Limitations on Democracy in Multilateral Policies to Regulate the Political Participation of Indigenous and Tribal Peoples

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ABSTRACT. **Objective/Context:** This paper analyzes the discourse of three supranational policy instruments produced by the International Labour Organization and the United Nations regarding the political participation of Indigenous Peoples. We argue that these discourses promote a utilitarian view of the environment and pose severe limitations on substantial political participation by Indigenous Peoples. **Methodology:** To support this thesis, we present the results of a Critical Discourse Analysis that reveals how political participation is shaped through discourses, social actors are represented within hierarchical relationships, and nature is defined in terms of an exploitable resource. **Conclusions:** Our conclusions show that these documents stimulate a form of political involvement by Indigenous Peoples that excludes the administrative and political consequences of dissent and that represents consent as the only possible outcome. Nonetheless, further research is necessary to understand the resonance of these policy instruments within national legal frameworks and their political, environmental, and cultural effects. **Originality:** The article challenges the conventional assumptions that the success of supranational policies on Indigenous Peoples' participation depends on the efficiency of their implementation process. Instead, it proposes a discursive comprehension based on the social practices and power relationships that configurate the policies' discourse to the detriment of substantial political participation.

KEYWORDS: Indigenous Peoples; political participation; critical discourse analysis; International Labour Organization; United Nations.

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Limitaciones a la democracia en las políticas multilaterales para regular la participación política de los pueblos indígenas y tribales

RESUMEN. **Objetivo/contexto:** este artículo analiza el discurso de tres instrumentos supranacionales de política producidos por la Organización Internacional del Trabajo y la Organización de Naciones Unidas en relación con la participación política de los pueblos indígenas. Argumentamos que estos discursos promueven una visión utilitaria del ambiente, así como serias limitaciones al ejercicio de una participación política sustantiva por parte de los pueblos indígenas. **Metodología:** para respaldar esta tesis, presentamos los resultados de un análisis crítico del discurso que revela de qué manera la participación política es configurada a través de discursos, los actores sociales son representados dentro de relaciones jerárquicas y la naturaleza es definida en términos de un recurso explotable. **Conclusiones:** nuestras conclusiones muestran que estos documentos estimulan una forma de involucramiento político de los pueblos indígenas que excluye las consecuencias políticas y administrativas del disenso y que representa el consenso como su único resultado posible. Sin embargo, investigaciones posteriores son necesarias para comprender la resonancia de estos instrumentos de política dentro de los marcos legales nacionales, así como sus efectos políticos, ambientales y culturales. **Originalidad:** el artículo desafía los postulados tradicionales según los cuales el éxito de las políticas supranacionales sobre participación de los pueblos indígenas depende de la eficiencia de su proceso de implementación. En cambio, proponemos una comprensión discursiva basada en las prácticas sociales y las relaciones de poder que configuran el discurso de las políticas en detrimento de una participación política sustantiva.

PALABRAS CLAVES: Pueblos indígenas; participación política; análisis crítico del discurso; Organización Internacional del Trabajo; Naciones Unidas.

Limitações da democracia nas políticas multilaterais de regulação da participação política dos povos indígenas e tribais

RESUMO. **Objetivo/contexto:** este artigo analisa o discurso de três instrumentos supranacionais de política produzidos pela Organização Internacional do Trabalho e pela Organização das Nações Unidas relativamente à participação política dos povos indígenas. Argumentamos que esses discursos promovem uma visão utilitária do ambiente, assim como sérias limitações ao exercício de uma participação política substancial dos povos indígenas. **Metodologia:** para respaldar essa tese, apresentamos os resultados de uma análise crítica do discurso que revela de que maneira a participação política é configurada através de discursos; os atores sociais são representados dentro de relações hierárquicas e a natureza é definida em termos de um recurso explorável. **Conclusões:** as nossas conclusões demonstram que esses documentos estimulam uma forma de envolvimento político dos povos indígenas que exclui as consequências políticas e administrativas do dissenso e que representa o consenso como o seu único resultado possível. No entanto,

são necessárias investigações ulteriores para compreender a ressonância desses instrumentos de política dentro dos enquadramentos legais nacionais, assim como os seus efeitos políticos, ambientais e culturais. **Originalidade:** o artigo desafia os postulados segundo os quais o sucesso das políticas supranacionais que envolvem a participação dos povos indígenas depende da eficiência do seu processo de implementação. Em vez disso, propomos uma compreensão discursiva baseada nas práticas sociais e nas relações de poder que configuram o discurso das políticas em detrimento de uma participação política substantiva.

PALAVRAS-CHAVE: Povos indígenas; participação política; análise crítica do discurso; Organização Internacional do Trabalho; Nações Unidas.

Introduction

The study of political participation of Indigenous Peoples demands an approach to the ways in which it has been regulated, at the international level, by policy instruments that reflect how Indigenous and Tribal Peoples, territories, and environment are represented to guide the construction of participation mechanisms. This paper critically reflects on the premises that shape the exercise of the Indigenous Peoples' right to participate in decision-making processes regarding their territories and environment in three documents: the Indigenous and Tribal Peoples Convention 169[1] (Convention 169) of the International Labour Organization (ILO) and the Declaration on the Rights of Indigenous Peoples[2] (Declaration) and the Final Report of the Study on the Indigenous Peoples and the Right to Participate in Decision-Making[3] (Final Report) of the United Nations (UN).

