



# Prior Consultation Challenges in Latin American Renewable Energy Projects: A Comparative Analysis of Colombia, Mexico, Chile, Panama, Brazil, and Honduras

*Desafios da Consulta Prévia em Projetos de Energia Renovável na América Latina: Uma Análise Comparativa da Colômbia, México, Chile, Panamá, Brasil e Honduras*

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## Abstract

Indigenous and local community consultation has proved difficult in Latin American renewable energy projects. Although prior consultation rights have been recognized in Colombia, Mexico, Chile, Panama, Brazil, and Honduras, this study shows implementation weaknesses. Major issues are consultations' lack of clarity and adequacy, perceptions as formalities without real impact on decisions, and social conflicts. Justice, equity, territorial disputes, transparency, and projects' cultural and environmental impacts on indigenous lands and ways of life cause these conflicts. Conflicts and legal gaps exist in some nations. Project cancellations were due to strong community opposition, demonstrating the importance of renewable energy support. A just energy transition in Latin America requires strengthened regulatory frameworks, institutional capacities, socio-environmental safeguards, and genuine intercultural dialogue to balance renewable energy development with indigenous rights.

**Keywords:** prior consultation; renewable energy; Latin America; indigenous rights; sustainable development.

## Resumo

*A consulta a comunidades indígenas e locais tem se mostrado difícil em projetos de energia renovável na América Latina. Embora os direitos de consulta prévia tenham sido reconhecidos na Colômbia, México, Chile, Panamá, Brasil e Honduras, este estudo mostra fragilidades na implementação. Os principais problemas são a falta de clareza e adequação das consultas, percepções como formalidades sem impacto real nas decisões e conflitos sociais. Justiça, equidade, disputas territoriais, transparência e impactos culturais e ambientais dos projetos sobre terras e modos de vida indígenas causam esses conflitos. Existem conflitos e lacunas legais em algumas nações. Cancelamentos de projetos ocorreram devido à forte oposição das comunidades, demonstrando a importância do apoio à energia renovável. Uma transição energética justa na América Latina requer o fortalecimento de marcos regulatórios, capacidades institucionais, salvaguardas socioambientais e um diálogo intercultural genuíno para equilibrar o desenvolvimento de energias renováveis com os direitos indígenas.*

**Palavras-chave:** consulta prévia; energia renovável; América Latina; direitos indígenas; desenvolvimento sustentável.

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## 1. Introduction

Latin America's natural resources, climate and established large-scale hydro facilities create an environment, for renewable energy initiatives (Escamilla-García *et al.*, 2023). The region has experienced growth in hydro, wind and solar energy generation with the significant hydro installations playing a role, in managing the variability of wind and solar projects (Washburn, C.; Pablo-Romero, 2019). However, renewable projects often overlook the involvement of communities leading to resistance and disputes (Ramirez, 2019).

Indeed, the development of energy projects in Latin America has encountered obstacles, especially in terms of engaging with indigenous and local communities (Temper *et al.* 2020). Lack of consultation can result in issues such as conflicts involving indigenous groups, multinational corporations and governments (Zaremborg, G.; Wong, 2018). The right to consultation is recognized by Convention 169 of the International Labor Organization (ILO) and the United Nations Declaration on the Rights of Indigenous Peoples. ILO Convention 169 guarantees indigenous peoples' rights to participate in decisions related to land and resources. Several American nations have approved the International Labour Organizations Convention 169 to protect tribal rights. Peru is a regional leader in implementing regulations based on consultation (Alva-Arévalo, 2019).

To comply with international law, indigenous and local communities must be involved in all stages of renewable energy projects. Although countries in Latin America have made some progress in protecting this right, some challenges remain. Indeed, several case studies of Latin American renewable energy projects have examined indigenous and local community consultation challenges. Examples of such studies in Mexico include Tehuantepec (Martínez-Mendoza *et al.*, 2021) and Juchitáns Eólica del Sur (Dunlap, 2017). Several cases also have been reported in Colombia (Góngora-Mera, 2019) and Chile (Lanegra Quispe, 2016). These studies indicate that power imbalances and structural inequalities make Latin American community consultations complicated and contentious. The government and business may view these consultations as a formality rather than a genuine opportunity for Indigenous communities to participate in decision-making (Pirsoul, 2019). However, while there is some research on this topic, more is needed to examine Latin American renewable energy project consultation challenges.

