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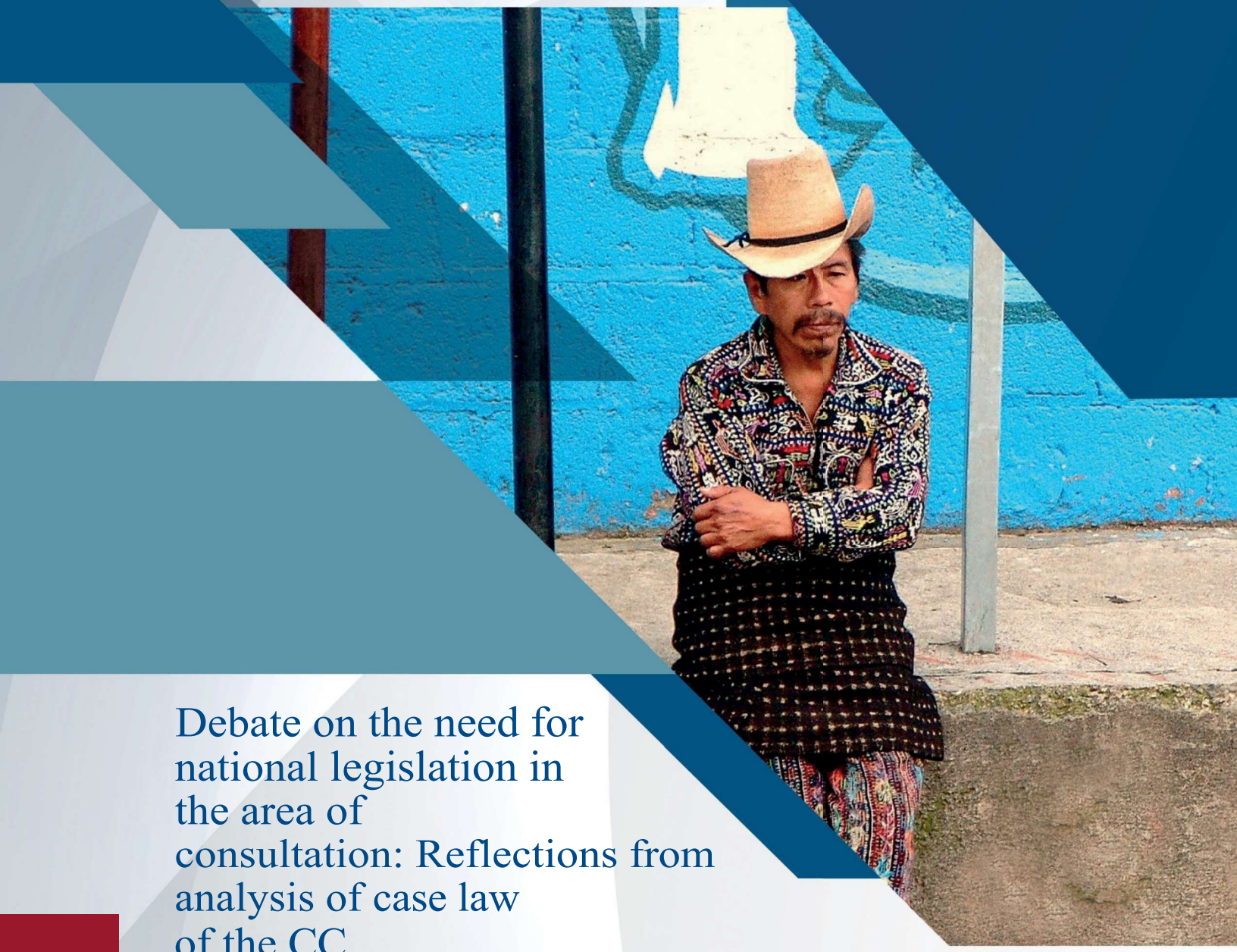

Debate on the need for national legislation in the area of consultation: Reflections from analysis of case law of the CC

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Right of consultation: a path to

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Free, prior and informed prior consultation in constitutional rulings

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Presentación

Debate on the need for national legislation on consultation: Reflections from the analysis of the jurisprudence of the CC.

