ALTERNATIVE REPORT CREATED BY AN ALLIANCE OF CIVIL SOCIETY AND INDIGENOUS PEOPLES ORGANIZATIONS TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF THE UNITED NATIONS ON THE OCCASION OF THE FIFTH PERIODIC REPORT OF THE STATE OF CHILE

Observatorio Ciudadano (coordinator)

Corporación Kümekawün ka Lawentuwün Identidad Territorial Lafkenche (ITL), Observatorio Ciudadano (OC), Txawün Comunidades Mapuche Temuco, Red de Acción por los Derechos Ambientales (RADA)

Temuco, Chile, august 2025

1. PRESENTATION

1. This report was prepared by a group of civil society organizations and organizations representing indigenous communities: Corporación Kümekawün ka Lawentuwün, Defensoría Ambiental, Identidad Territorial Lafkenche (ITL), Observatorio Ciudadano (OC), Pilmaiken, Txawün de Comunidades Mapuche Temuko, and Red de Acción por los Derechos Ambientales (RADA). The report aims to identify and highlight the different human rights violations against indigenous peoples and local communities, taking into consideration the 2015 Concluding Observations of the CESCR (E/C.12/CHL/CO/4) and the List of Issues Prior of 2020 (E/C.12/CHL/QPR/5).

2. INDIGENOUS PEOPLES

2. The rights of indigenous peoples from the perspective of ESCR in Chile have been a matter of concern for this Committee, both in its Final Observations on the 2015 Chile's Fourth Periodic Report and in the 2020 List of Issues Prior[i]. For the Committee, these following issues are of particular concern: constitutional recognition of indigenous peoples, the demarcation and restitution of indigenous territories, and the mechanisms adopted to guarantee the rights of indigenous peoples to freely dispose of their lands, territories, and natural resources, as well as the right to prior consultation with a view to obtaining free, prior, and informed consent**.**

a. Constitutional recognition of indigenous peoples

3. To date, indigenous peoples have yet to be recognized in the Political Constitution of the Republic of Chile, even though it has been part of their historical demands. Currently, the 1980 Political Constitution imposed during the dictatorship remains in force, which makes no mention of indigenous peoples and their individual or collective rights.

4. Indigenous peoples played a leading role in the process of drafting a new constitution for Chile, which began in 2019 after the social uprising, through the inclusion of 17 representatives of reserved indigenous seats in the Constitutional Convention (CC).[ii] The constitutional text proposal presented by the aforementioned organ in July 2022 included an indigenous consultation process and incorporated about 50 provisions, out of a total of 380, related to these peoples[iii]. It recognized Chile as a plurinational State, along with a series of collective and individual rights for indigenous peoples aligned with international law. These provisions triggered strong criticism from conservative sectors, whose media campaign against the approval of this text in the September 2022 referendum focused on its "indigenist" character and the "possible fragmentation of the country by declaring the State of Chile as plurinational and intercultural." The constitutional proposal from the CC was rejected by 62% of voters. Following this, in 2023, a new constitutional process was initiated[iv], and the drafted text expressed the vision of the State and the conservative majorities that were part of the Constitutional Council. In its provisions, there was a very insufficient recognition of economic, social, cultural, and environmental rights, and a limited recognition of indigenous people rights[v], which was preceded by the notion that these were part of the Chilean Nation, "one and indivisible." This expressed the fear of conservative parties of an unfounded indigenous separatist claim. The proposed constitutional text, that excluded the diversity of visions of existing society and the State, was once again rejected in the referendum of December 2023 and, therefore, the Constitution of 1980 is still in force.

5. Only in 2025, President Boric, as a result of the recommendations of the Commission for Peace and Understanding (CPE for its name in Spanish), on June 30th, submitted to Congress the Constitutional Reform Project, which modifies the Fundamental Charter to recognize indigenous peoples in the Political Constitution of the Republic (Bulletin No. 17.643-07)[vi]. This project proposes their recognition "within the framework of the unity of the State, guaranteeing their individual and collective rights in accordance with this Constitution, the laws, and the international treaties ratified by Chile and that are currently in force." This project is now in its first legislative process in the lower house, with very little political support for its realization.

Recommendation

- Progress towards an effective constitutional recognition of indigenous peoples, with participation and consultation, incorporating the reference to the individual and collective rights of indigenous peoples recognized in international law.

b. Lands and territories

6. The land conflicts in the central-south regions of Chile (from Bío Bío to Los Lagos regions), in the traditional occupation territory of the Mapuche people, have intensified in recent decades, even though they date from long ago. Although the State, through the National Corporation for Indigenous Development (CONADI for its name in Spanish), which was created under Law 19.253 (Indigenous Law) in the early 1990's, has promoted a policy for the acquisition and subsequent transfer of land to Mapuche communities that can demonstrate detriment to the lands legally recognized by the State (mainly the reduction titles – Mercy Titles)[vii], this has been very insufficient to respond to the Mapuche demands for the lands from which they have been dispossessed.

7. It is in this context that in June 2023, President Gabriel Boric announced the formation of a Presidential Commission for Peace and Understanding (CPE, for its name in Spanish)[viii], which aimed to determine the real land demand of the Mapuche communities and lay the foundations for providing a medium and long-term solution to land demands, which have so far not been met. This also contributes to achieving better coexistence among the inhabitants of the Bio Bío, La Araucanía, Los Ríos, and Los Lagos regions, in the traditional Mapuche territory in southern Chile.

8. On May 7, 2025, after almost two years of work, the CPE published its final report[ix]. It analyzed historical, legal, political, and economic context elements of the relationship between the State and the Mapuche people and the growing conflict existing in the regions where its work was focused. The report also contains a diagnosis and quantification of the Mapuche land demand and proposes a total of 21 recommendations, articulated in 5 topics: justice and recognition, victim reparation, lands, territorial development, and guarantees for implementation.

9. In terms of land, the CPE recommends the creation of a new Land System to address the excessive waiting time for the restitution requests of Mapuche communities, which under current conditions are estimated to take up to 162 years to be solved[x]. For this purpose, the creation of the Reparations Agency and an Arbitral Tribunal is proposed, which would be the bodies responsible for resolving land demands, mainly coming from legal titles, channeled through the institutional route of four groups identified in the report according to their state of institutional channeling of land demands. The Reparations Agency would preferably carry out its task through land reparations. When these are not available, or the communities do not consider them suitable, alternative forms of reparation may be applied. For this purpose, a unique budget of 4 billion dollars is proposed for its resolution.

10. One of the main gaps from the rights-based approach developed by the CESCR in its General Comments No. 21/2009 and No. 26/2022 is the fact that the CPE recommendations do not consider the recognition or reparation for the demand of traditional occupation lands of Mapuche people (except in the exceptional and limited cases of the Provinces of Arauco and Malleco, where the processing of such demands is limited by the Arbitral Tribunal created to the districts where the titles granted by the State represent less than 4% of the district area in the provinces of Arauco and Malleco) and temporary (they are given a period of 5 years from the constitution of the Tribunal to submit their reparation requests) to process such demands, a circumstance that does not resolve the main claim of territorial restitution of the Mapuche people. On the other hand, the recommendations maintain the market as the central mechanism to address that demand, without resorting to expropriation, which is a mechanism considered in the current Constitution and could potentially avoid the speculation that has characterized the land market in the area that is identified of a critical factor in the current public policy

in the matter. The most concerning part is that it procedurally, temporarily, and budgetarily reduces the potential for subsequent land claims raised by Mapuche organizations.

11. Another concern is that the recommendations of the CPE propose a partial modification of the statute for the protection of indigenous lands, allowing the extension of time of indigenous land renting (article 13, Law 19.253) from 5 to 25 years, which has generated heavily questioned by Mapuche organizations.[xi] Currently, these measures will soon be subjected to indigenous consultation, to which various Mapuche organizations have expressed their opposition[xii].

Recommendations:

- Adequating the normative framework and the execution of public policies incorporating mechanisms of recognition, reparation and restitution of Mapuche lands of traditional occupation that never received Titles, as well as keeping the protection of the current indigenous legislation regarding the renting contracts or others of mere ownership.
- Considering in an effective way the proposals made by Mapuche organizations in the indigenous consultation process of the new land reparation mechanism.
- Ensure that the legal and policy reforms proposed by the Peace and Understanding Commission and the Mapuche organizations have the resources identified by them for the resolution of Mapuche land claims within a reasonable time.

c. Impacts on Mapuche territories due to the growth of urban centers in the city of Temuco[xiii].

12. The State is not complying to its role of protecting the land and indigenous territories recognized through Mercy Titles (*Títulos de Merced*), according to the current regulations expressed in the Indigenous Law 19.253, as well as ILO Convention 169 ratified by Chile. In the district of Temuco, Araucanía region, a systematic process of "disaffection" (i.e. change of legal status of land) of Mapuche lands is being carried out due to the expansion of the urban area of the PRC, which has more than 90,000 non-indigenous people living in irregular neighborhoods and land subdivisions, as well as settlements that have directly affected 27 Mercy Titles and indirectly affected another 15. In this way, there is a total of around 54 communities with legal personality that are affected by this process, reaching an approximate number of disaffected 2,000 hectares just in the district of Temuco[xiv]. This situation is replicated in the regions of Gulumapu annexed to the State, with approximately 420,000 people between Bío Bío and Los Lagos regions, as no new mechanisms have been generated to comprehensively repair the damage and the demand of the communities to carry out a process of defining the PRC[xv].

13. Some of the impacts that communities have pointed out as a result of the change of the legal status of their lands are related to the imposition of property taxes on indigenous land due to the change in land use in the Internal Revenue Service (SII in Spanish), an issue that violates Law 19.253 since lands recognized in Mercy Titles are exempt from paying this type of taxes. Additionally, being incorporated into the urban area of PRC, the land is exposed to neoliberal real estate pressure, considering that the regional capital of Araucanía currently has a high demand for housing. Furthermore, the Mapuche families from the communities affected by urban expansion and irregular subdivisions have complained about the loss of projects for small-scale agriculture (INDAP, CNR, PDTI, and others), as well as the loss of rural housing subsidies. This is a consequence of being in the urban area and not qualifying for urban housing subsidies, as they own a property with rural characteristics, i.e. without sewage and other basic services, which leaves them in a double condition of vulnerability (limbo) within the system.

