IN THE SUPREME COURT OF BRAZIL
before Ministro Alexandre de Moraes
in the cases of
Ações Diretas de Inconstitucionalidade nos. 7.913/DF, 7.916/DF e 7.919/DF e
Ação Declaratória de Constitucionalidade no. 102

***AMICUS CURIAE* SUBMISSIONS OF CONECTAS DIREITOS HUMANOS,**
AGORA INTERNATIONAL HUMAN RIGHTS GROUP,
CENTRO DE ESTUDIOS LEGALES Y SOCIALES, DEJUSTICIA, LEGAL RESOURCES CENTRE,
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A. INTRODUCTION

1. These submissions are made by Conectas Direitos Humanos, Agora International Human Rights Group (Russia), Center for Legal and Social Studies–CELS (Argentina), Dejusticia (Colombia), Hungarian Civil Liberties Union–HCLU (Hungary), and Legal Resources Centre–LRC (South Africa) –hereinafter, "the interveners"- pursuant to the leave to intervene as *amici curiae* in the cases of reference, which concern the constitutionality of laws Law No. 15.190/2025 and Law No. 15.300/2025, that reformed environmental licensing procedures in Brazil. The information on the interveners can be found in their request to be admitted as *amici curiae* of 20 July 2026.

2. These contributions will address the analysis of international and comparative law regarding environmental licensing. First, the importance of environmental licensing in guaranteeing environmental rights recognized at both international and domestic levels will be addressed; subsequently, three central components of environmental licensing processes will be analyzed: environmental impact assessments, public participation, and the right of indigenous peoples to free, prior, and informed consent.

3. This intervention will argue that, by prioritizing speed and economic interests over administrative efficiency and environmental safety, the new legislation ends up violating the rights to an ecologically balanced environment, public participation in environmental matters; and free, prior and informed consent of indigenous peoples.

4. In addition, comparative evidence will be presented to illustrate how the creation of exceptional legal frameworks for projects categorized as "strategic" or "prioritary" weakens ordinary planning and environmental safeguards in the name of efficiency and economic development. This intervention will uphold, therefore, that no consideration of the strategic importance of an industrial activity can exempt a State from subjecting that activity to prior authorization (licensing).

5. The interveners note that domestic and international cases rely on different legal grounds when addressing environmental licensing. These include the right to life, the right to private and family life, and social and economic rights such as the right to health, water, and food. Together, or sometimes alone, these rights are used to support a right to a healthy environment. Courts also draw on the right to a safe climate and on international environmental treaties and customary law. Yet, in the interveners' submissions, those differences in the formulations of the applicable legal base had little or no impact on their reasoning and the outcomes of the cases. For this reason, the interveners do not discuss the variety of rules applicable in the cases mentioned in these submissions.

B. LICENSING AS A SUBSTANTIVE ASPECT OF ENVIRONMENTAL RIGHTS

6. Comparative and international practice demonstrates that environmental licensing constitutes one of the principal means by which States discharge their positive obligations to protect individuals and communities from environmental harm. Courts and international tribunals have consistently recognized that potentially harmful activities must remain subject to prior authorization and effective oversight, irrespective of their economic or strategic significance.

7. The Inter-American Court of Human Rights held that States must take measures to prevent significant harm or damage to the environment, within or outside their territory, and any harm to the environment that may involve a violation of the rights to life and to personal integrity must be considered significant harm (IACtHR, *Medio ambiente y derechos humanos*, Opinión consultiva OC-23/17, 24 de noviembre de 2017, Serie A no. 23, para. 140).

8. "The fact that the domestic authorities handed over the management of a public service to third parties does not relieve them of the duty of care incumbent on them", the European Court of Human Rights ruled recently, but now famously (*Kotov and others v. Russia*, nos. 6142/18 *et al.*, 11 October 2022, para.123). In that case it found in favour of the applicants complaining about the pollution of a landfill that functioned for at least four years without complying with essential requirements of registering as a landfill and as a polluting enterprise with the State which "would not be possible without some omissions on the part of the authorities"; delays in enforcing some of the environmental regulations were up to 9 years (*ibid.*, para. 128).