According to Rodríguez-Piñero (2004), the ILO has been crucial in establishing regulations to acknowledge Indigenous Peoples' rights, particularly since the interwar period, when normativity on "native labour" was proposed. The latter was a concept designed to help "civilized nations" to protect Indigenous Peoples in harmony with the *tutelage doctrine*. Furthermore, the ILO's foundational text "included references to the colonial status in its Article 35" (Rodríguez-Piñero 2004, 61), which regulated the application of international conventions to non-metropolitan territories. Still, it was the ILO, through its Convention 169, that defined the basis

1 Indigenous and Tribal Peoples Convention 169 of June 7, 1989.
2 Declaration of the Rights of Indigenous Peoples of September 13, 2007.
3 Final Report of the Study on the Indigenous Peoples and the Right to Participate in Decision-Making of August 17, 2011.

for the recognition of consultation as a fundamental right, which years later would be ratified by the Declaration and the Final Report.

Despite the temporal distance and differences in the legal scope between Convention 169, the Declaration, and the Final Report, the specialized literature on socio-juridical analysis on prior consultation has considered these documents as a set of rights with the common feature of having been designed specifically for Indigenous and Tribal Peoples (Gaete 2012). In addition to the connection between the declared purposes in these three discourses, i.e., protecting Indigenous Peoples' right to prior consultation, they were designed within the governance paradigm as a new instrument for legitimation that promises to involve other social actors besides governments in decision-making processes.

The regulation of how decisions are made regarding developmental and extractive activities has been a topic of interest for contemporary social researchers, particularly in Latin America. Thus, the first part of this paper reviews some research results that contribute to a critical approach to supranational guidelines for the political participation of Indigenous Peoples. Then, we present a methodological description of the analysis applied to our corpus of data. This methodology is based on Critical Discourse Analysis (CDA) and, especially, on a critical linguistics approach since it enables the comprehension of the links between discursive strategies, such as modalization and intertextuality, and the political and ideological content of the texts. Our theoretical framework, intertwined within the analysis, rests on concepts such as *low-intensity democracy* and *territory* to comprehend the synonymy relationships established by these discourses between *nature* and *resource*, the limits imposed on the political participation of Indigenous Peoples, the roles attributed to governments and communities, and the several forms in which citizenship appears as an attenuated exercise, almost exclusively oriented towards consent. Considering the subject of this research, we followed the guidelines established by Younging (2018) for writing about Indigenous Peoples.

The origin of this research lies in the concern visible in public discourses around the various manifestations of the Indigenous Peoples' political participation. Particularly in social media, the theoretical assumptions contained within multilateral texts tend to be naturalized to such an extent that the apparent identity between environment and resource—and exploitation and development—is incorporated without further interrogations.

The global issues underlying these problematic situations respond to the tensions created around the environment and territory by several actors with disputed interests: Indigenous and Tribal Peoples, governments, and private capital. As far as we can see, the ideological presumptions that configure such tensions and

how these are managed and resolved have not been sufficiently explored. CDA, on the other hand, provides us with methodological, theoretical, and political tools to unveil those ideological contents and address the power relationships reinforced by multilateral texts. Otherwise, social and political debates would remain restricted, as in the case of Andean countries (Arrunátegui 2010), to assessing the application of formal mechanisms for political participation without considering the limits they impose on a substantive, diverse, and inclusive democracy.

1. The Study of Convention 169 (Prior Consultation and Free, Prior and Informed Consent in the Andean countries)

In many cases, Convention 169 has been scientifically analyzed from the point of view of legal studies, with a focus on reviewing the applicability of rights in specific countries or regions. According to Baluarte (2004) and Gaete (2012), when it comes to Latin America and in particular the Andean countries, mechanisms such as *prior consultation* and *free, prior and informed consent* have been slow and ineffective in defending the rights of Indigenous Peoples. This represents a risk to the exercise of democracy since those are the only tools that Indigenous Peoples have to protect themselves against extractive capital.

Other researchers have examined the power relationships between Indigenous Peoples and governments. Rodríguez-Piñero (2004) analyzes the role of the ILO in generating the legal framework for Indigenous Peoples' rights. In his study, Rodríguez-Piñero (2004) shows how "[t]he history of the ILO concerning indigenous peoples is thus a thread of continuity between colonialism and multiculturalism, at the same time a sample of the changes and continuities in the discourses and power structures that subjected indigenous peoples and of the emergence of spaces that try to subvert this order" (75).