14. On the other hand, leaders of the Txawün de Comunidades Mapuche Temuko[xvi] have accused that culturally significant spaces such as *eltun* (cemetery), *gillatuwe* (ceremonial space), among others, are exposed to being managed by State institutions when

incorporated into the urban area, where they have already had conflicts with the Municipality over the administration of cemeteries. However, cultural impacts do not end there, as they are exposed to the arrival of irregular subdivisions and urban populations, changing land use and territorial ontology, affecting the cultural uses of the spaces. Urbanization presupposes that there families cannot have livestock, which affects the rural economy, which also suffers from problems caused by pets attacking sheep, birds, pigs, and larger livestock. Finally, the increase in vehicular traffic on neighborhood roads and main roads affects the circulation of livestock, bikes, and pedestrians, while the installation of residential complexes and land subdivisions has led to the closure of roads that become "private," blocking old easements, while proximity to urban areas has increased theft in houses and animals, as well as the installation of illegal landfills and problems with the supply of rural drinking water systems, among others.[xvii]

Recommendations:

- Strengthen the regulatory frameworks that recognize the territorial rights of indigenous peoples, in relation to the protection, use, and management of the lands that are threatened by the growth of the real estate industry and by the pressure created by land subdivisions in rural areas.
- Ensure an intercultural and respectful approach in the creation of territorial planning instruments in areas with a high indigenous population density.
- Improve reparation mechanisms and create new ones, in light of the impact on lands recognized by the State through Mercy Titles, which must consider both rural and urban solutions that contemplate the right to remain in the territory of origin and the prevention of forced migration.

d. Attempts to amend Law No. 20.249 or "Lafkenche Law"

15.1 In regards to territorial rights, the various attempts to modify Law No. 20.249, which creates the Indigenous Peoples Coastal Marine Spaces (ECMPO[xviii] for its name in Spanish), better known as the Lafkenche Law, are concerning. These attempts are driven by sectors linked to the indiscriminate exploitation of marine resources. Due to the areas requested and enacted as ECMPOs, as well as the significant number of requests being processed, it is undeniable that the implementation of Law No. 20.249 has led to a reconfiguration of the power dynamics that govern the use, access, and exploitation of the coastal-marine space and the resources existing there. Specifically, as ECMPOs are presented as mechanisms of marine governance and biocultural conservation to which the law itself gives preference over other requests for different purposes on the coastal-marine zone[xix], it has been the salmon industry (the second most important in terms of national exports) that has most strongly opposed this law, seeing its expansion in the fjords and channels of the Chilean Patagonia threatened. However, it should be noted that these tensions have arisen not only with the salmon industry, but also with other stakeholders, both State-related and private, including certain sectors of artisanal fishing, fueled by a strong communicational and political attack against the indigenous communities managing ECMPOs or the ones applying for them.

16. This has materialized in strong disinformation campaigns[xx], primarily promoted by business sectors, aimed at portraying ECMPOs as a "hindrance" to investment and economic development, as well as establishing a false division between indigenous peoples as supposedly "privileged" stakeholders and the artisanal fishing sector. [xxi]Recently, following the voting and rejection of recent ECMPOs requests by the current Government of Chile, there has been a proliferation and worsening at both national and local levels of hate speech and racist connotations, both in institutional decision-making spaces[xxii] and outside of them, against the ECMPOs and the indigenous communities applying for them.[xxiii]

17. In this context of hostility and racial discrimination, amidst the discussion and parliamentary processing of the Public Sector Budget Law for 2025 (bulletin 17142-05),

the National Congress approved a legislative provision proposed by opposition parliamentarians that aimed to suspend the application of Law No. 20.249, banning new applications for one year and rejecting all those applications in process that were not solved within six months, thus imposing a "negative administrative silence" not contemplated in the law.

18. This bill was reviewed by the Constitutional Court following the submission of a series of requests by parliamentarians and the Executive, which pointed to the unconstitutionality of the mentioned provision. In its ruling, the Court referred to the existence of several formal defects, highlighting that the inclusion of this article implied a violation of the law-making process by preventing the necessary discussion times for an adequate process of democratic deliberation[xxiv]. Along with this, in a notable preventive vote signed by the four female ministers of said Court[xxv], emphasis is placed on the violation of the political participation rights of indigenous peoples, particularly regulated in ILO Convention 169[xxvi], and incorporated into national legislation as a limit to the exercise of sovereignty, pursuant to the provisions of Article 5, second paragraph of the Political Constitution[xxvii].

19. To this unconstitutional maneuver via national treasury legislation, there were four other parliamentary initiative bills presented to the National Congress since April 2023[xxviii], which under the pretext of "perfecting" the implementation of Law 20.249, aim to modify it with the intend to reducing or mitigating the protection of ECMPOs, both during their processing and after their granting, in the face of other economic activities. All these legal proposals share a regressive character, affecting indigenous territorial rights and have been presented and processed without, to date, opening an indigenous consultation procedure as established in ILO Convention 169, despite being legislative measures that directly and severely impact the rights of indigenous peoples over ancestral use territorial spaces along the coast. Specifically, the regressive content of these bills can be summarized in five transversal areas of modification: (i) Tightening of the requirements for submitting an ECMPO application; (ii) Elimination of the preference for ECMPO applications over other uses or productive activities; (iii) Establishment of negative administrative silence hypotheses as grounds for early and automatic rejection of an ECMPO application; (iv) Elimination of administrative remedies provided for in the law; (v) Restrictions on submitting new ECMPO applications that have been previously rejected.

20. In various instances of parliamentary processing, a concerning tone has been adopted, using discriminatory and racist expressions, as well as accusations without factual basis and based on unverifiable anecdotes, all of which overlook the important contributions that ECMPO provide to the social, cultural, and political development of indigenous peoples and the country in general, such as contributions to the biocultural conservation of the country's common goods, to the food sovereignty of hundreds of communities, and to the familial, local, and communitary economy of the peoples and of Chile in general[xxixxxx].

Recommendations:

- Strengthening the regulatory frameworks that recognize the territorial rights of indigenous peoples, in relation to the protection of their lands threatened by the growth of the real estate industry, and those that allow ensuring the use, management, and conservation of the coastal spaces, such as law 20.249 that recognizes ECMPOs.
- Carrying out indigenous consultation processes before the modification or adoption of administrative or legislative measures that may directly affect indigenous peoples, as would occur with a reform to Law No. 20.249.

e. Indigenous consultation and free, prior, and informed consent (FPIC): limitations and restrictions of the Chilean model

21. Although, following the ratification of ILO Convention 169 —after 18 years of processing in the National Congress— Chile adopted various regulations to implement the right of indigenous peoples to prior consultation, the regulatory model adopted by the State has presented serious normative, institutional, and practical restrictions that have severely affected the ability of indigenous representative organizations and institutions to effectively exercise this right.
22. The regulations currently governing indigenous consultation in Chile are: Supreme Decree No. 40 of 2013 from the Ministry of Environment, which approves the regulation of the Environmental Impact Assessment System (SEIA for its name in Spanish); and Supreme Decree No. 66 of 2014 from the Ministry of Social Development and Family, which establishes the general procedure for indigenous consultation and repeals the previous Supreme Decree No. 124 of 2009 (General Consultation Regulation).
23. While the first specifically regulates indigenous consultation regarding those projects or activities that enter the SEIA, the second establishes the general rules governing this right in the national legal framework. Both regulations, however, have been subject to multiple criticisms—both for their normative design and their practical implementation—by indigenous organizations, civil society organizations, public bodies such as the National Institute of Human Rights (INDH for its name in Spanish), and various international human rights bodies[xxxi]. In particular, the Chilean regulation of consultation presents at least the following structural problems:
24. One of the most critical aspects of the regulatory model for indigenous consultation in Chile is the distortion of the international standard of free, prior, and informed consent (FPIC). Both the General Consultation Regulation and the SEIA Regulation stipulate that the duty to consult is considered fulfilled even when agreement or consent from indigenous peoples is not reached, as long as the procedural guarantees of the process have been observed[xxxii]. This interpretation reduces FPIC to a formal procedure, without binding substantive effects, regardless of the impacts that the State measure may have on the livelihoods, territories, and cultures of indigenous peoples, weakening its function as an effective mechanism for protecting their collective rights.
25. In practice, this has led to the limitation of the implementation of the right to consultation, restricting it to the verification of compliance with stages, deadlines, and documents, without ensuring that the decisions made reflect the indigenous will or safeguard their substantive rights and interests. Thus, the consultation has been stripped of its substantive dimension and transformed into a merely formal procedure[xxxiii].
26. Article 4 of the General Consultation Regulation limits its application to the bodies of the Executive power—ministries, regional governments, and public services—expressly excluding constitutionally autonomous bodies, such as the National Congress. Although the regulation itself states that this exclusion does not exempt these bodies from the duty of consultation "when it is appropriate according to current legislation," in practice, this omission has been used as an argument not to carry out indigenous consultation processes in the context of the legislative formation procedure, particularly regarding projects of parliamentary initiative.
27. This situation is particularly serious in relation to various legislative initiatives that seek to introduce regressive modifications to Lafkenche Law, all of which have been processed without prior consultation with the potentially affected indigenous peoples[xxxiv].
28. Linked to the previous issue, Article 7 of the General Consultation Regulation severely restricts what is understood by "legislative or administrative measures likely to directly affect" indigenous peoples.
29. In the case of legislative measures, the regulation limits them exclusively to draft bills or constitutional reforms initiated by the President of the Republic, expressly excluding bills of parliamentary origin. This exclusion has allowed legislative initiatives with potential impact on indigenous rights to be processed without any prior consultation, in open contradiction to the State's obligations under ILO Convention169.
30. Regarding administrative measures, the regulation requires that these correspond to acts containing a "non-regulated" declaration of intent and that grant the competent body

a margin of discretion to reach agreements or obtain the consent of indigenous peoples. This interpretation, based on a doctrinal distinction inherent to Chilean administrative law, has led to the exclusion from the duty of consultation of acts considered "regulated," even when these grant rights over natural resources—such as concessions, permits, or authorizations—have a direct impact on the territories, ways of life, and cultural rights of indigenous peoples.

31. In addition, Article 7 itself requires such measures, in order to be subject to consultation, to be the direct cause of a "significant and specific impact" on indigenous peoples in their capacity as such, affecting their traditions, customs, spiritual practices, or their relationship with indigenous lands. In this way, the threshold required to activate the duty of consultation is arbitrarily raised, demanding a direct, significant, and specific impact, contradicting the international standard which establishes that the mere "susceptibility of impact" is sufficient to trigger this duty. This restrictive interpretation not only excludes important legislative and administrative decisions with potential impact on indigenous peoples from the consultation process but also severely weakens the effectiveness of consultation as a tool for protecting their collective, cultural, and territorial rights. Consequently, the current regulation is not aligned with the international obligations assumed by the State of Chile and substantially limits the effective exercise of the right to consultation and FPIC.