By examining the issues and obstacles encountered during consultations with local communities in different cases this article seeks to contribute to this debate. This article employs a comparative case study method to explore the challenges experienced during the recognition of this right in six countries in Latin America. The paper starts by reviewing the progress that the Latin American region has made in relation to international standards and the right to Prior consultation. Then, it examines cases in countries such as Colombia, Mexico, Chile, Panama, Brazil and Honduras. Finally, the article examines the trends, patterns and differences in order to identify the challenges the region is facing in relation to the fulfilment of the right to Prior Consultation of Indigenous people and local communities in renewable energy projects.

## 2. Methodology

A comparative case study was used in order to identify patterns, similarities, and differences. Key stages were:

### Identification:

- Gathered relevant jurisprudence, academic literature, and reports from international organizations and NGOs for each country studied.
- Multiple databases and search terms ensured a complete document set.

### Document Selection:

- Screened documents based on titles and abstracts to identify those directly related to prior consultation in renewable energy projects.
- Conducted a full-text review of initially selected documents to further refine the sample.
- Developed clear inclusion/exclusion criteria to systematically select the most relevant sources.

### Eligibility Analysis:

- Performed a detailed review to confirm the relevance of the documents with respect to the study's objectives.
- Assessed document quality using criteria such as credibility of the source, methodological rigor, and triangulation of findings.

### Content Evaluation:

- Conducted a thematic analysis of each document to extract data on advancements and challenges in the implementation of prior consultation.
- Developed a coding framework to systematically identify key themes such as the recognition of rights, implemented processes, and resulting conflicts.
- Used qualitative data analysis software to facilitate coding and retrieval of relevant data segments.

### Synthesis and Comparative Analysis:

- Compared findings from different countries to identify common patterns and differences in the application of prior consultation.
- Used data displays such as matrices and network diagrams to visualize cross-case comparisons.
- Evaluated the effectiveness of current normative frameworks and practices through a comparative lens.
- Situated findings within broader theoretical frameworks on indigenous rights, sustainable development, and energy justice.

### 3. The Right to Prior Consultation in Renewable Energy Projects in Latin America: An Overview of International Standards

Despite some progress in the area of Prior Consultation in Renewable Energy Projects, there are still many challenges and obstacles. It is common to document cases where violations of Prior Consultation are evident in Latin America. For instance, studies in Panama highlight a lack of adherence to international standards (Finley-Brook; Thomas, 2011). In Colombia, although there is formal recognition, prior consultation often results in conflicts among various actors (Rodríguez, 2014). In Ecuador, this mechanism is seen more as a political tool than as environmental protection (Eisenstadt; West, 2019) while in Bolivia Prior Consultation can sometimes embed economic, social, cultural and economic tensions (Fontana; Grugel, 2016).

During the constitutional reforms of the 80s, nearly all Latin American countries incorporated Indigenous rights into their constitutions (Alfonso Sierra, 2021). Fifteen<sup>1</sup> of the 24 Latin American state parties to the ILO Convention 169 emphasize the importance of this right. Although there are advancements in implementation, significant challenges still exist. Prior consultation is a crucial tool for preventing social conflicts, though violations of the right to free, prior, and informed consultation are sometimes reported. Studies and reports have indicated that a significant proportion of global environmental conflicts related to renewable energy projects occur in Central and South America (Rubiano, 2021).

The UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169 are in force in several countries. Colombia's Law 21 of 1991 requires the state to consult indigenous and tribal communities on legislation and administration that affects them. The 1991 Constitution guarantees the fundamental rights of Indigenous and Afro-Colombian peoples, including the right to preserve their cultural, social, and economic integrity, while Decree 1320 of 1998 requires prior consultation with these communities to assess the impacts of resource exploitation in their territories and assign specific roles to the Ministry of the Interior and Incora (now Incoder). This decree also includes the preparation of participatory environmental studies and analyses of socio-economic and cultural impacts. Additionally, Decree 2613 of 2013 establishes the Interinstitutional Coordination Protocol for Prior Consultation, improving the connection between entities and optimizing resources in strategic projects. Presidential Directive 08 of 2020 establishes a guide for conducting prior consultation and adds stages 3, 4, and 5 to the process. According to this directive, The Ministry of the Interior have to evaluate project impacts and establish compensations within three months if communities and companies cannot reach agreements in three meetings, although it has been warned that a rushed consultation could trigger intercommunity conflicts. On the other hand, Presidential Directive 10 of 2013, which provided a "Guide for the Conduct of Prior Consultation with Ethnic Communities," was partially annulled by the Council of State, which declared certain provisions that modified the principles of legality and the exercise of the fundamental right to prior consultation null and void. In addition, Law 1715 of 2014 plays a role, in governing energy initiatives by encouraging the advancement and adoption of alternative energy sources. The Ministry of the Interior oversees the consultation stage whereas the National Environmental Licensing Authority (ANLA) assesses and authorizes permits for such endeavors.