Previous research has shown how Convention 169 does not guarantee the effective defense of Indigenous Peoples' rights. Furthermore, Policzer and Aylwin (2020) demonstrate, through comparative research, that community capitalization of the benefits of natural resource exploitation is even stronger in countries like Australia and Canada that do not recognize Convention 169 than in nations that have recognized it. However, Policzer and Aylwin (2020) point to the fact that:

> ILO C-169 has had an indirect but nevertheless relevant impact on states that have not ratified this international treaty, specifically Canada and Australia. Indeed, this convention cannot be understood in isolation, but is part of a broader international legal corpus that has emerged in recent decades,

> strongly influencing and impacting legal and jurisprudential transformations concerning these peoples' rights. (24)

It is important to examine, in the first place, how this issue has been studied previously. To this end, we selected relevant research about prior consultation and free, prior and informed consent in the Andean countries (i.e., Colombia, Peru, Ecuador, and Bolivia). These countries are rich in minerals; they are considered developing countries by the World Bank and have significant Indigenous populations that have maintained historical disputes with their national governments.

According to Merino (2018), Colombia, Peru, Ecuador, and Bolivia *have weak standards* for applying prior consultation, in general, and participation mechanisms, in particular. Given this scenario, Indigenous Peoples have lived with "limited provision of information, lack of local capacity to understand information, short time for deliberation, tensions between local visions of development and objectives of state development, and the transformation of consultation into a simple label of social responsibility" (Merino 2018, 76).

In Colombia, prior consultation has been enacted for thirty years as a right of Indigenous Peoples, who have exercised it to defend their right over their lands, affirm their self-determination, and protect the environment. Notwithstanding, nowadays, the country does not have a law that regulates this mechanism. Furthermore, the Colombian Constitutional Court has referred—in more than 400 jurisprudence pieces—to the necessity of legal protection for the defense of the lands, resources, and self-determination of Indigenous Peoples (Ramírez and Giraldo 2017).[4] This jurisprudence reinforces the status of prior consultation as a fundamental right, as a legal tool for the ethnical, social, and economic protection of Indigenous Peoples (Bucetto 2018), and as an instrument for conflict resolution (Jaskoski 2020).

Nonetheless, and according to Jaskoski (2020), the use of prior consultation has also been a cause of conflict. Through the description of specific cases, Jaskoski (2020) reflects on how the Constitutional Court "decided which communities [and sites] were affected by development […]; who legitimately represented communities […]; the size of a project's impact on communities

4 Relevant rulings issued by the Colombian Constitutional Court include: ruling C-196/01 and T-376/12 by which Convention 169 (1989) and the UN Declaration (2007) were incorporated into the constitutional block; ruling C-030/8 that established good faith, flexibility, and opportune, sufficient, and effective participation as values for demanding, exercising, and promoting the Indigenous Peoples' fundamental right to prior consultation; and ruling T-382/6 and C-366/11 that ratified the necessity to submit legislative and administrative decisions to consultation of Indigenous Peoples.

[…]; and the weight of the right to prior consultation relative to «national interests» in extraction" (549).

Data collected by Jaskoski (2020) show that by 2012 oil and its derivatives constituted 50% of Colombia's exports. It has led to sharpening the extractive model in Colombia and designing policies for the mining and hydrocarbons sector. This interest of the Colombian government in obtaining economic growth through the extractive industry has allowed and shaped an asymmetric power relationship between Indigenous Peoples and strategic alliances between states and private capital.

Even though Peru was the first country in Latin America to promulgate a specific legal framework for the right to prior consultation, Merino (2018) argues that several issues undermine its enforcement: the implementation of prior consultation demands Environmental Impact Assessments (EIAs) through which the Peruvian government evaluates the possible negative effects of each extractive project. However, "EIAs are mainly self-regulatory instruments because corporations order and pay for them and the main responsibility of the State is to establish an administrative procedure for approval or disapproval. Thus, this instrument simultaneously facilitates and limits the responsibilities of the State to oversee extractive industries" (Merino 2018, 77). Paradoxically, although the extractive industry and the government have focused on legitimizing extractivism by fulfilling legal requirements, according to the Peruvian Institute of Economy (2015), quoted by Merino (2018), the entire process of prior consultation (including the EIAs) is a source of conflicts with Indigenous Peoples that have resulted in delays in mining investments "for a total of US$ 21.5 billion […] since 2011" (76).[5]

Prior consultation and free, prior and informed consent were ratified in Bolivia in June 1991 through Law 1257; nevertheless, the government's implementation of this right of Indigenous Peoples was only achieved in 2006 during Evo Morales' administration. Even though several laws and decrees have been sanctioned since then, extractive industries "have caused serious environmental damages and risked the survival of indigenous and native peoples" (Urteaga-Crovetto 2018, 11) due to the strength of the corporate sector. Similarly, they have used prior consultation as an instrument to legitimize extractive

5 The Peruvian Constitutional Court has referred in several jurisprudential pieces to the protection of the Indigenous Peoples' fundamental right to be consulted, among them ruling 0025-2005-PI/TC, which recognized Convention 169 (1989) as part of the constitutional block; ruling 0022-2009-PI/TC that exposes the necessity of preserving the Indigenous Peoples' economic, social, cultural, and ethnic capacities; and ruling 1126-2011-HC/TC through which the Constitutional Court recognized the Indigenous Peoples' right to autonomy over their territories.

activities (Schilling-Vacaflor 2019). Therefore, prior consultation in Bolivia "actually restraints the adequate realization of the right to consultation […], thus favouring extractive projects. […] [It] is in itself a contentious issue between the government and indigenous organizations" (Urteaga-Crovetto 2018, 12).