Ana Gabriela Contreras
Guatemala, December 2020

Introduction

A new paradigm on indigenous peoples, their right to self-determination and their position in national and international law as subjects of collective rights, emerged with the adoption of Convention 169 of the International Labor Organization (ILO) on Indigenous and Tribal Peoples in Independent Countries, approved in Guatemala through Decree 9-96 of the Congress of the Republic, which was incorporated into national legislation with the advisory opinion, favorable of the Constitutional Court (CC) which pointed out "that Convention 169 analyzed does not contradict the provisions of the Constitution and is a complementary international legal instrument that comes to develop the programmatic provisions of Articles 66, 67, 68 and 69 of the same, which does not oppose but, on the contrary, tends to consolidate the system of values that the constitutional text proclaims" (CC, Advisory Opinion 199-95, p. 12). Later, Guatemala ratified the 2007 United Nations Declaration on the Rights of Indigenous Peoples and the 2016 American Declaration on the Rights of Indigenous Peoples, which contributed to consolidate a normative architecture in favor of the collective rights of these peoples.

These instruments complemented the constitutional recognition accorded to the protection of the

of "ethnic groups"', "indigenous groups of Mayan descent"[2] or "indigenous communities"', "ethnic groups"', "indigenous groups of Mayan descent" or "indigenous communities"'.
-as they are called in the Political Constitution of the Republic of Guatemala, by being incorporated into the national legal system through the figure of the block of constitutionality, recognized in Guatemala by the CC on the basis of articles
44 and 46 of the 1985 Constitution (CC, Exp. 1822-2011, p. 14-16). The Constitution recognized the multiethnic character of the State and established that the State recognizes, respects and promotes the ways of life of indigenous communities, their customs, traditions, forms of social organization, the use of indigenous dress in men and women, languages and dialects. This limited recognition, although relevant for its time, was far from the models of intercultural constitutionalism adopted in the continent during the same period. On the other hand, the Guatemalan Constitution declared in its Art. 125, that the technical and rational exploitation of hydrocarbons, minerals and other non-renewable resources is of public utility and necessity.

The normative consolidation of the collective rights of indigenous peoples occurred simultaneously with the expansion of the economic model based on extractivism, one of the main features of which is the

' Epigraph of Art. 66 of the Political Constitution of the Republic of Guatemala.
Art. 66 of the Political Constitution of the Republic of Guatemala.

Title of the Third Section of Chapter II of the Political Constitution of the Republic of Guatemala.

In Guatemala, the Mining Law, Decree 48-97, which omitted the consideration of international environmental standards and the State's obligations towards indigenous peoples, is the legislation that grants the State of Guatemala the lowest percentage of royalties in its history (Procurador de los Derechos Humanos, 2005, p.15). Article 7 of this law declares the promotion and development of mining operations in the country to be of public utility and necessity.

The expansion of extractivist projects in the country, the lack of compliance by the State with international commitments related to the rights of indigenous peoples, particularly the right to free, prior and informed consultation, and the evident clash between the indigenous worldview and the Western philosophy on the development model, caused the level of conflict in the territories to increase exponentially from the decade following the year 2000 onwards. Faced with this, various organizational expressions of indigenous peoples opted for two paths: on the one hand, to carry out community consultations in good faith based on the right to self-determination, convened by their own authorities and community institutions and, on the other, to make use of the constitutional jurisdiction to channel their demands. Thus, between 2005 and 2014, 93 good faith community consultations were registered throughout the country, founded on international instruments and some of them on Art. 66 of the Municipal Code, which strengthen and legitimize community systems of participation (UNDP, 2017, p. 139-140).

