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Legal empowerment and defense of the territory in Magallanes: The case of resistance to the salmon industry

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Legal empowerment and defense of the territory in Magallanes: The case of resistance to the salmon industry

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Introduction

Chile is home to several socio-environmental conflicts¹ in which communities have sought, through litigation and knowledge of the law, to gain access to justice to assert their rights and redress situations of inequality.

One such conflict is in the Magallanes region, where individuals, civil society organizations and Kawésqar families have opposed the expansion of the salmon industry in the territory. This industry has expanded from Chile's Los Lagos region to the regions of Aysén and Magallanes. In the case of the Magallanes region, this expansion was surprising, as in 2002 the region represented 1% of the national production of salmon, but in 2020 that number had risen to 17%.²

Chile's National Human Rights Institute (INDH in the Spanish acronym) documented the impacts of the salmon farming industry in the region of Los Lagos,³ many of which are currently observed in the Magallanes region.⁴ Some of the impacts that have been documented are the occupation of areas that were traditionally freely accessible, the generation of waste by the industry that is deposited on beaches, the use of antibiotics and the generation of biomass that impact the composition of the water and alter the seabed, and the prioritization of the growth of the salmon farming industry over respect for Indigenous peoples.

In response to this expansion of the salmon farming industry in the Magallanes region, Kawésqar families have used legal tools to defend their ancestral Kawésqar or Kawésqar Waes territories, particularly the geographical maritime area or "maritorio",⁵ understood as the equivalent of the territory in the sea. In addition, civil society organizations in Magallanes that promote environmental protection and conservation in the region have become involved in the fight against salmon farming due to the impacts it

1 The National Institute of Human Rights in Chile defines socio-environmental conflicts as "disputes between different actors - natural persons, organizations, private companies and/or the state -, publicly manifested and expressing divergences of opinions, positions, interests and demands due to the affectation (or potential affectation) of human rights, derived from the access and use of natural resources, as well as the environmental impacts of economic activities". National Institute of Human Rights (2012). *Mapa de conflictos socioambientales en Chile* [Map of socio-environmental conflicts in Chile]. Available at: <https://bibliotecadigital.indh.cl/server/api/core/bitstreams/81696ba6-a254-47df-ac3e-a725fc173cd3/content>

2 González, Gary (2021). Report on salmonid production in Chile (1990-2020), p. 4. Available at: https://www.terram.cl/descargar/recursos_naturales/salmonicultura/Minuta-sobre-el-aumento-de-la-produccion-de-salmonidos-en-Chile-1990-2020.pdf

3 National Institute of Human Rights (2021). *Industria salmonera en Chile y Derechos Humanos. Evaluación de Impacto Sectorial* [Salmon industry in Chile and Human Rights. Sectoral Impact Assessment]. Available at: <https://bibliotecadigital.indh.cl/items/37b32e37-d88d-4a72-a3b5-f9213c74c36f>

4 ONG FIMA (2023). *Transición socioecológica justa y desafíos para las áreas protegidas en Chile: Impactos de la salmonicultura en la Reserva Nacional Kawésqar* [Just social-ecological transition and challenges for protected areas in Chile: Impacts of salmon farming in the Kawésqar National Reserve]. Santiago. Available at: <https://www.fima.cl/wp-content/uploads/2024/02/impactos-salmonicultura-v2.pdf>

5 The term "maritorio", coined in Chile in the 20th century, is used to designate the geographical maritime area over which the Chilean state has sovereignty. Although the concept has no legal recognition, it is used to refer to the marine and marine-coastal ecosystems in the coastal zone, inland waters, territorial sea, etc.



has, mainly on coastal marine ecosystems. Through a process of legal empowerment, organized communities have been able to make use of various legal tools to address this conflict and gain access to justice.

Access to justice is an internationally recognized right and implies that people should be able to access justice systems to ensure that their needs are met. However, if they cannot access institutions on equal terms, if they feel deprived of their rights, and if the systems are unable to solve their problems, then they are not working as they should.⁶

Given that legal systems cannot address all of people's justice needs, new ways of achieving universal access for all have emerged. One of these approaches is legal empowerment, which seeks to enable people to become familiar with the law and learn about it, to then use it, so that it can effectively respond to situations of injustice⁷, and thus cease to be seen as a distant framework that is alien to people's everyday reality.

When justice systems do not work, the law can even be perceived as a threat by the population, because, instead of protecting, its actions seem more focused on criminalizing, stigmatizing, excluding, and oppressing. The legal empowerment approach seeks to redress this situation, for the law to become an ally so that people can generate social, legal, political, and economic transformations, and demand the guarantee of their rights.⁸

In consideration of the above, this report relates the experience of individuals, organizations, and families who have participated in actions to defend their territory, using different legal tools and mechanisms to influence decisions and policies regarding salmon farming, and to protect the environment and the rights of Indigenous peoples. It explains how knowing and using the law has allowed organized communities to carry out actions in defense of the territory and their rights, how these actions have led to changes in jurisprudence and policies in this matter, and what challenges remain.

Perceptions of communities regarding the installation and operation of salmon farms in the Magallanes region, as well as the tools that they acquired to engage in the still ongoing socio-environmental conflict, were gathered through filed work, consisting of semi-structured interviews, focus groups, participatory mapping, and power mapping.

6 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment in advancing access to justice for all. Resolution A/78/171 dated 13 July 2023, p. 4. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

7 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment in advancing access to justice for all. Resolution A/78/171 dated 13 July 2023, p. 11. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

8 Almela, Marta et al. (2019). *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica: experiencias de acceso a la justicia desde la comunidad* [Legal empowerment and community lawyering in Latin America: community-based access to justice experiences]. Buenos Aires: Asociación Civil por la Igualdad y la Justicia (A.C.I.J.), 1st edition, p. 8. Available at: <https://grassrootsjusticenetw.org/resources/emp-juridico-abog-comunitaria-latam/>

The research was conducted using an action research methodology, made possible with the support of IDRC, which seeks to generate evidence from social research on a particular issue to improve the living conditions of communities. In addition, a gender and intersectional approach was used, which promotes the identification of structures that have different impacts on the population depending on gender, and overlapping factors that increase conditions of vulnerability.

I. What is legal empowerment?

According to the report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, figures show that, in many cases, people do not have meaningful access to justice. Whether it is because the application of a regulation in practice does not deliver the expected results, or the procedures are costly, take too long, or there are simply none in existence which deal with a particular problem, many legal systems do not help people obtain solutions to the problems that most affect them. Thus, a gap persists between what these systems provide and the problems that people need help with most. This happens more frequently and in a more severe manner to those who suffer daily discrimination, exclusion, or marginalization,⁹ whether because of their race, gender, class, political or religious beliefs, cultural identity, among other factors.

As a result, despite being involved in a legal conflict, a high number of people simply decide not to use formal justice systems. In Latin America, there are several reasons for this. On the one hand, there are certain institutional barriers in place, such as the shortage of legal assistance, the long duration of trials, the lack of knowledge of the legal and justice systems, and the lack of trust in justice systems and in the enforcement of agreements and sentences, which

lead to access to justice gaps. On the other hand, there are various social, cultural, and economic barriers to be overcome, such as the cost of legal assistance, distance from urban centers, language barriers, and gender barriers.¹⁰

In this context, legal empowerment aims to increase access to justice,¹¹ seeking to remove the geographical, symbolic, economic, or linguistic barriers which prevent it from being delivered in an appropriate and timely manner.¹²

Legal empowerment has been defined as “an approach to increasing access to justice that puts the law in the hands of those most directly affected by injustice”.¹³ It encourages communities facing situations of injustice to use legal mechanisms to bring about improvements in justice systems.¹⁴ This approach is based on three key elements: knowing, using, and shaping the law.

The legal empowerment approach seeks to introduce legal concepts to communities that have experienced deprivations of their rights and have encountered barriers in the search for solutions, so that they understand the laws that affect them and can influence them, thus challenging injustices. It aims to shorten the distance between legislation and its implementation, and for knowledge of the law to no longer be reserved for lawyers,

9 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment to advance access to justice for all. Resolution A/78/171 dated 13 July 2023, p. 4-7. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

10 Observatory of Civil Conflict and Access to Justice (n.d.). *Barreras de acceso a la justicia* [Access to justice barriers]. Available at: <https://occa.cejamerica.org/que-observamos/barreras-de-acceso-a-la-justicia/>

11 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment to advance access to justice for all. Resolution A/78/171 dated July 13, 2023, p. 12. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

12 Declaration of Villa Inflamable (2017), p.1. Available at: <https://grassrootsjusticenetw.org/connect/justiciaparatodxs-english/>

13 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment to advance access to justice for all. Resolution A/78/171 dated July 13, 2023, p. 11. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

14 The Fund for Global Human Rights (n.d.): What is legal empowerment? Available at: <https://globalhumanrights.org/commentary/fund-101-what-is-legal-empowerment/>



so that it can be used by society in their engagements in public life.¹⁵

A transformative process of legal empowerment seeks to ensure that barriers to access to justice are not overcome by means of reforms designed by institutions, but rather that communities play a leading role through knowing, using, and shaping the law to achieve this.¹⁶

This approach particularly addresses situations of injustice that affect especially vulnerable populations, such as women, Indigenous peoples, migrants and refugees, victims of racial discrimination, informal settlements inhabitants, children, LGBTIQ+ population, displaced persons, amongst other groups. Thus, using an intersectional approach, it seeks to understand the different ways in which an injustice can manifest itself, both at the individual and community level,¹⁷ so that empowerment strategies can be coherent with that context.

The approaches and tools used for legal empowerment are diverse. For example, among the tools used to increase the knowledge of the law are accompaniment, guidance and support for individuals, monitoring and data collection, litigation, community organizing and building community power, and, in some cases, alternative dispute resolution mechanisms and avenues

which are not found in traditional legal systems, such as Indigenous or customary systems.¹⁸ In addition, paralegals may be assigned. Paralegals are not usually lawyers but people who have knowledge that helps to raise awareness of rights or laws, and who support people in their dealings with legal or administrative processes.

In this way, legal empowerment is not only based on conventional legal assistance, notwithstanding its importance, but also uses other tools such as education, participatory spaces, research, amongst other. It mainly seeks to highlight the lived experiences of communities as primary agents of change, seeking solutions to problems from their perspective.¹⁹

15 Almela, Marta et al. (2019). *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica: experiencias de acceso a la justicia desde la comunidad* [Legal empowerment and community lawyering in Latin America: community-based access to justice experiences]. Buenos Aires: Asociación Civil por la Igualdad y la Justicia (A.C.I.J.), 1st edition, p. 9. Available at: <https://grassrootsjusticenetwork.org/resources/emp-juridico-abog-comunitaria-latam/>

16 Declaration of Villa Inflamable (2017), p. 1. Available at: <https://grassrootsjusticenetwork.org/connect/justiciaparatodxs-english/>

17 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment to advance access to justice for all. Resolution A/78/171 dated July 13, 2023, p. 11. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

18 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment to advance access to justice for all. Resolution A/78/171 dated July 13, 2023, p. 12. Available at: <https://www.ohchr.org/en/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

19 Open Society Foundations (2021). Making the law work for people. A Handbook on Legal Empowerment and Inclusive Innovation, p. 5. Available at: <https://www.opensocietyfoundations.org/publications/making-the-law-work-for-people>

II. Legal empowerment in environmental matters

One form of access to justice involves access to environmental justice. The latter is related to the right of people to seek solutions to their socio-environmental conflicts on equal terms, regardless of economic, gender, or racial conditions, and for those fair solutions to be democratized, so that they apply to everyone.²⁰ In a narrower sense, access to environmental justice has been defined as “the ability of citizens to have recourse to impartial and independent arbitrators in order to protect environmental rights or to redress environmental harm, and to resolve disputes related to access to information and participation in decisions that affect the environment in an expeditious manner”.²¹

At the global level, the effectiveness of environmental laws to account for the complexity involved in the regulation of environmental protection and socio-environmental conflicts has been strongly criticized. Numerous communities in search of protection and remediation for environmental damages have been victims of the ineffectiveness and corruption of environmental impact assessment mechanisms, and the failures of legal systems to sanction crimes, among other instances of violation of individual and collective

rights.²² The obstacles that exist to access a fair solution to an environmental problem are known as barriers to access environmental justice.