32. In the context of the Environmental Impact Assessment System (SEIA), the international standard of "susceptibility to direct impact"—which, according to Article 6 of ILO Convention No. 169, triggers the State's obligation to carry out an indigenous consultation process—has been restrictively interpreted through regulations, being equated to the existence of those effects, characteristics, or circumstances (referred to as "significant impacts") regulated in Article 11 of Law No. 19.300[xxxv]. This regulatory homologation has as a consequence that only the projects entering the SEIA through an Environmental Impact Study (EIA) are considered potentially subject to consultation, excluding from this obligation the vast majority of projects processed through Environmental Impact Declarations (DIA), which, according to data from the Environmental Assessment Service (SEA), represented approximately 95% of the total entries into the system between September 15, 2009 (the date Convention 169 came into effect in Chile) and July 2025[xxxvi].

33. This interpretation contradicts international standards, which do not require a specific magnitude of impact to trigger the duty of consultation, referring only to "potentiality" or "susceptibility." This standard aims to allow consultation to work as an intercultural evaluation instance on the possible effects of a measure, especially in contexts where indigenous assessments of the territory and impacts are not captured by the dominant technical approach of the State. However, in Chile, the determination of whether there is an impact or not has been moved to a prior phase, outside the consultative process, in which the State and project holders unilaterally decide whether or not to consult, based on technical criteria that exclude the participation of the indigenous peoples themselves [xxxvii].

34. This institutional design presents an additional problem: since it is a procedure initiated at the request of the project owner, the information used to determine the existence of direct impact on indigenous peoples mostly comes from proponents themselves. The environmental authority, on the other hand, lacks autonomous and solid mechanisms to verify this information. Although Article 86 of the SEIA Regulation establishes the obligation of the SEA to hold on-site meetings with potentially affected indigenous communities when the project is located in their territories, this provision has been interpreted as optional and is applied marginally or merely for informational purposes, without ensuring effective collective participation or conditions to gather culturally relevant information[xxxviii].

35. In this way, instead of serving as a tool to build interculturally relevant evidence, the consultation has been reduced to a subsequent phase, subordinate to technical

evaluation, becoming a space for negotiating mitigation measures, and not a process of substantive deliberation on the very acceptability of the projects[xxxix].

36. Although there has been some jurisprudential progress that have moderated certain aspects of the regulatory model — such as the exclusion of "regulated" administrative acts from the duty of consultation[xl] or the requirement of significant impact as a threshold for its applicability[xli] — the Chilean model of indigenous consultation remains structured around a minimalist and restrictive conception of the right, which severely limits its effective exercise.

37. In practice, this regulatory design imposes on indigenous communities the burden of taking legal action to obtain recognition of their right to be consulted when the State denies it. This forced judicialization not only creates a structural inequality in access to rights protection, by shifting the economic and technical costs of litigation to the right-holding communities and organizations, but also contributes to their public stigmatization, portraying them as "obstructors of development" or as actors who use consultation for strategic purposes, without recognizing the legitimacy of their claims or the international standards that support them[xlii].

38. These restrictions are particularly evident in the way that the SEIA works. Between September 2009 —the date when ILO Convention 169 came into force in Chile— and July 2025, a total of 16,519 projects were submitted to the SEIA, of which 95% (15,675) were through Environmental Impact Declarations (DIA) and only 5% (844) as Environmental Impact Studies (EIA). Since indigenous consultation is only activated in projects evaluated through EIA, and within these, only 93 processes have included indigenous consultation —only 0.56% of the total projects—, there is a virtual systematic exclusion of the duty to consult. This low implementation shows that the SEIA Regulation operates as a normative filter that prevents the majority of projects, even those with potential impacts on indigenous peoples, from activating prior consultation processes, denaturing its preventive character and weakening its function as a tool for the protection of collective rights.

39. In addition, there is a significant regulatory gap: there are no adequate or institutionalized mechanisms that allow indigenous communities or organizations to contest the omission of consultation duty within the framework of the law-making process, especially in the case of projects initiated by parliament[xliii]. This systematic omission not only violates applicable international standards but also erodes the democratic legitimacy of the legislative process, weakening the trust of indigenous peoples in State institutions.

40. Although the current government of Gabriel Boric formally initiated a process of indigenous consultation aimed at modifying the General Consultation Regulation[xliv], which had been a campaign promise, this process was suspended without further explanation[xlv].

41. In summary, the Chilean model of indigenous consultation, far from facilitating intercultural dialogue and the effective protection of indigenous people's rights, it has operated as a structure of institutionalized exclusion that imposes legal, procedural, and political barriers to the exercise of a recognized right in international human rights law.

Recommendations:

- Generating the normative adequations needed to guarantee the right to consultation and the obtention of previos, free and informed consent of indigenous peoples for legislative and administrative measures regarding decisions that are susceptible to directly affect the exercise of their economic, social and cultural rights.
- Extend the scope of application of consultation to the diverse environmental evaluation instruments to guarantee its activation in the light of potential afectations in the context of environmental evaluation.

f. Law No. 21.600: conservation of biodiversity and the rights of indigenous peoples in Chile

42. Creating the Biodiversity and Protected Areas Service (SBAP for its name in Spanish) and establishes the National System of Protected Areas (SNAP, for its name in Spanish), Law No. 21.600 represents one of the most significant regulatory advances in environmental conservation in Chile in recent decades. Its origin is linked to the reform of the environmental institutional framework introduced by the 2010 Law No. 20.417, which created the Ministry of the Environment (MMA for its name Spanish), the Environmental Assessment Service (SEA for its name in Spanish), and the Environmental Superintendency (SMA, fior its name in Spanish), also establishing the mandate to submit to Congress the necessary bills to create the SBAP and transform the National Forestry Corporation (CONAF for its name in Spanish) into a decentralized public service.

43. This mandate was fulfilled in 2011 with the submission of the respective bill, whose legislative process extended for more than 12 years due to multiple technical and political obstacles. Throughout this process, substantive tensions emerged related to the rights of indigenous peoples, considering that many of the protected areas overlap with territories of traditional use and occupation. Despite this situation, the project was initially promoted without conducting prior consultation with the potentially affected indigenous peoples, in contravention of the provisions of ILO Convention 169. In response to the criticisms from indigenous and human rights organizations[xlvi], the MMA initiated an indigenous consultation process in 2016 regarding the Executive's proposals[xlvii]. However, this process was criticized for its limited scope and for not fully incorporating the spiritual, territorial, and cultural connection that indigenous peoples maintain with biodiversity[xlviii]. During the consultations, the organizations demanded specific mechanisms for participation in the management of protected areas, the recognition of legal figures for indigenous territorial protection, and respect for their own normative systems. Although the Executive presented the proposals before the conclusion of the process—which generated criticism for lack of good faith—this contributed to enriching the legislative debate and partially incorporating some of the raised demands.

44. A particularly contentious point was the opposition from the aquaculture sector, which operations take place within protected areas under a weak regulatory framework. This sector expressed concern about the possible effects of the SBAP on their concessions and expansion projections, with the support of regional guilds and unions that warned of impacts on employment and consolidated productive activities in areas of high ecological value.

45. Promulgated in September 2023, the law requires 13 regulations to be enacted for its full effectiveness, of which only two have been identified as impacting indigenous rights: the regulation on protected areas and the regulation on priority sites. The indigenous consultation process on both regulations that initiated in September 2024[xlix] was suspended in March 2025 for administrative and budgetary reasons, resuming in July of the same year. Its development poses crucial challenges: ensuring cultural pertinence, effective participation, and binding advocacy mechanisms.

46. Ultimately, Law No. 21.600 offers a historic opportunity to advance towards an intercultural ecological governance that recognizes the centrality of indigenous peoples in biodiversity conservation and the management of their ancestral territories.

Recommendations:

- Ensure respect for and protection of the territorial rights and participation of indigenous peoples in the implementation of Law 21.600, in accordance with international standards and the new Global Biodiversity Framework (KMGBF) of the Convention on Biological Diversity.
- Aligning national and regional biodiversity strategies coherently and bindingly with the Kunming-Montreal Global Biodiversity Framework and Law 21.600,

incorporating special indicators for indigenous peoples that make it possible to highlight, value, and adequately report their contributions to conservation.

g. Rights of those deprived of liberty belonging to indigenous peoples[l]

47. In the Chilean penitentiary system, the rights of individuals deprived of liberty are violated, with a serious persistence of issues that the State has not managed to resolve, mainly related to overcrowding and poor prison conditions. Many of these conditions affect the exercise of the rights recognized in the ICESCR. The impact of imprisonment is deeper for indigenous people. The issues related to their incarceration have been highlighted in recent years through the prison experience of individuals deprived of liberty belonging to the Mapuche people and reports created by various institutions. Some of these issues, which are linked to the non-compliance with the ICESCR, relate to inadequate sanitary conditions, lack of access to intercultural health, restricted access to culturally appropriate food, restricted and discretionary access to spiritual practices, restrictions on the exercise of their own language, access to education and work without cultural pertinence, the absence of plans or programs for social reintegration with an intercultural approach, and barriers to greater participation of the family, community, and traditional authorities in the penitentiary intervention.

48. For example, in the case Mapuche, ceremonies such as the ngüillatun, wetripantu, or gijañmawün, and other spiritual practices are fundamental for the balance and well-being of Mapuche individuals, especially in contexts of deprivation of liberty where spiritual vulnerability derived from confinement is increased. From the exercise of the right to culture, recognized in Article 15 of the ICESCR, and other rights recognized in the Covenant, as well as in other international instruments, these issues are pending challenges for the Chilean State.

Recommendations:

- Modification of the Prison Establishments Regulations No. 518 and 703 to respect and guarantee the rights of indigenous people deprived of liberty, as well as all incarcerated individuals.
- Progress in a social reintegration system with cultural relevance for indigenous peoples, which must be designed and implemented by indigenous peoples and must include the participation of traditional authorities and their own agents.
- Guarantee the right to free spiritual or religious exercise, adopting measures aimed at allowing and guaranteeing the performance of ceremonial activities for individuals deprived of liberty belonging to indigenous peoples, considering their spiritual, collective nature, their forms of organization, preparation, ritual dates, and times.

3. ENVIRONMENTAL ISSUES

a. Access to drinking water and sanitation

49. After eleven years of legislative processing, in 2022 the bill that reforms the Water Code (bulletin No. 7543-12)[li] was approved. This legal text dates back to 1981, and its main function is to regulate access and use of surface and underground terrestrial water resources. The reform, which materialized in Law 21.435/2022, reaffirmed the status of water as a national good of public use, recognizing that its access and sanitation are an essential and inalienable human right, establishing a correlative State duty to ensure it[lii]. However, this recognition has not been established at the constitutional level, where the only direct reference to the legal situation of water is found in the regulation of private property rights (article 19 No. 24 of the Political Constitution of the Republic[liii]), particularly to ensure and safeguard this guarantee for those private holders of water rights[liv]. This situation has only reaffirmed the capacity of appropriating this essential element for life.

