

PEER-REVIEWED

Green Energy Mining and Indigenous Peoples' Troubles

Negotiating the Shift from the Carbon Economy to Green Energy with FPIC

By Rudolph C. Rýser, PhD

Chairman and Executive Director, Center for World Indigenous Studies

ABSTRACT

The countries of China, the United States, India, Russia, Japan, and Germany emit 60% of the world's carbon gases that cause climate change and the breakdown of biodiversity. At the same time, these countries, and the corporations they created seek to make sizable economic profits from "Green Energy" as a replacement for dependence on the carbon-based economy. State government and corporate policies promote the mining of metals such as gold, tantalum, and lithium—key elements necessary for supporting the development for electrical replacements to petroleum-based machines like cars. The problem explored in this article is that while effecting "green energy" is a positive step toward reversing the adverse effects of the carbon-based economy, catastrophic damage is done to the environment and indigenous peoples. The consequent mining and other resource exploitation of the "greening" directly destroy and pollutes the environment while violently forcing the removal of indigenous peoples from their territories or now killing thousands of people. Democratizing mining and other resource exploitation inside indigenous peoples' ancestral territories is essential and must become the new standard—a standard based on obtaining the consent of the affect indigenous peoples. The author presents a green-energy plan for mediating relations between indigenous nations, corporations, and states. Mining and exploiting "green energy" resources is a dominant yet destructive economic activity in the Democratic Republic of Congo (DRC)—the second largest state in the African Continent.

The DRC illustrates the problem as the largest source of "green-energy" tantalum—a "refractory metal" mined with lithium essential to producing capacitors, computer chips and semiconductors used in electric technology. Tantalum and lithium are mined primarily from the territories of indigenous nations with disastrous consequences.

Keywords: Twa, Mbuti, Balega, Tantalum, Lithium, Gold

The Cost of Green Energy

The rapidly accelerating “Green Energy” drive by political leaders of high technology countries, their mining companies, and the electronics producers to reduce or eliminate carbon-energy dependence now threatens the biologically diverse ancestral territories of indigenous peoples worldwide. To achieve the transition to green energy without creating new damage to the environment democratizing and mediating climate change, regulating mining, resource exploitation and corporate agricultural development States, corporations and NGOs must effectively ensure the approval of these activities by indigenous peoples’ communities.

Since the early 1970s, scientists who study the weather and the environment have increased the volume of their alerts to political leaders that human development and especially dependence on petroleum combine to destroy life-supporting biodiversity and increasingly radically change the climate. During the years since the initial alerts, states’ governments and international institutions failed to change the human behaviors that threaten life on the planet. Political leaders and organized efforts launched efforts in the first two decades of the 21st century to promote “green energy” as the alternative to unrestrained development and dependence on carbon-based fuels. “Green energy” calls on industry and governments to emphasize the development of renewable energy sources. These sources must support a turn to electric cars, energy-efficient household appliances, expanded use of solar panels and wind-generated electricity,

use of computers, and other electricity-based technology. The “green energy” focus seeks to reduce carbon emissions and achieve “net-zero” carbon emissions. More than 1000 companies worldwide have made net-zero commitments to attain this goal by 2100. The shift to “green energy” is a powerful statement to secure a healthy climate and environmentally safe Earth—except the commitment is only a partial solution to the needed global climate and environmental breakdown.

Merely committing without enforcement of that commitment produces beneficial publicity but no “net-zero” or “green energy” results. Indigenous nations, small and large, must be at the negotiating table with state, corporate, NGO, and effective mediators to formalize agreements controlling and environmentally managing the extraction of resources from indigenous peoples’ ancestral lands. In accord with international law formalized under the principle of “free, prior, and informed consent,” indigenous nations must be recognized with full power to consent to or reject access to their territories. Indigenous nations, states, corporations, and NGOs must provide international mediation. They must provide negotiated agreement enforcement to maximize the beneficial outcomes expected from decisions between the concerned parties.

Indigenous nations, states, corporations, non-governmental organizations, and commercial producers all have a vested interest in equitable negotiations based on free, prior, and informed consent—democratizing international relations. Destruction of indigenous communities, the

environment, the climate, and indeed all of humanity now depends on decisions based on fair and equitable negotiations.

After reviewing the example of the failure of mining and corporate agriculture in the Democratic Republic of Congo's indigenous peoples' territories, we discuss a framework for monitoring, negotiating, and enforcing safe and responsible corporate actions in the final section of this article.

Shifting to electrical technology as now contemplated requires establishing extensive regulations, commitments, and controls on corporations extracting raw materials from indigenous territories—the principal sources of minerals, metals, and materials essential to support the making of the new technology. Nations, states, and corporations must institute international regulations through negotiations controlling corporations such as Glencore, with headquarters in Switzerland, and Générale des carrières des Mines (Gécamines), with headquarters in China—two of the largest transnational mining companies in the world. Mining companies from Switzerland, China, Canada, and the United States dig vast pits and quarries primarily in indigenous peoples' territories to extract electric technology-based materials such as copper, aluminum, gold, tantalum, lithium, and cobalt. Out of sight from the consciousness vision of urban populations advocating “green energy” solutions, these companies—often with the complicity of corrupt government officials, profit-oriented importing companies such as Toyota, Tesla, Intel, Apple, and the computer chip-making Gécamines—

contribute to the destruction and pollution of vast lands, rivers, and rainforests, impoverishment of local and indigenous peoples, force the removal of indigenous peoples from the ancestral lands, and contribute to the trafficking of indigenous women, killing of members of communities and further corruption of governments.