9. While most of the cases before that Court concerned States' failures to enforce compliance with regulations or licensing conditions, it has also dealt with the very requirement of licensing. In *Taşkin and others v. Turkey* the European Court found a violation of the European Convention on Human Rights because the gold mine using cyanide processing continued operating for ten months after its licence had been struck down by the Turkish Supreme Administrative Court on account of the risk posed to the local ecosystem, human health and safety by sodium cyanide use (no. 46117/99, 10 November 2004, ECHR 2004-X, paras. 26 and 122).

10. *Cannavacciuolo and others v. Italy* concerned what the Strasbourg Court described as "completely unregulated dumping, often accompanied by incineration, and burying of hazardous waste [that were] inherently dangerous activities which [posed] a risk to human life" (nos. 51567/14 *et al.*, 30 January 2025, para. 385). While the problem appeared in late 1990s, the Italian Government only introduced a plan to combat it, which included the introduction of authorizations for waste disposal (i.e., licences), only in 2018. The European Court of Human Rights found the delay in the introduction of licensing had been unacceptable (*ibid.*, para. 462).

11. Whereas the European Court of Human Rights recognises that strategic importance of certain economic activities is to be balanced against the privacy of individuals, regulations and their enforcement are required to strike that balance (e.g. London Heathrow Airport in *Hatton and others v. the United Kingdom* [GC], no. 36022/97, 8 July 2003, ECHR 2003-VIII, para. 126). In the landmark case of Fadeyeva v. Russia, the Court acknowledged the importance of the Severstal Steel Works in Cherepovets (one of the largest steel plants in the country) to the national economy. Nevertheless, it also criticized the respondent Government for failing to produce environmental studies. Importantly, the Court also faulted the Government for failing to explain "how they influenced policy in respect of the plant, particularly the conditions attached to the plant's operating permit." (no. 55723/00, 9 June 2005, ECHR 2005-IV, para. 128, emphasis added).

12. Since at least the *Fadeyeva* ruling, it is the clear case law of the Strasbourg Court that licensing conditions should aim at reducing the pollution harmful to health and the environment. It is thus incumbent on the respondent Governments to explain "how the interests of the population residing around [the polluting enterprise] were taken into account when the conditions attached to the permit were established" (*ibidem*). Dealing with heavy metal pollution from gold and silver extracting industry in Romania the European Court concluded, among other criticism of the policies towards the polluter, that the licence conditions turned out to be insufficient to prevent harmful emissions – a situation with heavy consequences for the environment and the well-being of the population (*Tatar v. Romania*, no. 67021/01, 27 January 2009, para. 112).

13. With regard to the procedures where licensing of industrial activities was delegated to the businesses themselves (so-called "self-licensing"), the Supreme Court of India struck down an administrative decision granting *ex post facto* environmental clearances. Under environmental protection legislation, such clearances had to be obtained prior to the beginning of activities harmful to the environment, but a governmental circular acknowledged and extended the period for which the production of pharmaceuticals, among others, could be undertaken without a clearance.

14. The Supreme Court of India found that the circular was not a measure for the purpose of protecting and improving the quality of the environment, that the concept of *ex post facto* clearance was fundamentally at odds with environmental legislation which had mandated prior clearances (*Alembic Pharmaceuticals Ltd. v. Rohit Prajapati*, (2020) 17 SCC 157 at 21). The Supreme Court went on to qualify the circular on *ex post facto* clearances as "anathema" to environmental jurisprudence as its underlying idea as it allowed to skip many stages of decision-making, including conducting a public hearing, screening, scoping and appraisal. The adoption of the circular resulted in polluting enterprises conducting their activities for years without oversight (ibid., at 23). Even though the companies eventually obtained the required clearances, they were fined approximately USD 1,35 million for the period when they functioned illegally.