As a result of submitting to constitutional justice matters arising from the State's failure to comply with its obligation to consult indigenous peoples, 37 rulings have been issued by the CC between 2006-2019 regarding free, prior and informed consultation in cases of natural resource exploration and exploitation projects in indigenous territories (ASIES, 2020, 12). These rulings have represented an important advance in the establishment of the scope and limits of the right to free, prior and informed consultation.

to consultation, both in individual cases and in general terms, given that the CC has recognized the existence of systematic patterns of violations of the collective rights of indigenous peoples. The development of Inter-American jurisprudence on the right to consultation, ancestral property and the relationship of indigenous peoples with their territory, as well as the invocation and application of the same through the doctrine of the control of conventionality and the block of constitutionality have had an important influence on national jurisprudence. However, the execution of these sentences is far from being effective.

The discussion on the need to issue ordinary and regulatory legal norms on the right to consultation has been present not only in the cases discussed before the constitutional jurisdiction, but also in the parliamentary discussion at least since 2007. Some sentences of the CC have urged and even ordered the Congress of the Republic to issue a specific law on this matter, as well as to revise the Mining Law, among other norms related to the exploration and exploitation of natural resources. Within the framework described above, an academic, political and legal debate should be held on the need for national legislation on consultation in light of the jurisprudence issued by the CC in Guatemala.

1. National legislation or regulation as a sine qua non requirement for the implementation of the right to consultation from the perspective of international human rights standards.

One of the fundamental points to be debated, from the perspective of international human rights standards, is whether compliance with the State's obligation to consult indigenous peoples with respect to legislative or administrative measures that affect them is feasible, only if the State has a duty to consult them.

The sine qua non requirement is a legal norm, whether of an ordinary or regulatory nature, that establishes a procedure. In general terms, the obligations derived from the ratification of an international treaty include internal harmonization, that is, the adoption of legislative or other measures necessary to ensure the effectiveness of the rights. In the case of indigenous peoples, this obligation must be understood in relation to the full content of the international norms referred to in the introductory section.

The obligation of internal harmonization provided for in international treaties consists of one of the most important treaty duties and complements the obligations to "respect" and "guarantee" rights and freedoms, obligations that are not exclusive, but complementary, insofar as they can, by themselves, generate international responsibility to the States parties to a treaty (Konrad Adenauer Stiftung Foundation, 2018, p. 78-85). This implies that the duties to respect, ensure and harmonize are autonomous and independent of each other. Likewise, the obligation of internal harmonization, in general terms, does not refer exclusively to the adoption of a legal norm, but to all those measures that the State establishes to make viable, domestically, the internationally acquired commitment. ILO Convention 169 makes repeated reference to the adoption of "measures" to give effect to its content .[4]

The Inter-American Court of Human Rights has indicated in its vast jurisprudence as measures through which the obligation of internal harmonization is fulfilled the following: A. Legislative provisions; B: Other provisions, which include constitutional norms, administrative norms, regulatory norms, *soft law* norms, public policies and technical instruments such as protocols and manuals, as well as criteria for the application of the law.

The following articles of the Convention refer to the adoption of measures: 2.2, 4, 5, 6, 7, 12, 14, 18, 20, 22, 25, 26, 28, 30, 31, 32, 33, 34.

institutional, and C. Institutional changes (CNDH Mexico, 2019, p. 78). Additionally, it should be clarified that the harmonization obligation reaches not only the adoption of legislative or other measures, but the suppression of those that contravene the obligation assumed by the State through the international treaty.

On the other hand, the doctrine of the self-executability of international human rights treaties also contributes to the direct implementation of international norms, when a right or a claim is derived directly from the provision of the treaty in favor of a subject who appears before a judge requesting its application, provided that the rule is specific enough to be judicially applied, without its execution being subordinated to a subsequent legislative or administrative act (Henderson, 2004, p. 83). Both conditions have been found with respect to the right of consultation of indigenous peoples in the case of Guatemala, although the same judicial debate results in the mandate of normative harmonization as discussed below.

