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Research Article

Right Environmental Participation of Indigenous in Chile

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Abstract

This research article analyzes standards derived from International Environmental Law and International Human Rights Law on the right to environmental participation of Indigenous Peoples, examining their reception and applicability in the Chilean internal legal system. Its objective is to establish the content, scope and limitations of the right to environmental participation of Indigenous Peoples, its reception and application in the Chilean legal system. We use dogmatic legal methodology with qualitative techniques and documentary research. It is concluded that, despite having reception and application, there is an incompatibility between what is established in the international standards regarding the right to environmental participation of indigenous peoples and specifically in relation to the right to consultation, with the Chilean internal legal system. If compliance with international obligations is not addressed in good faith, and the rights of indigenous peoples in Chile are not received, applied, formulated and recognized, in accordance with international standards, the right to prior consultation and respect for and guarantee of rights cannot be established. Advancing in the recognition and role of Indigenous Peoples in environmental matters and the recognition of their rights, as well as the protection of nature through shared biocultural governance is a challenge for the Chilean State.

Keywords

Indigenous Peoples, Prior Consultation, Participation, Standards, Right of Access

1. Introduction

The right to environmental participation of Indigenous Peoples in Chile materialized through prior, free and informed consultation seeking to protect Indigenous Peoples from potential damage and eventual impacts on their rights and lives. The development of prior, free and informed consultation has been established and regulated through regulatory standards. [1] However, because this regulation is limited to materializing in isolation the content of Article 6 of Convention No. 169, on Indigenous Peoples in Independent Countries of the International Labor Organization (Convention 169). On the one hand, it is considered that these limitations restrict the objects of the consultation [2] and, on the other, that this generates an implementation gap between the recognition of the rights of Indigenous Peoples and their effective implementation. [3]

Human rights are based on the international corpus iuris, primarily the Charter of the United Nations and the Universal Declaration of Human Rights, approved by the General Assembly in 1945 and 1948 respectively. However, since then, these initially recognized human rights have been progressively expanded to include specific and differentiated standards for women, children, people with disabilities, minorities and other vulnerable groups such as Indigenous Peoples.

This recognition of the rights of Indigenous Peoples has

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been based on standards that arise from this United Nations system and its agencies, which in principle derive from Conventions, Pacts, Treaties and pronouncements of intergovernmental organizations and other human rights bodies, through resolutions, recommendations, declarations, or decisions in specific cases and which are the result of efforts to implement human rights. [4]

These specific and differentiated standards for indigenous peoples are derived from soft law and hard law legal instruments, a distinction that refers to whether these sources of law are binding or not. [5] Soft law refers to norms that are not legally binding or obligatory for States, and which have been given an interpretative, axiological and hermeneutical use. While hard law refers universally to legal obligations that are binding on the parties involved (States) and that can be legally enforced before a court due to their obligatory nature. [6]

This paper will analyze standards that are derived or extracted from both types of legal instruments, seeking to examine and identify standards of the human right to access to environmental participation of Indigenous Peoples and the possibility of incorporating them into the Chilean internal legal system.

To determine the content, scope and limits of the differentiated rights for Indigenous Peoples, specifically the right to environmental participation, using as far as possible standards of international human rights organizations and demanding universal positivization [7] of the rights of Indigenous Peoples through a differentiated and inclusive approach as a legal norm that recognizes and makes visible the rights of Indigenous Peoples, taking into account their cultural diversity and the real situation in which they find themselves, such as difficulties, asymmetries, inequalities, vulnerability, among others, as well as their worldview, customs and traditions, language and forms of social, political and territorial organization.

Our work is divided into two parts. The first one presents the right to environmental participation in Chile; in the second part, we analyze the characterization of the right to environmental participation in the case of indigenous peoples; then we analyze the respect, preservation and maintenance of knowledge, innovations and practices of indigenous peoples, also the fair and equitable distribution of benefits derived from the use of traditional knowledge and use of genetic resources, the right to prior, free and informed consent as a manifestation of indigenous environmental participation and then the recognition and respect for indigenous knowledge, cultures and traditional practices; finally, we present our conclusions.