15. These conclusions of the Supreme Court of India were reached on the basis of a prior case which concerned an attempt to obtain an *ex post facto* clearance for an extension of an already operating mining project, but such clearance was denied (*Common Cause* v. *Union of India*, (2017) 9 SCC 499 at 125). *Alembic Pharmaceuticals* has also recently been applied to real estate developers (*Vanashakti v. Union of India*, 2025 SCC OnLine SC 1139).

16. Comparative constitutional practice has similarly recognized that projects designated as strategically or economically important do not thereby cease to be subject to ordinary environmental guarantees. In Hungary, in Decision 28/1994 (V.20.) AB, the Constitutional Court developed the principle of non-regression (*visszalépés tilalma*), according to which the State may not lower existing levels of environmental protection without demonstrating that an equivalent level of protection will be maintained. This principle is closely linked to the constitutional precautionary principle, which requires public authorities to act before environmental harm materializes where there is a foreseeable risk of irreversible damage.

17. The Hungarian experience illustrates concretely how formal non-regression guarantees can fail to prevent incremental erosion in practice when executive discretion to define "strategic importance" goes unchecked. Hungary introduced the category of investments of outstanding national economic importance in 2006. In its initial phase, the designation was applied sparingly, averaging only one to five new government decrees per year, and was reserved for major state-driven infrastructure and large-scale foreign investment. From 2011, its scope expanded steadily: annual designations grew to 10–20 decrees per year by 2014, and to 25–40 per year between 2015 and 2019, as the category was extended progressively to sports infrastructure, tourism, and cultural heritage projects. Between 2020 and 2023, driven by economic stimulus during the COVID-19 pandemic and the expansion of battery and automotive manufacturing facilities, annual designations reached 50 to over 80 legislative acts per year. Over two decades, what was designed as a genuinely exceptional legal category, legally bounded by the Constitutional Court's own non-regression principle, became a routine instrument used to bypass standard planning and environmental review.

C. ENVIRONMENTAL IMPACT ASSESSMENTS

18. Environmental impact assessments are among the most developed procedural components of environmental licensing. They serve not only to inform administrative decision-making, but also to ensure that licensing authorities possess sufficient information to prevent environmental degradation before it occurs. Comparative jurisprudence increasingly recognizes that this obligation extends beyond immediate environmental effects and encompasses cumulative and climate-related impacts where these may significantly affect ecosystems and human rights.

19. In general international law, environmental impact assessments have been a mandatory requirement for both industrial and non-industrial activities in transboundary contexts, as confirmed by the consistent case law of the International Court of Justice (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay),* Judgment, ICJ Reports 2010(I), p. 83, para. 204; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica),* Judgment, ICJ Reports 2015(II), p. 706, para. 104). This is a reflection in the transboundary context of a more general rule requiring the assessment of risks to the environment (ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion, 23 July 2025, p. 91, para. 297).

20. With the rise of climate change risks, these should be incorporated into EIAs "for the purpose of preventing significant harm to the climate system" (*ibidem*). Climate change risks being transboundary by definition, it is for the States to either include them in the general EIAs or develop specific climate risk assessment procedures for that purpose. Despite difficulties in the analysis of GHG emissions, the ICJ was unequivocal in its conclusion that "all States *provide for and conduct EIAs* with respect to particularly significant proposed individual activities contributing to GHG emissions *to be undertaken* within their jurisdiction or control, on the basis of the best available science" (*ibid.*, para. 298, emphasis added).

21. Even before the ICJ, the Constitutional Court of Colombia found that climate change considerations should be a mandatory part of environmental impact assessments (Judgment C-280 of 2024). That Court ruled that the constitutional right to a healthy environment could not be effectively guaranteed if environmental authorities lacked sufficient information about the climate impacts of projects subject to licensing (para. 421); if the State failed to flag that a project may affect climate change, environmental protection and sustainable development would be compromised, with a disproportionate impact on ethnic and rural communities and other subjects of special protection. The Court also held that omitting climate-change impacts undermines the effective community participation right (para. 321), depriving communities of the information they need to influence decisions that affect them (para. 333). The requirement to include climate change considerations itself was not found disproportionate as scientific advances and methodologies were already available to identify them. The Colombian Court also had regard to the evolution of international law, including the Kyoto Protocol and the Paris Agreement, and to comparative law, both American and from other continents as well.