In this article, I discuss the detrimental consequences of “green energy” for indigenous peoples, their neighbors, the earth, and the global economy. This discussion reveals that while there are severe disadvantages to “green energy,” it is possible to nearly eliminate the adverse effects on people, the earth, and the climate. By recognizing indigenous peoples' ancestral lands as THEIR territory and that they must agree to the terms for entering the territory and extracting raw materials, it will be possible to undertake “clean extraction.” Enforceable controls on companies and the state stipulated and agreed to by the indigenous peoples are essential. A negotiated agreement between indigenous communities and the corporate and political interests seeking access to indigenous territory and resources must fully express the internationally recognized principle of free, prior, and informed consent (FPIC). We examine in detail the indigenous territories, “green energy” materials, and resources in the Democratic Republic of Congo—a significant source of these materials.

“Clean” Technology and the Minerals needed

What if the World Meteorological Organization (WMO) report¹ that projects with 100% certainty the average global temperature will exceed 1.5

degrees Celsius at least for one year within the next five years proves true: nowhere on Earth will be safe on a catastrophically warming planet. Conservationists, environmentalists, climate scientists, and political leaders call for changing the dependence on petroleum that causes the climate changes to mineral components to manufacture laptops, smartphones, electric cars, and batteries. We may ask the questions: “Where are the minerals that will make the technological alternative to petroleum happen? What minerals are needed for the techno-revolution? Well, two elemental minerals commonly used to make smartphones, Xboxes, TVs, batteries, computers, electric automobiles, and other electronic devices is a mineral commonly called “coltan.” Without coltan, the ability to conduct digital communications using Zoom and Skype would be impossible, and hospital equipment designed to scan people’s bodies to diagnose diseases would not exist.

Coltan is the short expression for *columbite-tantalite*, a metallic ore extracted from the grounds of the Democratic Republic of the Congo. The mining takes place mainly in the Kahuzi Biega National Park, where the Batwa people’s ancestral lands are located and where the Dian Fossey Gorilla Fund International continues to work protecting gorillas.

The demand for Columbite-tantalite ore² is central to the commercial and government development of electricity-dependent technology intended to replace the petroleum-based economies of countries worldwide. The popular commentary is that electricity in support of technology is essential to electronic devices, new

modes of transportation, space satellites, military drones, and hospital equipment such as x-ray and kitchen appliances. While we all want to promote the development of new technology to reverse environmental damage done to the earth by petroleum dependency, from where do we think the minerals come?

The technology minerals and metals are contributors to environmental damage to soils and waterways in part due to mining by-product waste and other materials and disruption of the natural environment and to the health of nearby communities and the men, women, and children who mine these resources. Mining contributes to deforestation when trees and vegetation are cleared and burned. Topsoil, flora, and fauna are stripped away. Chemically reactive minerals are harmless when underground, but when they are mined and brought to the surface they often react spontaneously to oxygen and water resulting in acids and metal ions. The acid mine drainage is a risk after mines are closed even if stored by the mining company.

Mining companies and governments are disinclined to manage the adverse effects of mineral and metal extracts due to the additional costs for remediation. Clean-up is usually not

¹ WMO Global Annual to Decadal Climate Update 2022 and 2022-2026. World Meteorological Organization. <https://public.wmo.int/en/media/press-release/wmo-update-5050-chance-of-global-temperature-temporarily-reaching-15%C2%B0c-threshold#:~:text=the%20Global%20Annual%20to%20Decadal%20Climate%20Update%2C>

² Columbite-tantalite, coltan for short, is a grey metallic ore found in large quantities in the eastern areas of Congo. After processing and refinery, coltan is converted to tantalum in a metallic state. Its properties include heat resistance, capable of withholding relatively high metallic charges.

regulated, and the consequences of the mining can be disastrous for people, the environment, and the climate. There are measures to prevent the damages caused by mining that can be taken. But to bring effective regulation into effect it is necessary that indigenous nations, corporations, governments and communities become party to creating regulations and appropriate enforcement—to ensure clean results.

Resource Extraction and Climate Change

Electricity, that spark of thunderstorm energy from the sky, is touted as the solution to modern energy needs to eliminate carbon gas generating fuels that contribute to Climate Change resulting from human activity. The countries of China, United States, Russia, India, Japan, Canada, Germany, South Korea, and Brazil consume 64.1% of the world's non-renewable oil, natural gas, and coal. Six of these countries generate 60% of the world's greenhouse gases: China (28%), the United States (15%), India (7%), Russia (5%), Japan (3%), Germany (2%).³ Coal is the biggest electricity generator while producing the most significant carbon gas release.⁴ This simple tally of carbon producers is evidence that these countries are the main contributors to high levels of carbon gases in Earth's atmosphere.

Disastrous fires destroying towns and villages, drought eliminating the capacity to grow food crops, deaths due to extreme heat, destructive windstorms, floods, and more are already happening. The World Meteorological Organization Secretary-General Petteri Taalas stated: "The 1.5-degree Celsius figure is not

some random statistic. It is rather an indicator of the point at which climate impacts will become increasingly harmful for people and the entire planet."⁵ The WMO report author Mark Diesendorf concluded that it is "simply impossible for renewable energy to overtake the retreating target." He suggests it is "too late!" Yet governments, extractive industries, and commercial producers of electronic devices, cars, batteries, and other equipment insist that they must exploit the territories, peoples, and environment of indigenous nations for minerals essential for supporting the technological alternative.