50. Regarding the situation in rural areas, access to water is managed by cooperative and community organizations known as Rural Sanitary Services (SSR for its name in

Spanish), previously known as Rural Potable Water (APR, for its name in Spanish). Its regulation was updated through Law 20.998/2017, in force since 2020, which established a new legal and institutional framework for the supply and treatment of water in these areas.

51. In relation to this sector, the aforementioned reform to the Water Code introduced certain tools to grant and promote its development[lv]. However, significant challenges remain associated with water scarcity and the megadrought[lvilvii] caused by anthropogenic climate change, as well as geographical dispersion and the lack of State economic resources to ensure the operation of these services. Thus, the transport, supply, and distribution of potable water for several rural sectors have been supported through the use of water tanker trucks, under a state emergency solution. Nonetheless, in practice this has become an immediate and permanent measure for water distribution, despite being a precarious, discontinuous, and expensive form of water supply that threatens the realization of the human right to water[lviii].

52. In the absence of an internal regulation regarding the human right to water and sanitation, courts have adopted different positions to address cases where this guarantee has been invoked. Initially, General Comment No. 15 of the CESCR[lix] was used, which refers to water rights and its normative content, to follow with an argument based on international human rights instruments[lx], focusing on the particular vulnerability of certain human groups and the compulsory nature of ensuring the access of no less than 100 liters of water per person daily[lxi]. However, due to the lack of an explicit norm establishing this minimum standard, there has been some court rulings that are regressive from this standard, relying on administrative justifications and the existence of "qualified cases" arising from the water deficit situation.

Recommendations:

- Establishing at a constitutional level the human right to water and sanitation, pointing out the basic and essential conditions for its exercise. Along with that, it is critical to establish a State duty to promote and guarantee the same right.
- Effectively implementing the different regulations needed for the application of the modifications done in the Water Code reform in force since 2022, particularly those regarding with its ecosystemic function and the prioritization of the human right to water and sanitation.
- Adopting measures to guarantee the access to drinking water and sanitation services in rural areas, encouraging and applying the supply with water tanker trucks. Moreover, it is important to pay close attention to groups in situation of vulnerability, such as women, children, adolescents, indigenous peoples, migrants and elders.
- Adoption an ecosystemic approach and of human consumption prioritization in the different legal initiatives that are beings discussed in the National Congress that can influence the exercise of human right to water and sanitation.

b. Pollution in "sacrifice zones"

53. Since the list of issues prior to the presentation of Chile's fifth periodic report (AE/C.12/CHL/QPR/5) was issued, it is undeniable that the State of Chile has made progress in various environmental management measures to address the severe pollution situation in the so-called "sacrifice zones" and, in particular, in Quintero-Puchuncaví, which have resulted in an improvement in air quality associated with a reduction in pollution levels of SO2, NOx, particulate matter (PM), and volatile organic compounds (VOCs) [lxii].

54. In spite of this progress, serious gaps still persist in overcoming pollution and environmental and territorial injustice that both Quintero-Puchuncaví and other areas known as "sacrifice zones" in Chile are experiencing. This undermines the guarantee and effectiveness of the human right to a clean, healthy, and sustainable environment, especially in the right to clean air and to live in non-toxic environment dimensions. Although the frequency of occurrence has decreased compared to previous years,

episodes of environmental alerts due to atmospheric pollution continue to be reported in Quintero-Puchuncaví[lxiii], as a consequence of numerous hospital admissions of children and adolescents with symptoms of intoxication[lxiv]. Among the main regulatory deficiencies that could explain this issue is the inadequacy of pollution standards established in Chilean regulations (specifically, "primary environmental quality standards"), in comparison to the World Health Organization recommended standards.

55. As it was noted by the former United Nations Special Rapporteur on Human Rights and the Environment, David R. Boyd and the report on his visit to Chile (A/HRC/55/43/Add.1), this type of regulation "suffers from gaps and critical deficiencies" evidenced by the fact that, in the case of those norms concerning air quality, "at least eight Chilean standards are considerably more permissive than those of the World Health Organization."[lxv]

56. Moreover, as stated by in the aforementioned report, it is important to add the absence of legislation and an environmental quality norm related to soil pollution, despite the existence of an array of scientific studies that confirm the presence of contamination by metalloids and heavy metals in the soil in areas near to the Ventana Industrial Complex, as well as their current and potential ecological and health impacts on the population. In general, all of them agree on the presence of concentrations of elements such as As, Cd, Cu, Pb, and Zn, among others, at significantly higher levels compared to other areas. This has led to alarming results, such as the existence of carcinogenic risk associated with arsenic exposure in young children (1 - 5 years old) (Berasaluce et al., 2019 and Lizardi et al., 2020), as well as higher risks for the inhabitants of Quintero and Puchuncaví of having a failure in one of the genes responsible for suppressing cancerous tumors (Madrid et al., 2022). Although on April 6, 2023, the Ministry of Environment initiated the process of drafting the preliminary project of the "Primary Environmental Quality Standard for Soils of Chile" [lxvi] its progress has suffered delays, which evidences a lack of prioritization of the current government of the environmental agenda. In March 2025, the same Ministry decided to approve an extension of the deadline for the aforementioned draft until April 2026[lxvii], extending the wait and exposure of the population in sacrifice zones, due to the inaction of the State in regards to the protection, recovery, and remediation of contaminated soils.

57. Furthermore, it is evident that there is a serious and inexcusable delay in the development, approval, and initiation of the implementation of some Air Pollution Prevention and Decontamination Plans (PPDA, for its name in Spanish), which are key instruments regulated in Chilean environmental legislation that establish various specific measures and actions aimed at reducing air pollution levels and safeguarding the health of the population in areas that are latent and/or saturated with pollution. An emblematic case in this regard is the PPDA for the Province of Quillota and the districts of Catemu, Panquehue, and Llay-Llay, areas where air pollution has been strongly influenced by the operations of the Chagres Smelter (AngloAmerican), Cementos Melón, the San Isidro 1 and 2 Thermal Power Plants (Enel Generación), among others. Indeed, these districts were declared polluted by PM10 (saturated in their annual concentration and latent in their daily concentration) only in 2018[lxviii], despite evidence that the environmental authority was fully aware of the situation in the area at least since 2012. All this along with the declaration of Catemu as a latent zone for SO2 pollution in 2021 (both in its annual and daily concentration) [lxix], despite the fact that the Comptroller General of the Republic had already ordered the environmental authority to make this declaration in 2018, i.e., three years earlier. Based on these precedents, the procedure for the elaboration of the PPDA began in September 2019[lxx] and, although it was approved in May 2023, the legal process required for its enactment and entry into force is still pending, which results in the continued exposure and lack of protection of the population against pollution from PM10 and SO2.

58. Finally, despite the severe pollution situation in the so-called "sacrifice zones", the environmental authority has continued to approve new projects or facilities that cause and deepen the severe environmental and social impacts in these territories. One of the

most illustrative examples is the approval, in October 2024, of the "Maratué" mega real estate project in Puchuncaví, which plans to build more than 14,000 homes in the "Quirilluca" area, place of high environmental value and key to the environmental recovery of the sacrifize zone[lxxi]. This contradicts one of the recommendations made by the former United Nations Special Rapporteur, David R. Boyd, in his report on his visit to Chile, stating that: "No new industrial facilities should be built in Quintero-Puchuncaví—or in any other sacrifice zone or saturated zone—until existing pollution levels have been reduced to comply with WHO standards."

Recommendations

- Reviewing and reinforcing the environmental quality norms in order to adequate and approximate them as much as possible to the standards recommended by the WHO, with special emphasis on norms of MP10, MP2,5, NO2 and SO2.
- Prioritizing and accelerate the processing of the Primary Norms of Environmental Quality for Soils, avoiding new extensions of deadlines and establishing a binding public timeline with effective mechanisms of citizen participation.
- Accelerating the reviewing process of the Primary Norms of Environmental Quality of Lead on the air (Supreme Decree No 136/2000), initiated on july 2023, norm that has not been updated since it was enacted in the year 2000.
- Stictly comply to the legal and administrative deadlines in the declaration of latent and saturated zones, as well as of elaboration of prevention and atmospheric decontamination plans (PPDA in Spanish), avoiding new and unnecessary delays that extend the exposure of inhabitant of said areas to pollution.
- Abstaining from processing or approving new projects or polluting activities or anything with environmental and territorial impacts in sacrifice zones, establishing a legal or administrative moratorium in its submission to SEIA, and invalidating or retreating environmental authorizations of already approved initiatives, which is the case of the real state mega project “Maratué” in Puchuncaví.
- Urgently formulating a policy oriented to the adoption of truth, justice and comprehensive reparation measures, as well as non-repetition guarantees regarding severe human right violations derived from the extended exposure to environmental pollution, as it is the case of the “green men” in Puchuncaví.
- Realizar un análisis público y participativo del grado y brechas de cumplimiento de las recomendaciones formuladas por el ex Relator Especial de Naciones Unidas sobre los Derechos Humanos y el Medio Ambiente, David, R. Boyd, en su informe de 2024 sobre su visita a Chile (A/HRC/55/43/Add.1).
- Carrying out a public and participatory analysis of the extent and gaps of compliance to the recommendations formulated by the former Special Rapporteur of the United Nations on Human Rights and Environment, David, R. Boyd, in his 2024 report regarding his visit to Chile (A/HRC/55/43/Add.1).

c. Framework Bill on Sectoral Authorizations (Proyecto de Ley Marco de Autorizaciones sectoriales)

59. In mid-January 2024, as part of the implementation of the so-called "Fiscal Pact for the Development and Welfare of Chile" proposed by the current Government[lxxii], the Framework Bill on Sectoral Authorizations (bulletin No. 16.566-03) was presented to the National Congress. Its purpose is to establish a common legal framework that regulates the granting and processing of sectoral authorizations in Chile. Through a transversal approach, it sets common standards, introduces proportionality in regulation, and creates new management tools to modernize the State in its enabling role of currently dispersed administrative procedures[lxxiii].

60. The project was promoted by the Ministry of Economy, Development, and Tourism[lxxiv], and its processing was carried out very hastily, being subject to more than

forty legislative urgencies to accelerate its discussion[lxxv]. The proposal concluded its processing at the beginning of July, amid a wave of criticism from civil society and environmental organizations, which pointed out that these measures represented a setback in environmental protection by favoring large economic interests at the expenses of citizen well-being. The criticisms were also shared by several parliamentarians of the current government, who filed a request for unconstitutionality (Case No. 16.625-25-CPT) to the Constitutional Court, questioning several articles of the legal initiative that would affect constitutional dispositions such as the right to health and to live in an environment free of pollution. The judiciary rejected the review by five votes to four, deciding not to admit the request for processing, without analyzing the substantive arguments alleged.