22. The Inter-American Court of Human Rights (*Advisory Opinion AO-32/25*) has similarly held that, in the context of the climate emergency, States must determine the climate impacts of projects and activities where necessary. This obligation forms

part of the enhanced due diligence required from States to prevent significant harm to the climate system and related human rights, taking into account the best available science and the differentiated impacts of climate change on persons and groups in situations of particular vulnerability.

23. This is also what the National Environmental Tribunal of Kenya had ruled in *Save Lamu and others v. National Environment Management Authority and others*. That Tribunal recalled that the purpose of EIAs was to assist a country in attaining sustainable development when commissioning projects and that the achievement of the United Nations' Sustainable Development Goals should go hand in hand with tackling climate change. It struck down a decision to grant an operating licence because of the failure to consider the impact of a proposed coal power plant on climate change during the EIA (NET 196 of 2016, 26 June 2019, esp. paras. 16 and 151). The same failure led to the same findings having been made by the North Gauteng High Court at Pretoria, South Africa (*Earthlife Africa Johannesburg v. Minister of Environmental Affairs et al.* [2017] ZAGPPHC 58 at 107).

24. In an earlier case, applying the notion of indivisibility of rights, in particular the right to healthy environment and social and economic rights, the Constitutional Court of South Africa held that environmental impact assessment would not be lawful, under the Constitution and international law, if it did not include socio-economic impacts of the proposed activity (*Fuel Retailers Association of Southern Africa v. Director General, Environmental Management et al.* [2007] ZACC 13 at 89-91). The African Commission in *Social and Economic Rights Action Centre* (*SERAC) and another v. Nigeria* also insisted on the continuous nature of independent review of the environmental impacts of industrial activities ([2001] AHRLR 60 at 53). In view of the obligation of States to ensure that climate change impact assessments are conducted, these requirements should apply to such assessments as well.

25. Similarly, in *Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others*, the High Court of South Africa held that the authorization of offshore oil and gas exploration without a prior assessment of climate impacts was inconsistent with the requirements of lawful environmental decision-making. The Court observed that climate change constitutes one of the greatest threats to human rights and the environment and concluded that decision-makers must be placed in a position to evaluate the greenhouse gas emissions and broader climate implications associated with a proposed activity before granting authorization.

26. Argentinian courts halted the implementation of lithium mining projects in the Salar del Hombre Muerto — specifically in the Río Los Patos area, however strategic for

national and global economy, for the lack of EIAs. Lithium mining consumes large quantities of water and takes place in areas that are particularly arid and increasingly drying out as a result of climate change, so it was necessary to prevent irreversible damage to the Río Los Patos ecosystem. The provincial court required EIAs be conducted for such projects, having referred to article 17 of the Escazú Convention which required that authorization processes for activities affecting the environment must include "a description of the environmental impacts of the project or activity and, where applicable, the cumulative environmental impact" (Corte de Justicia de Catamarca, *Guitián*, Case no. 054/2022, 13 March 2024).

27. In a case concerning exception to the obligation to conduct EIA for the projects relating to national defence, the European Court of Justice ruled that the exception should be interpreted restrictively and does not apply where the project envisages commercial activities together with military ones (ECJ, *WWF and others (Verwaltungsgericht, Autonome Sektion für die Provinz Bozen)*, Case C-495/97, 16 September 1999).

D. PUBLIC PARTICIPATION

28. The effectiveness of environmental licensing depends to a great extent on the ability of affected persons to participate meaningfully in the decision-making process. Comparative practice demonstrates that licensing procedures must guarantee communities a genuine opportunity to be informed, to express their views, and to influence decisions concerning activities that may affect their environment, livelihoods, and cultural life.