All these governments are shifting some of their energy dependence from fossil fuels as their primary energy source especially for transportation to electricity generated by nuclear power plants, solar panels, wind generators, and computer capacitors and batteries.

The US government, for example, enacted a massive Infrastructure Investment and Jobs Act in November 2021 to build a countrywide electrical vehicle charging network, improve powerlines, and promote commercial production of electric cars and other electricity-dependent products.

³ Blokhin, Andriy. (2022) Investopedia: <https://www.investopedia.com/articles/investing/092915/5-countries-produce-most-carbon-dioxide-co2.asp>

⁴ IBID.

⁵ Kolhatkar, S. (2022) " 'We know where we are headed': humanity is sacrificing itself on the altar of corporate profits." May 14, 2022. <https://www.alternet.org/2022/05/humanity-sacrificing-itself-corporate-profits/>

Ample evidence has been compiled by climate scientists, environmentalists, and conservationists demonstrating that a massive and immediate global shift from petroleum-based energy to electrical-based energy is a critical step needed to meet what is now a climate change crisis. Conservationists, government environmental policymakers, and commercial electronics companies widely advocate the transition to electronics. These entities are the primary advocates of batteries, solar panels, wind electricity generators, household appliance makers, nuclear power plants, ground and air vehicles, military hardware (including rockets, ground vehicles, drone vehicles, satellites), computers (including iPads, iPhones, laptops, etc.)

A History of Economic Plunder of DRC

Mining sites in the Democratic Republic of Congo are in one of the world's most biodiverse regions, with a little more than 60% of the people living in rural areas. More than half of the DRC population of 89.562 million does not have access to potable water, and electricity is available to less than 1% of the people in rural areas. Its lands are rich with commercially attractive gold, diamonds, copper, and forest products, including timber and petroleum. Consequently, individual

men, women, and children working as individual “hand-in-ground” miners seek to earn small amounts of money to dig up minerals, elements, and precious gems for large corporations.

Despite the enormous wealth gained from raw materials extraction by a small elite, poverty in the country is rampant, and the Indigenous peoples in their territories suffer from removal from their lands and crimes, including genocide. The beneficiaries of this abundance are the state's political class and countries remote from Africa, including China, Canada, Switzerland, the United States, and the United Kingdom. Understanding the complex roots of resource and human exploitation in the Democratic Republic of Congo urges us to promote “green energy” produced from negotiated agreements with indigenous nations as action to bring the political, economic, and human violence to an end.

Small-scale mining

“Artisanal”⁶ and small-scale miners⁷ (ASM) join transnational mining corporations in the extraction of raw gems, minerals, and commercially wanted materials for electrical technology from ancestral lands of indigenous peoples such as the Batwa and the Balega located in the Ituri, North Kivu and South Kivu provinces

⁶ Fritz, M. James, M., Collins, N., and Weldegiorgis, F. (2017). “Global Trends in Artisanal and Small-Scale Mining (ASM): A review of key numbers and issues. Winnipeg. International Institute for Sustainable Development. “Despite its low productivity, ASM accounts is an important source of minerals and metals. It accounts for about 20% of the global gold supply, 80% of the global sapphire supply, and 20 percent of the global diamond supply. ASM is also a major producer of minerals indispensable for manufacturing population electronic products, such as laptops and phones ... producing “26 per cent of the global tantalum and 25 per cent of tin.” In many countries, 70 to 80 per cent of small-scale miners are informal workers producing “damaging socioeconomic, health and environmental impacts, which trap the majority of miners and communities in cycles of poverty and exclude them from legal protection and support.”

⁷ Walser, G. (2019) “Economic impact of world mining.” World Bank Group Mining Department, Washington D.C., USA. IAEA-SM-362/7. According to the World Bank, “small scale mining is “a poverty-driven activity” providing minimal income to an estimated 13 million men and women, while the Bank recognizes that the mining performed by small scale miners contributes to environmental damage, social breakdown, and conflict mineral mining—smuggling of minerals for profit.

of eastern Democratic Republic of Congo. Small-scale mining is not so small:

1. An estimated 150 million men, women, and children are paid often less than poverty wages (and frequently outright slavery) to mine for minerals with their hands and labor to produce a major portion of the world's tantalum, tin, gold, and precious gems.
2. ASM accounts for 80% Sapphires, 20% gold, 20% diamonds,
3. Small-scale mining is poorly regulated by local authorities due to the absence, lack of legal framework, or the capacity to enforce existing frameworks.
4. Small-scale mining in Central African Republic generates \$114.7 million into the economy,
5. Groundwater contamination, sinkholes occur where overlaying ground of the mine collapses, contamination of soils by-products of mining gold, and other metals released into the soils undermines vegetation, contamination adversely affects the local ecosystem, artificially modifying wildlife numbers.
6. ASM – gold mining buying, and refining facilities are in 55 countries but are a significant cause of mercury pollution.
7. ASM for gold is the largest source of anthropogenic mercury emissions to the environment of any sector globally, followed by coal combustion and non-ferrous metals.
8. High doses of mercury can affect neurological and behavioral disorders,

cardiovascular disease, high blood pressure, impairment of peripheral vision, kidney impairment and virtually no health support is provided to small-scale miners.

9. World Bank's optional solutions: a. encourage local economic and social aspirations, creating an environment for co-existence through employment, b. Vocational training to make a career path, c. establish a structure that includes an authoritative body to maintain good working environments, rights, and practices.