61. The "permisology" project, as it has been called, represents an effort to systematize and modernize the processing of administrative authorizations in Chile. However, its current regulatory design ignores essential components to ensure the respect and protection of human rights in business contexts, which can result not only in risks but also in concrete breaches of international standards to which the State of Chile has committed through international treaties, such as the Escazú Agreement and ILO Convention 169.

62. The lack of effective safeguards against mechanisms such as Alternative Enabling Techniques (THA for its name in Spanish)[lxxvi], positive administrative silence, or unmovable regulatory stability threatens to increase power asymmetries, weakens access to justice, and excludes affected communities from the processes that determine their environment and livelihoods. Incorporating a focus on due diligence, substantive participation, and real transparency is not only a legal necessity but a minimum ethical condition to progress towards a genuine sustainable and democratic development model. Limiting its application to low-impact sectors, establishing safeguards for critical sectors, including mandatory prior evaluation, verifiable post-monitoring, and effective participation channels.

Recommendations:

- Including in complementary regulation of the Law (as established, for example, in matters regarding alternative enabling techniques) clear and explicit safeguards in the light of simplification mechanisms, excluding its application to territories of high socio-environmental risk, and integrating the precautionary principle in the scope of human rights and business due diligence.
- Developing and implementing, in a participatory form, a periodic monitoring and evaluation plan to the law that is useful as a resource for its periodic evaluation, and that includes the elaboration and publication of annual reports of implementation, with disaggregated data on granted authorizations through simplified mechanisms, among other aspects.
- Reviewing and harmonizing the Framework Bill on Sectoral Authorizations according to the provisions of the ICESCR and all of its General Comments.
- Limiting its application to sectors of low impact, as well as establishing safeguards to ensure that in critical sectors previous evaluations, posterior verifiable monitoring and effective channels of participation are a must,
- Establish measures to ensure that the right to indigenous consultation ensured in ILO Convention 169 and established in national law is not affected by the application of Alternative Enabling Techniques (THA).

C. Bussines and Human Rights

63. The impacts of companies on ESCR in Chile have been a matter of concern to this Committee, both in its Concluding Observations on Chile's Fourth Periodic Report of 2015, and in the List of Prior Issues of 2020[lxxvii]. Of particular concern to the Committee

is the due diligence of companies in complying with ESCR, and the National Action Plan (PAN in Spanish) on the matter as a mechanism to ensure such compliance[lxxviii].

64. We note that far from creating mechanisms for corporate due diligence regarding ESCR, there have been setbacks, particularly in legislative matters, to ensure it. Regarding the PANs, the first one (2017-2019) emphasized the State's duty to protect human rights and not the responsibility of companies to respect those same rights. Most of its recommendations were not implemented[lxxix]. Similarly, a second PAN (2022-2025) was approved without consultation in 2022[lxxx], during the final days of President Piñera's administration. This plan, as in its first version, maintained the emphasis on state responsibility rather than corporate responsibility. Although the current government proposed increasing citizen representation on the oversight body, it did not include representatives of Indigenous and local communities affected by corporate activities. Its implementation, as the government itself acknowledges, has been deficient[lxxxi]. This year, the government proposed the development of a third National Action Plan (PAN), without addressing the shortcomings these mechanisms have had in ensuring corporate due diligence regarding ESCR.

65. President Boric's government program proposed the development of a draft law on corporate due diligence in human rights, similar to those adopted in recent years by European countries, to effectively enforce corporate accountability for adverse impacts on them. This draft law was announced by the Ministry of Justice in 2023. Just a few months before the end of the current administration, this draft bill is still unknown. This is despite the development of a participatory process involving various stakeholders, including civil society and Indigenous peoples, to gather input. Contradicting this, the government, in addition to promoting the Sectoral Authorization Framework Law (Bulletin No. 16.566-03) to expedite permits for corporate investment projects, which, as analyzed, affects citizen participation and Indigenous consultation regarding such projects, to the detriment of ESCR, promoted the approval of the so-called Short Law on Health Insurance Institutions (ISAPRES) (Law 21.674 of 2024), stemming from Supreme Court and Constitutional Court rulings alleging discriminatory charges based on gender and age, which forced these entities to pay US$1.4 billion to their members. This law grants ISAPRES up to thirteen years to pay off their debt (except for those over 65, five years, and those over 80, two years); and allows them to raise the prices of their plans, meaning the debt will be paid by their members, to the detriment of the right to health[lxxxii]. Added to this is the Pension and Social Security System Law (Law 21,735 of 2025), which, while committing to gradual employer contributions to workers' retirement pensions, consolidates Pension Fund Associations (AFPs) as mandatory private social security mechanisms in Chile, and excludes the possibility of a state mechanism to guarantee decent retirements.

66. As civil society, we have noted with concern the blatant misconduct of companies in the parliamentary debate that resulted in the approval of this legislation, denouncing the existence of an evident corporate takeover of the National Congress to the detriment of the recognition and protection of ESCR[lxxxiii].

Recommendations:

- Implement international regulations that protect the rights of Indigenous communities and peoples in relation to business activity, including the development of regulatory frameworks and public policies to guarantee access to information, participation, and access to justice.
- Establish a regulatory framework that holds companies accountable for human rights, with a focus on human rights due diligence. This includes making due diligence mandatory for state-owned companies and for strategic projects such as the National Lithium Strategy.
- Strengthen the capacity of communities to assert corporate accountability for human rights violations, leveraging tools and spaces provided by international and national law.

E. ANNEXES
E.1. Information on the signatory organizations

Name	**Observatorio Ciudadano**
Initials	OC
Adress	Antonio Varas 428, Temuco, Región de la Araucanía.
Telephone number	(+56) 9 92294140
Email	hsilva@observatorio.cl
Web site	www.observatorio.cl
ECOSOC Status	NO

Name	Txawün de Comunidades Mapuche de Temuko
Initials	TCMC
Adress	No
Telephone number	(+56) 9 76106537
Email	marimandanko@gmail.com , vivianawel@gmail.com
Web site	No
ECOSOC Status	No

Name	**Red de Acción por los Derechos Ambientales**
Initials	RADA
Adress	No
Telephone number	(+56) 962344201
Email	radatemuko@gmail.com

Web site	No
ECOSOC Status	NO

Name	**Identidad Territorial Lafkenche**
Initials	ITL
Adress	No
Telephone number	(+56) 94006581
Email	itlafkenche@gmail.com
Web site	No
ECOSOC Status	NO

Name	**Corporación Kümekawün ka Lawentuwün**
Initials	No
Adress	No
Telephone number	(+56) 9 37157578
Email	kumekawunkalawentuwun@gmail.com
Web site	No
ECOSOC Status	NO

[i] CESCR (2015), paragraph. 8; CESCR (2020), directly in paragraph 8, and indirectly in paragraphs 3, 26, 27, and 28.

[ii] 7 Mapuche, 2 Aymara, and one representative from each of the other peoples recognized in the Indigenous Law, out of a total of 155 convention members elected in May 2021.

[iii] The text recognized the collective and individual rights of indigenous peoples; their preexistence to the nation-state; the plurinationality and interculturality of the State; their right to self-determination and autonomy or self-government; the right to their own institutions, authorities, and justice systems; to participation; to consultation and free, prior, and informed consent; the right to cultural diversity and to their own culture, identity, and worldview, to heritage and indigenous language; and the right to equality and non-discrimination. This is consistent with international law and the trends of current Latin American constitutionalism. These provisions triggered strong criticism from conservative sectors, whose media campaign against the approval of this text in the September 2022 referendum focused on its "indigenist" character and the "possible fragmentation of the country by declaring the State of Chile as plurinational and intercultural." Meanwhile, the constitutional proposal emanating from the Conventional Constitution was rejected by 62% of voters. See: https://observatorio.cl/minutas-de-seguimiento-de-la-convencion-constitucional/

[iv] The new proposal was handled by a Constitutional Council, composed of 50 people elected by popular vote (with gender parity and additional indigenous seats, which resulted in only one Mapuche seat) responsible for drafting the constitutional proposal, and an Expert Commission of 24 experienced individuals, chosen by the National Congress, responsible for drafting a preliminary draft of the constitution.

[v] See: https://observatorio.cl/wp-content/uploads/2023/07/minuta-junio-2023-3.pdf

[vi] See: https://tramitacion.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=17643-07

[vii] The mechanism used by CONADI is limited to address the past land demands that the State recognized in favor of Mapuche, which only included legally owned lands of which they were dispossed. This left out the demands of traditionally occupied lands that were never recognized and constitute an important portion of them. On the other hand, the market mechanism used for these purposes, and the scarce resources allocated for these purposes, determine a significant delay in the State's response to this legitimate Mapuche demand.

[viii] The main mandate of this Commission, composed of eight individuals from a wide political spectrum, including Mapuche people, parliamentarians, representatives of the business sector, and farmers from these regions, was to determine the real land demand of the Mapuche communities and propose concrete and diverse mechanisms for reparation through institutional means in response to the dispossession of the lands that the Mapuche have been subjected to throughout history.

[ix] Available at: https://www.comisionpazyentendimiento.gob.cl/wp-content/uploads/2025/05/Informe-de-Resultados-VFinal.pdf

[x] The report contains a diagnosis and quantification of the demand for Mapuche lands, making evident the limitations of the land restitution system managed by CONADI under the current legislation. Considering the pending land demand to be satisfied (727 communities that have applicability based on article 20 B of law 19.253, and 1,252 communities that have submitted an applicability request and are awaiting a response from CONADI), at the current processing rate, meeting the land demand could take between 80 and 162 years.

[xi] See: https://www.gob.cl/nuevosistemadetierras/

[xii] See: https://www.futawillimapu.org/2025/07/29/junta-general-de-caciques-de-osorno-rechaza-consulta-indigena-del-gobierno/?fbclid=IwY2xjawL4tJRleHRuA2FlbQIxMQABHuWmxooS8yZEy6M52g-qbGEgOTT2wTrkLGk7aMR4VQu1HfenVGB5fqybMIaI_aem_aS2tgF8mTzfcpKOlIU6G0g

[xiii] Contribution elaborated by Txawün de Comunidades Mapuche de Temuko

[xiv] Títulos de Merced are property rights over a plot, originally granted by the Comisión Radicadora de Indígenas, which led the "settlement process" that began in 1883 as part of the colonization of La Araucanía. In: http://mapuchedataproject.cl/datos-de-tierras/

[xv] The Municipality of Temuco continues to grant permits to build on Mapuche communities through its Municipal Construction Directorate (DOM for its name in Spanish), while the Ministry of Housing and Urbanism (MINVU for its name in Spanish) continues to receive lands with Títulos de Merced to carry out social housing projects. The justification is based on the "navigation chart" with which these State agencies work, which is subject to what is established by the District Regulatory Plan (PRC for its name in Spanish) and the modifications of land use, which in some cases have led to the collection of contributions from Mapuche families. However, there are also other institutions that are part of afectación (change of legal status of land) currently suffered by indigenous land and territory in Temuco, such as National Assets, which grants ownership titles to non-Mapuche people over indigenous land. Finally, notary offices also participate in the disaffection by allowing the purchase and sale of indigenous land and territory that violate current regulations.