The most recent recommendations of the human rights protection bodies, follow the trend of pronouncing on *measures to make the exercise of the right viable, rather than the issuance of a specific regulation, a* position that is far from what was raised a few years ago. Thus, the United Nations Rapporteur on Indigenous Peoples, in the Report on her visit to Guatemala in 2018, has recognized the need to develop a process of legislative harmonization with the constitutional and international obligations of Guatemala on the rights of indigenous peoples including treaties, standards and jurisprudence of the Universal and Inter-American Human Rights System; While on the specific issue of consultation, she has pointed out that "The State must agree with the indigenous peoples on the *appropriate measures* for the implementation of the rights to consultation and free, prior and informed consent in accordance with international standards on the rights of indigenous peoples". The Rapporteur has also mentioned

that "The State should develop and implement, together with indigenous peoples, environmental legislation that respects the rights of indigenous peoples over their lands, territories and resources, including in relation to protected areas and actions linked to the fight against climate change" (UN, 2018, p. 18-20). It is noteworthy in this recommendation, the understanding of the need for a comprehensive harmonization in terms of indigenous peoples' rights, which not only includes consultation and consent, but also environmental legislation and that related to the various constitutional and international obligations adopted by the State.

For its part, the Office of the UN High Commissioner for Human Rights (OHCHR) has urged the State of Guatemala to *"guarantee consultation and* free, prior and informed *consent* of indigenous peoples, in accordance with international standards, on all decisions that may affect them, including legislative proposals" (OHCHR, 2019, p. 25). The Committee on the Elimination of All Forms of Racial Discrimination (CERD), in the Concluding Observations issued to the State of Guatemala in 2019, on the occasion of the 16th and 17th periodic review, has recommended:

> 20. The Committee recalls that respect for human rights and the elimination of racial discrimination are an essential part of sustainable economic development and that both the State and the private sector play a fundamental role in this regard, and therefore recommends that the State party: (a) Adopt, in consultation with the indigenous peoples, including the Garifuna people, appropriate measures to guarantee their right to be consulted on any legislative or administrative measure that may affect their rights, with a view to obtaining their free, prior and informed consent, and that, in addition, take into account the cultural characteristics and traditions of each people, including those relating to decision-making; (b) Ensure that the right of indigenous peoples to be consulted is duly respected; (c) Ensure that the right of indigenous peoples to be consulted on any legislative or administrative measure that may affect their rights, with a view to obtaining their free, prior and informed consent, and that, in addition, it takes into account the cultural characteristics and traditions of each people, including those relating to decision-making, is duly respected

> with a view to obtaining free, prior and informed consent regarding the implementation of economic development, industrial, energy, infrastructure and natural resource exploitation projects that may affect their territories and natural resources, ensuring that such consultations are carried out in a timely, systematic and transparent manner with due representation of the affected peoples; c) Ensure that, as part of the prior consultation process, impartial and independent entities conduct human rights impact studies, including the social, environmental and cultural impact that economic development and natural resource exploitation projects may have on indigenous territories in order to protect their traditional ways of life and subsistence; d) Define, in consultation with the indigenous peoples whose territories and resources are affected, mitigation measures, compensation for damages or losses suffered and participation in the benefits obtained from such activities. (UN, 2019, p. 5).

The Inter-American Court of Human Rights has followed this same trend by stating that under Article 2 of the American Convention, the State must "adopt such legislative, administrative or other measures" as may be necessary to fully implement and give effect, within a reasonable time, to the right to prior consultation of indigenous and tribal peoples and communities and to modify those that impede its full and free exercise, for which purpose it must ensure the participation of the communities themselves (Inter-American Court of Human Rights, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, para. 301).