As the Greenpeace organization reported in its 2004 report on deforestation in the Congo Basin, including the Democratic Republic of Congo:

Economically the region remains poor and indebted: despite its important oil reserves and revenues, combined with timber, diamond, gold and other minerals, countries all rank either in the 'Moderately Indebted' (Cameroon) or in the 'Severely Indebted' (all the other countries) categories of the World Bank. Although the situation may appear paradoxical, it is to a large extent explained by state patrimonialism and the persistence of "economies of plunder": the appropriation of public goods by public 'servants' and their private partners, rarely managed in the public interest but rather for private gains.

The riches were early targets after the arrival of the Portuguese in 1482 feasting on the human slave trade from both sides of the mouth of the Congo River for the next 300 years during the rise of the Kuba Federation in what is now southern Congo. Belgium's King Leopold II began his

colonization schemes at the beginning of the 1870s followed by his establishment of the Congo Free State under his direct control. The Kuba Federation fought violently to resist Belgium's slave trade and unrestrained exploitation of rubber, ivory, timber. By 1908 Leopold is forced to relinquish control over the peoples and territory leaving behind the removal and killing of an estimated 10 million people. Belgium continued exploitation of lands, resources and people by instituting forced labor regimes and then robbing the treasury just before 1960's independence was won. Belgium continued to interfere in the internal affairs of the region seeking control over vast copper deposits and with the failed purported efforts of the American government's Central Intelligence Agency facilitated the killing of the elected leader of the country Lumumba. Throughout the decades to follow wars were started⁸ and squelched by outsiders seeking to gain control over the rich resources for commercial export through neighboring countries.

Conflict Minerals

Carbon-based Energy and Green Energy minerals, metals, and precious stones are at the center of violent conflicts involving state/indigenous community/local community small-scale miners, corporations in dispute with local small-scale miners, mineral and human

trafficking, and forced population removals involving militias, indigenous peoples, the environment. Transnational mining corporations, states' governments, and importer states are all caught up in violent confrontations. Violent conflicts in the ancestral territories of indigenous nations with abundant natural wealth are convenient targets for states and transnational corporations.

While state political leaders and corporate executives covet stable conditions in indigenous peoples' territories that include considerable natural wealth, the unstable territories are valuable. Government authorities can invoke the state's police powers to advance corporate interests.⁹ Conflicts arise between competing small-scale miners and communities living near mining sites. In the Democratic Republic of Congo, the government deployed nearly 800 troops to attack its citizens to forcibly remove 10,000 artisanal miners from one of its largest copper-cobalt mines—the Tenke Fungurume Mine (TFM) and destroyed the small village of Kafwaya in the process. The DRC also supported the expulsion of 20,000 artisanal miners at Glencore's Kamoto Copper Company mine. The greater the violence, the “fewer livelihood options” for the individual, men, women, and children engaged in small-scale mining working to avoid the consequences of widespread poverty.¹⁰

⁸ Rwanda's Hutu government orchestrated a genocide of Tutsi and moderate Hutu in 1994 and when they were defeated over a million Hutu took refuge across the border (including many of the genocide leaders to Zaire the area so named from 1971 to 1997 that became the Democratic Republic of the Congo). The new Congolese government installed by the Rwandan militias blocked efforts by the UN to protect Hutu who continued to flee to the interior. The Rwandan militia was renamed as the Army for the Liberation of Rwanda (ALIR) with members inside and outside the Congo.

⁹ Rigtternink, A., and DeCaires Gall, K., October 27, 2020. “The Future of Conflict Mining.” Political Violence at a Glance.” Online magazine. <https://politicalviolenceataglance.org/2020/10/27/the-future-of-conflict-in-mining/>

¹⁰ IBID.

In the United States, the government is working with the Perpetua Resources company to develop a vast open-pit gold mine that would produce 115 million pounds of antimony in Nimiipuu¹¹ territories (State of Idaho). Antimony¹² is an element critical to manufacturing the high-capacity liquid metal batteries. The Nevada Lithium company is preparing to break ground for a 1000-acre lithium mine in Paiute and Shoshone territory to extract the element for electric car batteries.¹³

Conflicts in the states of Indonesia (West Papua), Burma (i.e., Shan, Mon, Karen), Iraq (i.e., Ezidikhan, Al-Dulaimi, Kurdistan), Brazil, Sudan, and the Democratic Republic of the Congo are rampant. Acts of criminal attacks on indigenous peoples by indigenous peoples are commonly associated with land disputes and the extraction of so-called green energy minerals and metals. The Banyarwanda (Tutsi and Hutu settlers from Rwanda and Uganda violently driven into eastern DRC in the 1990s by the Rwanda genocide and similar contests in Uganda) appropriated ancestral lands of the Hunde, Nyanga, and Nande in the eastern Democratic Republic of Congo. To retrieve control over their lands, members of the three tribes formed militias to drive out the Tutsi, and the Hutus regarded as invaders. Under the moniker “Mai Mai,” armed groups became resistance forces in opposition to what they consider immigrant communities and ethnic Rwandans. Their agendas range from defending their land to control resources to extortion, illegal taxation, and banditry. The Banyarwanda formed counter-armed groups that violently attack the Mai Mai groups and they have their own agenda to raise money through extortion, trafficking,

and mineral smuggling to Rwanda, where eager buyers to resell the green energy minerals to companies in the United States, Canada, United Kingdom, and China.



Female fighters from a Mai Mai group in North Kivu, DRC. Photo: Matchbox Media Collective.

