

International Standards and Indigenous Peoples: Discourses and Practices in the Mining Industry

Francisco Molina Camacho¹

Abstract

Twenty years after the creation of the General Environmental Framework Law, environmental requirements have increased. Besides the role that the Environmental Impact System has played as the main guarantor of 'good practices' on investment projects, international standards have been put onto the environmental agenda. Thus, both the State and mining companies have expanded their horizons and scope, emphasising discussion on environmental impact assessments, especially in relation to indigenous peoples. However, in practice, it is possible to observe gaps in its application, encouraging discretionary analysis about the impacts that investment projects generate. This article comparatively analyses the ILO Convention No. 169 and the ICMM (International Council on Mining and Metals) Indigenous People and Mining Good Practice Guide, in order to examine how both the State and mining companies have signed up to these standards only at a discursive level, avoiding the structural changes involved. Therefore, this paper shows the diffuse applicability of these standards in Chile and, consequently, the vulnerability challenging indigenous peoples facing incremental measures decided arbitrarily between the State and the mining companies.

Keywords: International standards, indigenous peoples, territory, mining industry

¹ Part-time professor at Universidad Diego Portales and researcher at Katalis Consulting Group (www.katalis.cl)

I. Introduction

Chile is a country strongly oriented towards commodities. In this regard, the mining industry has acquired a privileged position due its high competitiveness, reaching first place in terms of both copper and rhenium production, with US\$49 thousand million in exports during 2012 (Cochilco, 2013). These figures have allowed Chile to become part of emerging markets, like the BRICS countries² (Dow Jones, 2012). In addition, Chile has come to be seen as a country with strong institutions and a solid economy, therefore having low potential risks regarding public policy shifts. According to the Fraser Institute, Chile is considered the eighth best country to invest in (McMahon & Cervantes, 2011).

However, despite the good perspectives of this activity over the last few decades, the social and environmental impacts associated with it have also increased. In this regard, indigenous people have become a very vulnerable group due to their dependency on natural resources, especially in the northern regions of Chile where most of this activity is being developed (Yañez & Molina, 2011). Nowadays, new mining projects that have entered the Environmental Impact System (SEIA) have been unable to address the complexity of indigenous dynamics. Examples such as 'Los Pumas' by Southern Hemisphere Mining and 'El Morro' by Goldcorp have shown the need for new standards, beyond Chilean legislation. Therefore, international standards have started to form part of the discourse of the State authorities and mining companies. However, their diffuse applicability has generated high expectations that have not been achieved in practice.

This article sets out a brief history of the relation between mining and indigenous people as well as the way that the SEIA currently involves indigenous people in investment projects. It also analyses the role of international standards within this debate, specifically the 169 ILO Convention and the ICMM Indigenous People and Mining Good Practice Guide.

II. Mining and indigenous peoples

The creation in 1982 of the Organic Constitutional Law on Mining Concessions was crucial in the expansion of the mining industry in Chile. Under this Law, private companies' growth exponentially reduced the level of State control from 90% in the 1970s to 30% today (Lorca & Ponce, 2012). In this scenario, the irruption of mining companies in the north of Chile has been telling. In Tarapacá, 70% of the territory has been given over to mining while in Antofagasta it has reached coverage of 69%, showing the huge presence of this industry (Ramos, 2011). Companies such as Anglo American, BHP Billiton and TECK, among others, have set up investment projects in areas where indigenous people are located, generating social and environmental consequences affecting local development.

According to the CASEN Survey of 2009, the regions of Tarapacá and Antofagasta both have a significant number of indigenous people. In Tarapacá this number is around 12.6%, mainly composed of Aymara and Quechua, while in Antofagasta the percentage is slightly lower at around 5.7% (Ministry of Planification and Cooperation, 2009). Indeed, both regions have Areas of Indigenous Development (ADI) designated under Article 13 of Law 19.253 or the Indigenous Law (Ministry of Planning and Cooperation, 1993). In short, this

² BRICS is the acronym for an association of five major emerging economies: Brazil, Russia, India, China and South Africa.

means that both regions have areas where indigenous people have ancestral connections with the territory, relatively high population density, and consequently high dependence on water resources (CONADI, 2011). This is the case with the ADI, Jiwasa Oraje in Tarapaca, and both ADI Atacama la Grande and ADI Alto el Loa in Antofagasta, which are made up of ethnic groups such as the Aymara, Quechua and Atacameño (only in Antofagasta) who have important connections with the natural resources, especially water.

Therefore, the compatibility between mining projects and indigenous peoples' welfare has been questioned over recent years. Water scarcity and the weakening of indigenous peoples' productive activities, especially agriculture and livestock, due to mining activities (Yáñez & Molina, 2008), have become areas for discussion on the SEIA, questioning the real capacity of this tool to both identify and mitigate and/or compensate for environmental and social impacts.

III. The scope of environmental impact assessment regarding indigenous people

Chilean legislation first started to consider indigenous peoples with the Indigenous Law of 1993 that created CONADI (National Corporation for Indigenous Development) to promote indigenous culture and development, and to administer the 'Land and Water Fund' for the buying and transferring of land back to indigenous groups. Following this Law, several initiatives were developed. The 'Historic Truth and New Deal Commission' made "recommendations for indigenous constitutional recognition and self-determination" (Rodríguez & Carruthers, 2008:14), while the 'Origins Program' (that started in 2001, funded by the Inter-American Development Bank) was created to develop several measures focusing on the elaboration of productive, social, educational and health initiatives, and the strengthening of the Mache, Atacameño and Aymara communities in rural villages (Castro, 2003). In addition the plan 'Recognition: Social Pact for Multiculturalism' in April 2008 considered several initiatives to ensure compliance with the Government's commitment to the indigenous groups, where institutional reforms were proposed, and special programmes to restore water and land were developed (Ministry of Planning and Cooperation, 2008).