29. The right to participate in public affairs, guaranteed by Article 23(1)(a) of the American Convention on Human Rights, gives rise to the State's obligation to guarantee the participation of persons under its jurisdiction in decisions and policies that may affect the environment, without discrimination, in an equitable, meaningful, and transparent manner. To this end, States must first have ensured access to the relevant information (see IACtHR, Opinión consultiva OC-23, cited above, para. 232).

30. Within the context of climate emergency, the obligations of States under the American Convention further include the right to public participation in decision-making and policymaking that may affect the climate system, without discrimination, giving priority to persons, communities, and indigenous peoples who are particularly affected by climate harm, as well as by the measures taken by the State to prevent and respond to such harm (*Emergencia climatica y derechos*

humanos, Opinión consultiva OC-32/25, 29 de mayo de 2025, Serie A no. 32, paras. 536-537).

31. Regarding the timing of public participation, the Inter-American Court has found that the State must guarantee opportunities for effective participation from the earliest stages of the decision-making process and must inform the public of these participation opportunities (*Habitantes de la Oroya c. Perú*, Sentencia de 27 de noviembre de 2023, Serie C no. 511, para. 152).

32. The Supreme Court of Kenya set out the criteria that the public consultations have to meet to be regarded as genuine in the leading judgment of *British American Tobacco PLC v. Cabinet Secretary for the Minister of Health and others* (Petition 5 of 2017, [2019] eKLR at para. 96). They are as follows:

> (i) Public participation applies to all aspects of governance.
>
> (ii) The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
>
> (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.
>
> (iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is a need for both quantitative and qualitative components in public participation.
>
> (v) Public participation is not an abstract notion; it must be purposive and meaningful.
>
> (vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.
>
> (vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.
>
> (viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.
>
> (ix) Components of meaningful public participation include the following:
>
> (a) clarity of the subject matter for the public to understand;

(b) structures and processes (medium of engagement) of participation that are clear and simple;
(c) opportunity for balanced influence from the public in general;
(d) commitment to the process;
(e) inclusive and effective representation;
(f) integrity and transparency of the process;
(g) capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.

33. Importantly, the Supreme Court of Kenya underscored that the industry that is likely to profit from a governmental decision should be kept at length from the public consultations for the consultations to remain meaningful (*ibid.*, at 107-108). A recent reform was invalidated by the High Court of Kenya at Nairobi for the reason that the public consultations were limited to a half of the proposals of the reform (*Matindi and others v. President of the Republic of Kenya and others* [2023] KEHC 19534 at 220).

34. High Court of South Africa (Eastern Cape Division) at Makhanda struck down licences issued after the public consultations conducted only with the leaders of the communities concerned, but not with members thereof, and without making any proper notice of the proposed industrial activity; it held that the consultation process had been procedurally unfair as there had been no effort to identify and include the directly affected members of the communities.

> It would seem Impact and Shell were content to consult with only the monarchs or the communities, adopting the ill-begotten stance that such consultations sufficed. That view was clearly incorrect. From a reading of the application papers, it is evident that the traditional leaders concerned urged the consultants to deal directly with members of the affected communities, to no avail. In any event, the top-down approach whereby kings or monarchs were consulted on the basis that they spoke for all their subjects is a thing of the past which finds no space in a constitutional democracy. There is no law, and none was pointed to, authorising traditional authorities to represent their communities in consultations (*Sustaining the Wild Coast NPC et al. v. Minister of Mineral Resources and Energy et al.*, Case no. 3491/2021, 1 September 2022, at 92 and 99).

35. On appeal, the Supreme Court of Appeal upheld the finding of unlawfulness, though it suspended the order setting aside the exploration right pending a further application by the respondent.