2. Right Environmental Participation of Indigenous Peoples in Chile

The environmental participation of Indigenous Peoples in Chile is carried out during tension, due to a lack of criteria and uniformity both theoretical and practical, both institutional and normative, in a future of inequity in the distribution of power in decision-making on environmental matters, asymmetries of power and resources. [8] Prior consultation currently responds to a procedural logic that seeks to legitimize public decisions [2] without taking into consideration the power asymmetries and the position of inequality in which Indigenous Peoples find themselves. [9]

However, the formalization of prior consultation with Indigenous Peoples in Chile has been positive, because it means the acceptance of international standards related to the rights of Indigenous Peoples and their application in the internal legal system, initiating a period of institutional change. [10] This has generated an experience that has been able to be reformed in only one opportunity since its implementation.

For Indigenous Peoples, the changes introduced continue to be insufficient, which is expressed in a discouraging assessment of Convention 169, where a high degree of frustration is appreciated, in a correlation of deepening distrust towards the State, because the application of the regulations has had various obstacles that seek its failure or restriction. [11] It should be noted that Indigenous Peoples have a characteristic trait of inherent vulnerability, because they are in a position of inequality, whether due to language, structural racial discrimination, and the allegations of lack of experience in environmental matters. [12] It must therefore be kept in mind that the duty to ensure the participation of Indigenous Peoples is not limited to prior consultation. [13]

Although the principle of prior consultation was an innovation in the recognition of Indigenous Peoples in the sphere of environmental participation [14] as an internationally recognized right and a mechanism to ensure that their other rights and interests are respected [15] Currently it is an outdated and insufficient standard, especially in national territory. Prior consultation is not an isolated guarantee, but a fundamental right of Indigenous Peoples, normatively complex (that is, composed of various legal facets) [16] and that implies the recognition of a series of other related rights by the State.

In this sense, the right to environmental participation of Indigenous Peoples in Chile responds to the standards of prior consultation established in Convention 169, but in a limited and isolated manner to article 6 of the instrument, leaving aside other normative provisions and standards that integrate the complex content of the law. Therefore, it is necessary to ensure the effective participation of Indigenous Peoples, which implies that their point of view has an impact on the decisions taken on environmental matters. [17]

However, the limitations established by prior consultation generate a partial absence of participation by Indigenous Peoples in decision-making on environmental issues and, in turn, cause immediate repercussions, which produce negative impacts on both their lives and their families. rights. [18] As a consequence of the limited participation of Indigenous Peoples in environmental matters, repercussions are caused that become a direct threat to the inherent right to

self-determination [19] which creates a problem for the full exercise of the rights of these Indigenous Peoples of Chile.

The lack of participation or restricted participation of Indigenous Peoples in environmental matters is historically derived from various reasons, among which the following stand out: the paternalism of the State in the formulation of policies for indigenous people, such as helping weak groups by implementing approaches preservationists and assimilation [20] procedural inequality; issues of asymmetry of participation and hierarchies in forms of knowledge, [21] the ineffectiveness of government programs that on the contrary have served to perpetuate inequality and marginalization, [22] the absence of reforms in consultation processes. [23]

The participation of Indigenous Peoples is key to the exercise of other rights such as self-determination and autonomy and is therefore a central aspect in the processes of consolidating other demands. [24] However, it is observed that in Chile, indigenous conceptions of the environment, for environmental justice, go beyond the traditional emphasis on distributive inequalities and even beyond political exclusion and residual authoritarianism, highlighting the need to implement a pluralist and community-centered approach to broad capabilities for justice and development. [25]

Similarly, the need to go beyond the nominal in prior consultation and participation processes must be addressed, in order to adopt processes that ensure that Indigenous Peoples have a decisive voice in decision-making [26] and that affect their living conditions and environment. In addition, their participation could mean that the conditions that would allow limiting the impact of human activities on the environment are potentially generated. [27]

We therefore intend to determine the content, scope and limitations of the right to indigenous environmental participation, considering international standards and the jurisprudence of jurisdictional bodies, through an inclusive and differentiated approach that is useful for questioning the characteristics of Indigenous Peoples, which addresses and guarantees their participation in environmental decision-making. [28]

It is clarifying to highlight examples of this inclusive and differentiated way of guaranteeing the participation of Indigenous Peoples through two concrete examples. In the first of them, resolved by the jurisprudence of the Inter-American Court of Human Rights, the necessary differentiated character has been instituted in the participation of Indigenous Peoples and in the implementation of the prior consultation, considering Indigenous Peoples as differentiated social and political actors in multicultural societies, who must be especially recognized and respected in a democratic society. [29]

Another example of environmental participation of Indigenous Peoples with a differentiated approach is found in the Nagoya Protocol on access to genetic resources and fair and equitable sharing of benefits arising from their use (2011), which states that the effective participation of indigenous communities will be achieved through the obligation of States to establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations. [30]