Figure 1: A Troop of Mai Mai

The Karen, Shan, Mon, Kachin, Rohingya, and others in Burma are engaged in a major conflict with the criminal military enterprise the Tatmadaw. The Tatmadaw, on February 1, 2021, seized control over the territories of all the nations and their minerals, precious gems, and oil resources. The country long known as Burma includes more than 135 different indigenous nations with ancestral territories covering the whole country. Though many indigenous nations, the Chin, Kachin, Kayin, Kayah, Mon, Rakhine, Bamar, and Shan are widely used names to group the many nations though the Hani, Khun, Wa,

¹¹ Nez Percé is the name given to the “reserved lands” of the Nimiipuu—the name they have for themselves. Nez Percé is a French language derived name meaning “pierced nose.” Nimiipuu has a current population of more than 3,500.

¹² Antimony is identified in the table of elements as with the atomic number 52. It is a gray metalloid found primarily as the sulphide mineral stibnite.

¹³ Healy, J., Baker, M., December 27, 2021, “As Miners Chase Clean-Energy Minerals, Tribes Fear a Repeat of the Past.” *New York Times*. (Golden, Hallie., October 15, 2021. Indigenous Tribes tried to block a car battery mine. But the courts stood in the way.” *The Guardian*.

Palaung with many others may also be cited when dealing with ancestral lands. Numerous transnational corporations pay money directly to the Tatmadaw to continue mining. These companies include the Sino exploration & Mining Company of China and Tegiva Mining Company Ltd, registered in Accra, Ghana. Other companies include the Mustafa Rivers and Mining Company, registered in the United States, and another company from China, the Shanghai Kadi Metal Mining Co., Ltd. Many of these companies are registered with the United Nations Global Compact, pledging to respect and abide by ten principles. However, these companies are directly complicit in the dislocation and killing of several thousand indigenous people by the Tatmadaw.

The Iraqi government militias and the Kurdish Regional government have seized control over oil and gas resources inside Ezidikhan (Yezidi) territory and Al-Dulaimi Confederation territory by the Kurdish Regional Government and the Iraqi government militaries. The long-term dispute over control of West Papua (since 1949) in Indonesia, where mining concessions transnational corporations were located, resulted in the Indonesian military's dislocation and suppression of the Papuan peoples. The copper and gold mines cleared and polluted significant forest areas in the Erstberg and Grasberg mountains, the Paniai and Wissel Lakes Region, Fak Fak, the Baliem Valley, and the border area next to Papua New Guinea resulted in the dislocation and suppression of the Papuan peoples by the Indonesia military.¹⁴ As the Democratic Republic of Congo map in Figure 2 illustrates, the critical minerals of cobalt,

tantalum and lithium are extracted from Hunde, Nyanga, Nande and Twa territories and trafficking is closely associated with Rwanda and Uganda.



Figure 2: The Democratic Republic of Congo is now the world's largest producer of the conflict minerals tantalum with Brazil in second place followed by Rwanda, Nigeria, and China.

Negotiating the Free, Prior and Informed Consent of the Twa

The Kahuzi Biega National Park administrators were forced into negotiating with the Batwa to mitigate adverse consequences of the “conservation expansion” of the park. Even though the Batwa had lived in their ancestral lands long before the DRC was created; and had been forcibly expelled from their territory demands were made for a negotiated settlement of Batwa claims. The Forest Peoples Program, with headquarters in England (info@forestpeoples.org) attempted to facilitate a dialogue between the Kahuzi-Biega National Park

¹⁴ “Mining.” <https://www.cs.utexas.edu/users/cline/papua/mines.htm>

in South Kivu and the Batwa communities living around the park. Because the Park authorities showed “no willingness to meet any of the commitments they have made to communities in previous discussions and instead have taken the route of violence and intimidation in order to keep Batwa people out of the Park by force”¹⁵ the Forest Peoples Program withdrew from its mediation role. The negotiations collapsed because there was no mediating mechanism and no enforcement of any agreements. We discuss an alternative approach below that may have effectively proved successful.

Corruption, Militias and Massacres

Eastern DRC has more than 70 independent armed groups originating from Rwanda and Uganda.¹⁶ These groups making sure to get their share of the minerals and making sure to keep the flow of trafficked minerals coming across the border. The Tutsi Banyamulenge had migrated from what is now Rwanda to the Congolese town of Mulenge more than 100 years earlier. The Congolese authorities challenged their citizenship in the DRC. This challenge led to insurgencies that have evolved into smuggling Tutsi militias running minerals across the border into Rwanda. Smuggling by these and other groups make up such a vast industry—so lucrative—that the governments of Uganda and Rwanda support the militias and trafficking. Ultimately the European Union and the United States, the main customers of these minerals (for “green” energy), turn a blind eye to the violence and criminal enterprises. The successful trafficking in valuable green energy minerals appears to be why the US backs

up President Paul Kagame, the authoritarian human-rights violator in Rwanda.

Indigenous peoples and peoples attached to the DRC are forcibly removed from mining sites, and they get killed all the time in these conflicts just because they are in the way. But the Twa (Batwa is used interchangeably with Twa) in Tanganyika province farther south have also suffered attacks and forced removals. It’s a crisis. When the US and European Union buy the green energy minerals from Rwanda and Uganda—minerals that originate in the DRC—they can pretend to not have knowledge of the criminal enterprise.



Figure 3: Ituri and Tanganyika - Centers of violence and resource extraction.

¹⁶ Armies from Rwanda and Uganda and other African countries have continued to engage in violence in eastern DRC serving in part as traffickers in the rich resources to Rwanda and Uganda extracted from Batwa, Mbuti, and Baka territories as well as the rain forest extending west into DRC.