[xvi] In addition to the impact caused by urban expansion, other communities of the Txawün de Comunidades Mapuche Temuko, is located outside the urban area, in the Ñielol-Huimpil mountain range, a territory affected by **the presence of the forestry industry**. Community leaders have reported that due to the installation of forestry companies on lands adjacent to the communities' Títulos de Merced, there is a constant risk of fires during summer, contamination of surface water and groundwater due to the use of agrochemicals, and a lack of water for human consumption. Additionally, there is an impact on small-scale family farming due to the lack of water, roads are affected by the presence of heavy trucks and excess dust, access to culturally significant spaces that were left outside Títulos de Merced and within forestry properties is blocked, and there is an impact on the biodiversity of endemic flora and fauna that affects the communities' relationship with nature and the practice of traditional medicine, creating imbalances and violations of indigenous rights.

[xvii] **a**. **Communities affected by the urban expansion of Temuco and Labranza:**

1. **Hueche Huenulaf**, lofmapu Botrolhue, PJ No. 1694, 85% reduction of the Land Title.
2. Venancio Huenulao Epu, **Lofmapu Botrolhue PJ No. 2352, 58% reduction of the Land Title.**
3. **Juan Cayunao We Folil**, lofmapu Botrolhue, PJ No. 2599, 10% reduction of the Land Title.
4. **Guenchulle Linconao**, lofmapu Botrolhue, PJ No. 971, 6% reduction of the Title of Mercy.
5. **Juan Collinao**, lofmapu Botrolhue, PJ No. 1007, 4% reduction of the Title of Mercy.
6. **Juan Painenao**, lofmapu Botrolhue, PJ No. 2313, 67% reduction of the Title of Mercy.
7. **Juan Cayupan**, lofmapu Botrolhue Trañi-Trañi, PJ No. 729, 15% reduction of the Title of Mercy.
8. **We Folil Mariman**, lofmapu Botrolhue Trañi-Trañi, PJ No. 2569, 18.5% reduction of the Title of Mercy
9. **Antonio Huilcapan**, lofmapu Kohuilhue, PJ No. 1757, 16% reduction of the Title of Mercy.
10. **Nahuelhuen**, lofmapu Rengalil, PJ No. 1656, 11% reduction of the Title of Mercy.
11. **Antonio Huaiquilaf**, lofmapu Rengalil, PJ No. 1943, 61% reduction of the Title of Mercy.
12. **José Cheuquean**, lofmapu Rengalil, PJ No. 1505, 32% reduction of the Title of Mercy.
13. **Huete Rucan 2**, lofmapu Ralunkoyam, PJ No. 2274, 31% reduction of the Title of Mercy.
14. Rucan, **lofmapu Ralunkoyam, PJ No. 2147, Landless community, with 31% reduction of the Title of Mercy.**
15. **Francisco Huirio Lienan**, lofmapu Ralunkoyam, PJ No. 1609, 90% reduction of the Title of Mercy.
16. **José Nahuelfil Huentura,** lofmapu Koiweko, PJ **No.** 2374, 99.70% reduction of the Title of Mercy.

17. **Juan Quidel**, lofmapu Koiweko, PJ No. 2361, 97% reduction of the Title of Mercy.
18. **Juan Currin**, lofmapu Koiweko, PJ No. 633, 97% reduction of the Title of Mercy.
19. **Juan Currin 1**, lofmapu Koiweko, PJ No. 2395, 97% reduction of the Title of Mercy.
20. **Calvull Llanquihuen 3**, lofmapu Koiweko, PJ No. 2217, 64% reduction of the Title of Mercy.
21. Juan Diego Quidel, **lofmapu Fta Mallin or Monteverde, PJ No. 1800, 8% reduction of the Title of Mercy.**
22. **Juan Colipi**, lofmapu Pumalal, PJ No. 932, 40% reduction of the Title of Mercy.
23. **Txomen Molulco**, lofmapu Txomen Molulko, PJ No. 2583, 35% reduction of the Title of Mercy.
24. **Pedro Curiqueo**, lofmapu Paillaomapu, PJ No. 1645, site of cultural significance affected by a change of land legal status by CONADI that was supposed to make road for a school that was not built, leaving the land in the hands of non-Mapuche third parties.

b. Communities affected by the presence of the forestry industry:

1. **Juan Tranma**, lofmapu Llaullahuen, PJ No. 193, 12% reduction of the Title of Mercy.
2. **Cacique Antonio Curapil**, lofmapu Bochoko, PJ No. 49, 21% reduction of the Title of Mercy.
3. **We Bartolo Levimil 2**, lofmapu Tranantue, PJ No. 2138, 5% reduction of the Title of Mercy.

[xviii] This regulation, enacted and in force since 2008, sought to address the existing gap in Chilean legislation regarding the lack of recognition of the presence, role, and specificity of the ways of life of indigenous peoples linked to the coast and marine resources.

[xix] The final part of the second paragraph of article 10 of Law 20.249 states that "in the event that CONADI report accounts for customary use, the request for marine coastal space of indigenous peoples should be preferred (...)"

[xx] https://es.mongabay.com/2024/03/industria-del-salmon-acusada-de-desinformar-solicitudes-espacios-marinos-costeros-pueblos-originarios-chile/

[xxi] https://www.elmostrador.cl/cultura/2024/02/29/industria-salmonera-celebra-pueblos-indigenas-lamentan-se-rechaza-ley-lafkenche-en-aysen/

[xxii] This is the case with the so-called "Regional Commissions for the Use of the Coastal Edge" (CRUBC for its name in Spanish), collegiate and inter-institutional bodies that perform a decisive or decision-making function in the procedure for declaring an ECMPO, as they are responsible for ruling on the approval, rejection, or modification of the requested space as such. It is worth highlighting that Law No. 20.249 was the first legal norm to mention these bodies and grant them decision-making powers for the allocation of rights.

[xxiii] This has reached the concerning point of threats and intimidation against indigenous authorities and community leaders, which highlights the role of these individuals as environmental defenders, in the terms of the Escazú Agreement (Article 9); and on the other hand, it demonstrates the lack of guarantee by the State of Chile to ensure a an environment of security, dialogue, and respect for these actors.

[xxiv] Constitutional Court of the Republic of Chile. Ruling No. 15,981-24, No. 15,993-24, No. 15,994-24, No. 15,995-24, No. 15,996-24, and No. 16,000-24-CPT (accumulated). Considering one hundred and seventeenth.

[xxv] Ministers Daniela Marzi Muñoz (President), Nancy Yáñez Fuenzalida, Catalina Lagos Tschorne, and Alejandra Precht Rorris

[xxvi] In particular, the Constitutional Court's ruling indicates that articles 2, 5, 6, 7, 15, 18, 22, 23, 27, 29, all of ILO Convention No. 169, are violated.

[xxvii] The second paragraph of Article 5 of the Political Constitution states that "the exercise of sovereignty recognizes as a limitation the respect for essential rights that emanate from human

nature. It is the duty of the State bodies to respect and promote such rights, guaranteed by this Constitution, as well as by international treaties ratified by Chile and that are in force."

[xxviii] The bills correspond to the following legislative bulletins: 15862-21; 16864-21; 16998-21; 17109-14

[xxix] The important role and contributions of indigenous women in ensuring the food security and sovereignty of their families and communities, the generation and transmission of customary uses developed in the ECMPO, and their sustainable use of resources are also unrecognized

[xxx] Therefore, the modification of Lafkenche Law would drastically affect the communities and families that have utilized it since its enactment 17 years ago and does not address the underlying issue, which is solely the responsibility of the State. This issue relates to the long waiting periods and delays in processing ECMPO applications, as well as the urgent need to improve public services and create less bureaucratic administrative processes with cultural and territorial relevance.

[xxxi] In this regard, check: INDH, 2013: The duty of prior consultation in the Proposed Regulation of the Environmental Evaluation System, Santiago: INDH; INDH, 2013: Observation Report of the Indigenous Consensus Board, Santiago: INDH; OBSERVATORIO CIUDADANO, 2018: ILO Convention 169 on Indigenous and Tribal Peoples 10 years after its ratification by the State of Chile: Critical analysis of its compliance, Chile: OBSERVATORIO CIUDADANO - Central Unitaria de Trabajadores.; OBSERVATORIO CIUDADANO, 2014: The right to consultation of indigenous peoples. Analysis of national, international, and comparative law, Report 19, IWGIA; MILLALEO, Salvador, 2014: "Govern with Consultation? Comparative analysis regarding the problems related to the bases and objects of indigenous consultation (Convention 169) of the regulations approved in Chile", in ¿Chile Indígena? Challenges and opportunities for a new deal, Santiago, Fundación Chile. pp. 52-102; AYLWIN, José, SILVA, Hernando and YÁÑEZ, Nancy, 2015: "Chile", in IWGIA (ed.), The Indigenous World 2015, Copenhagen, IWGIA, 204-216; FUNDACIÓN PARA EL DEBIDO PROCESO, 2015: Right to consultation and to free, prior, and informed consent in Latin America. Progress and challenges for its implementation in Bolivia, Brazil, Chile, Colombia, Guatemala, and Peru, Washington DC: Fundación para el Debido Proceso; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, 2015: "Indigenous peoples, Afro-descendant communities, and natural resources: protection of human rights in the context of extraction, exploitation, and development activities," Washington, Organization of American States, OEA/Ser.L/V/II. Doc. 47/15, pp. 25-27 and pp. 45-47

[xxxii] Article 3 of the General Consultation Regulation, under the title "Fulfillment of the Duty to Consult," establishes that "the responsible body must make the necessary efforts to reach the agreement or consent of the affected peoples, complying with the principles of consultation through the procedure established in this regulation. Under these conditions, the duty to consult will be considered fulfilled, even if it is not possible to achieve this objective." In a similar line, Article 85, third paragraph, of the SEIA Regulation states that: "in the consultation process referred to in the previous paragraph, the affected indigenous peoples will exclusively participate and it must be carried out with the aim of reaching an agreement or obtaining consent. However, not achieving this aim does not imply the violation of the right to consultation."