36. In a similar sense, Argentina provides solid guarantees for the prior consultation of indigenous peoples, in particular, however important the projects may be (CSJN, *Comunidad Aborigen de Santuario Tres Pozos and others*, case C.1196. XLVI, concerning exploration and mining permits for lithium and borate). Importantly,

redefinition of what constitutes an indigenous people is also subject to public consultation with those concerned, ruled by the Supreme Court of Justice of the Nation (*Confederación Indígena del Neuquén*, case C. 1324. XLVII).

E. FREE, PRIOR AND INFORMED CONSENT OF INDIGENOUS PEOPLES

37. Particular considerations arise where environmental licensing affects Indigenous Peoples and other traditional communities. International law has long recognized that activities capable of affecting their territories, resources, or ways of life trigger specific procedural obligations, including consultation and, where applicable, free, prior and informed consent. Comparative jurisprudence further confirms that such obligations cannot be made contingent upon the completion of domestic recognition or titling procedures where delays are attributable to the State itself.

38. It is well-established in the Inter-American jurisprudence that free and effective participation of indigenous peoples in the decision-making that concerns themselves, their resources or environment is a part of their free, prior and informed consent on those matters (IACtHR, *Saramaka People v. Suriname*, Sentencia de 28 de noviembre de 2007, Serie C no. 172, para. 137).

39. UN Declaration on the Rights of Indigenous Peoples (UN GA Res. 61/295, 13 September 2007) introduced the concept of free, prior and informed consent of indigenous peoples, in particular, in respect of the measures that may affect them generally (Article 19) and, in particular, that may result in their relocation (Article 10), affect cultural traditions and customs (Article 11(2)) and, importantly, result in confiscation, taking, occupation, use of and damage to the lands or resources they have traditionally owned or otherwise occupied or used (Article 28(1)) or storage of hazardous waste (Article 29(2)).

40. In *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 ("the *Endorois* case"), the African Commission recognised the Endorois community as a "people" under the African Charter of Human and Peoples' Rights. The matter concerned the removal of the community from its ancestral lands around Lake Bogoria, Kenya, following the gazetting of the area as a game reserve, and its exclusion from associated decision-making processes. It was found that the Kenyan government had violated their rights to property, culture, religion, development, and the free disposal of natural resources.

41. The African Commission found further that the Endorois community's right to development had been violated because they had been informed of the project as a

fait accompli and were not afforded an opportunity to shape or play a role in policy (at 281-282). This was a rejection of the proposition that development may be decided only at the State level and then imposed on affected communities.

42. In *Endorois* the African Commission held that the State has a duty not only to consult, but to obtain FPIC from an affected community according to their customs and traditions (at 291). FPIC therefore operates as a mechanism through which affected peoples are able to exercise meaningful choice where development implicates their land, resources, culture, and livelihoods.

43. Firstly, FPIC refers both to a substantive principle under international treaty and customary law as well as a process designed to ensure satisfactory development outcomes. To realise this principle, the community's decision should be made free from any obligation, duty, force or coercion. Ideally, alternative development options should also be available to the community to ensure that the decision is based on real choice. Secondly, the community is entitled to make the development choice prior to any similar decisions made by government, finance institutions or investors. In other words, FPIC is not realised if the community is presented with a project as a *fait accompli*. Thirdly, the community must be able to make an informed decision. That means that they should be provided sufficient information to understand the nature and scope of the project, including its projected environmental, social, cultural and economic impacts. Such information should be objective and based on a principle of full disclosure. The community should be afforded enough time to digest and debate the information. Finally, consent means that the community's decision may be to reject the proposed development. They can say no.

44. FPIC is then also described as a process precisely because the right to say no places the community in a position to negotiate. In other words, FPIC is not designed only to stop undesirable projects, but also to provide communities with better bargaining positions when they do consider allowing proposed developments on their land or resources.