In terms of its institutional framework, Chile is no exception when it comes to these barriers. Some of these are: i) economic and technical barriers, given how costly it is to get involved in legal actions, and the specialized language that is used; ii) a lack of active legitimacy in some cases, preventing people from filing actions on issues that do not affect them directly, but in which they have an interest, such as environmental protection; and iii) excessive delay in resolving disputes and enforcing judgments.²³

Regarding the specific case of the conflict with the salmon farming industry, access to information barriers have also become evident,²⁴ given the difficulty obtaining information on: a) the amount of antibiotics used in production processes, among other agents; b) the processing of concessions; and c) industry operations in general, due to the lack of oversight of the fattening centers. In addition, there are barriers to access decision-making, as all fattening centers enter the system by means of Environmental Impact

20 ONG FIMA (2022). *Hacia una constitución ecológica. Acceso a la justicia ambiental* [Towards an ecological constitution. Access to environmental justice], p. 3. Available at: <https://www.fima.cl/wp-content/uploads/2022/05/informe-acceso-a-la-justicia.pdf>

21 Economic Commission for Latin America and the Caribbean (2013). *Acceso a la información, participación y justicia en temas ambientales en América Latina y el Caribe* [Access to information, participation and justice in environmental matters in Latin America and the Caribbean]. Environment and Development Series (151), Santiago, p. 7. Available at: <https://repositorio.cepal.org/server/api/core/bitstreams/60540fe6-09d0-4a6f-bbbd-9d7e06b6902f/content>

22 Almela, Marta et al. (2019). *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica: experiencias de acceso a la justicia desde la comunidad* [Legal empowerment and community lawyering in Latin America: community-based access to justice experiences]. Buenos Aires: Asociación Civil por la Igualdad y la Justicia (A.C.I.J.), 1st edition, p.103-104. Available at: <https://grassrootsjusticenetwork.org/resources/emp-juridico-abog-comunitaria-latam/>

23 ONG FIMA (2022). *Hacia una constitución ecológica. Acceso a la justicia ambiental* [Towards an ecological constitution. Access to environmental justice], p. 13-26. Available at: <https://www.fima.cl/wp-content/uploads/2022/05/informe-acceso-a-la-justicia.pdf>

24 Oceana (2021). *Constitución y Océanos: El derecho de acceso a la información pública* [Constitution and Oceans: The right of access to public information]. Available at: https://chile.oceana.org/wp-content/uploads/sites/19/informe_acceso_a_la_informacion.pdf



Statements, which is an assessment mechanism that does not include an obligatory citizen participation process.²⁵

In Latin America, and with the aim to overcome access to environmental justice barriers, there have been various examples where legal empowerment has been fostered, linked to territorial defense processes. The study *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica* [Legal empowerment and community lawyering in Latin America] analyzes some of them to identify the most used methods and those that were considered most effective in obtaining justice results. Some of the most commonly used strategies by civil society organizations that carry out empowerment actions are: (i) strengthening community organizing; (ii) training leaders who can replicate knowledge concerning human rights and nature (youth, public advocates, training of Afro-descendant women); (iii) strategic litigation; (iv) advocacy aimed at politicians; v) capacity-building of grassroots legal advocates, understanding that not all defense actions should be carried out by lawyers (gathering information, evidence, etc.); vi) community mobilizing and involvement, which may include

mobilizations or media pressure; and vii) the use of technologies for information, dissemination, and communications.²⁶

Results of these empowerment processes have included the acquisition of knowledge and confidence on the part of communities regarding the use of legal tools and mechanisms, increased participation in forums with authorities and international organizations, the generation of capacities among advocates for the autonomous use of tools, and the creation of work networks, among others.²⁷

ONG FIMA has provided support in several legal empowerment and accompaniment processes, using some of the tools described above. Specifically, capacity-building and education of communities, research, strategic litigation, and dissemination and communication of conflicts have made it possible to position issues in the public debate, and to achieve jurisprudential advances in the protection of human rights and the environment of communities threatened or harmed by projects.²⁸ This report studies one such process.

25 For more information see the report: Arancibia, Claudia et al. (2022). *Incompatibilidad de la salmonicultura con la Reserva Nacional Kawésqar* [Incompatibility of salmon farming with the Kawésqar National Reserve]. Available at: https://www.fima.cl/wp-content/uploads/2023/05/informe_incompatibilidad.pdf

26 Almela, Marta et al. (2019). *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica: experiencias de acceso a la justicia desde la comunidad* [Legal empowerment and community lawyering in Latin America: community-based access to justice experiences]. Buenos Aires: Asociación Civil por la Igualdad y la Justicia (A.C.I.J.), 1st edition, p.105-110 and 127-131. Available at: <https://grassrootsjusticenetwork.org/resources/emp-juridico-abog-comunitaria-latam/>

27 Almela, Marta et al. (2019). *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica: experiencias de acceso a la justicia desde la comunidad* [Legal empowerment and community lawyering in Latin America: community-based access to justice experiences]. Buenos Aires: Asociación Civil por la Igualdad y la Justicia (A.C.I.J.), 1st edition, p. 149-151. Available at: <https://grassrootsjusticenetwork.org/resources/emp-juridico-abog-comunitaria-latam/>

28 ONG FIMA looked at the accompaniment process to the representative of the Lickanantay people in San Pedro de Atacama, which began in 2015. In this regard, Gabriela Burdiles points out that some of the results of the work with the community were: i) the generation of capacities in the community, for example, regarding searching for information; ii) strengthening local leadership; iii) link between the community and the competent authorities; iv) greater coordination for collective work; iv) generation of work or territorial defense networks. At the same time, advocacy actions were carried out, such as requests for statements from authorities, awareness-raising workshops and the production of audiovisual material. Almela, Marta et al. (2019). *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica: experiencias de acceso a la justicia desde la comunidad* [Legal empowerment and community lawyering in Latin America: community-based access to justice experiences]. Buenos Aires: Asociación Civil por la Igualdad y la Justicia (A.C.I.J.), 1st edition. Available at: <https://grassrootsjusticenetwork.org/resources/emp-juridico-abog-comunitaria-latam/>

III. Experience of territorial defense in the Magallanes regiones

In 2018, the Kawésqar National Park and the Kawésqar National Reserve were created. The National Park was established over the land areas of the former Alacalufes Forest Reserve, but the National Reserve category covered the marine area exclusively. According to Decree No. 6 of 2019,²⁹ by which the Kawésqar National Reserve was created, the purpose of the recategorization of the marine waters as a National Reserve was to comply with the fundamental demands of the Kawésqar people with regards to the protection of their waters, to exercise productive activities in said maritime area, and to give effect to the recognition of the Kawésqar people. The same document added that the main reason behind

the recategorization was the significant value of the areas to be protected.

The expansion of the industry in the region is currently concentrated in the Kawésqar National Reserve and, as a result, it is one of the protected areas under greater pressure from aquaculture activities.³⁰ Despite the fact that the recategorization represented a commitment by the Chilean state to comply with the demands and recognition of the ancestral territory of the Kawésqar people, to date 68 aquaculture concessions have been granted for salmon farming projects and 41 additional applications are in process.³¹

29 Decree No. 6 of the Ministry of National Property, which revokes the designation of the “Alacalufes” Forest Reserve and creates the “Kawésqar” National Park and the “Kawésqar” National Reserve, in the region of Magallanes and Chilean Antarctica. Available at: <https://www.bcn.cl/leychile/navegar?idNorma=1128360>

30 Programa Austral Patagonia (2022). *Caracterización de las concesiones acuícolas ubicadas en la porción marina de Áreas Silvestres Protegidas* [Characterization of aquaculture concessions located in the marine portion of Protected Wildlife Areas], p. 27. Available at: https://programaaustralpatagonia.cl/wp-content/uploads/2022/11/01_FINAL_Informe-Salmonicultura-SNASPE_28-nov.pdf

31 ONG FIMA (2023). *Transición socioecológica justa y desafíos para las áreas protegidas en Chile: Impactos de la salmonicultura en la Reserva Nacional Kawésqar* [Just social-ecological transition and challenges for protected areas in Chile: Impacts of salmon farming in the Kawésqar National Reserve]. Santiago, p. 27. Available at: <https://www.fima.cl/wp-content/uploads/2024/02/impactos-salmonicultura-v2.pdf>



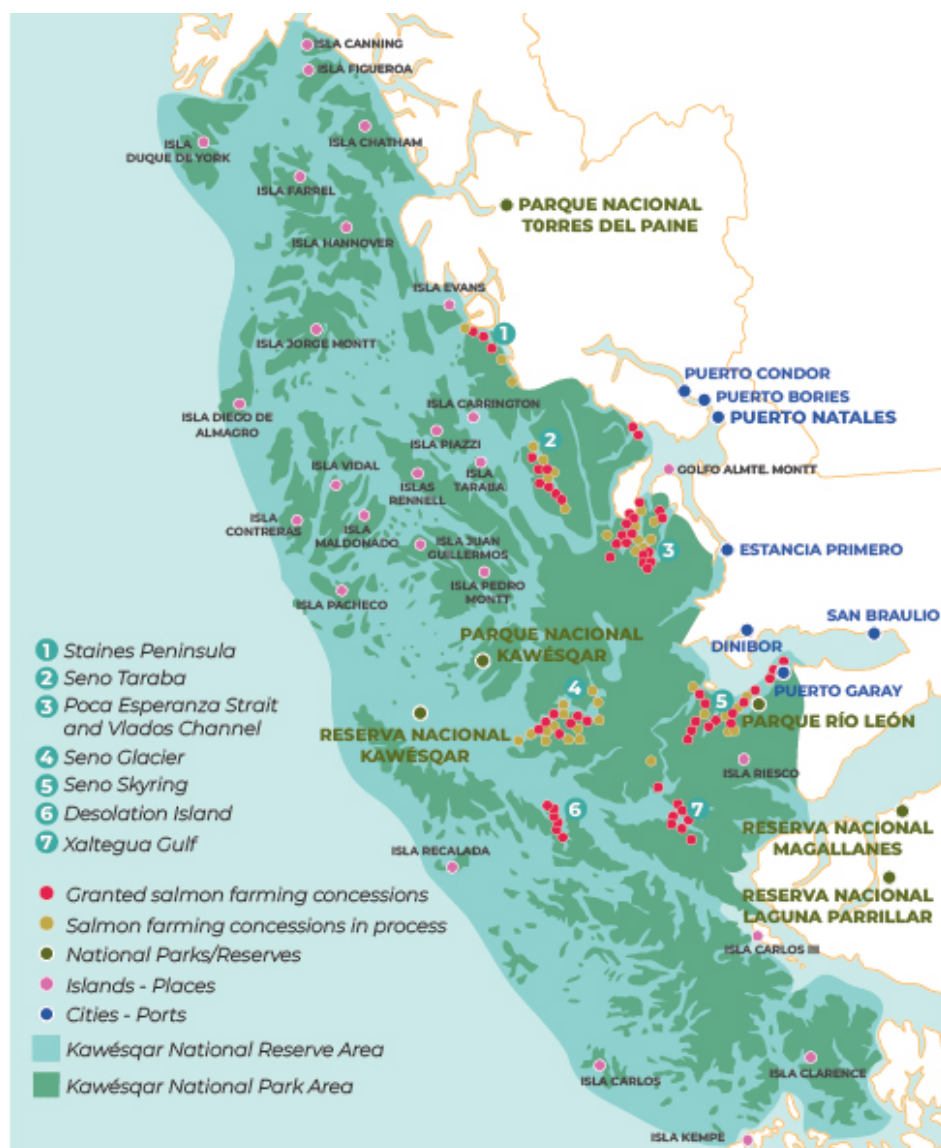


Figure 1: Salmon farming concessions granted and in process within the Kawésqar National Reserve as of November 2022.