Regarding the rights of Indigenous Peoples, the need to see this right to environmental participation of Indigenous Peoples expressed as especially regulated and the usefulness of having reinforced protection, considering principles and specific regulations, has been expressed. [31]

The environmental impact of development and extractive activities directly affects Indigenous Peoples and generates a series of protests, claims and demands for recognition, respect and guarantee of rights for the protection of the environment, which are explained by the fact that Indigenous Peoples are the most vulnerable to these actions, plans, programs and projects implemented by States without their full consent and participation. [32]

An example of this direct impact on the Chilean conflict is the conflict caused by the construction of the El Pangue hydroelectric plant (1992) and the Ralco dam (1997), built by the state-owned electricity company, which ultimately constituted a significant ecological and cultural disturbance [25] for the Indigenous Peoples because it involved inequality, forced relocation and flooding of ancestral indigenous lands and heritage, without any type of environmental participation by the affected indigenous peoples. [33]

These types of events incite a series of protests and claims, which translate into a confrontation with the Nation-State and the ideological and economic interests of the governments that have passed, which have allowed the consolidation of a model of evaluation of projects with narrow criteria, based solely on corporate interests [34] and which is not conditioned by the opinion of the Indigenous Peoples, causing legal and social tensions to increase between them and the State.

Therefore, inclusive, binding and comprehensive indigenous environmental participation could achieve equal conditions for actors in decision-making, generating agreements instead of provoking conflicts based on power imbalances, asymmetry of information and knowledge. [35]

Therefore, it is necessary to carry out an investigation that shows the reception and application of international standards that ensure the right to environmental participation of Indigenous Peoples in the Chilean internal legal system.

Human rights are based on the international corpus iuris, fundamentally in the United Nations Charter and the Universal Declaration of Human Rights, approved by the General Assembly in 1945 and 1948 respectively. However, since then and progressively, these initially recognized human rights have been expanded to include specific and differentiated standards for women, children, people with disabilities, minorities and other vulnerable groups such as Indigenous Peoples.

3. Discussion

In Chile, according to current regulations, indigenous peoples are consulted in total subordination to the State, without respecting their rights to autonomy and self-determination,

evidencing a series of deficiencies in the regulations which do not conform to international standards for consultation. [36] It is therefore necessary to generate clear and precise legislation on consultation that in turn responds to indigenous demands and leads to compliance with international obligations, but also because it is necessary to standardize the criteria in all State bodies that deal with the matter, both at the administrative level, where arbitrariness is evident, and at the judicial level, where there is evidence of an evolving interpretation that generates a confrontation of opinions on the matter. [37]

The reception and application of international human rights law, despite some progress, is an issue that is not easily accepted in the countries of the region. [38] Chile does not escape this reality, having other problems that also arise in the reception such as the hierarchical location [39] of the international human rights instruments, since, in the Political Constitution of the Republic, there is no express rule that gives it a certain category among the sources of law, so this must be determined by way of interpretation. [40]

As well as the validity when it comes to mere declarative instruments such as soft legal instruments, which also leads to other problematic issues such as non-compliance with international obligations. [41]

In Chile, international human rights law operates as a way of complementing content and protection, fulfilling the role of filling the gaps left by inactivity in the domestic sphere and establishing itself as a direct source to be applied in the protection of human rights. [39]

International human rights treaties must be interpreted, as provided for in articles 31 and 32 of the Vienna Convention on the Law of Treaties, ordering an interpretation in good faith and respectful of the Pacta Sunt Servanda. Seeking to adequately distinguish the type of mandates that it regulates since some are of immediate application and others of progressive implementation. [42]

To understand the reception of international standards on the right to environmental participation of indigenous peoples, it is necessary to mention that ILO Convention No. 169 was ratified by Chile and has been in force since October 14, 2008, by Decree No. 236 of the Ministry of Foreign Affairs. According to the Supreme Court, this Convention constitutes a mandatory norm not only by application of article 5 of the Fundamental Charter but also has a direct development in the internal regulation that seeks to materialize in concrete terms the international regulations. [43] In addition, in the Chilean internal legal system, the Convention on Biological Diversity has been in force since 1995.