45. An Argentinian judge ruling on a company's claim against an indigenous community which opposed the company's projects on their lands (Civil Judge no. 2 at Cutral Co, Province of Nequén, *Petrolera Piedra del Águila SA v. Curruhuinca Victorino and Others*, 16 February 2011, Case no. 43907/07) found that the constitutional guarantee of indigenous participation in management of their resources comprises:

> (a) the right to information and consultation, which must be broad, prior, mandatory, conducted in good faith, allow indigenous peoples free expression, and respect their ancestral institutions and practices;

(b) the right to prevent the implementation of any initiative not preceded by such information and consultation, giving the latter the character of a "sui generis mandatory opinion," the absence of which renders any resulting decisions irremediably void;

(c) the right to obtain economic benefits where these result from the exploitation of natural resources or from other tourism, rural, industrial, or similar activities; and

(d) the right to monitor the execution, implementation, and evaluation of activities that may affect their interests — which translates into ongoing consultation throughout every stage, for which the necessary economic resources must be provided to make such oversight effective.

46. The above reasoning also reflects the criteria of the ILO Convention no. 169 on Indigenous and Tribal Peoples.

47. The requirement that Indigenous peoples be consulted whenever activities may affect their territories cannot be conditioned upon the completion of domestic recognition or titling procedures. In *Andrada de Quispe, Rosario Ladiez and others v. Provincial State*, proceedings concerning the implementation of a judgment ordering the transfer of communal lands to Indigenous communities in the Province of Jujuy, Argentine authorities argued that sufficient measures had been taken notwithstanding the fact that numerous communities had yet to obtain legal title. The case illustrates the principle that States remain under an obligation to complete the procedures necessary to give effect to Indigenous communal property rights and to guarantee consultation and participation in all administrative proceedings affecting those lands. State delays in regularization procedures cannot operate to the detriment of the rights of Indigenous peoples.

48. Likewise, in *Maledu and Others v. Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another*, the Constitutional Court of South Africa held that the existence of valid mining rights did not extinguish the applicants' rights arising from their occupation of the land under customary law. The Court emphasized that informal land rights continue to enjoy legal protection notwithstanding the absence of formal title and that affected communities must be afforded the procedural guarantees attached to those rights. In particular, the Court rejected the proposition that the authorization of extractive activities could, by itself, render Indigenous and customary occupants unlawful occupiers. Rather, the rights of such communities remain operative until lawfully extinguished in accordance with the applicable legal framework.

E. CONCLUSION

49. On the basis of the above, the interveners submit that, in the current state of international and comparative law, environmental licensing is recognized as a

fundamental mechanism through which States give effect to their obligations to protect the rights to a healthy environment, life, health, and the rights of Indigenous Peoples and other traditional communities.

50. No considerations of strategic nature of industrial activity, where such activity produces environmental impacts and/or GHG emissions that engage human rights guaranteed by international and domestic law, can dispense the State from subjecting such activities to prior licensing to ensure that the least possible damage to the environment and individuals concerned is caused and that the damage caused is compensated. This requires, among other procedures, conducting environmental impact assessments which include climate change considerations, genuine public consultations and free, prior and informed consent of indigenous peoples where the latter are concerned. These procedures cannot be dispensed with.

51. The exposed evidence further demonstrates that States may not reduce existing levels of environmental protection by exempting activities from licensing requirements, replacing technical review with self-declaratory mechanisms, or creating exceptional procedures for projects designated as strategically or economically important. Nor may they restrict procedural guarantees by conditioning the participation of Indigenous Peoples and traditional communities upon the completion of recognition or titling procedures attributable to the State itself.

52. While States retain discretion in designing their administrative procedures and pursuing their development priorities, that discretion is not unlimited. Exceptional procedures for projects designated as strategically or economically important carry a structural risk: over time, they tend to displace ordinary environmental guarantees not through any single legislative act, but through accumulated executive practice that normalizes what was designed to be an exception.

53. Finally, contemporary environmental law increasingly recognizes that environmental licensing regimes must incorporate climate-related considerations where these are necessary to prevent significant environmental harm.

54. For these reasons, the interveners respectfully request that this Honorable Court take into consideration the foregoing comparative and international authorities when determining the constitutionality of Laws No. 15.190/2025 and No. 15.300/2025.