Source: ONG FIMA, 2023

Thus, the expansion of the salmon farming industry in the region, and particularly in the Kawésqar National Reserve, has led to the mobilization of people and communities, and the emergence of various social movements for environmental defense, seeking to counter this expansion and the various impacts it has.

Considering the framework of access to environmental justice and legal empowerment as a type of people-centered justice that focuses on developing people's knowledge of the law and use of

legal tools to demand respect for their rights, the following is an analysis of the experience of territorial defense in the Magallanes region, particularly in relation to the dispute over the expansion of salmon farming.

The stories and views of those who have participated in the legal empowerment process in Magallanes are presented to illustrate the reasons for their involvement in the territorial defense and the tools that they used.

1. The connection with the territory as a key element that motivates its defense

One aspect of socio-environmental disputes that can be used as a basis for analysis is their affective dimension, which considers the subjective experience of individuals regarding the significance of a given area. From this point of view, emotions, affections, and attachment to the territory in which one lives play an important role in terms of environmental defense and the generation of a sense of belonging to the territory.³²

The people, groups, and communities that mobilize to defend the environment in the Magallanes region have a particular bond with the area they are defending, and this motivates them in their fight against the salmon industry.

On the one hand, the motivations that lead certain Kawésqar families to become involved in the

defense of the sea are related to their special bond with it. The Kawésqar cosmovision and spirituality is closely linked to the sea, given the nomadism of their culture, as well as the fact that the ancestral practices of fishing, hunting, and gathering were historically based around the sailing of Patagonian fjords and channels. Accordingly, “the cosmovision and spirituality of the Indigenous peoples linked to the sea is fundamental when it comes to sustaining the importance and protection of the territory and coastal areas, as well as in defining the culture and identity of these peoples and understanding the special relationship they have with these places”.³³



“ It’s great to hear these stories because they highlight the importance of sailing for the Kawésqar in the sense of identity. We have always been told that you can have Kawésqar blood, but that doesn’t make you Kawésqar; the important thing for the Kawésqar is knowing how to sail. [...] So it’s important because for us it’s not only mainly about honoring the memory of the elders, and we all know the bloody history of this place, but also about remaining in the area. ”

Participant 2, Kawésqar representative
Focus group
Punta Arenas, May 2023

32 Jara-Ruiz, Marcelo and Stamm, Caroline (2023). Emotions and environmental activism in large-scale mining. Analysis of a copper mining project in the Metropolitan Region of Santiago, Chile. *Revista Austral de Ciencias Sociales*, (45), p. 183. <https://doi.org/10.4206/rev.austral.cienc.soc.2023.n45-10>

33 Arce, Lorena et al. (2023). *Mujeres del mar: Aproximaciones sobre los Espacios Costeros Marinos de Pueblos Originarios* [Women of the sea: Approaches to the marine and coastal areas of Indigenous people], p.16. Available at: <https://observatorio.cl/wp-content/uploads/2023/03/mujeres-del-mar-web.pdf>

The protection of the sea thus has as its ultimate objective the vindication of Kawésqar memory, since the sea is considered the heart of their culture and the connection with their ancestors. For the Kawésqar who defend the sea, conserving it and its biodiversity goes hand in hand with the conservation of memory, thus honoring and dignifying the memory of their ancestors and combating the loss of Kawésqar cultural identity.

This is particularly important if we consider the process of the systematic elimination of the canoe peoples of the southernmost regions of Chile, which occurred during the twentieth century in the context of the Chilean state's expansion into the area.³⁴



“ Why do we defend the territory? Because it's our legacy, it's our connection with the ancient world. This is where the Kawésqar were subjected to genocide, we lost many stories, we don't know who our great-grandmother's siblings are, for example, we don't know who her parents or relatives are, but we do know where she comes from, and we know where she is located. ”

Participant 1, Kawésqar representative
Focus group
Punta Arenas, May 2023



“ The issue of memory has always been the engine or the fuel [...], it has always given us the strength to move forward. Because we know that further back, in the past, there is also a terrible injustice. ”

Participant 2, Kawésqar representative
Focus group
Punta Arenas, August 2023



“ We still love the territory. And we respect the territory, as they did. So, I don't think anyone can change that. ”

Participant 6, Kawésqar representative
Focus group
Punta Arenas, August 2023

³⁴ Harambour, Alberto and Barrena, José (2019). Barbarism or justice in western Patagonia: Forms of colonial violence during the twilight of the Kawésqar people, at the end of the nineteenth and start of the twentieth centuries. *Historia Crítica*, (71), p. 29. <https://journals.openedition.org/histcrit/2259>

On the other hand, the motivation of the representatives of civil society organizations for the protection of the sea and ecosystems is related to territorial belonging. In their discourse, the need to contribute to the care and protection of the territory they inhabit as a way of giving back to

nature, which provides the means to live, is apparent. Accordingly, considering that the environment of the Chilean southern zone is conducive to a significant quality of life, from the participants' point of view, protecting this natural heritage is what is most consequent.



“ I’m an environmental defender because the concept of sustainability means ceasing to be a migratory bird and instead contributing to the local community [...]. I believe that you also have to protect the territory. That is, for me, an integral part of the concept of sustainability or maintainability. That is, if a place, nature, provides you with work and a living, why can’t I do something for it, in return? ”

Participant 5, representative of a local organization
Interview
Puerto Natales, August 2023



“ To be mindful of your intentions, to understand that if you have a good quality of life here based on the natural environment, you have to protect it. ”

Participant 7, representative of a local organization
Focus group
Puerto Natales, August 2023

These reflections on the importance of caring for the territory and the aspects of it that provide a livelihood, are consistent with the experience in other parts of Chile,³⁵ where it is mainly women who are mobilizing to demand a healthy environment and decent living conditions, having been deprived of both in the name of progress.³⁶

The connection between the communities and the representatives of local organizations and the “physical territory”, understood as the physical space in which they live, is key to understand the

motivations that lead them to seek to defend it from the threats of extractive industries. This is why the impacts of the salmon industry on the areas adjacent to the Kawésqar National Reserve have direct repercussions on the livelihoods of the people who live there. The main impacts of salmon farming on the *physical territory* identified by the participants are presented below.

35 A key example in Chile is the case of the *Mujeres en Zona de Sacrificio en Resistencia* (MUZOSARE) movement. This involves a group of women who for over 10 years have been mobilizing to combat pollution in the Quintero-Puchuncaví industrial park, where thermoelectric plants, oil companies, and chemical plants operate.

36 Bolados, Paola et. al. (2017). *Ecofeminizar el territorio. La ética del cuidado como estrategia frente a la violencia extractivista entre las Mujeres de Zonas de Sacrificio en Resistencia (Zona Central, Chile)* [Ecofeminizing the territory. The ethics of care as a strategy in the face of extractivist violence among the Women of Zonas de Sacrificio en Resistencia (Central Zone, Chile)]. *Ecología Política*, (54), p. 82. <http://www.jstor.org/stable/44645641>

2. Disputed territory: mapping the salmon farming conflict

To learn about the impacts of salmon farming within the Kawésqar National Reserve and adjacent areas, a participatory mapping exercise was carried out in conjunction with the participating communities and organizations.

Participatory mapping is a process that allows participants to autonomously identify, locate, and plot relevant landmarks on a base map of their territory. Thus, the maps presented below provide graphical representations of relevant landmarks, ecosystemic services, ways of life, ways of relating to the territory, environmental and socio-cultural impacts, and potential threats from salmon farming and/or other extractive industries.

The mapping exercise was carried out in two separate instances: the first, in Punta Arenas, with two Kawésqar men and six Kawésqar women who defend the sea; and the second, in Puerto Natales, with four women representatives of local environmental organizations. The results presented below thus include a gender perspective, in that the vast majority of participants in these mapping exercises were women, and, therefore, in general, the experiences in this territorial defense process are from women.

The mapping allowed for a deeper understanding of the conflict and how salmon farming impacts and alters the physical territory and, consequently, the relationships and ways of life that are built with and around it.

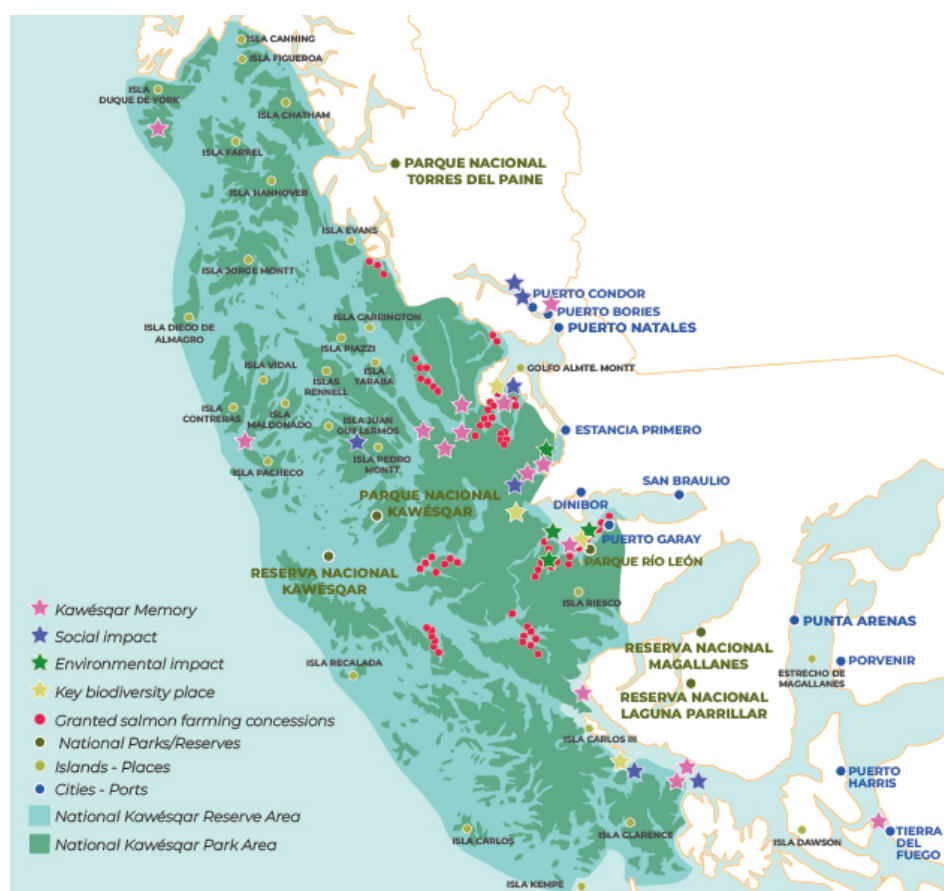


Figure 2: Mapping by Kawésqar representatives

Source: Compiled by author based on the results of the activity carried out with Kawésqar.