In Colombia, Law 99 of 1993 was pivotal in establishing the Ministry of the Environment and the National Environmental System. This law also integrated prior consultation with Indigenous and Afro-descendant communities as an essential requirement for environmental licenses in resource exploitation and development projects, aiming to protect their cultural, social, and economic integrity. Similarly, Law 685 of 2001, known as the Mining Code, promotes mining exploration and exploitation, recognizing state ownership over minerals and the rights of ethnic communities, although it limits prior

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<sup>1</sup> Argentina, Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Bolivarian Republic of Venezuela.

consultation to the exploitation phase. The Constitutional Court of Colombia has outlined in multiple rulings the procedures and scopes of prior consultation, emphasizing the need for a participatory, good-faith, and culturally appropriate process.

Like Colombia, Mexico has ratified ILO Convention 169, which establishes the obligation to conduct consultations with indigenous and tribal peoples before carrying out actions or projects that may affect their territories or ways of life. Prior consultation is recognized in articles 2 and 27, section VII, of the Political Constitution of Mexico, and in article 106 of the Agrarian Law. Additionally, the National Commission for the Development of Indigenous Peoples (CDI) formulated a "Protocol for the Implementation of Consultations with Indigenous Peoples and Communities" that adopts principles of diversity, equity, permanence, transparency, and representativeness. This Protocol specifies that authorities must conduct consultations in situations where administrative or legislative measures may affect the rights of these peoples. On the other hand, in March 2017, an agreement was issued in the Official Gazette of the Federation establishing criteria for conducting prior consultations related to actions and/or projects executed by the Ministry of Agrarian, Territorial, and Urban Development and associated entities. Furthermore, the Ministry of Energy, as established in articles 120 and 119 of the Hydrocarbons Law and the Electric Industry Law respectively, has implemented a specific mechanism for dialogue with these communities.

In Mexico, the Electric Industry Law (Mexico, 2014) and the Energy Transition Law (Mexico, 2015) establish guidelines for the development of renewable energy projects. The Ministry of Energy (SENER) plays a key role in formulating and conducting national energy policy. Among its initiatives, the Window for Renewable Energy Projects (VER) stands out. Additionally, the Large-Scale Renewable Energy Development Project (PERGE) aims to boost electricity generation from renewable sources, seeking a significant reduction in pollutant gas emissions. President Andrés Manuel López Obrador reaffirmed Mexico's commitment to achieving at least 35% of its energy production from clean and renewable sources by 2024. Meanwhile, the Energy Regulatory Commission (CRE) is responsible for regulating and overseeing the sector, including the approval or rejection of projects (PVMagazine, 2022).

Chile has ratified ILO Convention 169 and incorporated regulations for consulting indigenous peoples into its environmental legislation. For example, Law 19300 on the General Bases of the Environment and its regulations include specific measures to consult indigenous peoples during the environmental assessment of projects. This law, amended in 2010, stipulates that government agencies with environmental functions must support indigenous development in accordance with the Convention. This is particularly relevant for renewable energy projects, which must undergo an environmental impact assessment, potentially requiring consultation with affected indigenous communities. Similarly, the Indigenous Law, Law No. 19.253 (Chile, 1993) enacted in 1993, establishes criteria to protect, promote, and develop indigenous peoples in Chile. Although it does not detail a specific mechanism for consultation, it requires state agencies to conduct consultations with indigenous peoples on matters affecting them. Additionally, Decree No. 66 of 2013 regulates the implementation of these consultations under the framework of ILO Convention 169. This decree has been criticized for restricting the scope of Articles 6 and 7 of the Convention, and its application has generated debate, especially in the context of renewable energy projects.

In Panama, the participation of indigenous peoples in prior consultation is guaranteed through various legal and constitutional mechanisms. The Political Constitution of the Republic of Panama, in its Article 90, recognizes and respects the ethnic identity of indigenous communities, while Article 127 guarantees the allocation and collective ownership of lands necessary for their economic and social well-being. Comarcal laws require the approval of indigenous general congresses for any productive or extractive activity in their territories. Additionally, both the General Environmental Law of Panama and the Transparency Law establish the obligation to conduct prior consultations. Specifically, Article 103 of the General Environmental Law dictates that consultation procedures for projects in indigenous territories must seek agreements with their communities, respecting their rights and traditions, and ensure compensatory benefits for the use of their resources.

