Unregulated Corporate and State Capitalization of Nations' Land

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

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ABSTRACT

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

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

Despite human rights violations, the United Nations and other state-based bodies do not impose international organization constraints. There remains no accountability for the destruction in communities, the environment, or economies. By implementing nation-based laws, Indigenous nations may be the only actors to stop the human and environmental carnage resulting from unregulated mining, forest cutting, and industrial food production. Furthermore, nation-based laws may also moderate unrestrained development of commercial and urban centers carried out in the name of improving the social, economic, and political lives of so-called “less developed” countries. Nation-based governance and laws are only possible if efforts to corrupt nations and divide them politically can be prevented.

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

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

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

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

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

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

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

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

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

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

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

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

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

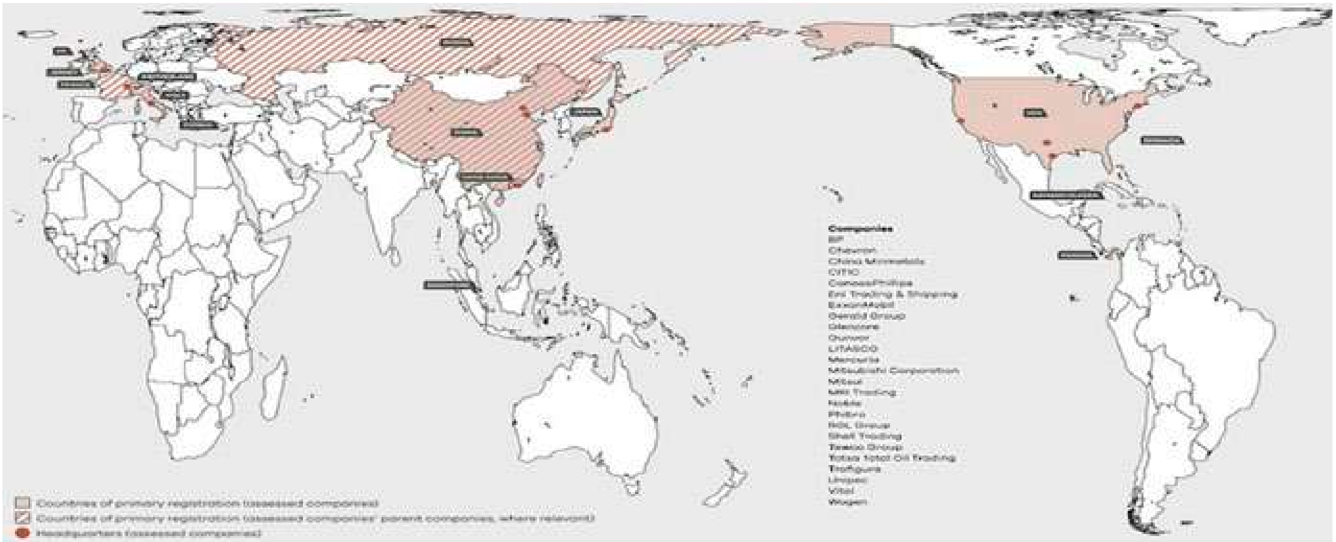

Figure 1. Twenty-Five Companies Headquarters or Registration - 15 states[4]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[11] IBID.

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

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

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

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

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

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

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

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

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

[16] IBID., 5.

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

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

Civil Lawsuits

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

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

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

Human Rights Registration Exposure

Many corporations engaged in extractive activities have registered with the UN Global Compact, the Extractive Industries Transparency Initiative, Transparency International, and similar inter-state or non-governmental organizations. By registering Extractive Industries and thousands of other corporations and businesses pledge their commitment to upholding internationally established human rights conventions, treaties, and rules established by inter-state human rights agencies. Corporations often use the mere fact of their registration with a monitoring body to demonstrate their commitments to human rights and (in many cases) to protect indigenous nations' cultures and society. Registration does not mean "implementation." Many companies can skirt transparency by simply announcing their "compliance with the registering organization rules or regulations, but a company may fail to implement in a way consistent with the goals set out. Companies' websites often site their registration and "compliance" but ignore the actual consequences of their actions on the lands, people, and environment.

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

Public Exposure of Corporate, Political, and Investor Leaders

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

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

Vertical Policy Organizing

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

This process requires an organized network of individuals and organizations familiar with and able to sustain engagement with local, regional and international state bodies. The difficulty faced by organizers approaching vertical engagement is that the state-based political and legal system is expensive to influence and heavily dependent on voluntary commitments by states, corporations, and international bodies. Indigenous nations have limited capacity to engage in the state-based international system. This circumstance places a burden for influencing international change in organizations and individuals outside indigenous nations. However, where nations have established capabilities, they may be allied with non-governmental organizations. Where nations form alliances with other nations, the capabilities may be further magnified.

The Voice and Authority of Nations

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

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

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

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

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

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

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

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

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

[18] IBID., 68.

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

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

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

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

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

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

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

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

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

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

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[21] IBID.

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

Benefit Agreement Critical Issues:[23]

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

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

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

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

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

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

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

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

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

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

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

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

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

Wet'suwet'en Hereditary Chiefs Oppose GasLink

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX 1

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

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

[35] IBID., p. 5

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

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

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

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

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

APPENDIX 2

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

Key Terms

Benefit Agreements

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

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

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

Box 1: Benefit Agreements Lexicon

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

Indigenous

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

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

Government/State

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

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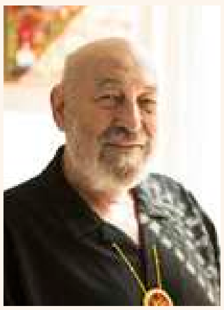

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