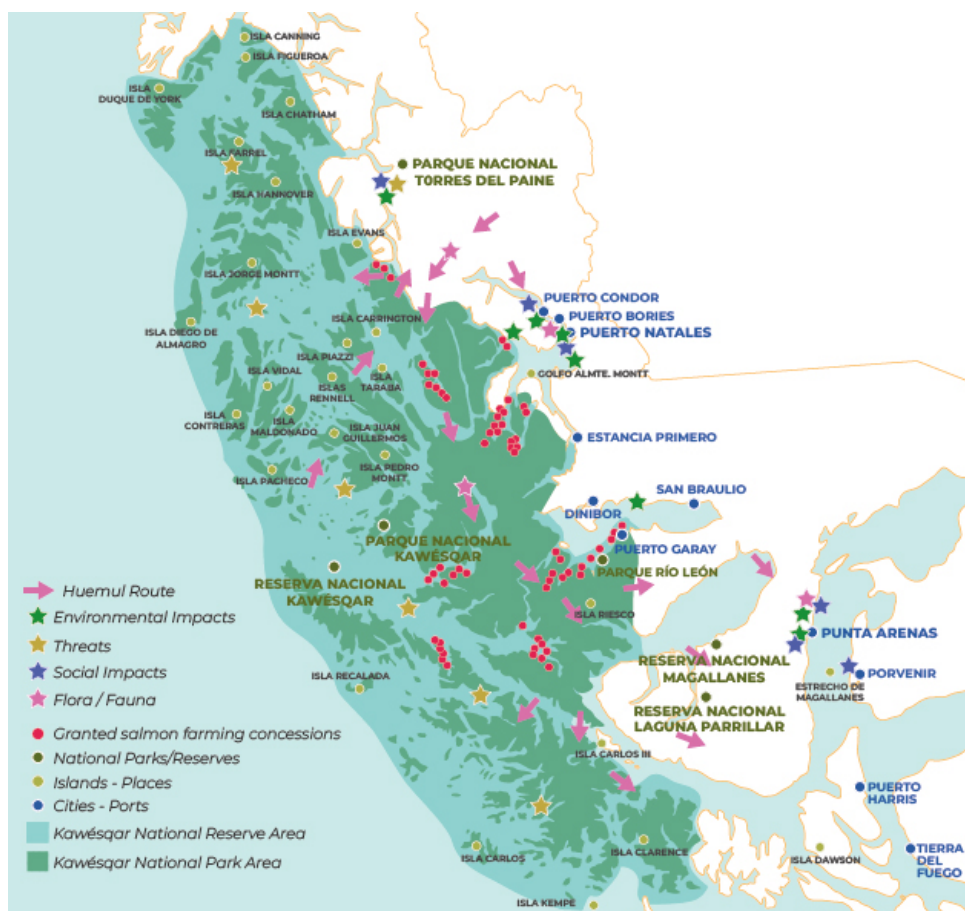


Figure 3: Mapping by civil society organizations

Source: Compiled by author based on results of activity conducted with representatives of civil society organizations

Below are some of the main findings resulting from these activities.

2.1. Environmental impacts

One of the main results of the activity was the identification of a large number of environmental impacts derived from the operation of the salmon farming industry in the territory.

Among these impacts, the participants mention the anoxia of the seafloor and the acidification of the waters because of the accumulation of organic matter. These changes in the ecosystems lead to a reduction in the availability of hydrobiological resources, which directly impacts the representatives of the Kawésqar people, as they and their families live off artisanal fishing and shore gathering, and the availability of fish and shellfish is therefore essential for their subsistence.

Other environmental impacts resulting from the operation of salmon farming in the area include contamination from garbage dumps, the sinking of barges and pontoons, and the discarding of waste from salmon farming vessels and salmon net washing centers, which generate micro-dumps along the coastline.

In addition, the representatives of civil society organizations see a clear link between environmental protection and the need to tackle the climate crisis, since salmon farming would enhance the effects that this phenomenon has on the habitats of native species and on the climate regulating function of the sea.

2.2. Socio-cultural impacts

The mapping process focused particularly on the socio-cultural impacts of salmon farming, which threaten the cultural heritage and traditional economic activities of the local population by modifying the social dynamics of the territory. Specifically, one can observe a fragmentation of the social fabric and a progressive loss of cultural identity as a result of the operation of the industry in the Magallanes region.

The following is an in-depth analysis of the socio-cultural impacts derived from salmon farming operations in the Magallanes region according to the affected communities.

2.2.1. Socio-cultural impacts identified by the Kawésqar who defend the sea

The Kawésqar families who defend the sea are emphatic in pointing out that, nowadays, not all Kawésqar people have a link to the sea, because of the progressive loss of Kawésqar culture and traditions.

Thus, there are communities which, because they do not have this link, have entered into agreements with salmon farming companies, which offer them assistance in exchange for a commitment to support the installation of farms in the waters surrounding the Kawésqar National Reserve.³⁷ These agreements include capacity-building in relation to salmon farming and job opportunities within the industry, in addition to different types of material assistance such as work supplies, educational scholarships, school uniforms, etc.

This has led to a deep division of the social fabric, encouraged by salmon farm owners, between the Kawésqar who defend the sea and those communities with no ties to the sea. Due to the form of social organization of the Kawésqar people, these communities correspond to family groups that have cut off contact because of this conflict.



“ I think that is worth mentioning, because he who doesn’t see what is happening, has no affection for what is his, has no idea, so he doesn’t recognize the value it has. ”

Participant 1, Kawésqar representative
Focus group
Punta Arenas, May 2023

Consequently, the values of the Kawésqar culture are increasingly being lost, giving way to a prioritization of the quest to improve their socio-economic situation.



“ This has also been due to the salmon farming industry itself, which has made them believe that they’ll be able to help them escape poverty. However, one remains in poverty... one can say ‘hey, I have a house, my children are doing well, I can work at something else’, but you are poor in your soul, because you have abandoned everything else. Your essence. What you were when you were a child. ”

Participant 6, Kawésqar representative
Focus group
Punta Arenas, August 2023

37 ONG FIMA (2023). *Transición socioecológica justa y desafíos para las áreas protegidas en Chile: Impactos de la salmonicultura en la Reserva Nacional Kawésqar* [Just social-ecological transition and challenges for protected areas in Chile: Impacts of salmon farming in the Kawésqar National Reserve]. Santiago. Available at: <https://www.fima.cl/wp-content/uploads/2024/02/impactos-salmonicultura-v2.pdf>



“ That’s why I think it’s also important not to romanticize, because in the end we are people, and we are people who are already fully immersed in the education of the West. [...] And that’s why there are many communities that also work with the salmon farms. Because the lifestyle that they have is the one that capitalism taught them: to have an income, to generate money. And their lives are based on that. It’s not the romanticized image of the Indigenous people who used to live in nature. ”

Participant 2, Kawésqar representative
Focus group
Punta Arenas, August 2023

Salmon farming’s impact on the sea also entails the loss of ancestral knowledge for the Kawésqar, given that the legacy of their culture lives on in the sea. Examples of these impacts include damage to sacred places, or the destruction of archaeological sites which are important to the collective Kawésqar memory, such as fishing corrals, cemeteries, and ancient encampments, which are affected by the disposal of waste from salmon farming centers.



“ Then salmon farming arrives and immediately causes a problem for us in terms of carrying out our family activities, which are characteristic of the Kawésqar people. ”

Participant 2, Kawésqar representative
Focus group
Punta Arenas, August 2023

In addition, the sailing routes traditionally used by the Kawésqar people are being restricted due to the increased traffic of industrial vessels, which makes passage difficult for the smaller boats used by the communities. As a result, the arrival of salmon farming and its progressive expansion across the territory has made it difficult for the Kawésqar communities to carry out their traditional practices, including sailing and artisanal fishing.

2.2.2. Socio-cultural impacts identified by representatives of civil society organizations

In the opinion of the representatives of civil society organizations, a territorial rivalry has developed between locals and salmon farming workers who come from other regions. Unlike the locals, these industry workers come to the region exclusively to do their jobs and are thus part of a floating population that does not really connect with the needs or problems of the area.



“There’s increasingly no connection between residents. Here at least it happens in Puerto Natales, but with the people who live here. As for those who don’t... they form a circle which includes those who come for tourism, for example, those who come for salmon farming and live in their world and that’s it. And obviously there’s a fragmentation, because there’s no connection there, and I think that those connections are very important, in human terms, and to be able to settle in a place and understand how things really work, the values of the territory.”

Participant 7, representative of a local organization
Focus group
Puerto Natales, August 2023

Along the same lines, the increasing presence of salmon farming in the region has succeeded in creating a narrative which alludes to the “Magallanes salmon farming tradition”, positioning the industry as an essential element of local identity at a discursive level.³⁸



“And an identity issue as well. You can even see it in the advertisements for the salmon farming industry, where they include in their discourse the salmon farming tradition of Magallanes. Or the Magellanic salmon, as if it were like El Calafate”

Participant 7, representative of a local organization
Focus group
Puerto Natales, August 2023

³⁸ The salmon farming industry integrates itself into the territory and the community through corporate marketing and participation in recreational activities such as fairs, festivals, and traditional celebrations.

This leads to a certain invisibilization of the artisanal fishing traditions typical of the region, and a progressive disconnection from other typical local practices.



“ We also have no connection with this trade, which is ancestral here [...], we also have no connection with the identity that’s ancestral in this area. So... yes, I feel that we also have a lack of knowledge of this activity. There’s more of a connection with cattle raising, which in the end is like the activity of the invaders, which they brought, and not with our own ancestral activity. ”

Participant 4, representative of a local organization
Focus group
Puerto Natales, August 2023



“ All the while, ancestral territorial knowledge or practices, or the appreciation or the way people connected with the territory in the past and to this day, those who are left, the people with the territory, are being squeezed out and rendered invisible. ”

Participant 7, representative of a local organization
Focus group
Puerto Natales, August 2023

Participants also say that the growth of salmon farming in the territory makes the work of artisanal fishermen more difficult, and riskier, increasing the precariousness of their livelihoods and leading many to choose to work in the salmon industry.

Finally, they identify a series of impacts that would affect men and women living in the territory differently.