In Ecuador, prior consultation and free, prior and informed consent were ratified in 1998 and approved during Fabián Alarcón's administration. In September 2008, the new Constitution included Article 84, which acknowledges the right to prior consultation as a collective and extended right of Indigenous Peoples. The Ecuadorian Constitution of 2008 establishes that "[i]f consent was not obtained, the government would proceed according to the Constitution and the law. Thus, the 2008 Constitution reproduced the same problem noted in the 1998 Constitution: it depicts indigenous self-determination as a prerogative of the State" (Urteaga-Crovetto 2018, 15).

According to scholars (Urteaga-Crovetto 2018; Figuera-Vargas and Ortiz-Torres 2019; Rodríguez and Baquero 2020), the main problem related to the enactment of prior consultation in Ecuador lies in the fact that this right coexists with other laws and decrees that violate Indigenous Peoples' right to prior consultation of. Like in other countries, in Ecuador, prior consultation and free, prior and informed consent are regulated by highly technical legal instruments, which, ultimately, is harmful for native communities. Following Urteaga-Crovetto (2018), the Ecuadorian government has argued that extractive activities are decisive for growth and national development.

This literature review depicts deficiencies in the quality of participation and representation in prior consultation processes in Latin America. Consequently, our research aims to explain, through a Critical Discourse Analysis of the policy documents designed to regulate prior consultation, some relevant factors that determine the weaknesses of these mechanisms to defend Indigenous and Tribal Peoples' rights.

2. Data and Methodology

From a CDA perspective, we analyze the Indigenous and Tribal Peoples Convention 169, the Declaration, and the Final Report. We chose CDA because this perspective allows identifying various forms of abuse of power, domination, or control constructed, reproduced, and concealed within discourses. CDA "includes, for instance, trying to clarify the relationship between the causal effects of 'orders of discourse' […] and of the agency of people as social actors and producers of texts" (Fairclough 2012, 80).

Analyzing discourses from a critical perspective of social science helps overcome the tradition of registering and describing the reality of social

systems, organisms, and institutions and unveil the power relationships that shape that reality. Narrowly speaking, a critical social science, according to Fairclough and Fairclough (2012), quoting Fairclough and Graham (2002), "[…] tends to be open to the idea that discourse is part of its concerns and ought to be given more detailed and systematic treatment than it generally has, because it has long recognized the importance of ideas and concepts in social life, which are manifested in discourse" (79).

Here, we argue that supranational dispositions discursively configure a specific sort of political participation. Our findings show that this type of political participation coincides with what Santos (2004, 2012) has called *low-intensity democracy*.

The discourses under analysis use *consultation* and *consent* as devices that can be employed by governments to interact with Indigenous and Tribal Peoples. Nevertheless, in several instances, those documents refer to *consultation* as a requirement for achieving free, prior, and informed consent.

This framework for CDA unveils the political subject in the context of a *low-intensity democracy* as an individual allowed to vote but deprived of substantive power and expected to exercise a passive, exclusive, and shallow form of citizenship. This scenario corresponds to a democratic regime in which political power provides channels for political participation, individual rights, and juridical protection, but material equality and the protection of political, social, and economic rights are undervalued (Aguiló 2009). Consequently, the governmental instrumentalization of this form of participation is favorable to an accumulative regime and a development model based on the exploitation of nature as a resource.

For our analysis, we pay close attention to the forms used to represent the relationship between Indigenous Peoples and governments and the discursive roles attributed to said Peoples. To this end, we consider the uses of passive voice and modalization as linguistic markers. Passive voice is a verbal form in which the emphasis is placed on the verb and the object rather than the subject of the action (e.g., "Enjoyment of the general rights of citizenship without discrimination *shall not be prejudiced* in any way by such special measures") (ILO 1989). Modalization, according to Fairclough (2003), is a discursive strategy employed to conceal or manifest—through questions, demands, declarations, or offers—different levels of commitment to the value of truth of a statement. Thus, we understand modalization as a "[…] relationship between speaker or writer, or 'author' and representations" (Fairclough 2003, 166). This, in turn, "[…] can be seen as initially to do with 'commitments,' 'attitudes,' 'judgments,' 'stances' and therefore with Identification […], but it is also to do with Action and social relations, and Representation" (Fairclough 2003, 166).

Without losing sight of such relationships between actors within a discourse, we show how, through modalization and intertextuality, the texts contribute to shaping a low-intensity form of participation deprived of effective dissent. Although the documents under analysis explicitly include references to dissent and even appear to encourage it, along with collaboration and cooperation, CDA allows us to unveil the strictly nominal character of these concepts. Dissent is not linked, as we will argue, to practical effects or political consequences.

Intertextuality and its commitment to a socio-diagnostical analysis demystifies "the—manifest or latent—persuasive or manipulative" character of discursive practices" (Wodak 2001, 103). Consequently, for the purposes of this research, intertextuality is understood as "[…] the presence of actual elements of other texts within a text—[direct or indirect] quotations" (Fairclough 2003, 39). Finally, we expose how discourses equate the environment with natural resources by means of synonymy relations.