In Chile, the normative antecedents on environmental participation are found in the General Bases Law on the Environment No. 19,300 of 1994, which establishes the State's duty to facilitate citizen participation and the promotion of educational campaigns (article 4), as well as the duty to promote the adequate conservation, development and strengthening of the identity, languages, institutions, social and cultural traditions of indigenous peoples, in accordance with the provisions of the law and the international conventions ratified by Chile and which are in force.

Then, Law No. 19,253 of 1993 on the protection, promotion and development of indigenous peoples, which creates the National Corporation for Indigenous Development, establishes political and participatory rights, in addition to including consultation with indigenous organizations by public bodies on matters that concern them. This establishes the duty to listen to and consider the opinion of indigenous organizations by the State administration services (article 34). Law No. 19,300 of 1994 (amended in 2010 by Law No. 20,417) created the Environmental Impact Assessment System and the Environmental Assessment Service, which is responsible for and manages the environmental impact assessment system. In turn, Supreme Decree No. 40, which approves the Regulations for the Environmental Assessment System, contemplates the consultation process with indigenous peoples in Chile in both regulations.

In accordance with the provisions of ILO Convention 169, the Chilean State decided to regulate the consultation regulations through Supreme Decree No. 66 of 2013. This decree put into effect the Regulations that regulate the Indigenous Consultation procedure under Article 6 No. 1, letter A and No. 2 of Convention 169 of the International Labor Organization.

This regulatory instrument aims to implement the exercise of the right to consultation of indigenous peoples, understanding that consultation is a duty of the State bodies. Then, as a right of indigenous peoples likely to be directly affected by the adoption of legislative or administrative measures, which materialized through an appropriate procedure and in good faith. According to the regulation, the purpose of consultation is to reach an agreement or achieve consent regarding measures likely to directly affect them (article 2).

This regulation is of utmost importance for the exercise of prior consultation as a right of indigenous peoples, because it substantially establishes the procedure and specifies the principles on which the consultation is based, such as good faith, fair and correct action by those involved (article 9), appropriate and flexible procedure (article 10) and prior nature of the consultation (article 11).

Thus, since 2009, with the first regulation and now with the current one from 2013, the Chilean State has technically responded to the fulfillment and application of international standards regarding the right to consultation of indigenous peoples, fundamentally those contained in Convention 169.

In Chile, indigenous peoples reveal that the consultation process currently closes the doors to the possibility of real participation and instead, attempts to give greater validity to the measures presented and already taken by the government, which, as explained above, translates into dissatisfaction, [23] the object or subject matter of the consultation processes, generally within the framework of projects, is intended to obtain the environmental qualification resolution that is expected to be issued declaring environmentally favorable the projects or activities subject to evaluation via environmental

impact study. [44]

However, the right to indigenous consultation in Chile is established through a procedure regulated by predominantly regulatory norms that combine successive stages of this process. [44]

In this sense, with the recognition of prior consultation limited to the content of article 6 of Convention 169, the contents of the right to consultation are unilaterally limited, since the objects of the consultation are restricted, as well as disfiguring the process. [2] For this reason, the Chilean State remains in debt since it cannot apply Convention 169 through norms that restrict the scope and area of application of the right to consultation. [45]

Accordingly, there is a gap between the recognition of rights and effective implementation, among other reasons because the regulatory framework is inconsistent with the standard of Convention 169 in relation to the subject of consultation. [3]

Another inconsistency in the regulations is related to the closure rule of Convention 169 that requires a final decision by the State. In cases where the agreement or consent of the indigenous peoples is not obtained, a concrete response that allows the consultation to be carried out beyond conventional citizen participation has not yet been considered or generated. [46]

The regulatory norms that regulate indigenous consultation in Chile respond only in a limited way to the materialization of article 6 of Convention 169 of the International Labor Organization, leaving aside a series of standards that complement the right to prior consultation.

On the other hand, it is considered that prior consultation in Chile is configured within a regulatory framework based on efficiency, which also generates a dialogue between the discourse of rights and that of efficiency. [47] This contrasts with other positions, which indicate that there is a strong tension due to the lack of a criterion of theoretical and practical uniformity, as well as towards a marked inequity in the distribution of power in environmental decision-making, which translates into an asymmetry of power and resources. [8] Consultation as currently established is limited to responding to a purely procedural moral and political foundation to legitimize public decisions. [2]