Unlike the aforementioned bodies, the ILO Committee of Experts on the Application of Conventions and Recommendations has made specific and repeated pronouncements on the need for legislation, as did Rapporteur James Anaya during his mandate as United Nations Special Rapporteur on Indigenous Peoples, recommendations that were issued in 2011 and 2012 and taken up by the CC in the following rulings

discussed below (CC, Cumulative Exp. 90, 91 and 92-2017, p. 104-108).

If one starts from the content of the international obligations expressed in the treaties and the universal and inter-American jurisprudence, it is possible to affirm that the existence of an ordinary law is not a sine qua non requirement for compliance with the State's obligation to consult indigenous peoples, although the adoption of State measures is, since it is through such measures that the State generates the appropriate conditions for the exercise of the right to consultation for indigenous peoples. In terms of compliance with Art. 6 of ILO Convention 169, none of these measures could be adopted without prior consultation with indigenous peoples.

2. Constitutional jurisprudence and legislation on consultation with indigenous peoples

This section examines the position of the CC of Guatemala with respect to the issuance of legislation on consultation with indigenous peoples. As referred to in the introduction, **between** 2006 and 2019 the CC has issued 37 rulings related to the right to consultation, which correspond to appeals of amparo rulings, as well as unconstitutionality rulings and amparos in sole instance (ASIES, 2020, p. 12).

Relevant criteria have been developed by the CC in these rulings, including, among others, that lack of finality cannot be argued as a procedural prerequisite for amparo when the indigenous peoples have not been a party to the administrative proceedings in question, particularly in the granting of licenses for extractive projects[5] ; that failure to comply with prior and informed consultation is the omission of an administrative act.

mandatory for the public administration and that it is considered of continuous effects as long as the same is not carried out[6] ; and that the active legitimacy to file a constitutional action in these cases corresponds to the indigenous authorities recognized according to their forms of organization, to the persons that integrate an indigenous community by the relationship they have with the same, to the civil associations whose object and purpose is congruent with the objective of the action and to the Human Rights Ombudsman (PDH) (ASIES, 2020, p. 19-24). Part of these criteria is directly related to the need for regulations.

In the jurisprudence of the CC on the issue of consultation, there is a progressive treatment of the need for a law. Thus, in a first sentence issued in 2007, the Court describes the scope and limits of the legislation in force at the time and **points out** that "a legal platform has not been consolidated at the national level that comprehensively and effectively regulates the right to consultation of indigenous peoples [...] and that the regulations governing the 'popular consultations' referred to in Convention 169 [...], is quite broad and imprecise in terms of the development of consultation procedures" (CC, Exp. 3878-2007, p.12).

This position was reiterated in judgments of 2012 and 2013, in which the Court mentions that the special regulation of consultation at the domestic level is one of the essential state obligations arising from the subscription and ratification of ILO Convention 169 and urges the Legislature to comply with its institutional responsibility with respect to the issuance of the consultation law.

In 2017, after examining various cases related to the lack of consultation with indigenous peoples, the CC warns of the existence of a problem

This criterion was first observed in the judgment issued i n case No. 3878-2007, and is reiterated in the judgments issued in cases No. 3753-2014, No. 1798-2015, 2567-2015, joined cases No. 90-2017, 91-2017 and 92-2017.
2017, No. 4785-2017 and 2547-2018 (ASIES, 2020, p. 20).

This criterion is raised for the first time in case No. 5711-2013 and is reiterated in the judgments handed down in cases Nos. 411-2014, 3753-2014, 1798-2015, 2567-2015, joined cases Nos. 90-2017, 91-2017 and 92-2017, 4785-2017 and 4785-2017.
n.° 2547-2018 (ASIES, 2020, p. 21)
Although the consultation of indigenous peoples is a different concept from the popular consultation, in the referred sentence, this term is used.