Moreover, under Article 105 of that legislation it is stipulated that indigenous communities are entitled to share in the advantages arising from initiatives carried out on their territories. Similarly, the Public Management Transparency Act (Law 6 of 2002) mandates institutions to facilitate participation, in matters that could impact their welfare specifically involving indigenous groups. To promote consensus and peaceful dispute resolution, this law encourages forums or workshops.

A strong Brazilian legal and regulatory framework supports indigenous prior consultation. The 1988 Federal Constitution, decrees, laws, and international treaties support this. This legal framework protects traditional knowledge, promotes sustainable development, and ensures indigenous peoples' participation in land and lifestyle decisions. The 1988 Constitution strengthens indigenous rights in Brazil through Articles 231 and 232. Article 231 guarantees indigenous peoples' customs, traditions, and lands. These groups can defend their rights and participate in prior consultations under Article 232. Brazil ratified ILO Convention 169 on Indigenous and Tribal Peoples. Brazil issued several decrees highlighting these commitments. Decree No. 6,040 of 2007 governs sustainable development of traditional peoples and communities, while Decree No. 7,747 of 2012 governs environmental and territorial management of indigenous lands. These decrees give indigenous peoples land ownership, decision-making power over their territories and natural resources, and recognition for their traditional knowledge. Indigenous peoples receive fair compensation for genetic resources and traditional knowledge use under Law No. 13.123 of 2015, regulated by Decree 8.772 of 2016. In Brazil, prior consultation is difficult to implement despite strong legal framework. Lack of ILO Convention 169-mandated prior consultation legislation has hampered its implementation. Indigenous groups use consultation protocols to demand that the state respect their rights and procedures. The National Indian Foundation (FUNAI) protects communities' environmental approval and prior consultation rights. These measures' success depends on the state's political will to its populations and communities' ability to advocate for their rights within a comprehensive system that may need fine tuning for full implementation.

Indigenous and Afro-Hondurans have been guaranteed prior consultation by the constitution, international commitments, and laws. For instance, the Honduran Constitution indirectly acknowledges prior consultation. Indigenous rights, lands, and forests must be protected under Article 346. Article 349 requires indigenous rights consideration since private property is inviolable and can only be expropriated for public utility or social interest. Honduras ratified ILO Convention 169 on Indigenous and Tribal Peoples in 1995 to protect prior consultation. This entails that, the state must consult indigenous peoples and involve them in decision-making about projects that may affect their territories and ways of life before passing laws or administrative measures, according to this convention.

Despite these advances, Honduras lacks a law regulating prior consultation, making its implementation difficult. Consequently, Business-included national institutions must administer prior consultation processes. In order to respect indigenous and Afro-Honduran worldviews and rights, prior consultation must be fully and effectively exercised.

## **4. The Struggle to Translate Legal Commitments into Practice: Assessing the Implementation Gap for Prior Consultation in Colombia, Mexico, Chile, Panama, Brazil, and Honduras.**

### **4.1 Colombia**

The implementation of renewable energy projects in Colombia, particularly in the department of La Guajira, faces significant social challenges, including high conflictivity due to concerns about justice, equity, and the management of social and cultural impacts (Vega-Araujo *et al.*, 2023). The process of prior consultation with affected communities is crucial for

the success of these projects. However, the lack of adequate consultation processes has led to conflicts and the non-sustainability of some projects from a social, cultural and environmental focus (Rozo *et al.*, 2011).

Unrest surrounds Colombia's La Guajira wind farms. Some traditional authorities, not necessarily ancestral ones, have been recognised by the government, causing land use negotiations. Wayuu community fragmentation has delayed projects. Petro's energy transition agenda's Colectora project shows these tensions. Real estate, contract, and land disputes arose. Some of the challenges of renewable energy projects and prior consultation are listed above.

### 4.1.1 Guajira Wind Farm Project

Years of poverty, malnutrition, and lack of services have affected the Wayuu people in La Guajira. The history of malnutrition is rooted in social inequality and unjust power structures (López-Ríos *et al.*, 2021). According to Vega-Araújo *et al.* (2023), the Mining-Energy Planning Unit (UPME) predicts 45 wind farms in La Guajira by 2034, with most located within the Wayuu Indigenous people. The first Colombian wind farm, Jepirachi, opened in 2004. The province had 26 renewable energy projects (19 wind and 7 solar) in various stages of development in 2022 (Eiti, 2023).