[xxxiii] This reduction contradicts the purpose of FPIC as a guarantee to safeguard the economic, social, and cultural rights of indigenous peoples, as well as their rights over lands, territories, natural resources, and their cultural and spiritual integrity, as established by ILO Convention No. 169 and reiterated by the CESCR in its General Comments No. 21 and No. 26.

[xxxiv] Even more concerning, the Undersecretary of Fisheries and Aquaculture, Julio Salas, in a session held on April 16, 2025, before the Senate Commission on Maritime Interests, Fisheries, and Aquaculture, formally stated that the Executive will not intervene in the legislative processing of these initiatives, indicating that: "...the involvement of the Executive in this matter... through indications, must act with prior indigenous consultation... therefore, the Executive does not plan to get involved, as this would require conducting an indigenous consultation on the indications..." See the intervention of the Undersecretary of Fisheries and Aquaculture, Julio Salas, in the session dated April 16, 2025, of the Senate Commission on Maritime Interests, Fisheries, and Aquaculture. Available at: https://www.youtube.com/watch?v=zxkaTexHPEg

He also added that the Executive respects the authority of the National Congress to amend its own laws, thereby reinforcing the disconnection between the duty of consultation and the legislative processes of parliamentary origin.

[xxxv] According to Article 85 of the SEIA Regulations: "[…] in the event that the project or activity generates or presents any of the effects, characteristics, or circumstances indicated in Articles 7, 8, and 10 of these Regulations, to the extent that it directly affects one or more human groups belonging to indigenous peoples, the Service must, in accordance with the second paragraph of Article 4 of the Law, design and develop in good faith a consultation process, which includes appropriate mechanisms according to the sociocultural characteristics of each people and through their representative institutions, so that they can participate in an informed manner and have the opportunity to influence during the environmental evaluation process." It should be noted that the effects, characteristics, or circumstances mentioned in Articles 7, 8, and 10 of the SEIA Regulations—also referred to as significant environmental impacts—correspond to those provided in letters c), d), and f) of Article 11 of Law No. 19.300. These are: i) the resettlement of human communities or the significant alteration of their ways of life and customs; ii) the location in or near protected populations that may be affected; and iii) the alteration of monuments, sites with anthropological, archaeological, historical value, or, in general, belonging to cultural heritage, respectively.

[xxxvi] https://seia.sea.gob.cl/busqueda/buscarProyecto.php

[xxxvii] An emblematic example is the WTE Araucanía Project, which aims to incinerate solid household waste from the municipalities of the region. It has been evaluated by the environmental institution from 2017 to March 2022, where it did not obtain its Environmental Qualification Resolution. n 2023, the Committee of Ministers, a political rather than technical body whose function is to hear and resolve appeals filed against resolutions that reject or establish conditions or requirements for an Environmental Impact Study, ratified the rejection of the project, after which the owner of WTE filed an environmental claim appeal before the Third Environmental Court (Causa Rol: R-18-2024) which is still being processed. This case reflects the shortcomings of Chile's Environmental Assessment System. The project failed to acknowledge any significant impact on the Mapuche communities in the area, even though they are located within the project's area of influence; there was no indigenous consultation despite the Mapuche communities submitting citizen observations identifying the impacts this project would have on their health, economy, and cultural practices. Furthermore, the project has received significant public criticism, accumulating more than 16,000 comments.

[xxxviii] SEA, 2016: Instruction on the implementation of the consultation process with indigenous peoples in accordance with ILO Convention No. 169 in the Environmental Impact Assessment System, Of. Ord. D.E. No. 161116, pp. 16-17 and 21-22. Available at: https://www.sea.gob.cl/sites/default/files/migration_files/instructivos/of._ord._ndeg_161116.pdf

[xxxix] As widely documented in specialized literature, this regulatory model—which requires a significant and certain impact as a precondition to activate the duty of consultation—distorts the epistemic function of the right to prior consultation. This function includes the recognition of indigenous peoples as valid epistemic agents in decision-making processes that affect them, and the role of consultation as a mechanism to highlight impacts that might not be detected from a hegemonic technical rationality or the dominant culture. See Guerra Schleef, Felipe Andrés, & Sánchez Sandoval, Gonzalo Andrés Rafael. (2021). The epistemic function of the right of indigenous peoples to prior consultation in Chile. Ius et Praxis, 27(3), 24-44. https://dx.doi.org/10.4067/S0718-00122021000300024

[xl] In this regard, see: Court of Appeals of Antofagasta, judgment Rol 1.356-2017 (confirmed by the Supreme Court, judgment Rol 35.629-2017); Court of Appeals of Antofagasta, judgment Rol 14-2019.

[xli] In this regard, see: Supreme Court, judgment Role 138.439-2020 (accumulated Role 140.342-2020); Supreme Court, ruling Role 17.289-2021.

[xlii] A paradigmatic case of the stigmatization of exercising the right to indigenous consultation is the ongoing process implemented by the National Monuments Council (CMN for its name in Spanish) in the context of "Los Lagos Hydroelectric Plant" project, by the Norwegian state company Statkraft, in the Pilmaiquén River territory (Los Ríos and Los Lagos regions, Chile). This

consultative process began due to the discovery of archaeological sites of high value to the Mapuche-Williche people inhabiting this area. The consultation was ordered by the Supreme Court (judgment Rol 17.289-2021) following a protection appeal filed by the Mapuche-Williche organizations and communities of this territory, after the confirmation of these findings within the framework of the construction works of the plant, initially authorized without an adequate archaeological impact assessment or prior consultation. In this context, the CMN was forced to activate an indigenous consultation process in accordance with Article 6 of ILO Convention No. 169, which is currently underway. However, since the beginning of the process, Statkraft Chile —the Chilean subsidiary of Europe's largest renewable energy generator and owned by the Norwegian State— has developed an aggressive media and communication campaign in regional and national outlets, portraying opposing communities as a radical minority that opposes development and hinders a "clean energy" project for the benefit of the country. This strategy has reinforced the corporate and political narrative that represents the legitimate exercise of the right to consultation as an obstacle to investment, delegitimizing the demands of indigenous peoples and generating a climate of hostility and misinformation in public opinion. Additionally, the company has maintained a systematic practice of differentiating and fragmenting the Mapuche organizational fabric of Pilmaiquén, promoting the participation of communities favorable to the project in institutional spaces, while denying physical access to archaeological sites to representatives of opposing communities, even when they are directly involved in the consultation process. In this regard, see: ExAnte, Statkraft: Indigenous Consultation of the Council of Monuments spends 14 times more than a SEA process, available at: https://www.ex-ante.cl/statkraft-consulta-indigena-del-consejo-de-monumentos-gasta-14-veces-mas-que-un-proceso-del-sea/; ExAnte, With 96% progress, Statkraft's hydroelectric plant will not be able to operate due to delays from the Consejo de Monumentos Nacionales, available at: https://www.ex-ante.cl/con-96-de-avance-hidroelectrica-de-statkraft-no-podra-operar-por-retrasos-del-consejo-de-monumentos-nacionales/; Reportajes T13: The "ghost plant" in Los Lagos that has the investment paralyzed, available at: https://www.t13.cl/videos/reportajes-t13/reportajes-t13-central-fantasma-lagos-tiene-inversion-paralizada-6-5-2025; T13, Hydroelectric plant in Los Lagos is built but cannot operate: they have been waiting 5 years for an indigenous consultation, available at: https://www.t13.cl/noticia/nacional/central-hidroelectrica-lagos-esta-construida-pero-no-puede-operar-llevan-5-anos-6-5-2025

[xliii] This situation is of particular concern in the light of current legislative initiatives in process aiming to introducie regressive modifications to Lafkenche Law, withouth carrying out previous, free and informed consultation with potentially affected indigenous peoples. The absence of specific regulation and the lack of institutional will to activate the duty of consultation in these cases—which in practice is left to the criterion of the National Congress or the Executive branch, should the latter decide to present indications—severely affect the ability of indigenous peoples to exercise this fundamental procedural right, whose objective is precisely the protection of their substantive and collective rights.

[xliv] Exempt Resolution No. 349, dated October 2, 2024, from the Undersecretary of Social Services of the Ministry of Social Development and Family, which "INSTRUCTS AN ADMINISTRATIVE PROCEDURE TO INITIATE THE PRIOR CONSULTATION PROCESS FOR THE MEASURES INDICATED, AND CALLS UPON THE REPRESENTATIVE INSTITUTIONS OF THE INDIGENOUS PEOPLES AND THE CHILEAN AFRO-DESCENDANT TRIBAL PEOPLE." Available at: https://www.diariooficial.interior.gob.cl/publicaciones/2024/10/10/43970/01/2554291.pdf

[xlv] The public debate around this initiative developed in a context marked by increasing media hostility towards indigenous consultation, where this mechanism was repeatedly presented as an obstacle to development and investment. Far from aiming to adapt the regulations to international human rights standards, the discussion was permeated by discourses seeking to delegitimize the consultation as a right and strip it of its substantive content. This deeply alarmed indigenous organizations, which warned that this reform attempt could lead to an even more severe regression in the protection of their fundamental rights, in open contradiction to the principle of non-regression that rules human rights matters.

[xlvi] Observatorio Ciudadano and ICCA Consortium, 2016: Questioning the classical approaches to conservation in Chile. The contribution of indigenous peoples and local communities to biodiversity protection. pp. 59 and onwards. Available at: https://iwgia.org/images/publications/0754_Cuestionando-los-enfoques-clasicos-de-conservacion-en-Chile_1.pdf

[xlvii] Exempt Resolution No. 05, dated January 8, 2016, from the Ministry of Environment, which "Orders the implementation of a consultation process with indigenous peoples, initiates an administrative procedure and calls for the process." Available at: https://consultaindigena.mma.gob.cl/wp-content/uploads/2021/01/ResExenta_5_2016.pdf

[xlviii] In this regard, see: INDH, 2018: Final Report. Observation of the prior consultation process developed by the Ministry of the Environment regarding specific matters to draft indications to the Bill that creates the Biodiversity and Protected Areas Service and the National System of Protected Areas. Report approved by the Council of the National Institute of Human Rights on April 16, 2018 - Ordinary Session 420. Available at: https://bibliotecadigital.indh.cl/server/api/core/bitstreams/9b074bb1-4478-4db8-ae59-c3b1c40ea18b/content

[xlix] Through the MMA Exempt Resolution No. 04259, dated September 3, 2024, published in Diario Oficial on September 11, 2024, it was mandated to carry out an indigenous consultation regarding matter to be regulated in the protected areas and priority sites regulations, dictated by Law No. 21.600.