Transnational companies such as Générale des quarries des Mines (Gécamines), with headquarters in China, the *Minière des Grands Lacs Africains* (MGL), headquartered in Belgium, and the Banro Corporation, headquartered in Toronto, Canada, are the active transnationals in eastern DRC. They benefit from the impoverished individual families digging in the soil for green energy minerals and, in turn, the export of these minerals that benefit companies such as Tesla, General Motors, General Electric, Volvo, Apple, Intel, and more.

A Park for Gorillas and Mining—not for ancestral Twa

Corporations and corrupt political officials exercise decisive influence over extracting raw materials from indigenous territories and so-called “protected” sites. The companies use front companies with 60% to 100% control to do the work on the ground while the initiating company and political officials in government directly benefit from earnings. Using front companies is common with mining activity in the Kahuzi-Biega National Park. In 1980, UNESCO designated this

sorry situation a ‘World Heritage Site,’ further demonstrating the inability of state-based international organizations and governments to accommodate Indigenous nations. UNESCO and the DRC park authorities ignored and essentially trampled on the human rights law under international treaties and conventions to negotiate with indigenous nations according to the standard of free, prior, and informed consent (FPIC). Under FPIC, state and state-created bodies are required under international law to negotiate with indigenous nations if government administrative, legislative, or judicial policies and actions conflict with indigenous peoples’ interests. The method exists, and the requirement is in place according to treaties and convention but is completely violated in the DRC and by UNESCO.

The Park authorities recognized in 2014 that the primary problem was that the Batwa had been forcibly made landless even as they retain a strong attachment to their ancestral lands. The state and companies promised to accommodate the Batwa, but the promises have been left unfulfilled.

Our Land Our Nature

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In early September 2021, Survival International, Minority Rights Group and other NGOs convened a global conference *Our Land Our Nature* to assess this coercive, colonial model of conservation to promote green energy, based on separating people from their close relationship with nature. Indigenous people from Africa, Asia and Latin America spoke at the conference, along with researchers and activists who are looking for a more effective way to protect people and nature. The conference coincided with the corporate-funded International Union for the Conservation of Nature (IUCN) conference promoting a global increase in the amount of protected area. This is the so-called 30 x 30 plan (30% of the earth's surface protected by 2030). From the perspective of the speakers at the Our Land Our Nature conference, this would be a social, moral, and environmental catastrophe.

Julien Basimika, Coordinator of the Congolese group *Actions pour le Regroupement et l'Autopromotion des Pygmées* (ARAP), spoke at the *Our Land Our Nature* conference, reporting about his experiences and the harm that the Kahuzi Biega National Park has caused. ([Click here to see his speech with English subtitles](#)). Shockingly, this World Heritage Site, purchased in blood, did not result in greater protection for the endangered species or forest landscapes. Instead, the Park is now overrun with settlements, militias, mines, and charcoal operations. By driving out the indigenous inhabitants, the Park lands became a free-for-all of illicit and corrupt resource extraction – what Julien referred to as ‘their mafia.’

So, Julien and his fellow activists at Kahuzi Biega are left to advocate for the impossible: agricultural development for people with no lands; human and cultural rights for people whose identity is tied to the land that has been taken; and conflict resolution between the Batwa and the Park when land is the only thing that could resolve the problem.

Following the September conference, a Manifesto was drawn up by the participants, proposing a better way to protect landscapes, biodiversity and people. Indigenous peoples, who currently control around 80% of the world's biodiversity, must become central participants in the process and empowered to find ways to protect these lands – as well as to meet their own needs. In fact, studies show that community-managed lands are better at protecting biodiversity than are “protected areas” devoid of people.” “Thus in 1975, some 6,000 Twa, hunting and gathering people, were driven out and left to fend for themselves on the outskirts of the rural society. Given no compensation and no alternative lands, and with no access to economic resources, food security, modern education, or their traditional land-based culture, the Twa languished in abject poverty.

Fast forward to 2021: the situation is now worse, because conflict has developed, and nothing has been resolved. But the Twa are not alone. All over the world, “protected areas” have been grabbed and designated for conservation at the expense of the indigenous and other local communities. The reality in the Kahuzi-Biega National Park is that the very people—Batwa—whose stewardship over the millennia protected the biodiversity that makes these lands worth saving are the same people who were chased out, then shot as poachers if they attempted to return.

The three mining permits on which Kamituga town and its surrounding mining sites are located were acquired by Banro, a Canada-based multinational (Geenen, 2015). The Balega are the people in Kamituga working as artisanal and small-scale miners. Kamituga Mining Company mines copper, coltan, gold, cobalt, uranium, and coal in Kenya, Tanzania, DRC, Zambia, Zimbabwe, and South Africa. <https://kamituga.com/#>



Figure 4: Location of Kamituga Mining Company in eastern DRC

The Belgian company Minière des Grands Lacs Africains (MGL), or Great Lakes Mining Company, operated in Kamituga mining gold until it merged into SOMINKI (Société Minière et Industrielle du Kivu). SOMINKI is a privately held company with eight other mining companies mining tin and then purchased by Banro Corporation of Canada, gaining the right to exploit gold mines. The mining companies in Kivu Province merged in three phases. First, the Cobelmin companies were unified into one company. Second, on 1 April 1974, Cobelmin began to administer Kivumines, Phibraki, and Somikubi as one while the legal arrangements were being sorted out. Mining, petroleum, and transnational agricultural corporations that engage in the extraction of green energy minerals and metals are primarily registered in the United

States, Canada, South Africa, and Australia, and perhaps the largest and most influential corporation is in China (SEE Figure 5 location map below)



Figure 5: Transnational corporations and primary states' governments engaged in green energy extraction

International Human Rights Negligence: “Our Hands are Tied”

When the officials at the United Nations Organization Stabilization Mission’s (MONUSCO) headquarters¹⁷ at the United Nations in New York were directly challenged with not having protected the Batwa people in DRC, they said, “we know what’s happening, but our hands are tied.” Who has tied their hands, one might ask? Who runs the UN’s Security Council? The states’ governments either do not want to enforce the laws they create, or they accept the wealth from the crimes and turn their eyes away.