The experience of Prior Consultation in the implementation of the Guajira Wind Farm renewable energy project in La Guajira has been complex and has presented several challenges and difficulties. For example, in 2023, the government reported that 235 consultation processes had been conducted, but problems emerged nonetheless (Colombia, 2023). There have been cases where prior consultations were conducted with individuals who, although residents of the territory, were not the ancestral landowners. This has led to conflicts and disputes between the Wayuu communities and the wind power companies (Monsalve, 2023a).

Additionally, a lack of transparency and access to information has been identified as a serious issue. It is widely acknowledged by communities, businesses, academic institutions, and the public and private sectors of the region that a lack of knowledge about aspects such as the total area that needs intervention, details about developers and contractors, environmental impact assessments, ethnographic research of nearby communities, and other project-specific details hinders participation and the capacity to predict positive and negative impacts (Monsalve, 2023b). Moreover, it is crucial to consider the interculturality and the Wayúu cosmology when assessing the impacts of these projects on local communities. This involves a serious recognition of the links between nature, culture, and territory, as well as of the divisions between the human and non-human worlds, to determine the real impact of the projects in their cultural and environmental context (Gutiérrez Martínez; Guerra Carrera, 2024).

Although wind energy generation is considered more economical than other forms of energy and renewable energy projects can contribute to energy security and sustainable industrial development (El Heraldo, 2023), the implementation of these projects has also raised environmental concerns, such as potential impacts on local wildlife, including endangered species like the Caribbean flamingo (Corredor, 2023). There have also been tensions related to landscape transformation and cultural practices (Guerra Curvelo; Schwartz, 2023). At the same time, a high percentage of the Wayuu population does not have access to electricity services (Silva Ortega *et al.*, 2017), despite the development of dozens of wind farms in their region. Some propose that multinational companies should involve indigenous communities as partners in the projects. For example, EPM has indicated that for its upcoming parks, the Wayúu community will enter as a partner and participate in 2% of the profits (Ochoa, 2020) (individual compensation, collective compensation vs. economic participation as partners).



### 4.1.2 The Quimbo Hydroelectric Project

The *Quimbo* hydroelectric project, located in the Huila department and developed by Enel (United Nations, 2023), as approved in 2009 and launched in 2015. This project has had a considerable impact on indigenous communities such as the Pijao, Nasa, and Yanakuna, with whom a prior consultation process was carried out. However, in addition to affecting these indigenous communities, the Quimbo has also had negative effects on peasant communities and artisanal fishermen in the departments of Huila, Cauca, and Tolima (Polania, 2021).

According to Dussan and Calderón (2017, p. 13) the residents of the region suffered significant losses of land, directly affecting artisanal fishermen, farmers, day laborers, transporters, and others whose incomes depended on the traditional use of these resources (Polania, 2021). Moreover, the project was carried out despite significant objections from the involved communities, resulting in displacements and other environmental impacts. A critical aspect of the situation was the lack of an effective and adequate prior consultation with the affected communities. This violated the inhabitants' right to receive truthful, complete, and transparent information about the project and its potential impacts. The Environment Minister at the time highlighted that compensating the 427 affected families simply with cash payments, of which there was no clarity or traceability, was unsustainable and unjustifiable. This case shows how previous consultations failed and the need for community-based, consensual consultations. It also emphasises full disclosure and fair compensation for affected populations.

### 4.1.3 México

Solar and wind energy projects are growing in Mexico. Many of these projects are in indigenous areas. Mexico's prior consultation implementation has been criticised for lacking a specific regulatory framework for energy projects. Avila-Calero (2017), Ramirez (2019), Zárate-Toledo *et al.* (2019a), and Barragan-Contreras (2022) identify conflicts, indigenous resistance, and procedural and distributive injustices as major challenges. Community concerns have included not being adequately informed or consulted, or that the consultations are merely formal and do not affect decision-making.

In southern Mexico's indigenous Huave and Zapotec communities, prior consultation and energy project development have caused conflict. Renewable energy development has been difficult in these communities (Zarate-Toledo *et al.*, 2019b). Nearly 20 wind parks operate in the Isthmus of Tehuantepec. The local Zapotec communities have opposed these projects, claiming they were not consulted and that they affect their lands and way of life. Zapotec communities are concerned about the lack of genuine prior consultation before implementing wind projects that could affect them (Zarate-Toledo *et al.*, 2019b), undermining the principle of free, prior, and informed consent. This mistrust and discontent have led to significant resistance from these communities (Hernández Vásquez *et al.*, 2022).