One of these impacts is the increase in insecurity because of the arrival of industry workers. The perception of the participants is that the increase in the male floating population³⁹ leads to an increase in crime and violent crime,⁴⁰ which mostly affects women, increasing their vulnerability.

39 According to the Employment Monitoring Report of the Chilean Salmon Council (CDS in the Spanish acronym), a trade association made up of the country’s main salmon companies, as of the first half of 2023 the percentage of men in the salmon industry was 66.2%. Chilean Salmon Council (2023). Employment Monitoring Report. Available at: <https://www.consejodelsalmon.cl/wp-content/uploads/2023/10/230925-Reporte-empleo-CDS-ene-jun-2023.pdf>

40 According to Chile’s 19th National Urban Citizen Security Survey (ENUSC in the Spanish acronym), the Magallanes region has the lowest victimization rates in the country (3.9% victimization in households and 1.3% victimization of persons). Despite this, the perception of increased crime in Magallanes is greater than in other neighboring regions. Chile’s National Institute of Statistics (2022). 19th National Urban Survey on Citizen Security. Available at: https://www.inec.gov.cl/docs/default-source/seguridad-ciudadana/publicaciones-y-anuarios/2022/nacional/s%C3%ADntesis-de-resultados-19-enusc-2022---nacional.pdf?sfvrsn=2854ad13_2



“ There is a sizeable floating population of single male workers that makes the city more unsafe for women, not for men. [...] I feel that Magallanes is a place that is becoming more unsafe for women. ”

Participant 4, representative of a local organization
Focus group
Puerto Natales, August 2023

A problem related to the entrenchment of traditional gender roles because of the industrialization process in the region has also been identified. One notices in the discourse of these communities that there is unease in terms of the perpetuation of the stereotype of the male provider, which restricts women to domestic work and caregiving, limiting their opportunities for fulfillment in other areas.



“ In my opinion, this is one of the most serious risks, because it also perpetuates patriarchy, since extractivism perpetuates gender gaps in societies, the stereotype of the family where the man provides and the woman stays at home alone, often without a safety net, raising the children. [...] The fact that this means that women don't have access to better job opportunities is completely overlooked and they're forced to stay at home in a more precarious, vulnerable and risky situation. ”

Participant 4, representative of a local organization
Focus group
Puerto Natales, August 2023

The above, added to the disproportionate impact that climate change has on the most vulnerable populations, including women,⁴¹ has led social organizations in the Magallanes region, mostly composed of women, to incorporate a feminist analysis component in their territorial defense actions, including the demand for a gender approach in project evaluation processes.

41 Economic Commission for Latin America and the Caribbean (2021).). *La igualdad de género ante el cambio climático: ¿Qué pueden hacer los mecanismos para el adelanto de las mujeres de América Latina y el Caribe?* [Gender equality in the midst of climate change: What can the region's machineries for the advancement of women do?] Gender Affairs, (159), Santiago, p. 13. Available at: <https://repositorio.cepal.org/server/api/core/bitstreams/8005c7ed-957e-4434-b6b6-cf29ceb54866/content>



“ We have to provide more tools, to give environmentalists who are super disconnected from ecofeminism an idea of what it means to take a feminist approach to the problems of extractivism. It is as if they were still two super separate issues, whereas they are a binomial, and they’re not incorporated into the dialogue. Also, from the point of view of the law, what does it mean that we’re able to demand for the gender approach to be included in the evaluations? ”

Participant 4, representative of a local organization
Interview
Puerto Natales, August 2023

These reflections are in line with the experiences of other territories in Latin America, where the gender perspective has made it possible to highlight the different impacts that extractive projects and industries have on men and women, the resulting increase in violence against women in these territories, the marginalization of women in decision-making spaces, and finally, the reinforcement of the gender stereotype of the dependent woman.⁴²

42 Colectivo Miradas Críticas desde el Feminismo (2017). *La vida en el centro y el crudo bajo tierra: El Yasuní en clave Feminista* [Life in the Center and the Crude Underground: Yasuní in a Feminist Key], p. 66. Available at: <https://miradascriticasdelterritoriodesdeelfeminismo.files.wordpress.com/2014/05/yasunienclavefeminista.pdf>



2.3. Threats

Additionally, communities point out the existence of latent threats in the territory, mainly related to areas under study for the relocation of salmon farms; the installation of infrastructure for the development of the Green Hydrogen industry; and the expansion of the tourism industry in the Magallanes region.

Firstly, relocations refer to the option granted by law to aquaculture concession holders to modify the location of these concessions. Thus, the projects can be moved to another sector within an area appropriate for aquaculture (AAA), which offers better operating conditions, guaranteeing better performance. However, most of these projects seek to relocate to within the Kawésqar National Reserve, which is a contradiction with the object of protection of the Reserve; the marine ecosystems, and the Kawésqar culture.

Secondly, the positioning of the Magallanes region as a hub for the development of the Green Hydrogen industry is perceived by participants as a threat to the region. The installation of wind energy plants would generate new impacts in large territories where there are currently no industrial facilities, while the creation of desalination

plants and ports would generate impacts in the coastal region which would add to the already existing pressures caused by salmon farming.

Finally, the expansion of tourism in the Magallanes region by outsiders is seen by representatives of civil society organizations as a threat. In their accounts, the participants describe how the arrival of new inhabitants to Puerto Natales, coinciding with the expansion of salmon farming, has led to a change in the way local tourism is organized. Whereas previously it had been managed by the inhabitants of the territory themselves, tour guide positions - considered the best paid in the tourism industry - are now held by people from outside the region, with specialized technical or professional training. This limits the options in terms of professional and economic development for young inhabitants of the territory who as a result choose to work in the salmon industry.



“ I see tourism as a threat and as having a social impact, because it represents an economic opportunity that could upgrade the technical skills of the local labor force, and thus people from outside would stop coming to work in the better paid jobs, and local people would continue to work in this industry. [...] Then the local people of Natales, the young people who leave, who leave and get jobs in tourism, where they earn less than if they worked in the salmon farming industry. They can't decide. It's not really a free choice. ”

Participant 4, representative of a local organization
Focus group
Puerto Natales, August 2023

In summary, the expansion of the salmon industry in the Magallanes region is perceived by the participants as having diverse impacts. On the one hand, it is a highly polluting industry which has impacted the physical territory in which they live, due to contamination by waste, the generation of micro-dumps, and the loss of hydrobiological resources. On the other hand, a connection was noted between environmental protection against the threat of the salmon industry and the need to prevent the climate crisis from worsening. Finally, this expansion has also led to a transformation in the socio-cultural relations that have been built around and on the environment, a deterioration of the social fabric and of the cultural identity, insecurity, and the entrenchment of gender roles. In addition, the expansion of salmon farming in the region, which continues today, is perceived as a threat.

The reflections on the impacts and transformations that the expansion of the salmon industry has entailed for the physical territory, and the participants' relationship with it, are closely linked to their motivations for advocating for and protecting the environment.

In consideration of all the above, the following is an analysis of the legal empowerment process carried out in the Magallanes region, which, consequently, seeks not only the protection of ecosystems, but also the conservation of local traditions, social dynamics, and ways of life.

IV. Use of legal empowerment strategies for territorial defense in Magallanes

The seriousness of the situation, with Magallanes as the focus of the expansion of an industry that had already proven to be highly polluting, led in 2017 to the initiation of collaborative work between civil society organizations and organizations and communities in Magallanes to facilitate access to justice in relation to the conflict with the salmon farming industry.⁴³

The first contact with the territory was with civil society organizations and in relation to the threat posed by the installation of a salmon processing plant on the coast, a fish farm, and two salmonid fattening centers. The environmental authority had given the green light to all these projects, despite the considerable environmental and socio-cultural impacts they would have, and despite the fact that they would be located in Indigenous land and the Kawésqar communities had not been consulted beforehand.

On that occasion, the legal and administrative actions contained in the environmental law were used, as well as the appeal processes available to challenge environmental assessment decisions that do not consider the observations made during the citizen participation period, or requests for revocation based on illegalities in the environmental assessment decision, contained in the administrative law.

Subsequently, in 2020, actions were taken to contest the approval of six salmon fattening centers that were intended to operate within the Kawésqar National Reserve, owned by the Norwegian company Nova Austral. This work, carried out as part of a network which involved the scientific input of Greenpeace and AIDA, bore fruit in 2022: six rulings were handed down in favor of the protection of the sea, with the environmental court forcing the Environmental Assessment Service to re-evaluate the salmon farming projects which had been found to involve several legal infringements.

Also in 2020, at the request of a group of Kawésqar communities defending the sea, accompaniment was provided in the application for a Native Peoples' Marine Coastal Area (ECMPO in the Spanish acronym), which they had already completed. This designation is a tool provided for in Chilean law that allows Indigenous communities to request the administration of a coastal area, provided that customary uses are verified. In addition, the law stipulates that the processing of other applications for uses and concessions in the area be frozen as soon as the ECMPO application is submitted for processing. However, in practice, it took years for ECMPO applications to be declared admissible by the competent authorities, meaning that this

⁴³ Among the civil society organizations and local organizations and communities are: Kawésqar defending the sea, ONG FIMA, Greenpeace, Interamerican Association for Environmental Defense (AIDA in the Spanish acronym), Asamblea Ciudadana Última Esperanza, Sociedad Civil por la Acción Climática (SCAC) of Magallanes, Fundación Lengua, and environmental defenders from the region.



freezing did not occur. It was therefore not an effective tool for safeguarding ancestral uses within a territory.⁴⁴

In this context, legal actions were filed to stop the processing of a series of aquaculture concessions for salmon farming projects in the same place where the ECMPO application for Última Esperanza of one of the Kawésqar communities defending the sea had been requested. The consequence of the action was the freezing of the processing of the concessions from the moment the ECMPO application was submitted and not from the moment it was declared admissible by the fishing authority. This jurisprudence is maintained to this day and has served as a reference for other application processes in regard to these areas with customary uses in Chile.

Finally, significant actions advocating for the Kawésqar National Reserve were the judicialization, on behalf of the Kawésqar who defend the sea and Greenpeace, of a series of resolutions that rejected the initiation of citizen participation processes in the environmental assessment of five salmon farms owned by the company Nova Austral.⁴⁵

The outcomes of these appeals for protection were favorable and the Supreme Court ordered the commencement of the citizen participation processes initially rejected by the Environmental Assessment Service.⁴⁶ This allowed many organizations, environmental defenders, and residents of the Magallanes region to become involved and participate in a process of citizen observation of the projects submitted for environmental assessment, voicing their concerns in relation to the salmon farms.

Taking this context into account, this section analyzes in greater detail the experience of the legal empowerment process of Kawésqar families and civil society organizations in the Magallanes region, presented according to its three key components: knowing, using, and shaping the law.

44 For more information on the regulations concerning the Native Peoples' Marine Coastal Areas (ECMPO in the Spanish acronym), please refer to the Annex of this report.

45 The fattening centers had been submitted to the Environmental Impact Assessment System (SEIA) by means of Environmental Impact Statements (DIA in the Spanish acronym). This means that to begin a citizen participation process and make comments on the environmental assessment of the project, these must be requested by ten natural persons or two legal entities. In addition, the law requires that the requests must include an account of how the project will result in negative externalities and social benefits in nearby communities. If not, the environmental authority will not allow a citizen participation process to be initiated. In the cases reviewed, the Environmental Assessment Service concluded that there would be no negative externalities in nearby communities, as the fattening centers are located at sea, far from the main population centers of the Magallanes region.