Despite all these initiatives by the Chilean Government since the return to democracy in 1990, their implementation has always generated resistance from the indigenous peoples. A good example of this was the ratification of the 169 ILO Convention in Chile in September 2009. Although it enshrined the right to consultation relating to the exploitation and alienation of traditional or ancestral territory and associated natural resources, giving fresh hope to the indigenous people over their land and water access (Molina C, 2012), the Convention was crucially not part of the 'Constitutionality Block'³. Hence, it was reduced to just a basic process of participation and consultation, and did not become an effective tool for claiming land and water rights (Yáñez & Molina, 2011).

In this respect, the Chilean Government has had various failures when trying to implement the main principles of the ILO Convention 169 in terms of territorial recognition and natural resources protection. The failure of Decree 124 in 2009 as well as the lack of representativeness of the 'consensus tables' led by the Government in 2013 has generated concern over the new rules on the procedure for consultation with indigenous people (Amnesty International, 2014). Indeed, the new regulation of the Environmental Impact Evaluation System (SEIA) has generated resistance. While the UN Rapporteur

³ The application does not consider components that involve constitutional changes (Yáñez & Molina, 2011).

James Anaya has argued the need to develop a more inclusive and comprehensive dialogue (Anaya, 2012), the National Institute of Human Rights declared that the non-existence of special regulations would allow indigenous consultation to be distinguished from ordinary citizen participation (National Institute of Human Rights, 2013).

IV. The role of the international standards: From the IFC to the ICMM

The difficulties that the State has had in implementing the 169 ILO Convention have generated the need for new mechanisms of dialogue. In this regard, international standards such as the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability as well as the Equator Principles have begun to enter the environmental debate. For instance, the IFC has defined specific guidelines such as 'Performance Standard 7: Indigenous Peoples' to help their clients to manage risks and impacts including stakeholder engagement (International Finance Corporation, 2012), encouraging investment projects to go beyond Chilean legislation and to reconsider the importance of indigenous peoples.

The role of the ICMM over recent years has become very important, particularly in mining. This institution, which was founded in 2001 to promote sustainability in the industry, currently supports 21 mining and metals companies as well as 33 national and regional mining associations, positioning itself as a major player in the field (ICMM, 2014b). Popular mining companies that operate in Chile such as BHP Billiton, Anglo American, Barrick Gold, and TECK are part of this institution, which validates the importance of mining as a sustainable activity, and they therefore meet the highest standards in terms of ethical business, sustainable decisions, and respect for human rights and cultures (ICMM, 2014b).

Thus, the message of sustainability has been incorporated into the policies of mining companies. Discursively, mining companies have agreed to be evaluated under leading international standards on which the ICMM based their initiatives. The Rio Declaration, the Global Reporting Initiative, OECD Guidelines on Multinational Enterprises, and the World Bank Operational Guidelines (ICMM, 2014a) are all examples of how mining companies have subscribed to powerful international commitments but are not necessarily looking at the local implications, as most of them do not have both the political will and the technical capacity to guarantee binding citizen participation.

V. International standards in practice: effects on indigenous peoples

The failure to apply the Indigenous People and Mining Good Practice Guide by companies that operate in Chile is an empirical example that international standards are still considered as symbolic agreements. This Guide, which promotes spaces of participation where (1) indigenous peoples can comprehend the full range (short, medium and long-term) of social and environmental impacts; (2) traditional knowledge is considered in mitigation strategies; and (3) the voices of these groups are taken into account in project planning (ICMM, 2010), has not been regarded as a useful tool by mining companies in Chile.

Instead of using toolkits and guides (of institutions to which they subscribe) to avoid potential problems with indigenous peoples, mining companies have preferred to rely on Chilean institutions' uncertainties over the application of the 169 ILO Convention. In this

regard, mining companies have followed the same trends shown by State authorities when implementing international standards.

Both have continued their implementation with 'consensus tables' and/or citizen participation processes not necessarily including the three elements that both the ICMM and ILO have defined as priorities: (1) these initiatives should be binding processes so that indigenous people's opinions could generate major changes in the project's design and/or implementation; (2) indigenous leaders that are invited must represent local claims and demands of their villages; and (3) a broader concept of territoriality that embraces historical and cultural dimensions that are not tangible should be considered when analysing environmental and social impacts.

Consequently, indigenous people will continue to suffer the impacts of an activity that has overlooked local views of development in liaison with the State. Currently, subscribing to international standards alone is not enough; adopting the tools within these standards would appear to be the next stage.

VI. Final reflections

The diffuse applicability of international standards in Chile has generated new challenges for both the State authorities and mining companies. While new environmental and social impacts have started to affect indigenous people, incremental measures such as 'consensus tables' have shown the incapacity of both actors to address these groups' claims and demands with the regulation of the Environmental Impact Assessment System (SEIA) failing to develop inclusive dialogue.

As already mentioned, learning how to implement international standards through specific methodologies seems to be the solution, not only for the State but also for all mining companies who want to build 'bona fide' relations with indigenous peoples, as promoted by the 169 ILO Convention.

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