Communities are concerned about the effects of such projects on their land and way of life and the lack of prior consultation. These include social and cultural effects, property disputes, landscape loss, and high noise levels in communities (Castillo Jara, 2011). Ramirez (2021) argues from the perspective of "internal colonialism" that investments in wind energy in the region perpetuate the historical oppression and repression of indigenous peoples by elite groups, including those with governmental or business power.

The President of Mexico, Andrés Manuel López Obrador, has acknowledged the human rights violations suffered by indigenous communities in relation to the *Eólica del Sur* project (Desinformememos, 2021). In this context, the creation of more robust policies and more inclusive and transparent consultation processes will be key to the success of future energy projects and the protection of the rights of indigenous communities.

#### 4.1.4 Chile

The HidroAysén hydroelectric project in Chile, which proposed the construction of five dams on the Baker and Pascua rivers, was cancelled after facing significant opposition from local communities, environmental groups, and a large percentage of the Chilean citizenry. The opposition focused on the inadequacy of prior consultations and the potential damage to unique ecosystems in the Chilean Patagonia, one of the last great expanses of wild nature in the world (International Rivers, 2014).

The Committee of Ministers of Chile, the country's highest administrative authority, annulled the environmental permits that had been granted to the dams in 2011, culminating an eight-year dispute. The decision was applauded by a coalition of about seventy Chilean and foreign organizations, including the NRDC (Natural Resources Defense Council) and International Rivers, as a milestone for the country toward a sustainable future with renewable energy. The project's cancellation was seen as a major victory for the environmental movement and a turning point where empowered citizens demand to be heard and participate in decisions affecting the environment and their lives. The varied nature of Patagonia was considered an environmental treasure, and the dams would have endangered the region's incredible landscapes, culture, and tourism.

The HidroAysén project, proposed by the companies Endesa Chile and Colbún, also faced criticism for not adequately assessing the environmental impact of the dams and for not considering other energy options. It was argued that the country's future energy needs could be better met with renewable energies and energy efficiency (Maxwell, 2011).

Finally, in November 2017, the companies Colbún and Enel announced the definitive cancellation of the HidroAysén project, recognizing that the development of projects with the characteristics of HidroAysén also required a widely agreed-upon energy policy, a condition that was not possible to achieve (Roca, 2017).

#### 4.1.5 Panamá

In Panama, problems have been identified with hydroelectric projects such as Barro Blanco and Chan I and II, where the prior consultation process has shown errors and distortions. These errors have led to conflicts with indigenous communities, affecting the worldview and way of life of the indigenous population (Ospina, 2015).

The Barro Blanco Hydroelectric Project in Panama faced controversies related to the prior consultation process and generated conflicts with the Ngäbe-Buglé indigenous communities. Negative impacts on the livelihoods of approximately 5,000 Ngöbe farmers who depend on the river for drinking water, agriculture, and fishing were reported. Furthermore, it was criticized that the impacted communities never gave their free, prior, and informed consent for the project. Although the company GENISA claimed that the project would not flood indigenous villages or require relocations, the criticisms focused on the lack of adequate consent and the environmental and social impacts.

The project was temporarily suspended in February 2015 following protests. Later, in August 2015, the President of the Republic authorized the partial resumption of construction, reflecting the complexity and tension between the development of energy infrastructure and the rights of indigenous communities.

Finally, an agreement was reached between the government and the leaders of the Ngäbe Buglé Comarca in 2016. This agreement included measures such as the operation of the project by an independent third party and the commitment that 50% of the staff would be indigenous people from the Ngäbe Buglé Comarca and peasants. Additionally, the agreement established the creation of a trust fund with government contributions for the development of activities in the indigenous and peasant communities near the project (El Capital Financiero, 2016).

#### 4.1.6 Brazil

In Brazil, the expansion of wind farms in the state of Bahia has led to conflicts in traditional territories. Communities have faced issues with companies, primarily over land lease contracts for installing turbines. These conflicts have also caused internal divisions within the communities, as opinions on the installation of wind parks vary among families (Caramel, 2022).