[l] Information provided from the Report on the prison conditions of indigenous peoples deprived of liberty in Chile in light of the International Covenant on Economic, Social and Cultural Rights has been prepared by the "CORPORACIÓN KÜMEKAWÜN KA LAWENTUWÜN," with the aim of offering recommendations to the State of Chile to advance in the respect and guarantee of the rights of those deprived of liberty belonging to indigenous peoples, within the framework of Chile's periodic review cycle by the Committee on Economic, Social and Cultural Rights. The report analyzes the rights of indigenous people deprived of liberty in light of the international human rights law and the ICESCR and points out that despite the existence of various treaties ratified by the State of Chile, international human rights bodies have not declared anything on the protection of indigenous people deprived regarding the aforementioned Convenant. It emphasizes that people deprived of liberty and indigenous people deprived of liberty are holders of different rights recognized in it. Among them, the right to work, social security, family protection, food, clothing and housing, health, education, and the right to culture.

[li] Introduced in 2011 as a parliamentary initiative, the bill proposes, among its main objectives, the establishment of water as an essential right. Details of the process can be reviewed at the following link: https://tramitacion.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=7543-12

[lii] Other innovations incorporated in this reform relate to prioritizing uses. In this regard, it is stated that under all circumstances, human, domestic, and subsistence consumption will prevail, both in the granting, exercise, and limitation of water rights. (Article 5 bis)

[liii] In particular, the final paragraph of Article 19 No. 24 states that "the rights of individuals over water, recognized or established in accordance with the law, shall grant their owners ownership of them."

[liv] In contrast, the constitutional draft proposals submitted during 2022 and 2023, both rejected in national plebiscites, expressly recognized the human right to water and sanitation.
The 2022 Proposed Political Constitution of the Republic of Chile recognized in Article 57 the "human right to sufficient, safe, acceptable, affordable, and accessible water and sanitation." Meanwhile, the 2023 Proposed Political Constitution of the Republic of Chile established in Article 16 No. 30 the "right of access to water and sanitation, in accordance with the law."

[lv] These measures include the establishment of water rights for human consumption, exemption from paying fees for non-use of water, and the non-expiration of rights granted for these purposes, among others.

[lvi] It has been pointed out that we are currently experiencing a constant rainfall deficit in much of the national territory, which, combined with a very pronounced increase in temperatures and the effects of anthropogenic climate change, have produced an extraordinary event that has come to be called a "megadrought." In: Center for Climate Science and Resilience (CR)2. Report to the Nation The 2010-2015 megadrought: A lesson for the future. https://www.cr2.cl/megasequia/

[lvii] One of the most powerful impacts of this phenomenon, known as the "megadrought," is the shortage of water resources in the country's various rivers, which have seen their flow decreases between 25% and 70%. This situation has also affected other bodies of water such as lakes, reservoirs, snowpack, and groundwater.

[lviii] It has been found that the transportation and distribution of drinking water in rural areas has served as a lucrative business for those providing these services, without contributing to the

realization of the human right to water. In: https://ciperchile.cl/2017/03/21/el-negocio-de-la-sequia-el-punado-de-empresas-de-camiones-aljibe-que-se-reparte-92-mil-millones/

[lix] This observation states that the right to water is linked to the right to an adequate standard of living (Article 11, paragraph 1) and the right to the highest attainable standard of living (Article 12, paragraph 1). Regarding its normative content, it establishes that the following factors apply to the exercise of the right to water: availability, quality, accessibility, non-discrimination, and access to information.

[lx] In particular, reference has been made to instruments such as the American Convention on Human Rights, Observation No. 15 of the Committee on Economic, Social and Cultural Rights, the Inter-American Convention on the Protection of the Human Rights of Older Persons, and the Convention on the Rights of the Child.

[lxi] In this sense, different sentences issued between the years 2020-2022 accounted for the existence of the human right of access to drinking water, the special consideration of groups in vulnerable situations and the provision of at least 100 liters per day per person. (Supreme Court, Rol No. 72.198-2020, January 18, 2021, ninth, tenth, and eleventh considerations. Supreme Court, Rol No. 131.140-2020, January 23, 2021, thirteenth, fourteenth, and fifteenth considerations. Supreme Court, Rol No. 78.670-2021, January 21, 2021, sixth consideration. Supreme Court, Rol No. 5.295-2022, September 26, 2022, fifth consideration.)

[lxii] Among these measures, we can mention, as an example, the promulgation and entry into force in May 2023 of Law No. 21,562, which establishes restrictions on the environmental assessment of projects in latent or saturated areas due to contamination, the approval in November 2023 of a Primary Air Quality Standard for Arsenic, as well as the promulgation and entry into force in 2024 of Secondary Environmental Quality Standards for the Protection of Marine Waters and Sediments of the Quintero-Puchuncaví Bay. In the specific context of Quintero-Puchuncaví, the definitive closure of CODELCO's Ventanas Smelter in May 2023, one of the most polluting sources of SO2 in the area, stands out as a historic milestone, as well as the inauguration and commissioning of a new Air Quality Monitoring Network for Concón, Quintero, and Puchuncaví in April 2025. See, for example: https://mma.gob.cl/hito-para-concon-quintero-y-puchuncavi-medio-ambiente-inaugura-nueva-y-moderna-red-publica-de-monitoreo-de-calidad-del-aire/

[lxiii] Biobío (2025). Environmental alert declared for Concón, Quintero and Puchuncaví due to particulate matter (July 2, 2025). Retrieved from: https://www.biobiochile.cl/noticias/nacional/region-de-valparaiso/2025/07/02/declaran-alerta-ambiental-para-concon-quintero-y-puchuncavi-por-material-particulado.shtml ; Biobio (2024). Minsal declares Health Alert for Concón, Quintero and Puchuncaví due to pollution episodes (August 6, 2024). Retrieved from: https://www.biobiochile.cl/noticias/nacional/region-de-valparaiso/2024/08/06/minsal-declara-alerta-sanitaria-para-concon-quintero-y-puchuncavi-por-episodios-de-contaminacion.shtml

[lxiv] Biobío (2024). 45 students reportedly poisoned following an environmental emergency in Quintero and Puchuncavíu (May 16, 2024). Retrieved from: https://www.biobiochile.cl/noticias/nacional/region-de-valparaiso/2024/05/16/45-estudiantes-estarian-intoxicados-tras-emergencia-ambiental-en-quintero-y-puchuncavi.shtml ; Biobío (2024). Official to the SMA after reports of poisoning and strange odors in various schools in Quintero (May 29, 2024). Retrieved from: https://www.biobiochile.cl/noticias/nacional/region-de-valparaiso/2024/05/29/ofician-a-la-sma-tras-reportes-de-intoxicacion-y-olores-extranos-en-diversos-colegios-de-quintero.shtml

[lxv] This is the case, for example, for respirable fine particulate matter (MP2,5), whose annual standard (20 µg/m^3) is four times more permissive than the WHO standard (5 µg/m^3) , while its daily (24-hour) standard (50 µg/m3) is 3.3 times more permissive than that of the WHO (15 µg/m3). A similar situation applies to MP10, whose annual standard (50 µg/m3) is 3.3 times higher than the WHO standard (15 µg/m3), while its daily standard (130 µg/m3) is almost three times higher than that of the WHO (45 µg/m3). For nitrogen dioxide (NO2), the standard for which was recently updated, the national standard for both its annual (40 µg/m3) and daily (100 µg/m3) concentrations is four times more permissive than the WHO standard (10 µg/m3 and 25 µg/m3, respectively). Finally, the daily standard for sulfur dioxide (SO2) (150 µg/m3) is almost four times higher than the WHO standard (40 µg/m3), while for the 10-minute concentration, the Chilean standard does not set a value.

[lxvi] Exempt Resolution No. 30, dated April 6, 2023, of the Ministry of the Environment.

[lxvii] Exempt Resolution No. 1611, dated March 21, 2025, of the Ministry of the Environment.

[lxviii] D.S. N°107/2021 of the Ministry of the Environment.

[lxix] D.S. N°11/2021 of the Ministry of the Environment.
[lxx] Exempt Resolution No. 1105, dated September 10, 2019, of the Ministry of the Environment.

[lxxi] Interferencia (2024). Maratué real estate project was approved despite Seremi warning about high levels of arsenic (November 15, 2024). Retrieved from: https://interferencia.cl/articulos/proyecto-inmobiliario-maratue-fue-aprobado-pese-que-seremi-alerto-sobre-altos-niveles-de
[lxxii] The Pact includes a set of measures that include the modernization of the State to strengthen transparency in public spending and an agenda to promote investment, productivity, and growth. More details can be found here: https://www.gob.cl/noticias/presidente-da-a-conocer-pacto-fiscal-para-el-desarrollo-y-el-bienestar-de-chile/
[lxxiii] https://www.economia.gob.cl/2025/07/01/proyecto-de-permisos-sectoriales-es-despachado-a-ley.htm
[lxxiv] The project aims to "provide greater certainty to all stakeholders and expedite the granting of the necessary sectoral authorizations for investment projects without reducing or deregulating mechanisms for protecting the environment and people."
[lxxv] Legislative emergencies are a procedure that allows the President of the Republic to prioritize and expedite the discussion of bills currently being processed in the National Congress.
[lxxvi] These techniques seek to simplify administrative procedures by replacing formal authorizations with notices or sworn declarations. While they can improve efficiency, they pose serious risks to respect for human rights and the environment.
[lxxvii] ESCR Committee (2015), par. 11; ESCR Committee (2020), directly par.6 y 19, and inderectly in par. 2,3,4,5,6, 7, 8, 9, 16 and 22.
[lxxviii] The Committee refers to the National Action Plan on Human Rights and Business 2017-2019.
[lxxix] https://globalnaps.org/wp-content/uploads/2021/03/estudio-de-actualizacion-evaluacion-del-plan-de-accion-nacional-de-derechos-humanos-y-empresas-y-propuesta-para-la-elaboracion-de-su-segunda-version.pdf.

[lxxx] See the public statement by the Chilean Civil Society Platform on Human Rights and Business: https://observatorio.cl/declaracion-por-aprobacion-del-segundo-plan-de-accion-nacional-de-derechos-humanos/
[lxxxi]https://www.derechoshumanos.gob.cl/wp-content/uploads/2024/09/Informe-tercer-ciclo-de-Reporte-PAN-2-f.pdf

[lxxxii] https://www.ciperchile.cl/2024/05/15/ley-corta-de-isapres-triunfo-el-liberalismo/

[lxxxiii] https://observatorio.cl/poder-legislativo-y-captura-corporativa/