The lack of a criterion of theoretical and practical uniformity, unclear and imprecise in the interpretation of these matters, is reflected in judicial decisions, for example the jurisprudence of the Constitutional Court in judgments of the years 2008 (Role No. 1050), 2011 (Role No. 1988), 2013 (Role No. 2387), 2021 (Role No. 8792-20) which in the matter of indigenous consultation has maintained a position or less uniform in its interpretation on the right to consultation, establishing criteria below international standards. [48]

It is important to highlight that in its interpretation of ILO Convention 169, the Constitutional Court also restricts its application by finding procedural incompatibilities with the Chilean internal legal system, as in the case of the special indigenous jurisdiction. For the Constitutional Court, there is an essential difference between the consultation referred to in Article 6, No. 1, letter a) of Convention No. 169 and those established in the current positive order. It points out that although the response to the consultation referred to in the treaty does not have a binding character in the strict sense, it does have a special legal connotation that is specified in No. 2 of the same Article 6, which states: "The consultations carried out in application of this Convention must be carried out in good faith and in a manner appropriate to the circumstances, with the aim of reaching an agreement or obtaining consent regarding the proposed measures." [49]

While the Supreme Court initially follows the doctrine of the Constitutional Court, assimilating the consultation to the mechanisms contemplated by environmental legislation in matters of citizen participation, it later evolves to require that consultations be carried out in accordance with Convention 169 of the International Labor Organization in projects likely to affect the lands and natural resources of indigenous peoples. [48]

In this regard, it has been established that the indigenous consultation process seeks precisely that, through complete and sufficient information, the Indigenous Communities eventually affected, can express their agreement or disagreement with the project or action in question, avoiding having to resort to other appeal instances established in the legislation and that could effectively delay the issuance of an administrative act. [49]

According to the Supreme Court, Environmental Impact Studies in the context of indigenous consultation processes must be carried out in compliance with national regulations, which through Law No. 19,253, recognize indigenous peoples and establish the State's duty to respect, protect and promote their development, and international regulations, which recognize their right to be consulted in advance, each time legislative or administrative measures are planned that may directly affect them. [50]

In this sense, the interpretation that has been given by the Supreme Court regarding the Indigenous Consultation is evolutionary and uses principles such as proportionality and reasonableness to determine it. [51] On the contrary, the interpretation that has been given regarding the indigenous consultation, in addition to omitting the susceptibility referred to in Convention 169, responds to the preventive principle that governs environmental law in Chile and not to the precautionary principle, for this reason the prior consultation was included in the environmental assessment procedure. [52]

The judicial interpretation that has been made of the conditions for consultation has decided to replace "susceptibility of direct impact" with "direct impact", replacing the possibility of demanding certainty, which constitutes a violation of the international standard of precautionary criteria in the matter. [53, 54]

Regarding the issue of the susceptibility of impact on indigenous peoples, the Supreme Court has ruled that, in the

presence of a susceptibility of direct impact on indigenous peoples, within the background of a project, an informed consultation procedure must be followed, [55] indicating that the obligation of this process requires only a potential impact. [55]

Regarding the discussions of purely procedural aspects of the consultation, as a basis for judicial decisions "the protection of the substantive rights of indigenous peoples is compatible with the location of a certain investment project in indigenous territory" [56] in contrast, consultation has no place in judicial proceedings, which means that in the matter of concessions it would not be admissible. [57]

This discussion is interesting because the judicial interpretation of the consultation has used legal figures and institutions such as the figure of the concession, to establish the inadmissibility of the consultation, even when this concession implies affectations to the rights of indigenous peoples, which continues to be a consequence of the limited interpretation and application of Convention 169 and of prior consultation.

In another fatalistic panorama in Chile there are no conditions sufficient for the development of indigenous consultation processes at the level of international human rights standards, in this respect it is necessary to attribute responsibility to the Mapuche people themselves who have not managed to establish a clear self-definition of their forms of collective representation. [10]

It is therefore necessary to guarantee the exercise of environmental participation by Indigenous Peoples, on the one hand, by considering the special connection and dependence of Indigenous Peoples on the environment and the surroundings where they live as an intrinsic right, [58] and on the other hand, due to the social problems generated by the demands for the vindication of rights and social protests. These demonstrations, which are the response to the demands that demand the vindication of the rights of the Indigenous Peoples in Chile, become a problem that needs a solution through timely addressing; and that requires the reception, application and implementation of a series of international normative standards related to the rights of the Indigenous Peoples, in favor of their participation in decision-making in environmental management. [59]

