Chile


BOLIVIA
PACIFIC OCEAN
ARGENTINA
Santiago
CHILE
ATLANTIC OCEAN

Despite steady increases since the 1990s, Chile's Indigenous population has experienced no major changes since the 2017 census. At that time, 2,185,792 people self-identified as Indigenous, equivalent to 12.8% of the country's total population (17,076,076). The Mapuche were the most numerous (almost 1,800,000 individuals), followed by the Aymara (156,000) and the Diaguita (88,000).[1] A sustained increase in the urban Indigenous population over the rural is noteworthy, now accounting for 87.8% with only 12.2% living in rural areas.[2]

Law 19,253 of 1993 on the Promotion, Protection and Development of Indigenous Peoples, known as the "Indigenous Law", has not been amended to comply with current international standards on the rights of Indigenous Peoples, such as ILO Convention 169, ratified by Chile in 2008. In addition, Chile has adopted the UN Declaration on the Rights of Indigenous Peoples (2007) and the American Declaration on the Rights of Indigenous Peoples (2016).

Indigenous youth: contributions to and challenges in gaining recognition of their rights

Chile's Indigenous youth play a fundamental role in creating appreciation and awareness of Indigenous identity and rights as native peoples. They nonetheless face strong discrimination due to their Indigenous origin, physical features and names.[3]

There are no recent official data or studies on the situation of Indigenous youth, who are estimated to represent 13.2% of young people in Chile.[4] Research into the nature and policies of Indigenous youth in Chile, entitled *Jóvenes y juventudes indígena en Chile: Vivencias y tensiones en el Chile contemporáneo* [Indigenous Youth in Chile: Tensions and experiences in contemporary Chile], produced by the National Youth Institute in collaboration with National Corporation of Indigenous Development (CONADI) and the Social Studies Department of the Pontificia Universidad Católica (DESUC), dates back to 2015.[5] Its main results showed that, in terms of socioeconomic conditions, Indigenous

youth are generally more disadvantaged than non-Indigenous youth in areas such as income, years of schooling, and health status. In turn, 75% of Indigenous youth live in urban areas for educational and employment reasons.

Despite facing a number of difficulties, Indigenous youth are making valuable contributions to the political, cultural, social and economic life of their peoples and the country in general. Their contributions include: claiming their territorial rights (demanding compliance with the rights established in international standards); strengthening their cultural identity (reviving their languages, promoting their cultural traditions such as music, dance and the arts, as well as their ancestral practices and crafts); and strengthening their community organizations. They are also noteworthy for their use of digital technologies (social and community media, etc.) in making their culture and demands more visible, sharing stories, music and Indigenous languages, and thus contributing to raising awareness about their struggles.

Many young people are playing a notable part in the struggle against projects that affect the environment such as mining, deforestation and the construction of large hydroelectric projects, which often have a direct impact on their territories. Ever more young Indigenous men and women are likewise gaining recognition in professional areas such as the social sciences, law and geography, putting their knowledge to good use by contributing to a strengthening of their territories.[6]

The challenges faced by Indigenous youth include a lack of economic opportunities in their territories and limited access to land. One of the main trends observed is that most young people, both men and women, are choosing to migrate to the cities in search of better educational and employment opportunities. Some do return to their territories but the disconnect from the land and the territory has become such that, upon inheriting land, many choose to parcel it up and sell it off. Some, however, decide to return and stay, facing multiple challenges in gaining access to the land and securing their right to it. This access is fundamental as land plays a crucial role in preserving their cultural identity and connection to traditions. Economic development based on food sovereignty is a means by which young people are seeking to strengthen their territorial autonomy and contribute to building a more just future.

There is only limited support available in such situations. Although the Agricultural Development Institute (INDAP) is a government programme that provides support to land users, access to its benefits is conditional on land ownership, meaning there is only limited assistance for those who have no access to land. In addition, there is no law guaranteeing the territorial rights of Indigenous youth, nor are there any financial bodies granting specific credit lines or budgets for them.

Despite these challenges, many young people remain hopeful and are continuing to embark on different economic activities with the goal of transforming their realities and strengthening their communities. The struggle for territorial autonomy continues to be one of the main motivations of Mapuche youth, who are seeking to defend their right to land and preserve their ancestral culture.

Despite the difficulties, many young people have decided to stay on their land and work hard to strengthen their communities. Through their efforts and actions, they are continuing to fight for a future in which their land and territorial rights are respected and in which they can guarantee their territorial autonomy. The struggle for food sovereignty and the strengthening of rural communities is, today, one of the main focal points of these young people, committed to the land, the territory and its culture.