46 For further information, please refer to the Annex to this report.



1. Knowing the law: helping communities understand legal language

According to specialist literature, legal empowerment is an approach that seeks to increase knowledge of the law and develop better pathways for accessing justice.⁴⁷ Thus, knowing and understanding the law is the first step in enabling individuals and communities to navigate the workings of the justice system and the ways in which they can assert their rights.

In general, for communities and organizations in the Magallanes region, the law is like a foreign language, not easily read, and difficult to comprehend, especially for people with no legal training. To overcome this barrier, ONG FIMA has worked with the communities and organizations of the Magallanes region, using the following strategies:



Training workshops and schools



Seminars and discussions



Regular meetings for the discussion of strategies



Sharing of case progress by means of infographics and explanatory videos

The objective has been to actively include them in the legal strategy when representing them in courts and before administrative bodies, as well as to enhance their knowledge and use of the different legal tools available in the institutional framework for territorial defense.

For the participants, this has made a difference in their level of knowledge and understanding of the law, which has been key to bring them closer to the legal language.



“ Now that I understand the language, this legal language, with those ‘otrosí’, ‘otro no’, ‘otrosí’, [laughs], ok? Now that I more or less understand the legal language, even when something new appears, I investigate it and it’s no longer so confusing. [...] I feel that rather than being a language that was difficult to access, and not only regarding environmental law, it’s like understanding the legalese, how the legalese works. It has meant gaining a better understanding of the law. ”

Participant 5, representative of a local organization
Interview
Puerto Natales, August 2023

⁴⁷ Open Society Foundations (2021). Making the law work for people. A Handbook on Legal Empowerment and Inclusive Innovation, p. 5. Available at: <https://www.opensocietyfoundations.org/publications/making-the-law-work-for-people>

Through these mechanisms, progress has been made in familiarizing communities with the legal knowledge, language, regulations, procedures, and institutions via which they can make their rights enforceable. However, there is also an exchange of knowledge in these instances, which then informs legal strategies and allows for a better expression of the communities' demands in the language of law.⁴⁸



“ It has helped me to advance in that sense, in understanding the system, the system from the legal point of view. [And in this case, I’ve already learned what we have to do to apply for protection. I learned what we have to do to bring, I don’t know, a claim. How do we bring it to court, to the Supreme Court? What’s the first step? For example, injunctions, etc. Environmental Court, Supreme Court, I know that’s the path to take. When we start the process of appealing for protection and they reject it, we’ll have to take it to the Supreme Court, that’s the way. That’s what I learned. Before, I had no idea. ”

Participant 1, Kawésqar representative
Interview
Punta Arenas, August 2023

This familiarity with the legal language has made dialogue with authorities and institutions more equitable, empowering the communities as interlocutors, since not all knowledge is concentrated in the institutions or the industry.



“ I believe that it does enable and facilitate, in the sense that, by using the same language, it places you in an equality of... I don’t know if it’s equality, but in a more direct dialogue [...]. It provides tools that make the dialogue less hierarchical, with them in a higher position. It’s no longer like a hierarchical dialogue with the organized community, like where they have all the knowledge. And I think that creates a change. ”

Participant 4, representative of a local organization
Focus group
Puerto Natales, August 2023

48 Almela, Marta et al. (2019). *Empoderamiento jurídico y abogacía comunitaria en Latinoamérica: experiencias de acceso a la justicia desde la comunidad* [Legal empowerment and community lawyering in Latin America: community-based access to justice experiences]. Buenos Aires: Asociación Civil por la Igualdad y la Justicia (A.C.I.J.), 1st edition. Available at: <https://grassrootsjusticenetw.org/resources/emp-juridico-abog-comunitaria-latam/>

In addition, the communities have learned to better manage their expectations in relation to the length of time taken by the administrative and legal processes which, despite their delays, have proven to be effective. The lessons learned in this regard include not reducing everything to a legal strategy, but rather combining it with other actions, whether communications actions or community-based actions, which allow for engagement in parallel to the legal processes.



“ And then came all the legal accompaniment when..., to have patience, because legal processes are not like human, emotional processes, where you want the issue to be resolved right away. The law is much slower. So, what does it teach you? Not to despair. Not to throw in the towel [...]. One enters with a lot of anxiety. So I think that the view they have, which is like a common language among lawyers in general, is that the legal proceedings run in parallel, they have a different timeframe. ”

Participant 5, representative of a local organization
Interview
Puerto Natales, August 2023

In the case of the Kawésqar who defend the sea, in particular, the fact that some representatives are familiar with the law has made it possible to convey key information about the legal cases to the rest of the community. Certain members of the communities who, due to their representative role, their greater involvement in the actions, or their knowledge of technical concepts, have taken on the task of explaining important developments in the cases in simple language, avoiding overly technical language.



“ I have to communicate to all the communities. I tell them in simple language, for example, ‘guys, they rejected the appeal we presented to the Kirke. What we’re going to do now is take it to the Environmental Court. For this, I need you to tell me first if you agree, who’s going to participate in the appeal’. I have to explain the situation to them in simple language. [...] I’d say that the conduit between this knowledge and the community... there’s me, maybe the people who participate more, and there’s [name of representative] who can also respond to queries. ”

Participant 1, Kawésqar representative
Interview
Punta Arenas, August 2023



“ Yes, logically yes, because suddenly there are, for example, words that I don’t understand and she tells me, no, it’s this, this and this and this. [...] And [the representative] also informs me about this, she informs me internally, she tells me ‘the process is like this, we won’. Ah, perfect, then I tell the people of the community, ‘this process has been won’. ”

Participant 3, representative Kawésqar
Interview
Punta Arenas, August 2023

In summary, legal support through case advice in the form of training workshops, seminars, discussions, meetings, infographics, and explanatory videos by different organizations, together with the dissemination of knowledge in simple language by representatives of the communities, has helped the communities to have a better understanding of the legal language, which is essential to carry out defense actions for the territory through Chile’s formal access to justice mechanisms. In this way, an ownership of the legal language by the communities is generated, while promoting free, equitable, and fully informed participation in public participation instances.

2. Using the law: implementation of actions for the defense of the territory

The second key component of legal empowerment is the use of the law. On many occasions, the use of the law by communities is facilitated through lawyers, paralegals⁴⁹, and other experienced individuals who provide legal advice.⁵⁰

In the case of the Magallanes region, the communities and organizations highlight that, although they were aware of the need to take action to defend the territory, they were not clear on how to do so given the multiplicity of procedures available and the complexity of the legal language. This situation of uncertainty left them defenseless in the face of the impacts of the salmon industry's expansion.



“ Before FIMA came along, even before organizations like Greenpeace and National Geographic came along, we felt that while we knew we had to empower ourselves, we didn't know how. In a way, it was as if we were trying to navigate through a sea of fog, so it was very difficult to achieve our objectives. ”

Participant 2, Kawésqar representative
Interview
Punta Arenas, August 2023



“ What happened was that I needed to learn, because I could no longer continue along the path without the necessary knowledge, because I would get lost; and, in fact, I was already lost. ”

Participant 1, Kawésqar representative
Interview
Punta Arenas, August 2023

This situation is changing as the communities have begun to use legal tools to call for the protection of the environment and their rights.

⁴⁹ Paralegals or community legal workers are people from the community who work directly with those affected by injustices so that these can understand and use the law for themselves. Maru, Vivek and Gauri, Varun (2018). Paralegals in comparative perspective. What Have We Learned across These Six Countries? Cambridge University Press, p. 2. <https://doi.org/10.1017/9781316671801>

⁵⁰ Open Society Foundations (2021). Making the law work for people. *A Handbook on Legal Empowerment and Inclusive Innovation*, p. 5. Available at: <https://www.opensocietyfoundations.org/publications/making-the-law-work-for-people>

2.1 Tools and actions used

The advice of non-governmental organizations has enabled the prosecution of cases of environmental injustice, accompanying and guiding communities and organizations in the filing of administrative claims and legal actions.

Among the main access to justice mechanisms used by communities and civil society organizations are those that allow them to have direct involvement, or actions in which they are represented before administrative and legal bodies.

Tools for direct use by communities

Tools for direct use include requesting the initiation of participatory processes in the assessment of projects through the Environmental Impact Assessment System and submitting citizen observations through them; submitting requests for early termination of project assessments; filing complaints and following-up before sectoral agencies and the Chilean State's Superintendencia del Medio Ambiente (Environmental Authority); filing applications for Native People's Marine Coastal Areas (ECMPOs) and following-up; presenting requests for information via Chile's Transparency Law, and participating in lobbying meetings with authorities.⁵¹ Although all of these actions are procedures before the administration – meaning that individuals do not need to be represented by a lawyer – the accompaniment provided by environmental organizations has been crucial to increase awareness and use thereof.



“ Those observations were made by me. I made them by myself. [...] I submitted a lot of observations. I went to the site and started to look around and looked for all the spaces that there were for submitting an observation. I made a list and then I realized that there was a lack of information regarding the area of influence. ”

Participant 1, Kawésqar representative
Focus group
Punta Arenas, August 2023

⁵¹ For a more in-depth analysis of this tool, see the Annex to this report.

Actions in which communities are represented

Actions in which the communities are represented include administrative and legal claims when their observations are not duly considered in the evaluation of a project; the filing of protection actions when a current threat to or violation of any of their rights must be urgently stopped or when their rights to citizen participation and the right to live in a pollution-free environment are denied; appeals against decisions by Chile's Environmental Authority that adversely affect their rights; or the request for the revocation of an administrative decision when it is found to be illegal because it violates their rights and/or environmental regulations.



“ Personally, I've learned a lot. From how to submit observations to the SEA, which I used to see as rather pointless, but then I realized that it isn't pointless. I mean, in order to even be able to object to a project, we have to do it. ”

Participant 1, Kawésqar representative
Focus group
Punta Arenas, August 2023

The communities and organizations recognize the importance of administrative and legal bodies in the search for solutions to the salmon farming conflict and consider that the prosecution of cases is an effective way to achieve results in relation to the defense of the territory and ecosystems. In this regard, although their relationship with institutions and decision-makers is always hierarchical, the accompaniment provided by non-governmental organizations in the process has allowed them to become a significant player in the decision-making process related to the salmon farming conflict, translating their opposition to the expansion of salmon farming within the Kawésqar National Reserve into concrete results.

In turn, representation before legal and administrative bodies has helped to increase the communities' say in terms of decisions on the operation of certain projects, since it is a court that will then make a ruling in respect of the conflict, considering the points raised by the communities and adjudicating in accordance with their rights. Although the asymmetries of power are not completely redressed in the legal process, significant decisions that were initially detrimental to the communities have been reversed.



“ We always think of it as one of the most important mechanisms, because in the end, many of these conflicts, whether political or administrative, will invariably be settled in court. ”

Participant 2, Kawésqar representative
Focus group
Punta Arenas, August 2023

In addition, the consistent accompaniment of non-governmental organizations has led to a progressive empowerment and greater confidence on the part of the communities of the Magallanes region, which has resulted in an increase in the number of legal and administrative actions filed autonomously by representatives of these mobilized groups.