The structural structure that is evident in the case under consideration' and establishes that

> It has been deemed necessary to issue an atypical judgment with nomogenetic nuances that integrates the legal system and provides guidelines that can bind different actors who, although they do not appear as reproached authorities in the matter under examination, are linked in the decision to be issued in order to overcome an unconstitutional situation warned by the evident omission to carry out the prior and informed consultation that corresponds when projects are undertaken that may cause affectation to the native communities (CC, Exp. Acumulados 90-2017, 91-
> 2017 and 92-2017, p. 81).

The Court notes that the case under study denotes a repeated attitude on the part of the State, constituting a violation of the conventional norms and the Magna Carta, and that the purpose of issuing a structural judgment is to prevent the repetition of this omissive conduct. With this justification, the Court establishes the guidelines to be observed in the consultations in order for them to be considered valid (CC, Cumulative Exp. 90-2017, 91-2017 and 92-2017, p. 81).

In this judgment, the CC dedicates a specific section to the *enormous need for the issuance of ad hoc regulations on the consultation of indigenous peoples,* thus reiterating its position that the mechanism to comply with the obligation of internal harmonization is an ordinary law issued by the Congress of the Republic, thus opting for one of the multiple alternatives established in international standards to comply with this obligation. The Court points out that the need for this legislation is due "to the growing conflict that its absence causes in the social fabric, due to the clash of interests that have generated projects, operations or activities linked to the

> In this case, the CC examined the amparo judgment issued by the CSJ in relation to the authorization by the Ministry of Energy and Mines of licenses for the concession of public property on the Oxec and Cahabón Rivers, for the implementation of the Oxec and Oxec II Hydroelectric Projects, in the municipality of Santa María Cahabón, department of Alta Verapaz, without consulting the indigenous Q "eqchi community.

The use of natural resources does not find an institutionalized and replicable procedural framework in which it can be adequately resolved". (CC, Cumulative Exp. 90-2017, 91-2017 and 92-2017, p. 105).

According to the position expressed by the CC in this judgment, the period of ten years elapsed since the first judgment on consultation constitutes, in the opinion of the court, sufficient and reasonable time to overcome the legislative omission and "it is decided to compel the Deputies of the Congress of the Republic of Guatemala to, within a period of one year from the date of notification of this judgment, to initiate the legislative process in order to ensure that the legal norms related to the right to consultation are approved within said period", for which the coordinated, systematic and harmonious participation of members of the indigenous peoples in the legislative process must be ensured. The operative part of the sentence "urges" the deputies of the Congress of the Republic to carry out such procedure. According to the Dictionary of the Real Academia de la Lengua Española, "to command" implies "to require someone to comply with a mandate under certain penalty or sanction" (Diccionario de la Real Academia de la Lengua Española, 2018).

The Court concludes by justifying its decision by stating that

> The failure of the Congress of the Republic to legislate on the aforementioned consultation has created a climate of distrust in the country for the indigenous communities that may be harmed by projects aimed at social development and the companies that invest in such projects, as there are no clear rules that provide legal certainty for the enjoyment of the right to consultation of the mentioned communities and other rights that may be affected by operations or activities of exploration or exploitation of natural resources in their territories, as well as those of the referred entities that contribute their capital to start up the mentioned projects with the imminent risk that their investment may be diminished or lost in the absence of such rules. (CC, Accumulated Exp. 90-2017, 91-2017 and 92-2017, p. 108).

The aforementioned judgment, although it makes the direct application of the right to consultation feasible, establishes guidelines for the case in question and for future cases, while the lack of domestic legislation is overcome.

Judgments issued subsequently insist on the obligation of the Congress of the Republic to issue the consultation law and the resolution of Exp. 4785-2017, adds the firmness of the exhortation ordered by the Court that heard this case in the first degree, regarding the revision that must be made in the legislation that establishes the amount of royalties to be paid by the holders of mining rights, in order to raise the percentage received by the territories and populations affected by mineral exploitation projects. The Court adds that indigenous peoples must actively participate in the approach of the reforms considered relevant and formulate their proposals before any of the authorities with law reform initiative, establishing deadlines of 3 to 6 months for the development of each of the stages of this process (CC, Exp. 4785-2017, p. 552).