3. Low-intensity democracy

The origins of this relationship between the governments' encouragement of an exclusive and passive exercise of political participation and the exploitation of nature as a resource for development come from the preponderance of accumulation over redistribution. These assumptions are related to liberal "monoculture" (Santos 2012), theoretically conceived by liberal authors such as Stuart Mill, Constant, and Tocqueville. Bobbio (2004) pointed out that these authors contributed to consolidating the idea that only a liberal state could be compatible with "some fundamental rights, such as freedom of thought, religion and conscience, association, and the press was the representative or parliamentary democracy" (323).

Santos (2004) underlines that it was within capitalist societies that liberal democracy became the hegemonic conception of political organization. According to this author, it was part of an attempt carried out by the core countries and local elites to stabilize the tensions between capitalism and democracy, addressing the fundamental feature of capitalist societies: the priority of accumulation over redistribution. The idea that democracy is the government of the people, influenced by capitalism, became less popular in view of the growing complexification of modern social relations. Ultimately, democracy started to be depicted as a set of rules and procedures, deprived of ethical contents linked to justice or equality (Borón 2006). This situation explains why there is an evident tension between the democratic expectations of people and the rules of capitalist accumulation (Borón 2006). While capitalist accumulation demands several sorts of exploitation (i.e., of nature and human beings), it requires an institutional framework

capable of containing social discontent, which is incompatible with intense democratic participation.

We found discursive evidence of these limitations on democracy in the documents under analysis. Convention 169 establishes that governments are the subjects in charge of the actions that make the political participation of Indigenous Peoples possible. Consequently, Convention 169 declares in its Article 6 that it is a government's responsibility to create the conditions, offer guarantees, coordinate with the peoples concerned actions to protect their rights, and "establish means by which these peoples can freely participate" (ILO 1989).

In fact, governments are the subject of several types of actions. They are in charge, among other things, of 1) protecting Indigenous Peoples' rights—including those over their lands, 2) assisting Indigenous Peoples in processes leading to eliminating the socio-economic gaps that affect them, 3) ensuring proper assessments before taking any decision that may compromise Indigenous Peoples, 4) preserving the environment and preventing discrimination in work spaces, 5) providing special training programs, 6) promoting and strengthening traditional economic activities, 7) ensuring adequate health services, 8) developing activities to ensure equality and respect for their cultural heritage, and, of course, 9) consulting peoples concerned and establishing means for their free participation in consultation before making decisions related to developmental projects.

On the other hand, the actions of which Indigenous Peoples are active agents can be classified as follows: 1) to contribute to cultural diversity and social and ecological balance, 2) to participate, cooperate, and collaborate with governments in the exercise and guarantee of their rights, 3) to freely make decisions about their own development, 4) to participate in the management, use, and conservation of their lands' "resources," and 5) to request technical and financial assistance when necessary.

Along with positioning governments as the subject of actions regarding the participation of Indigenous Peoples, passive voice is used constantly throughout the document. Article 5 exemplifies this linguistic feature of Convention 169 since it contains three dispositions, none of which establishes an explicit subject for the action:

> (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals; […] (b) the integrity of the values, practices and institutions of these peoples shall be respected; […] (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life

> and work shall be adopted, with the participation and co-operation of the peoples affected. (ILO 1989)

This verbal form appears repeatedly when referring to measures, procedures, policies, and projects that ensure the Convention's proper application. Thus, Convention 169 does not declare specific subjects in charge of aspects like cultural recognition, respect for the culture, values, institutions, and practices of Indigenous Peoples, administration of justice, relocation, and compensation. As said before, passive voice is also used to call for designing measures that provide Indigenous Peoples with cultural, legal, patrimonial, and environmental protection, as well as legal procedures to enforce the Convention's dispositions.

What has been said so far adds to the naturalization of a notion of political participation conceived, guided, and operated by governments, whose sole purpose is to obtain the consent of the affected peoples: "[t]he consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures" (ILO 1989). We will attend to the modalizing role of the concept of "good faith" below. Here, we argue that governments are considered by this Convention as the main actors responsible for regulating political participation and generating mechanisms, conditions, and assessments for the political participation of peoples potentially affected by development activities, which ultimately leads to consent as the only possible outcome of these measures.

Clearly, its ontological nature places responsibility on governments for actions that guarantee the safety, integrity, and prosperity of societies. Their leadership in ensuring, for instance, participation rights is undeniable. Nonetheless, our evaluation of the actions attributed to governments and Indigenous Peoples reveals that, in most cases, governments are described as subjects of several actions, but actions represented as performed by Indigenous Peoples are fewer. The semantical role of Indigenous Peoples is one in which they appear as receivers of public actions regarding the rights that must be guaranteed, processes that must be respected, and conditions that must be created. This analysis reveals that, although governments are responsible for acting in favor of the rights and prerogatives of their citizens, the ILO's Convention displays a paternalistic view of Indigenous Peoples and an inconsistent appropriation of the concept of governance since its premises of openness and equality are not fully delivered in the light of the subordinated role of these Peoples in the description of the actions leading to their free participation.