Presidential Commission for Peace and Understanding

During 2024, the Presidential Commission for Peace and Understanding, convened by President Gabriel Boric in June 2023 with the aim of laying the groundwork for a medium to long-term solution to the land demands of the Mapuche people and their communities, continued its work of attempting to reach an agreement with a view to generating political and legislative proposals that would enable progress towards its objective.

Throughout the year, the Commission met in various cities in the regions of Biobío, La Araucanía, Los Ríos and Los Lagos, in the traditional Mapuche territory in southern Chile. During these sessions, the Commission held hearings with representatives of Mapuche organiza-

tions, productive associations, civil society and local authorities. In addition, spaces for participation were opened, such as the Intercultural Dialogues (multi-stakeholder dialogue spaces held in 11 cities) and the Self-Convened Territorial Meetings aimed at Mapuche organizations.

Participation in these spaces was not particularly broad due to insufficient publicity, methodological shortcomings and a lack of the Mapuche organizations' confidence in the process. In spite of this, proposals emerged from the Self-Convened Territorial Meetings in relation to the need for constitutional recognition of Indigenous Peoples and the relevance of recognizing rights to the lands traditionally occupied by the Mapuche people, and these proposals were formally channelled to the Commission. For their part, a group of Mapuche organizations from different territories submitted a series of reports to the Commission containing the grounds that support their claims to their lands of traditional occupation, with a view to having these issues considered in the Commission's final proposals.

The Commission's discussions are focused on five main areas: Land and Territories; Institutional Structures; Justice and Recognition; Territorial Development; and Reparations for all victims. However, so far, the commissioners have not been able to reach agreement on these issues. In particular, there has been a failure to clearly define the recognition of, or reparation mechanisms for, lands of traditional occupation, which represent a very important part of the Mapuche people's territorial claims. This situation led the Commission to extend its operations, initially until the end of January 2025 and then until the end of April 2025, in order to reach the necessary agreements. These agreements are made more complex by the composition of the Commission, which includes the opposing interests of the Mapuche representatives, who are seeking to raise the level of recognition of their people's rights, and those of the representatives of the productive world and of the farmers who are descendants of settlers in the area, who question the land restitution policies.

These circumstances have resulted in a climate of uncertainty over the possibility of advancing towards the agreements necessary to build social peace in the south of Chile via recognition of the Mapuche people's rights and reparation for the process of dispossession of their legal lands and traditional occupation as a result of the State's actions. Moving towards structural agreements that can rebuild the social equi-

librium and the peaceful coexistence of all the actors inhabiting the territory is an opportunity that should not be missed. It is therefore necessary to seriously and structurally identify and resolve the conflicts related to the Mapuche's traditionally occupied lands, international standards on Indigenous Peoples, and the effective participation of all Mapuche sectors.

Challenges of Indigenous consultation on Protected Areas and Priority Sites Regulations

Within the framework of the new law creating the Biodiversity and Protected Areas Service (SBAP) and the National System of Protected Areas (SNAP)[7] (hereinafter, the Biodiversity Law), at the end of 2024 the Ministry of the Environment (MMA) initiated a process of Indigenous consultation on the Protected Areas and Priority Sites Regulations,[8] in compliance with ILO Convention No. 169 and Supreme Decree (SD) No. 66 governing the consultation process in the country. Paradoxically, one month later, the Ministry of Social Development announced the start of an Indigenous consultation on Decree No. 66.[9] Both national consultation processes were therefore to be carried out in parallel.

The Biodiversity Law came into force in September 2023 after more than 10 years of consideration in Congress. Its initial text made no reference to Indigenous Peoples, ignoring their rights, their relationship with biodiversity and international standards on the matter. However, following various advocacy actions by Indigenous and civil society organizations, the MMA conducted a nationwide consultation between 2016 and 2017. This consultation resulted in the incorporation of important provisions that establish Indigenous Peoples' rights and responsibilities in the management of protected areas, ensuring their participation in decision-making.

Among these, the new Biodiversity Law requires Indigenous consultation before creating, modifying or declassifying protected areas (Arts. 65, 66); incorporates the category of Indigenous Peoples' Conservation Areas (Art. 62), including Law N° 20.249 of Coastal and Marine Spaces of Indigenous People (ECMPO) contemplates the possibility of reaching management agreements with Indigenous Peoples in State

Protected Areas (Art. 68); includes participation in the preparation and revision of management plans (Arts. 72 and 74); and requires Indigenous consultation when granting concessions (Art. 80).