An example of this was the revocation requests submitted in the case of the Kirke Channel, in the Magallanes region.⁵² In July 2021, a project was approved to widen the Kirke Channel to allow larger vessels to pass through. The Kirke Channel is an ancestral site that has been used by the Kawésqar to transit through the territory for more than six thousand years. In addition, the marine ecosystems found there are unique and fragile, due to the singularity of the currents that converge there. In August 2021, Kawésqar representatives defending the sea and the Civil Society for Climate Action (SCAC in the Spanish acronym) in Magallanes filed two appeals for revocation of the Environmental Approval Resolution (RCA in the Spanish acronym) that had approved the project.

In the case of SCAC Magallanes, it was the members themselves who reviewed the project and organized around the identification of various illegalities in the environmental approval of a project such as the widening of the Kirke channel. The request sought to annul the RCA of the project on the grounds that the approval was granted without due consultation with Indigenous peoples, without properly assessing the impacts on the local communities, marine ecosystems, landscape, tourism, and without considering its incompatibility with the objectives regarding the protection of the Kawésqar National Park and Reserve.⁵³

⁵² For further information on these requests, please refer to the Annex to this report.

⁵³ At the date of publication of this report, the revocation requests had been rejected by the Magallanes Environmental Assessment Commission and were contested before Chile's Third Environmental Court, which has not yet issued a ruling.



“ Before, we used to have it reviewed much more often and I don’t know, but now? We still send it for review because it’s always good to have a lawyer look at something. But lately, we have been coming up with things on our own. The most obvious example is the annulment of the Kirke [...]. I know that FIMA helped the communities [Kawésqar defending the sea] a lot, but the one that was done through SCAC, that one was completely citizen-led. ”

Participant 5, representative of a local organization
Interview
Puerto Natales, August 2023

Thus, the involvement of the communities in the legal strategy has been achieved not only by actively informing them of the progress of the case in simple language, but also by helping them to develop their own actions.

It is worth noting that local communities and organizations have applied their knowledge of the law in different personal situations that require the implementation of legal processes. This led to a spontaneous discussion concerning the way in which the law is present in all spheres of life and, therefore, it is important to be familiar with it and to use it.



“ Even apart from activism, it happened to me in my personal life, when I had to go through the whole process of my divorce [...]. I felt much more confident, that it was the way, and that it had to be done. It taught me that the legal process is the way to go when you are informed and you can become informed, that it wasn’t something distant that I wouldn’t be able to access and that it wasn’t just an idea, in life it’s fundamental. As this happened to me in my personal life, it was crucial to do it that way, and in socio-environmental conflicts it’s also essential to do it that way. ”

Participant 4, representative of a local organization
Interview
Puerto Natales, August 2023



“ The law, from being like ‘ah, law and lawyers belong over there’, now it’s like, no, because the law applies to everything, it’s the same as politics. It’s present in daily life, you know? The right to live in a healthy environment, the right to freedom of opinion, are things that are part of daily life. ”

Participant 5, representative of a local organization
Interview
Puerto Natales, August 2023

In conclusion, the accompaniment and guidance provided to communities and organizations in the use of legal tools and in the filing of administrative claims and legal actions has contributed to reducing barriers to access to environmental justice. This has been done by increasing knowledge of the law so that it can then be used by the communities to resolve their environmental conflicts. As a result, the communities and organizations have been able to translate into legal language their territorial demands and to submit their own actions, helping to level the playing field in these socio-environmental conflicts, which have been addressed through administrative and legal procedures. In addition, knowledge of the law has increased the degree of legal empowerment and the confidence to be able to use it in other areas of the lives of the communities and advocates.

3. Shaping the law: a pending debt on the part of the Chilean state

The final key component of legal empowerment involves shaping the law, i.e., generating systemic changes, such as the modification of regulations and laws, through advocacy and strategic litigation.⁵⁴ This component is part of a transformative approach that can be applied in legal empowerment processes that seek to strengthen the capacity of communities to use and appropriate legal tools in order to obtain systemic changes that overturn the structural inequalities to which they are subjected.⁵⁵

As regards legal actions filed in defense of the Kawésqar who defend the sea, there have been significant jurisprudential advances. One example of this was the decision of the Environmental Court of Chile to annul the environmental permits of five salmon farms located within the Kawésqar National Reserve, requesting that they be assessed jointly and synergistically.^{56, 57} Similarly, the Supreme Court ordered the retroactive evaluation of five salmon farms in the Reserve for having violated the right to live in a pollution-free environment, strengthening national jurisprudence regarding citizen participation in environmental matters.⁵⁸ As a result, it is now possible for local communities to participate in the assessment of salmon farms, given the Supreme Court's recognition that such facilities have

negative environmental externalities due to the use of antibiotics, potential salmon escapes, and pollution caused by their deposits, and that these consequences are likely to affect large areas that exceed the distance between the project and the nearest town.

However, from the perspective of the communities of the Magallanes region, there is still a long way to go to ensure that the law accounts for their most important historical demand. In particular, the Kawésqar who defend the sea highlight how elements of their indigenous cosmovision have not yet been incorporated into national legislation. The clearest example of this is that, despite the fact that the Kawésqar's traditional form of organization is based on family trees, the Kawésqar advocates were obliged to register as indigenous communities in the registry of indigenous communities and associations of Chile's National Corporation for Indigenous Development (CONADI in the Spanish acronym) in order to comply with the Chilean institutional framework, which registers indigenous communities as a requirement for their participation in various bodies.

54 Open Society Foundations (2021). Making the law work for people. *A Handbook on Legal Empowerment and Inclusive Innovation*, p. 5. Available at: <https://www.opensocietyfoundations.org/publications/making-the-law-work-for-people>

55 United Nations (2023). Report of the Special Rapporteur on the independence of judges and lawyers - The promise of legal empowerment to advance access to justice for all. Resolution A/78/171 dated July 13, 2023, p. 11. Available at: <https://www.ohchr.org/es/documents/thematic-reports/a78171-report-special-rapporteur-independence-judges-and-lawyers>

56 Third Environmental Court, Proceeding No. R-17-2021 (aggregated in R-16-2021); R-7-2022 (aggregated in R-6-2022); R-25-2022 (aggregated in R-24-2022) and R-40-2022.

57 The rulings strengthen the jurisprudence on fracking and set a precedent whereby a complete assessment for this type of industrial activity would require, firstly, that the fattening centers located nearby and belonging to the same owner must be evaluated as a single undertaking; secondly, that the shipping routes in their areas of influence be appropriately incorporated and, lastly, that the synergistic impacts that they might have be assessed. For more information on these rulings, see: <https://www.elmostrador.cl/noticias/opinion/2023/01/09/las-alertas-y-avances-en-el-resguardo-de-la-reserva-nacional-kawesqar/>

58 Supreme Court, Proceeding No. 60548-2021.



“ Subsequently, with the salmon farming issue, we were forced to institutionalize ourselves. In fact, the community was born out of this, because we were not originally organized as a community, but rather as family trees, and the state only listens to you when you have a community. ”

Participant 2, Kawésqar representative
Interview
Punta Arenas, August 2023

Moreover, the rulings that annulled permits for the installation of salmon farms in the Kawésqar National Reserve were based on technical environmental arguments, leaving aside considerations related to the presence of sites which are sacred in Kawésqar culture.



“ I believe that everything we have won in the Environmental Court and in the Supreme Court has to do more with the General Environmental Law. However, in this instance, the Court has not accepted our claims, or whatever it's called, because it's us who's doing it, or because it's sacred land, or because it's a sacred site, or because it's indigenous land, or because of the cosmovision. [...] For example, on Clarence Island. Synergistic impacts. But it doesn't say anything about it being an ancestral land, that there's a burial site, no, it doesn't say anything. So, we haven't seen that incorporation within the rulings. It doesn't exist. ”

Participant 1, Kawésqar representative
Interview
Punta Arenas, August 2023

Likewise, when making ECMPO requests, they have been questioned by the authority regarding the size of the territory requested.⁵⁹ This shows a lack of institutional understanding of their particular relationship with the territory, which is not conceived as something static, but is rather based on transit by means of sailing, nor in a strictly material manner, but also through spiritual links.

⁵⁹ One of the main difficulties in the processing of applications for Native Peoples' Marine Coastal Areas (ECMPO for its acronym in Spanish) is related to the surface area of these spaces. In particular, issues are raised regarding the compatibility of the ECMPO with the carrying out of production operations and the potential consequences of the ECMPO designations on investment projects on the borde costal (state-controlled coastal areas). Rojas, Jaime (2023). *Ley Lafkenche: análisis y perspectivas sobre su aplicación* [Lafkenche Law: analysis and perspectives on its application]. Available at: https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/34373/1/Ley_Lafkenche_analisis_y_perspectivas_sobre_su_aplicacion.pdf



“ There is this belief that you have to experience ‘settlement’. The idea of settlement. We inhabit the space. We don’t have a house in the middle of the Park. But we do sail, travel, gather, fish. We live and subsist within those areas. And I would say that this is much more in line with the Kawésqar way of life, which in essence is not, shall we say, sedentary, as the state would like it to be. ”

Participant 1, Kawésqar representative
Focus group
Punta Arenas, August 2023

This is related to the distrust that Indigenous communities have towards Chilean institutions and the use of administrative channels for conflict resolution, given that the language of the law pertains to the Western world and is alien to their cosmovision. However, the process of legal empowerment has allowed them to make use of these mechanisms to achieve results favorable to their interests.



“ As a result of the accompaniment provided, you realize that there are mechanisms which once were obscure and which we didn’t trust, but that if you know how to use and execute them and with the proper strategic approach, good results can be obtained. [...] That was the moment when we said, when that appeal was won, we said ‘the system is there and we have to try to use it to our advantage no matter what’ ”

Participant 2, Kawésqar representative
Interview
Punta Arenas, August 2023

Thus, although legal representation has led to progress being made in terms of the environmental assessment of salmon farming projects and citizen participation in environmental issues, the consideration of Kawésqar traditions, customs, and cosmovision when it comes to regulations is still a pending debt on the part of the Chilean state. The effective incorporation of the Indigenous cosmovision in the processes of resolving the conflicts caused by the presence of the salmon farming industry in the territory would represent the consolidation of an innovative transformation within the justice systems, where the definition of the success of actions depends on the perspective of the affected communities themselves.

V. Conclusions

In the Magallanes region, the socio-environmental conflict generated by the arrival and expansion of salmon farming, particularly within the Kawésqar National Reserve, has led the organized community to adopt strategies to advocate for the territory and its culture which are related to legal empowerment.

In the scenario examined, legal empowerment has led to increased access to environmental justice and, in doing so, has allowed Kawésqar peoples defending the sea and civil society organizations to advance in their campaign in defense of the territory and their rights through the use of legal strategies and tools.

An analysis of the experience of these organizations as regards each of the three key components of legal empowerment reveals evidence of opportunities and progress in the defense of their rights, their impact on decision-making, and their efforts to redress inequalities. However, there are still significant barriers in place which impede meaningful access to justice.

Regarding the first key component, i.e., knowledge of the law, it is clear that the communities' interaction with the legal information, language, regulations, procedures, and institutions through which they can enforce their rights makes a difference as regards their level of knowledge and understanding of the law, which in turn has allowed them to be accepted as interlocutors. Knowledge of the law has also allowed them to better manage their expectations as regards the length of time

taken by administrative and legal processes. In addition, their understanding of the general concepts of law, procedures, and institutions involved in the conflict has enabled them to transmit key information regarding the cases to the rest of the community.