In addition to conferring to governments a central role in the regulation of political participation, the Convention's discourse consolidates the subordination of Indigenous Peoples in their relationship with governmental institutions through a strict regulation of the mechanisms for participation described by the document.

4. Representations of Social Actors

This issue is closely related to political participation as a responsibility of governments. Convention 169 is committed to establishing mechanisms and conditions for the political participation of institutional instances. The affected peoples are considered co-operators of governmental proceedings, recipients of political participation measures, and, in some cases, objects of public actions.

As said before, there are several statements in Convention 169 describing actions that the governments shall undertake, in which the peoples affected are described as participants under the figure of co-operators: "[g]overnments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities" (ILO 1989).

Furthermore, modalization is used within this statement to delimit the scope of government responsibility in defining the potential effects of development activities on Indigenous Peoples and their territories, as the clause "whenever appropriate" allows governmental institutions, during the implementation of Convention 169, to define when it is appropriate to assess possible damages derived from these activities. The peoples concerned are invited to co-operate, but the subject of the action ("shall ensure") are the governments. Along with this example, another fifteen clauses of Convention 169 use the word "co-operation" to denote how peoples concerned are expected to get involved in several types of actions.

In the second case, the representation of affected peoples as recipients of political measures for participation can be clearly illustrated through item (b) of Article 6 of Convention 169: "In applying the provisions of this Convention, governments shall: […] (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them" (ILO 1989).

Another example of this feature of Convention 169 relates to the use of modalization to impose limits on the participation and self-determination of peoples: "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs,

institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development" (ILO 1989).

The expression "to the extent possible" imposes a boundary beyond which only the mentioned political institutions are allowed to determine when and how it is feasible for the peoples to control their own destinies.

Finally, the subordination of Indigenous Peoples, linked to the central role of governments in regulating the mechanisms for these peoples' political participation, is also manifest in how the essence of such participation is enunciated. Convention 169 *defines* political participation by referring to *consultation* as a means for such an end, given that there is a lack of clear conceptualization of participation throughout the document. The first part, "General Policy," declares that "[t]he consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures" (ILO 1989).

5. The Purpose of Political Participation

The first part of Convention 169, referring to the participation of Indigenous Peoples, offers significant guidelines for the application of its dispositions. Throughout these guidelines, the Convention displays a high level of commitment—by using the expression "shall be"—to the designation of governments as responsible for carrying out the consultations.

Connected to this high-level commitment to the value of truth of its clauses, the ILO's discourse uses an evaluative modalization by establishing *good faith* as a requirement for the consultation. These two forms of modalization converge to establishing, through an imperative clause, that the *objective* of this consultation is to achieve the consent of Indigenous Peoples. Consequently, the participation of Indigenous Peoples, oriented to achieving said consent, confines dissent to its formal expressions with no practical effects.

Without effective political dissent with practical consequences, democracy cannot operate legitimately, and political participation remains a mechanism for obtaining people's endorsement of governmental decisions. Against this background, we call for the adoption of a definition of political participation as the citizens' meaningful involvement in public and governmental issues, characterized by a confrontation of ideas and worldviews and a favorable institutional framework for processing political discussion and disagreement (Pattie and Johnston 2009). Sen (2011) refers to inclusive democratic systems as those supported by the participatory engagement of people in public affairs, accompanied

by meaningful representation, actual inclusion, and an accountable government, prone to listen to its constituents and to provide evidence and arguments to support its policy decisions (this is what Sen calls "government by discussion").

Like Convention 169, the Declaration also reinforces a democratic regime focused on strictly formal allowances for political participation. Furthermore, it does not define the political participation of Indigenous Peoples. Instead, throughout the document, participation is referred to as a mechanism of *consultation*. Article 19 of the Declaration uses modalization as a discursive tool to define the proper way of performing consultations: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them" (UN 2007).

The absence of a clear statement around the meaning of participation illustrates the vagueness of the ILO discourse on the forms of involvement of Indigenous Peoples in public decisions, which makes such a discourse functional to several interests, even those in dispute. Rather than a call for clarity or inflexibility in the public comprehension of participation, this finding suggests a fundamental demand for honesty about the document's commitment to a specific way of understanding political participation.

In general terms, the Declaration embraces the same discursive strategies present in Convention 169 to enunciate the consultation's purpose. Through low modalization and high commitment to the value of truth of its clauses, the Declaration presents consultation and cooperation as imperative and, as in the case of Convention 169, modalizes once again the scope of said clauses by introducing *good faith*.

This form of participation emerges again in the discourse of the Declaration, particularly when referring to the use that the states can make of Indigenous Peoples' territories. Article 37 of the Declaration establishes that the states "shall consult" Indigenous Peoples, in an imperative mode. Both modalization and the use of an imperative voice contribute to shaping a discursive strategy with no place for opposition. Through a causal relation, consultations seek to obtain from Indigenous Peoples "their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them" (UN 2007).

Participation without dissent with political effects and as a mechanism to obtain the consent of Indigenous Peoples, as laid out in Convention 169 and the Declaration, is reinforced again in the Final Report. This discourse is the result of the Experts Mechanism, a UN advisory body on the rights of Indigenous Peoples.