Although the Biodiversity Law thus represents progress in the recognition of the rights of Indigenous Peoples, they still face the challenge of drafting good implementing regulations that will enable them to really exercise those rights. The barriers that the MMA will have to overcome are not insignificant. On the one hand, it will have to prevent the consultation of SD No. 66 from interfering with this process, for which it will be necessary to ensure greater coordination between ministries than has occurred so far. At the same time, almost 10 years after the consultation on the Biodiversity Law, and without the ministry having had a working agenda on these issues in the territories, it will need to provide adequate and sufficient information to resume a dialogue that is not new but most likely will have new participants. Last but not least, it will need to ensure that the consultation is carried out in an environment free from the intervention of industrial interests, which see the conservation and protection of biodiversity as a barrier and threat to development. This could already be seen in the first days of the consultation in the Magallanes Region, where the salmon industry unprecedentedly intervened in the consultations on the Management Plans for the Kawésqar National Park and Reserve.[10]

Attempts to modify the Law on Marine Coastal Areas for Indigenous Peoples and threats to defenders of the sea

The Law on Marine Coastal Areas for Indigenous Peoples (ECMPO) seeks to recognize and protect the territorial rights of Indigenous Peoples over the coastline and the sea. Since its entry into force in 2008, it has been established as a mechanism for delivering the administration of a delimited marine space to a community or association of communities that have exercised customary use of that space, with the aim of preserving its uses and ensuring the conservation of the natural assets included therein and promoting the welfare of the communities.

Since then, this law has been used by various Indigenous Peoples to defend their territorial rights and protect coastal and marine spaces, which are increasingly being threatened by exogenous development models, extractivism and pollution. There are currently more than 100 ECMPO applications, across seven regions of the country, covering an area of more than 30,000 km^2. However, with long processing times that exceed the legal deadlines, only some 13% of these applications have yet reached the end of the process. Political and administrative barriers arose as soon as the scope and impact this law would have on the reorganization and governance of Chile's marine and coastal areas began to become evident.

In April 2023, a bill was introduced to amend the ECMPO Law (Bulletin No. 15.862-21), in order to "perfect its implementation". The attempt to modify this law seeks to curtail the rights acquired by Chile's coastal Indigenous communities and was promoted by "sectors linked to the indiscriminate exploitation of marine resources and endorsed by some politicians with clear economic interests that they disguise as 'development'".[11]

Last December, Chile's National Congress approved a specification in the Budget Law that halted the processing of new ECMPOs for a period of one year or automatically rejected pending applications if they had not been resolved within six months. Faced with this measure, which is in violation of their territorial rights and was approved without consultation, the Indigenous Peoples of the sea mobilized from north to south to defend the ECMPO Law. For its part, the Executive, a group of parliamentarians and a number of Indigenous organizations filed unconstitutionality appeals against the aforementioned specification. In addition, they participated in a hearing before the Constitutional Court where they pointed out the violations of their rights. As a result, in a historic ruling, the Constitutional Court declared the specification unconstitutional, stating that it affected the rights won by the native peoples. The Court established that governments cannot adopt decisions that diminish rights recognized by previous laws; that the right to participation had been violated since the affected peoples were not involved in the debate; and that budget rules were to be limited to financial matters only and not used to modify substantive aspects such as the protection of the ECMPO.[12]

Despite this, the disinformation campaign against ECMPO applications continues in the marine coastal territories, together with the constant intimidation of and threats to defenders of coastal spaces. The important contributions that these spaces make to the social, cultural and political development of the Indigenous Peoples and the country in general, such as contributions to the conservation of the country's common assets, to the food sovereignty of hundreds of communities and to the family, local and community economy of the Indigenous Peoples and Chile in general, are ignored.

Mining and the Indigenous Peoples of northern Chile

Lithium mining in Chile, in the planning stages in the High Andean Salt Flats and already operational in the Atacama Salt Flats, has become a strategic State policy, driven by the growing global demand for a so-called energy transition. This exploitation has, however, generated tensions among the region's Indigenous Peoples, including the Lickanantay-Atacameño, Colla, Quechua and Aymara, as well as within their organizations, due to the challenges they face related to accessing water, degradation of the environment, and the effects on their ancestral territories.

Both metal and non-metal mining processes consume large amounts of water. In the case of lithium mining, it is the water itself that contains high concentrations of the salts used to obtain this element which, added to the arid conditions in which these communities already live, only accelerates the environmental degradation and endangers ecosystems and local economic activities, such as agriculture and livestock farming, which are fundamental to these communities.

The operation and lease contracts between the Chilean Economic Development Agency (CORFO) and the State-Owned Copper Company (CODELCO) for the exploitation of the Atacama Salt Flats, projected over the 2025-2030 and 2031-2060 periods, are currently in the process of Indigenous consultation. These contracts seek to expand the lithium extraction quota in the area, which could intensify the impacts on the Lickanantay-Atacameño people. At the same time, the Ministry

of Mining is consulting on the so-called Special Lithium Operating Contracts, which affect the Ascotán, Maricunga and Infieles salt flats, important territories for the Quechua and Colla peoples.