The jurisprudence of the CC described above directly mandates the issuance of an ordinary regulation on consultation, shifting the obligation of internal harmonization to the Congress of the Republic, in addition to issuing in a broad and comprehensive manner

The CC has exhaustive criteria of immediate application for the fulfillment of the obligation of consultation that corresponds through various agencies of the Executive Branch. Thus, although international human rights standards contemplate a wide range of possibilities for the adoption of measures to enforce the right, in the case of Guatemala, the CC requires the issuance of an ordinary law, the content of which is extensively developed in these judgments. Once the term established by the CC in the sentence has elapsed, the execution of the part related to the issuance of the legislation is still pending.

3. Key players in consultation legislation: Indigenous peoples and the Congress of the Republic

Initiatives to regulate consultation with indigenous peoples are not new. Within the Congress of the Republic, we can identify Law Initiative 3684, presented in 2007 by the then Vice President of the Commission of Indigenous Communities, and Initiative 4051, presented in 2009 by the Commission of Indigenous Peoples. From the Executive Branch, on February 23, 2011 at the National Palace it was presented by the then President of the Republic,

Álvaro Colom and the Minister of Labor and Social Security, the "Regulations for the consultation process of Convention 169 of the International Labor Organization (ILO) concerning Indigenous and Tribal Peoples in Independent Countries". This regulation was declared unconstitutional by the Constitutional Court in November 2011, in the framework of an amparo appeal filed by representatives of indigenous peoples, who argued that they had not been previously consulted on the content of the regulation, alleging a violation of due process (CC, Exp. 1072-2011, p. 5-12).

In July 2017, the then President of the Republic Jimmy Morales presented a guide to carry out consultations with indigenous peoples prepared by the Ministry of Labor with the technical advice of the ILO, which was also widely rejected (Prensa Libre, 2017). None of these projects has entered into force and, on the contrary, they have been widely rejected by indigenous peoples, as they have been projects developed in the absence of a true intercultural dialogue that would reflect their needs and demands and given that they consider it a step backward compared to the international standards that regulate the matter. According to indigenous peoples, these proposals diminish or ignore the right to self-determination in their territories (CUC, 2011).

In 2018, in response to the conminatoria of the CC, the Legislative Directorate of the Congress of the Republic received two initiatives of law on consultation with indigenous peoples identified with the numbers 5416[9] and 5450[0] . Although these initiatives establish different mechanisms to comply with the State's obligation, one of the most significant differences between them is the effect they give to the result of the consultation. The first one is clear in establishing in its Art. 19 that "the consultation process does not limit the power of the State in making decisions that are within its competence", while the second one

Art. 5 establishes that "Once the consultation with Indigenous Peoples, Indigenous Communities and all other forms of organization have been carried out, and the essential requirements have been fulfilled, the result of the consultation will be binding for any administrative or legislative decision to be taken by any institutional expression of the State". This difference highlights the multiple aspects related to consultation, which still need to be discussed between the State and the indigenous peoples with respect to a regulation of this type.

Regarding the possibility of regulating consultation with indigenous peoples, there are also very diverse positions from indigenous peoples, ranging from those who argue that an ordinary or regulatory regulation that denaturalizes the right to consultation -which is already constitutional- and turns it into a mere administrative procedure is neither necessary nor pertinent, diminishing its normative hierarchy (Xiloj, 2018), such as those that propose the need to develop a comprehensive process of harmonization of international human rights norms and standards that includes institutional,1 legislative and regulatory reforms, procedural manuals and protocols for action, with the full participation of indigenous peoples (Asociación de Abogados y Notarios Mayas de Guatemala, Nim Ajpu, 2019, p. 133). In line with the recommendations of the UN Rapporteur on Indigenous Peoples and the jurisprudence of the Inter-American Court of Human Rights, there are also positions that raise the need to address this issue in the broader context of the right to collective private property of indigenous peoples and the right to their lands, territories and natural resources.