The Final Report provides a definition of *good practices* for the political participation of Indigenous Peoples. This is an innovation, considering that this would be the first document of the UN regarding our object of study that offers an explicit definition of political participation applied to the specific case of Indigenous Peoples. According to the Final Report:

> To assess whether a practice is good, the Experts Mechanism has based its criteria on the Declaration on the Rights of Indigenous Peoples. […] The most significant indicator of good practice is likely to be the extent to which indigenous peoples were involved in the design of the practice and their agreement to it. Other indicators include the extent to which the practice: (a) Allows and enhances indigenous peoples' participation in decision-making; (b) Allows indigenous peoples to influence the outcome of decisions that affect them; (c) Realizes indigenous peoples' right to self-determination; (d) Includes, as appropriate, robust consultation procedures and/or processes to seek indigenous peoples' free, prior and informed consent. (UN 2011, 4)

Defining a practice as *good* constitutes a value statement that implies the existence of a non-desired practice that the UN and its Experts Mechanism expect to prevent from occurring. Furthermore, the conceptualization of *good practice* is a cause, and its effect is the concerned peoples' consent. In other words, the purpose of political participation shall always be, in this case, consensus between governments and Indigenous and Tribal Peoples, which is consistent with our previous findings.

Intertextuality plays a fundamental role in this definition. In fact, the Final Report declares that "[…] the Expert Mechanism has based its criteria on the Declaration on the Rights of Indigenous Peoples" (UN 2011, 4). This suggests that the official discourse around political participation responds to a historical configuration, reinforced, for decades, by international organisms such as the ILO and the UN.

6. Participation without Dissent, a Utilitarian View of the Environment, and the Problematic "Relocation" of Indigenous Peoples

So far, our findings have shown that Convention 169, the Declaration, and the Final Report discursively construct a form of political participation that excludes the political consequences of dissent as a possible outcome of democratic debate. This form of participation, as we will establish, is important for the actions carried out by states over Indigenous Peoples and their territories. Through these

mechanisms, under conditions similar to dispossession, governments are allowed to relocate these communities and facilitate the exploitation of their lands by private capital. Furthermore, "[t]he search for "consent" solutions—evidently, consent between States—before controversial issues is depicted in Convention's vague language" (Rodríguez-Piñero 2004, 73).

To understand the scope of these dynamics, the concept of *territory* is helpful since it embraces multiple dimensions converging to the constitution of the inhabited space. Those who defend a complex definition of territory argue that this concept is in constant change and any comprehensive approach to it requires a broad recognition of the conflicts surrounding its constitution. "Territory is created through spatial relationships and socio-environmental processes that must be studied according to the particular context" (Devine *et al.* 2020, 15).

According to this definition, territory is more of a process than an object and, instead of being constituted by predetermined spatial or temporal scales, it is the outcome of social rituals and everyday practices. In sum, to overcome the traditional approaches to territory, it is necessary to "take distance from the emphasis in the enclosures created by *Cartesian* cartography, to focus on a new materiality crossed by the spiritual and affective dimensions which are inseparable from livelihoods, from the social struggles for sovereignty and from the exercise of peoples' autonomy" (Devine *et al.* 2020, 18).

Considering the above, our analysis shows that Convention 169 establishes a relationship of synonymy between *environment*, *resource*, and *natural resources*. "Environment" is mentioned four times without any significant allusion to relevant actions or processes. On the other hand, the nouns "resource" and "natural resources" are mentioned nineteen times. In terms of collocation, these nouns are always preceded by others such as "lands," "territories," and "habitats," which indicates that Convention 169 promotes a utilitarian view of the environment as an exploitable and exchangeable resource. Furthermore, synonymy relationships are extended from the concept of *territory* to the concepts of *land*, *habitat*, and *areas occupied* or *used* by the peoples concerned: "The use of the term lands in Articles fifteenth and sixteenth shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use" (ILO 1989).

As for the concept of *habitat*, it is semantically attached to a biological representation of the appropriate conditions for a species to live, which falls short regarding the complex cultural, historical, ecological, and economic relationships that constitute the idea of territory. These theoretical restrictions are consistent with the representation of nature as a *resource* susceptible to exploitation, present in Article 15: "[…] governments shall establish or maintain

procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands" (ILO 1989).

This utilitarian view of the environment as an exploitable resource is also present in the Declaration. Article 25 establishes that "Indigenous [P]eoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard" (UN 2007).

Also, through synonymy, the Declaration states that *lands, territories, waters, and coastal seas* are types of resources. As Convention 169, the Declaration includes the word "environment" two times, while the nouns "resource" and "natural resource" appear fifteen times, preceded by nouns such as "lands," "habitat," and "territories."