To establish a regulatory framework in Chile regarding the environmental participation of Indigenous Peoples, it is necessary to follow international standards regarding the right to consultation. [37] The recognition of the rights of Indigenous Peoples and in particular the rights to prior consultation and environmental participation, generates greater strength to the rule of law, especially the democratic system due to the inclusion and recognition of the differentiation of rights of vulnerable groups. [60]

The environmental participation of indigenous peoples is a mechanism of socialization and joint decision-making that enables the establishment of rules that allow for true environmental democracy. [61] It is considered the exercise of a right based on self-determination, which will only be effective if it allows people to achieve the maximum possible control over their ways of life. [58]

In the last two decades, there have been significant advances in the recognition of the rights of indigenous peoples, which entail greater attention to collective rights, such as self-determination. While the participation of indigenous peoples poses important intercultural challenges, it also provides valuable lessons that can promote processes of institutional transformation that contribute to climate mitigation, such as strengthening local capacities and questioning the beliefs that have led to climate change. [3] In addition, attention has been paid to the articulation of theories of decolonization, postcolonial political changes, and participation of indigenous peoples converging in discussions that seek the recognition of the rights of indigenous peoples. [62]

The acceptance of multiculturalism is a weak recognition of the rights of indigenous peoples, due to its conditioning to the defense of the identity of the Nation State and the protection of sovereignty with respect to international law. [63] Furthermore, it has been stated that consultation, despite being a legal mandate, is far from being implemented as a right, since land use planning has not been implemented as a support tool in decision-making. [64]

4. Conclusions

As we can see, despite the acceptance and application, there is an incompatibility between what is established in the international standards regarding the right to environmental participation of indigenous peoples and specifically in relation to the right to consultation, with the Chilean internal legal order. On the one hand, because the normative framework that regulates consultation is sub-legal, at a regulatory level, instead of being constitutional or legal, however, the validity of Convention 169 could be considered constitutional, but there are also limitations in the interpretation.

This recognition at a regulatory level generates legal uncertainty and institutional instability in an interpretative-practical development regarding consultation as an institution that must clearly be differentiated from citizen participation. On the other hand, there are a series of inconsistencies in the limited recognition of the right to consultation, which as we saw restrict the object, subject and ignore both Convention 169 in its entirety and the rest of the standards and the international corpus iuris.

In Chile, as in the rest of the world, in relation to the recognition of the rights of indigenous peoples, a phenomenon called jurisgenesis occurs, which seeks the implementation of the human rights of indigenous peoples in domestic legislation and which often occurs because of the interaction and justification of these rights, but which, as in the rest of the world, faces serious challenges. This process of recognition of rights is present and observable. Promoting the effective participation of Indigenous Peoples requires intercultural skills that critically address the challenges of implementing policies in Indigenous territories.

Although in Chile, participation occurs after the Environmental Impact Study has been completed and presented to the authorities for evaluation, the recognition of new standards could generate more active participation such as the proposal for early participation.

More recently, in 2022, with the entry into force of Law 21,455, the Framework Law on Climate Change contemplates Citizen Participation in the management of Climate Change, where it is established in article 34 that every person or group of people will have the right to participate, in an informed manner, in the preparation, review and updating of climate change management instruments, through the mechanisms provided for this purpose in the law.

In addition, citizen participation must allow timely access and by appropriate means to the information necessary for an effective exercise of this right. And the standard recognized on citizen participation in this standard, guidelines are established related to the environmental participation of Indigenous Peoples that must consider the opportunity and mechanisms to formulate observations and obtain a reasoned response to them, considering criteria of legal viability, technical relevance and opportunity; without prejudice to the standards of the indigenous consultation processes that must be carried out, when appropriate.

Also in July 2022, through Decree 209 of the Ministry of Foreign Affairs, the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean and its Annex I were promulgated, which brings with it the progressive recognition of the standard regarding the right to environmental participation for all Chileans, including indigenous peoples.

Finally, if compliance with international obligations is not addressed in good faith, and the rights of indigenous peoples in Chile are not received, applied, formulated and recognized, in accordance with international standards, the right to prior consultation and respect for and guarantee of rights cannot be established.

Advancing in the recognition and role of Indigenous Peoples in environmental matters and the recognition of their rights, as well as the protection of nature through shared biocultural governance is a challenge for the Chilean State.

Abbreviations

ILO	International Labor Organization
Convention 169	Convention No. 169, on Indigenous Peoples in Independent Countries of the International Labor Organization

Author Contributions

Jorge Luis González González is the sole autor. The autor read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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Biography

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