On the other hand, the construction of hydroelectric plants in the Amazonian ecosystems, such as the Madeira River Hydroelectric Complex in Brazil, has caused significant negative impacts in the region (Farabundo, 2009). These impacts include the disruption of river connectivity, changes in water levels, restriction of migratory fish passage, and displacement of local communities, leading to serious social, economic, and environmental consequences (Fearnside, 2019). The lack of participation by affected communities in decisions related to these projects, as well as the absence of adequate compensation and mitigation measures, have been critical issues in the installation process of these plants. Although hydroelectric power represents a significant portion of the total electricity generation in the country, concerns have been raised about the socio-environmental impacts associated with these dams. Hydroelectric projects are expected to continue to grow in the coming years (Mordor Intelligence, 2023), with a focus on updating existing power stations to improve their efficiency and control systems.

The Belo Monte Hydroelectric Complex, located on the Xingu River in the state of Pará, Brazil, is one of the largest and most controversial dam projects in the world. With a planned installed capacity of 11,233.1 MW, Belo Monte would be the third-largest dam in the world, located in one of the planet's most crucial ecosystems: the Amazon rainforest. The project has faced strong opposition and resistance from indigenous communities and environmentalists due to its social and environmental impacts.

Indigenous communities have argued that they were not adequately consulted about the Belo Monte project, which would flood a vast area of land, dry up parts of the Xingu River, and destroy the forest, reducing the fish reserves essential for their subsistence. Moreover, more than 60 legal proceedings challenge the irregularities of the hydroelectric plant in Brazilian courts, including lawsuits filed by the Federal Public Ministry of Pará and other civil society institutions.

Norte Energia received R\$ 25.4 billion (US\$ 10.16 billion), its largest investment, from Brazil's National Bank for Economic and Social Development (BNDES) to build the dam. However, the bank has denied access to the amounts already disbursed, despite access being guaranteed by Brazil's Access to Information Law. Indigenous occupation of the construction site and protests against the dam construction consortium's environmental and social failures have also opposed the project. Documentation shows how the dam has displaced communities and changed traditional ways of life.

#### 4.1.7 Honduras

Agua Zarca Hydroelectric Project in Honduras has been controversial since the murder of human rights and environmental activist Berta Cáceres. The Lenca indigenous Cáceres opposed the project, arguing that it violated indigenous communities' rights by failing to consult and obtain their free, informed, and good faith consent as required by ILO Convention 169 on Indigenous and Tribal Peoples. On March 3, 2016, unknown people murdered Cáceres at her Intibucá home, drawing international attention to Honduran human rights and environmental defenders' violence and vulnerability (Front Line Defenders, 2024). On November 30, 2018, the National Criminal Court of Honduras convicted seven men for her murder, but Cáceres' family and international organisations have criticised the government and called for an independent international investigation.

The Agua Zarca project on the Gualcarque River in Santa Bárbara was halted after Cáceres' murder. Construction may resume at any time since the project's licence is valid. This project has been criticised for its environmental and social

impacts and lack of consultation with indigenous communities. Cáceres' death illustrates the risks and conflicts of development projects in indigenous territories in Honduras, where environmental and human rights activists are increasingly persecuted. Her murder emphasises the need to protect environmental defenders and indigenous communities from development and investment projects.

## 5. Towards Effective Prior Consultation in the Renewable Energy Sector: Experiences and Recommendations from Six Countries in the Region

This article examined prior consultation challenges in Latin American renewable energy projects, focusing on Colombia, Mexico, Chile, Panama, Brazil, and Honduras. Prior consultation challenges in the region are diverse and complex, according to this research:

Table 1 – Challenges and Obstacles in Prior Consultation for Renewable Energy Projects in Six Latin American Countries

Country	Main Challenges and Issues in Prior Consultation
Colombia	- Social conflict due to concerns about justice and equity.
	- Territorial disputes and lack of clarity in prior consultation.
	- Lack of transparency and access to information.
	- Need to consider interculturality and indigenous cosmology in project impacts.
México	- Lack of a specific regulatory framework for prior consultation in energy projects.
	- Perception of consultations as formal and without real impact.
	- Conflict over property, impact on landscapes, and high noise levels.
	- Human rights violations in relation to energy projects.
Chile	- Insufficiency of prior consultations and potential damage to unique ecosystems.
	-Cancellation of projects due to significant opposition from communities and environmental groups.
Panamá	- Errors and distortions in prior consultation that generate conflicts with indigenous communities.
	- Negative impacts on the livelihoods of communities dependent on natural resources.
Brasil	- Conflicts over land lease contracts in traditional territories.
	- Significant negative impacts of hydroelectric projects on Amazonian ecosystems.
Honduras	- Violations of the rights of indigenous communities due to lack of genuine prior consultation.
	- Negative environmental and social impact of hydroelectric projects.
	- Murder of activists and defenders of human and environmental rights, highlighting the high risk for those who oppose these projects.