The perpetrators of crimes against the Twa are not only responsible for violence against human societies; but also for long-term damage

¹⁷ MONUSCO is the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (the acronym is based on the French name) that was established by the UN Security Council resolutions 1279 and 1291 to monitor the peace process of the Second Congo War. However, though the agency turned to other conflicts (Ituri, Kivu, and the Dongo).

to the communities, environment, and cultural wellbeing. Such conditions demand substantial financial and legal liabilities for pollution, corruption, land grabs, destruction of cultures and communities, killings, etc.¹⁸ The damages done by state government complicity, corporate negligence, and investor support must be documented by a team of experts on the ground.



Figure 6: DR Congo peoples, land, raw materials, and biodiversity (Source: Agence France-Presse [AFP])

The investigative report must be delivered and prosecuted in a competent international criminal court for crimes committed against humanity. Independent international enforcement mechanisms must impose penalties on all the countries involved in the supply chain, all companies and their investors, and customers using the extracted resources. The independent international agency must calculate the size of the financial and other material responsibility based on the social and economic cost of restoring the communities and landscapes, including land and water, vegetation, and wildlife. This cost would be in the hundreds of billions, easily.

Punitive damages assessed against states, companies, and organizations involved in what must be assessed as crimes against humanity

have an alternative. The alternative is to negotiate to settle conflicts and thereby ensure that indigenous nations are recognized as exercising full powers to grant consent to access their ancestral territories on terms they determine. The missing piece in the green-energy proposition is moderating, mediating, and negotiating territorial and resource access with environmental and climate regulations to benefit all parties.

ALDMEM – A Mediation and Negotiating Mechanism

I propose a plan to establish an “ancestral lands decolonization monitoring and enforcement mechanism” that facilitates negotiations enforced by third-party guarantor(s) to establish international treaties between affected indigenous nations, relevant states, and corporations to control access to indigenous territories and their resources. Some states, corporations, and many indigenous nations have “agreed” to the need to implement FPIC in matters involving administrative, legislative, and judicial decisions that may adversely affect the interests of indigenous nations. However, no permanent international mechanism exists to facilitate constructive and enforceable arrangements between concerned parties. The state, corporations, and many nations currently emphasize the need to engage in “consultations” instead of obtaining indigenous nations consent. Consent establishes the necessary conditions for

¹⁸ Kambale, Albert (2016) “DR Congo Christmas slaughter leaves 35 dead” Yahoo News December https://www.yahoo.com/news/13-civilians-killed-dr-congo-christmas-day-ethnic-115708222.html?soc_src=social-sh&soc_trk=pi

mutually determined negotiations. It balances the power relations between nations possessing ancestral territories and resources and the states and corporations seeking to access and extract those resources.

Christian Radu Chereji, Managing Director of the Conflict Studies Centre at the Babes-Bolyai University in Romania, suggests that “one of the major problems encountered by indigenous communities is their apparent lack of power to protect their lands.” He points to different expressions of power, such as a “strong organization, knowledge of legal and technical aspects of the problems, and the capacity to communicate effectively and mobilize international public opinion.”¹⁹ He indicates that his Conflict Studies Center, the Center for World Indigenous Studies and other organization can supplement indigenous nations through capacity building technical assistance. Chereji suggests that more than 1000 corporations have reclaimed “social responsibility” as part of their “corporate profile,” and must be brought to the table with indigenous nations. That action can press states’ political players to join the table to establish a working mechanism to monitor, mediate and facilitate negotiations between concerned parties. It will be necessary, according to Chereji, “to work both ends—to make public consultation processes real and true instruments of decision-making regarding development projects and to make the indigenous communities powerful enough to be taken seriously”²⁰ for them to sit at the decision-making table with corporations and governments.

Therefore, this proposal:

Ancestral lands decolonization monitoring and enforcement mechanism (ALDMEM)

Through a cooperative agreement between nations, non-governmental organizations, willing states, and willing corporations establish a mechanism funded by independent sources to facilitate monitoring, negotiations, agreements, and enforcement of negotiated agreements concerning access to and exploitation of raw materials inside indigenous nations’ ancestral territories based on the principle of free, prior and informed consent.

MISSION:

To monitor, mediate and facilitate negotiation of agreements (compacts, treaties, etc.) between nations, and corporations and states seeking to access ancestral territories and to use or extract resources for outside benefit.

GOALS:

- Register nation, state, corporate and purchaser parties seeking to use or extract resources from ancestral territories
- Establish mediation teams to facilitate conflict cession between competing nations seeking to control claimed lands and resources.

¹⁹ Private communication to the author on 25 May 2022.

²⁰ IBID.

- Monitor existing territorial occupations and respond to nation requests for mediation between the nation and other parties
- Facilitate Third Party Guarantor participation of 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 customary governance of nations, structure of corporate, state and purchaser systems.
- 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.