In addition to these challenges, there is only limited recognition of Indigenous rights in Chile, and there are regulations governing the application of instruments such as ILO Convention 169 in relation to Indigenous consultation. In domestic law, the Constitution does not provide for explicit recognition of these rights, and collective land rights are only guaranteed by way of interpretation through the right to property. This situation restricts the capacity of Indigenous Peoples to defend their territories from the expansion of mining projects.

For its part, the National Lithium Strategy states that it seeks to establish dialogue and participation with the Indigenous Peoples in whose territories the operations will take place, in addition to including environmental measures, such as the Protected Salt Flats Strategy. Although a benefit-sharing mechanism is included, especially in the Indigenous consultation on the Atacama Salt Flats, there is a lack of concrete and specific measures that would effectively improve the relationship between economic development and the rights of Indigenous Peoples. Such measures would include the effective exercise of Free, Prior and Informed Consent, in the form of the binding participation of communities in decisions on extractive projects, and State compensation mechanisms for Indigenous lands and territories that will be sacrificed for this energy transition.

Finally, it is essential to reinforce the regulatory frameworks in place in order to ensure the rights of the Indigenous Peoples of northern Chile who are being affected by lithium extraction, in addition to providing environmental, territorial and social compensation mechanisms that can guarantee full exercise of their rights, minimizing the impacts on these peoples.

Notes and references

1. National Institute of Statistics (2018). *Síntesis de resultados Censo 2017*. https://www.censo2017.cl/descargas/home/sintesis-de-resultados-censo2017.pdf

2. Ibid.

3. UNICEF. *Los jóvenes mapuche en Chile hablan contra la discriminación:* https://www.unicef.es/noticia/los-jovenes-mapuche-de-chile-hablan-contra-la-

discriminacion#:~:text=
4. 13.2% of young people in Chile self-identify as Indigenous. See Salud Ciudadana https://www.saludciudadana.com/pueblosoriginarios#:~:text=
5. Ministry of Social Development and Family. (17 December 2015). *INJUV, CONADI y DESUC lanzan libro con estudio que caracteriza a los jóvenes indígenas de Chile.* https://www.desarrollosocialyfamilia.gob.cl/noticias/injuv-conadi-y-desuc-lanzan-libro-con-estudio-que-caracteriza-a-los-jovenes-indigenas-de-chile
6. Muriel Alarcón. "Simón Crisóstomo Loncopán, el líder mapuche que defiende su tierra con mapas". *El País*, 02 January 2025. https://elpais.com/america-futura/2025-01-02/simon-crisostomo-loncopan-el-lider-mapuche-que-defiende-su-tierra-con-mapas.html
7. Law No. 21,600. https://www.bcn.cl/leychile/navegar?idNorma=1195666
8. Ministry of the Environment, Santiago. (09 September 2024). Exempt Res. 04259 https://consultaindigena.mma.gob.cl/wp-content/uploads/2024/09/RES-03.09.2024-INICIA-PROCESO-CONSULTA-INDIGENA.pdf
9. Ministry of Social Development, Santiago. (02 October 2024). Exempt Res. 349. https://www.bcn.cl/leychile/navegar?idNorma=1207321&idVersion=2024-10-10
10. Michelle Carrere. "Comunidades kawésqar denuncian obstrucción de la consulta indígena". *Mongabay*, 07 September 2024. https://es.mongabay.com/2024/09/comunidades-kawesqar-denuncian-obstruccion-consulta-indigena/
11. Citizen Observatory. (24 April 2023). *Public statement regarding the attempt to modify Law 20.249 - Lafkenche Law.* https://observatorio.cl/declaracion-publica-ante-intento-de-modificacion-a-la-ley-20-249-ley-lafkenche/?fbclid=IwAR17_k5IpxvcgPhq0AYZP3qLtd5QCuNtI1QUKEG81aIs9D9PPT4g7aHSfZw
12. "Tribunal Constitucional declaró inconstitucional indicación contra Ley Lafkenche". Radio JGM, 10 January 2025. https://radiojgm.uchile.cl/tribunal-constitucional-declaro-inconstitucional-indicacion-contra-ley-lafkenche/

José Aylwin, Lorena Arce, Valeska Caballero Huaiquifil, Juan Carlos Cayo, Oriana Mora, Hernando Silva *and* ***Karina Vargas*** *are members of the Observatorio Ciudadano (Citizens' Watch) (www.observatorio.cl), a human rights NGO based in Temuco and Santiago, Chile.*

CONTENTS