What cannot be denied is that the need for an ordinary or regulatory law on free, prior and informed consultation in Guatemala corresponds to the western vision of the legal system, according to which it is necessary to have codified norms that ensure legal certainty for the parties in a legal relationship. The issuance of a law by the Congress of the Republic, not only

Initiative presented by Representatives Oliverio García Rodas and Oscar Stuardo Chinchilla Guzmán.
Initiative presented by Representatives Amílcar Pop, Andrea Villagrán, Marco Antonio Lemus Salguero, Eugenio Moisés González Alvarado, Orlando Joaquín Blanco Lapola and compañero

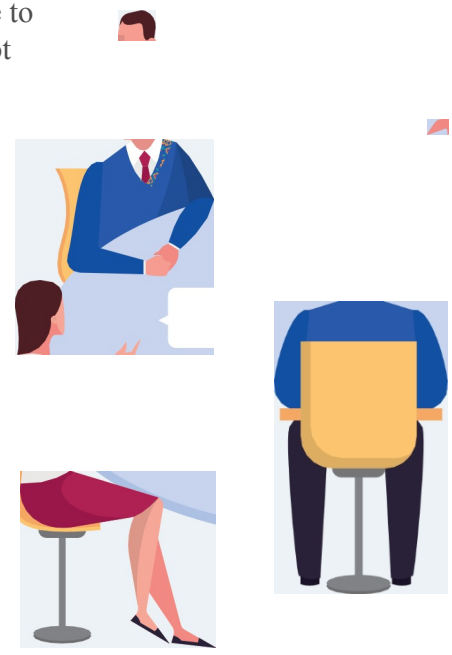
is alien to the indigenous peoples' own representative institutions, but rather, in the opinion of some of them, it implies a risk of diminishing the rights already recognized in international and constitutional norms and in jurisprudence.

In the vision of indigenous peoples, the right to consultation is not understood in isolation, but rather in direct relation to the other rights contemplated in ILO Convention 169 and in the UN Declaration on the Rights of Indigenous Peoples, particularly Art. 3, Self-determination of indigenous peoples, Art. 4, Autonomy and self-government in matters relating to their internal and local affairs and Art. 5, Right to maintain and strengthen their own political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

By way of conclusion

From the perspective of international human rights standards, although there is a general obligation of internal harmonization with international treaties, the lack of national regulations does not constitute an obstacle to the fulfillment of the obligation or the exercise of the right, since the State's responsibility subsists and the right of the State to exercise the right of access to information is not limited to the right of access to information. of the subject to claim it as well. From the CC rulings, a series of criteria can be deduced that make the consultation applicable to specific cases, reiterating the obligation of the State entities, whether or not there is an ordinary legal or regulatory rule.

According to the established jurisprudence of the CC, the issuance of a law on consultation with indigenous peoples is a judicial mandate to be fulfilled. As in other cases resolved by the constitutional court, there are great challenges in the execution phase of the sentences, in spite of the level of detail offered by the Court to facilitate compliance, especially in the area of



The evolution of jurisprudence shows the exhaustiveness of the CC in ordering concrete actions that, according to its criteria, will make the exercise of the right by its holders viable.

The fulfillment of the CC's mandate to legislate on indigenous peoples' issues cannot be carried out to the detriment of the collective rights of the indigenous peoples that it is called upon to protect, which is why the debate must be based on free, prior and informed consultation and consensus among the actors involved in order to guarantee legitimacy and social viability. For the State, consultation is an obligation that contributes to the promotion of social dialogue, the guarantee of legal security and the development of the economic model, while for indigenous peoples it is the right that allows them not only to participate in decisions that affect them directly, but also to defend the goods, territories and resources that are inherent to their ways of life and worldview. Any intercultural dialogue undertaken to implement the decision of the Constitutional Court regarding legislation on consultation should keep these perspectives in mind.