Source: Author's own elaboration.

The cases show patterns, themes, and key differences between the countries. Each country struggles to implement prior consultation, often due to a lack of clarity, inadequacy, or the perception that these are mere formalities without real impact. Social conflict stems from justice, equity, territorial disputes, and lack of transparency. Balancing renewable energy project development with local community rights and expectations is difficult. Moreover, environmental and social impacts and cultural aspects of affected communities, such as indigenous cosmology in Colombia or unique ecosystems in Chile, are common concerns.

Prior consultations emphasise justice and equity, as communities want fair and equitable participation in decisions that directly affect them. Human rights violations, including community lifestyle changes and activist murders in Honduras

and Mexico, are another recurring theme. In Chile, community and environmental opposition has even cancelled projects, demonstrating the importance of community support for renewable energy projects.

As key differences, it is observed that while some countries lack a specific legal and regulatory framework for prior consultation, like in Mexico, in others the challenges are more focused on implementation rather than the absence of regulations. Additionally, the nature of the conflicts varies, as while in Colombia and Mexico they are often related to a lack of clarity and the perception of the consultations, in Panama and Honduras the conflicts are exacerbated by errors in prior consultation and direct violations of the rights of indigenous communities.

This aligns with what Flemmer and Schilling-Vacaflor (2016), point out, stating that consultation processes often fail to fulfill their promises due to power asymmetries, communication challenges, and inadequate time for effective participation. It also agrees with Machado *et al.* (2017), who identify the difficulty in creating conditions for true interculturality and the lack of political will to uphold consent as significant issues.

To strengthen the normative framework for prior consultation in renewable energy projects, it is crucial to develop or enhance specific legislation that clearly defines procedures, criteria, and rights of all parties involved, while harmonizing with international standards. Strengthening institutional capacity, community participation, free, prior, and informed consent, transparency, accountability, and conflict resolution should be part of the comprehensive approach. Traditional indigenous organization and decision-making, prior consultation in energy planning, and culturally and worldview-based community participation should be recognized. Clear compensation and benefit-sharing mechanisms for affected communities are crucial. Transparency and complete project and impact information are also essential. Countries can create an effective and equitable regulatory framework for inclusive sustainable renewable energy development that respects local communities' rights by addressing these issues.

Renewable energy projects are complex and project promoters and local communities lack technical knowledge, making decision-making difficult (Jami; Walsh, 2014). However, true interculturality and political will to maintain consent are major issues (Machado *et al.*, 2017). Consultation processes often don't deliver due to power imbalances, communication issues, and insufficient time for participation (Flemmer; Schilling-Vacaflor, 2016). Public resistance to switching to renewable resources, often due to landscape changes and lifestyle disruptions, is another issue (Pasqualetti, 2011). Renewable energy project decisions must include social criteria and participation mechanisms. Expert consultation is common, but the process is rarely described (Estévez *et al.*, 2021).

## 6. Conclusions

Despite legal recognition, prior consultation cases in renewable energy projects in Colombia, Mexico, Chile, Panama, Brazil, and Honduras show common weaknesses in the effective implementation of this fundamental right. Some of these issues include a lack of clarity and adequacy in consultations, the belief that they are mere formalities without real impact on decisions, and social conflicts over justice, equity, territorial disputes, and transparency. Key differences exist between countries. Countries like Mexico lack a legal and regulatory framework for prior consultation in energy projects, but others face more implementation challenges. Conflicts vary from unclear consultations in Colombia and Mexico to process errors and indigenous rights violations in Panama and Honduras. These findings inform discussions about how to balance renewable energy development with community rights by strengthening regulatory frameworks, institutional capacities, socio-environmental safeguards, and genuine intercultural dialogue. Community support is essential for these projects, as shown by Chile's project cancellations due to opposition.

Closing the gaps in the implementation of prior consultation will be essential to move towards a just and sustainable energy transition in Latin America. Addressing the identified challenges will require concerted efforts to strengthen legal and institutional frameworks, as well as a renewed commitment to respect indigenous rights and effective community participation in decisions that affect their territories and ways of life. Only then can prior consultation fulfill its purpose of giving indigenous peoples a meaningful voice in the development of renewable energy in the region.

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