Our previous findings regarding dissent without effective political consequences and a utilitarian view of the environment as an exploitable resource are consistent, in our analysis of Convention 169, with the use of modalization as a discursive strategy to address the use governments can give to the lands *occupied* by Indigenous Peoples. This is evident in "Part II, Lands," where modalization is employed as a discursive strategy to emphasize the *democratic* nature of consultations when interacting with Indigenous Peoples and reducing the impacts of the exploration and exploitation of the environment. Consequently, Article 15 states that

> 2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities and shall receive fair compensation for any damages which they may sustain as a result of such activities. (ILO 1989)

The imperative form "shall establish" suggests that it is an obligation of governments to consult Indigenous Peoples who, as we have already exposed, do not have effective participation mechanisms, and when the existing ones do not include dissent as a source for public decisions regarding development projects. Furthermore, the discourse emphasizes *consultation* as a procedure that

can be used by governments to interact with Indigenous Peoples by presenting this scenario as one based on democratic ideals. Subsequently, the relocation of Indigenous Peoples is portrayed as a *possibility* through modalizing the verbs "would be" and "may sustain" to diminish the impacts of such relocation.

In cases in which Indigenous Peoples are relocated at the request of governments or private capital, the Convention 169 declares in its Article 16:

> 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. […] 4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. (ILO 1989)

Once more, Convention 169 uses modalization to emphasize the positive aspects of government actions by considering that relocation "shall take place" through "appropriate procedures." Additionally, modalization operates when stating that concerned peoples "shall be provided in all possible cases with lands." These modalized statements do not explicitly declare in which cases, to what extent, and under whose responsibility Indigenous Peoples should be compensated for their relocation. It also allows for the possibility that Indigenous Peoples will not receive any compensation since the clause "in all possible cases" implies that there are cases in which it is not possible to provide them with lands. The lack of an explicitly defined subject for these actions deepens this uncertainty.

Conclusion

Our analysis reveals some relevant points for reflecting on the effects of the participation of Indigenous and Tribal Peoples without the administrative and political consequences of dissent, configured on Convention 169, the Declaration, and the Final Report, which, in turn, has direct implications on the view of the environment as an exploitable and exchangeable resource.

Firstly, our research allows us to conclude that Convention 169, the Declaration, and the Final Report have shaped a discourse that contradicts

the protection of the rights of Indigenous and Tribal Peoples because these discourses configure a type of participation that assumes, without questioning, the absence of the practical effects of dissent. Democratic mechanisms become reduced to their more formal features. The idea of participation without effective dissent allows governments and private capital to deprive Indigenous and Tribal Peoples of their lands, their environment, and their culture without effective political and democratic resistance. Linguistic markers used for critically analyzing these documents reveal this void.

Participation without effective dissent is potentialized by assigning a central role to governments in executing consultation under the imperative prescription of good faith. It is decisive for this interpretation to underline that Convention 169 uses imperative clauses for prescribing the consent of Indigenous and Tribal Peoples as the ultimate outcome of consultation.

Secondly, our interpretation shows how political participation deprived of conclusive dissent is aimed at consolidating a *low-intensity democracy*. This form of democracy excludes Indigenous and Tribal Peoples from the possibility of appealing the decision of relocation and imposes on them the obligation of accepting the terms under which they are to be compensated. A deterministic description of social actors reinforces such comprehension of democracy, given that they appear only as government cooperators, recipients of measures to encourage political participation, and objects of public policies. Indigenous and Tribal Peoples are never mentioned within the documents under analysis as decision makers over their territories.

Thirdly, our findings show that governments boost their interests by defining the environment as an exploitable and exchangeable object through a synonymy relationship between environment and resource. This is reinforced by an attenuated view of the impacts of exploration and exploitation of the environment and the possibility that peoples concerned would not be compensated for their relocation. The lack of any explicit subject responsible for the actions conducive to such compensation aggravates the problematic situation.

Our study seeks to contribute to policy analysis by challenging traditional interpretations according to which the success of public policies depends on the efficiency of their implementation process. Rather than that, our methodological approach (CDA) exposed the grave political implications of the limited political participation of Indigenous and Tribal Peoples. CDA reveals itself as an innovative approach, given its potential for unveiling the ideological presumptions underlying strictly technical analysis and power relationships established, reinforced, and questioned through discourse.

To sum up, consultation processes, from a critical perspective and following Santos' (2004) call to overcome *low-intensity democracy*, should consider a greater social involvement in decision-making processes and the expansion of possibilities for social conflict. Consequently, participation, deliberation, and decision-making are the primary benefits for Indigenous Peoples and would open the opportunity to generate scenarios for self-determination through consultation practices. These two democratic values (participation and self-determination) should be considered during negotiation processes between governments and Indigenous and Tribal Peoples to recognize the latter's cultural particularities and political practices that, in several cases, do not coincide with Western political models.

Our work aims to contribute to defining a research agenda that considers the relationships between environment, development, and Indigenous Peoples. Some generative topics for such an agenda include a) forms of appropriation and resistance that Indigenous Peoples construct regarding the discourses used to structure institutional mechanisms for political participation, b) new findings that could emerge from a Critical Discourse Analysis of legal frameworks through which the states incorporate multilateral guidelines for the political participation of Indigenous Peoples, c) possibilities of an intercultural dialogue that sheds light on the conflicts and tensions surrounding the notion of citizenship underlying these regulations, and d) how, in specific cases, supranational policies, such as Convention 169, the Declaration, and the Final Report, could intensify the implementation of neo-extractive models in the Andean region.

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