ORGANIZATION:

Director: Oversee and manage the organization

Monitoring Staff: Document, evaluate and track nation, corporate, state and purchaser activities in relation to ancestral territories worldwide. Maintain evaluation of existing relations, and document circumstances of relations between affected parties.

Diplomatic Staff: Engage state, nation, corporate and purchaser and multi-lateral parties to facilitate engagement. Facilitate Third Party Guarantors, observers and affected parties.

Communications Staff: Develop and maintain language, cultural, environmental, and geographic information to facilitate communications between nations, nations and states and corporation and research.

Mediation Staff: Directly engage parties in conflict and facilitate mutual understanding, rules for negotiations and consent and guarantees.

Public Affairs Staff: Develop and produce public information about engagement between nations, states, corporations, and purchasers.

Subject Matter Researchers: Nation negotiators of FPIC must have access to information and resources that include 1. Analysis of risks and benefits, 2. Roles and Responsibilities of all parties to agreements, 3. Governance Principles and Arrangements, 4. Social and environmental impact assessments, 5. Assessment of potential internal conflicts within the nation, 6. Evaluation standards for implementation of agreement, 7. Evaluation and validation of the standing of parties in negotiations, 8. Documentation of revenue streams, 9. Data, records, and knowledge base, 10. Domestic nation personnel and business participation, 11. Legal analysis, 12 Evaluation of Capacity of Parties.²¹

²¹ These elements are derived from a reading of key considerations established by the First Nations LNG Alliance involving twenty-nine indigenous communities and 63 agreements concluded under FPIC with the Prince Rupert Gas Transmission; Coastal Gaslink; Pacific Trail Pipeline and the Westcoast Connector Gas Transmission project to build a gas pipeline across the territories of 29 first nations. <https://benefits.fnlngalliance.com/critical-issues/>

Framework for an FPIC Mechanism²²

Each nation that enters an FPIC process must receive technical assistance and support to determine whether a company or companies and a state are allowed to access ancestral lands to develop and extract natural resources. Technical support and capacity building will help guarantee that it is possible to freely act as an equal negotiator.

There are no mechanisms for implementing human rights declarations or treaties except when the interests of competing entities find mutual benefit in implementation. Instead of “good faith” implementation is dependent on “good will.” The absence of implementation and enforcement mechanisms in international and state laws²³ to directly protect nations from exploitation raises the question, “What are the options for establishing a mechanism that has the full capacity to ensure that nations are active parties in protecting their territories and communities and or controlling social, economic, and political forces that exploit peoples, resources and the environment for economic gain and power?”

The foundational principle in international law regarding the authority of indigenous nations is stated in UN General Assembly Resolution 1803²⁴, recognizing that sovereignty and

self-government are foundational in international law as noted:

The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.²⁵

As the original peoples, indigenous nations reserve their authority over their lands, natural wealth and resources while states seek to exercise authority the same ancestral lands of nations. And Resolution 1803 makes clear that violations of the rights to the exercise of their sovereignty over natural resources and other wealth is inconsistent with the UN Charter.²⁶ Violations of such rights is contrary to the intent of international declarations, conventions, and treaties approved and ratified since the 1960s. These agreements guarantee indigenous nations the right to freely consent or reject administrative, legislative, or judicial actions that may be contrary to their interests.

Article 19 of the UN Declaration on the Rights of Indigenous Peoples and other provisions in the Declaration assert the necessity for state and nations to engage cooperatively regarding administrative, legislative, and judicial measures

²² Ryser, R., (2022) “A Framework for Implementing the Principle of Free, Prior and Informed Consent (FPIC) – Comity or Conflict.” Fourth World Journal. Winter V21 N2 2022. p. 127

²³ In a recently released document entitled “Tribal Implementation Toolkit” (2022) designed for indigenous nations inside the United States to implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) the authors from the University of Colorado Law School, Native American Rights Fund and the University of California-Los Angeles Law School repeatedly note there are no enforcement mechanisms internationally to ensure conformity with the UNDRIP provisions.

²⁴ UNGA Resolution 1803 14 December 1962. “Permanent Sovereignty over Natural Resources.” United Nations General Assembly.

²⁵ IBID. Paragraph 1.

²⁶ IBID. Paragraph 7.

that have the potential for adversely affecting the interests of nations. Similarly, the International Labor Organization Convention 169 (1989) contains provisions in article 16 regarding relocation of peoples by a state “only with the free and informed consent” of the indigenous peoples affected. The point is emphasized in article 6 of the Convention noting that engagements between states and nations “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.” In neither international instrument, nor in any other convention or declaration concerning indigenous nations are their provisions for enforcing the “requirement” of consent or agreement by nations except “good faith.”

Exploitation of nations’ ancestral territories and peoples by states, corporations and the purchasers of raw materials extracted from nations’ territories accelerates and expands to more and more nations’ lands. As mounting wealth and power of a few states grow there are calls for “green energy” to mitigate the damage growing worldwide. All entities concerned with stabilizing changing climate, reversing biodiversity collapse, preventing the destruction of indigenous peoples, and preventing the breakdown of human society worldwide must act to directly work through a mutually acceptable international mechanism that can ensure beneficial results for all parties. Establishing a new international mechanism with all contending parties seated at the table is an urgent matter.

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This article may be cited as:

Ryser, R., (2022) Green Energy Mining and Indigenous Peoples’ Troubles: Negotiating the Shift from the Carbon Economy to Green Energy with FPIC. *Fourth World Journal*. Vol. 22, N1. pp.101-120.

ABOUT THE AUTHOR



Rudolph Ryser, PhD

Dr. Rudolph C. Ryser 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.