Regarding the second key component, use of the law, it has been improved after a process focused on raising awareness of regulations. Greater knowledge of the regulations has enabled communities and civil society organizations to understand how they might be able to resolve their environmental conflicts. The main mechanisms for access to justice used include those that encourage direct intervention by the communities themselves, such as citizen observations or complaints, so that they can then be represented before administrative and legal bodies if the observations and complaints are not duly accepted by the environmental authority. Communities recognize the importance of administrative and legal bodies in the pursuit of solutions to the salmon farming conflict and consider the legal process to be an effective way to advocate for the territory and ecosystems. In addition, they feel that the accompaniment of environmental organizations in the process has allowed them to become involved in the decision-making process, which in turn has increased the confidence of the communities in the Magallanes region when it comes to using the different tools available to them.

The third key component, shaping the law, represents the greatest challenge. Although it is recognized that there have been significant advances in jurisprudence and results that enable the defense of the territory, particularly in the case of Indigenous communities, there is a considerable discrepancy in terms of the law's recognition of their indigenous cosmovision and its effective incorporation into national legislation and legal decisions. Institutions and the law are perceived as tools belonging to the Western world, which is alien to their cosmovision and practices, and there is still a long way to go to redress the structural inequalities that make it difficult for the demands of these groups to be met.

Although the expansion of salmon farming in the Magallanes region persists, the process of legal empowerment that has resulted in the knowledge and use of environmental legal tools

has allowed organized communities and civil society organizations to increase their participation in decision-making and their levels of access to justice. This has been especially significant in terms of raising awareness of the specific impacts of projects regarding their cosmovisions and ways of life. In the current socio-environmental context of the region, this process of strengthening and learning about the tools provided by the law should facilitate the development of strategies for defense and advocacy in the face of future territorial threats.

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Annex

Tool	Description	Regulations
Citizen Observation in the Environmental Impact Assessment System	<p>It is a mechanism for citizen participation within the framework of the Environmental Impact Assessment System. It is defined as any opinion, comment, question, concern, and/or request from a natural or legal person regarding the environmental and climate aspects of a project or activity.</p> <p>The observations made are part of the assessment process and the entity must respond to them. However, the duty lies with the authority, who must address them and make a well-founded pronouncement on all of them in its decision.</p> <p>If the observations are not duly considered in the decision regarding the environmental approval and the person who made those observations is not satisfied with the response, they may file an administrative appeal. A subsequent claim may be filed before the competent Environmental Court.</p> <p>In Environmental Impact Studies, a mandatory 60-day period is established for submitting citizen observations. In the case of Environmental Impact Statements, the citizen participation process must be requested and subsequently approved by the environmental authority.</p> <p>If during the assessment there are substantive modifications to the project, a new citizen participation process may be requested.</p>	<p>Law 19.300 on General Environmental Principles Paragraph 3. On Community Participation in the Environmental Impact Assessment Procedure. Articles 26-31.</p> <p>Regulations of the Environmental Impact Assessment System (Supreme Decree No. 40 of the Ministry of the Environment) Section V: Community participation in the environmental impact assessment process. Articles 82-96.</p>
Application for Native Peoples' Marine Coastal Area (ECMPO in the Spanish acronym)	<p>ECMPOs are delimited marine areas whose administration is granted to Indigenous communities or associations that have exercised customary use of the area, after verification by CONADI.</p> <p>Customary use is understood as those practices or behaviors carried out by the generality of members of the communities, in a habitual manner, and that are recognized as part of their culture. Such uses include religious, economic, recreational, medicinal, and other practices or behaviors.</p> <p>The application to establish a protected area is submitted to the Undersecretariat of Fisheries and must demonstrate the customary use of this marine coastal area, in addition to the background information required according to the procedure established in the law and the respective regulations.</p>	<p>Law 20.249 establishing Native People's Marine Coastal Areas.</p> <p>Regulation of the Law (Supreme Decree No. 134-08 of the Ministry of Social Development and Family)</p>
Complaint to the Superintendencia del Medio Ambiente (Environmental Authority)	<p>Any citizen may use this tool to bring to the attention of the authorities an event that has the characteristics of a regulatory infringement. The Superintendencia del Medio Ambiente (SMA) is the body that oversees compliance with environmental management instruments and environmental regulations under its jurisdiction.</p> <p>Complaints must contain a detailed description of the facts and/or actions to be reported, specifying the geographic location and date of commission, and, if possible, identifying the offender. It is recommended that the affected ecosystem be specified and that the effects and damages caused by the conduct or event on the environment be specified, in addition to accompanying audiovisual documentation. The process involves filling out a form and submitting it online or presenting it in person at the respective regional office of the SMA.</p> <p>It may lead to audits being carried out by the authority and a sanctioning procedure if it is serious and is found to have sufficient merit.</p> <p>The SMA may refer the matter to the competent agency if the matter exceeds its powers.</p>	<p>Law No. 20.417 Organic Law of the Superintendencia del Medio Ambiente. Articles 21 and 47.</p> <p>https://denuncia.sma-gob.cl/</p>

Requests for information via the Transparency Law

Everyone has the right to access public information or information held by a government agency. These bodies have the active duty to make information permanently available to the public on their websites, as well as to deliver it in a timely manner to anyone requesting any particular information.

Requests may be submitted to the following agencies: Ministries, Regional Governments, Municipalities, Armed Forces, Carabineros (Chilean national law enforcement gendarmerie) and Investigative Police, State Universities, and Public Health Services. It can be done in person, on the agency's website or on the [Transparency Portal](#), following the instructions provided there. It is important to clearly indicate what you need, what type of document it is, in what date range the information originates, the format in which you need it, and other relevant details.

Once the request has been submitted, the institution will have 20 working days to respond, which may be extended by 10 days if more time is needed to prepare the response.

If the public institution you requested information from does not have what you need, it must refer the request to the corresponding body, which must respond to your request.

In case you are not satisfied with the answer you were given to your request (either because you did not receive an answer within the stipulated period, the information is different from that requested, it is incomplete, etc.) you can file a [complaint before the Transparency Council](#) within 15 working days.

[Law No. 20.285 on Access to Public Information](#)

Lobbying meetings

The purpose of the Lobbying Law is to improve transparency and probity in relations with government agencies, regulating public disclosure in the management of private interests, and establishing a public agenda registry and a registry of lobbyists.

Lobbying is an activity through which a person, organization, or company seeks to promote, defend, or represent a particular interest to influence the decision making of an authority or official, such as, for example, the drafting or rejection of bills and administrative acts, the signing of contracts, the design and implementation of programs or policies, among others.

It is a useful tool for following up on procedures in progress to ensure they are advancing, as well as to express objections or reservations, and to obtain the grounds and criteria regarding certain acts or resolutions.

You can request a meeting online by [filling out a form](#), selecting the institution you wish to meet with and stating the reason for your request. Requests may also be made in person.

The authority in question has three working days in which to accept or deny the request. In case of acceptance, the meeting may be delegated to another department official.

[Lobbying Law No. 20.730](#)

Early termination requests

Projects submitted to the Environmental Impact Assessment System (SEIA in the Spanish acronym) are required to contain the key information necessary for an adequate environmental assessment of their impacts.

Failure to provide information shall be deemed significant or critical when it cannot be corrected by means of requests for clarifications, rectifications, or additions which, as their name indicates, are aimed at clarifying, rectifying, or adding to the information initially submitted.

Early termination is at the discretion of the Environmental Assessment Service and may only be ordered within the first forty days in the case of an Environmental Impact Assessment (EIA) or within the first thirty days in the case of an Environmental Impact Statement (DIA in the Spanish acronym).

Although it is at the discretion of the Service to issue a ruling, the right to petition contained in Chile's constitution allows individuals to make a request, which will be reviewed and decided upon by the Regional Director of the respective Environmental Assessment Service, if it is considered that essential information is missing from the project. Besides that, not providing full information is a serious matter, since the public needs to have all the information necessary to make accurate observations.

An appeal for reconsideration may only be filed against the decision issued within five days following the respective notification.

[Regulations of the Environmental Impact Assessment System](#)
(Supreme Decree No. 40 of the Ministry of the Environment).
Articles 36 and 48.

Revocation request

This request is an administrative appeal that seeks to revoke a particular administrative act.

Administrative acts are formal decisions issued by the organs of the state Administration in the exercise of public authority. The Environmental Approval Resolution (RCA in the Spanish acronym) that approves or disapproves a project submitted for assessment is an administrative act.

As such, it is subject to the oversight of the same authority that issued the act, in order to review, correct, or revoke due to any defects, irregularities or illegalities in said act. This power to revoke may be exercised at the request of whoever has an interest in such revocation, or ex officio by the authority, i.e., on its own initiative.

Although the general administrative deadline is two years from the publication or notification of the act, in the context of challenging an RCA, it has been understood that this term is 30 days, the same as for the PAC appeal.

It is important to note that unlike the PAC appeal, which only proceeds with respect to those who made observations, the request for revocation can be made by any person, even without the need for legal assistance, as long as he/she can be considered a stakeholder.

For this procedure to be successful, certain requirements must be met: i) demonstrate an interest, either because of a currently compromised right or a potential harm that can only be remedied with the declaration of the illegality of the act; ii) describe the relevant facts on which the request is based; iii) indicate the unlawful aspects, for example, formal defects that relate to an essential procedural step, infringement of fundamental rights, lack of justification and/or grounds for the act, etc.; iv) a specific request for the act to be revoked.

[Law No. 19.880 on the bases of administrative procedures.](#)
Article 53, in relation to Article 21.

Action	Description	Regulation
Appeal or application for protection	<p>The appeal for protection is a constitutional proceeding that seeks to put an end to a violation of rights in an urgent manner. It allows access to the respective Court of Appeals when fundamental rights covered in Article 19 of the Constitution are affected, specifically those listed in Article 20. Its objective is to provide a prompt solution to the person or persons whose rights have been injured by an arbitrary or illegal action or omission that results in a privation, disturbance, or threat to the right. As such, it is processed considerably faster than special actions before other courts.</p> <p>Any person, whether natural or legal, may file an appeal for protection due to the infringement of his or her own right or even due to the infringement of the rights of a third party. However, for the appeal to be successful, it must comply with the following requirements: it must be filed before the Court of Appeals of the place where the act or omission occurred within 30 days from the execution of the act or from the time the person became aware of it, and it must state the facts that indicate the violation of fundamental guarantees.</p> <p>In the case of an appeal for a violation of the right to live in an environment free of pollution, there must necessarily be an illegal action or omission. In other words, it is not enough that it is arbitrary. Furthermore, such illegal action or omission must be imputable to a specific person or authority, something that is not required for the general appeal for protection.</p>	<p>Political Constitution of the Republic. Articles 19 and 20.</p> <p>Order 94-2015 of the Supreme Court, on processing and ruling as regards appeals for the protection of constitutional guarantees.</p>
Complaint due to improper consideration of citizen observations or PAC Complaint	<p>An administrative appeal may be filed before the Environmental Assessment Service (SEA in the Spanish acronym), challenging the Environmental Approval Resolution of the project, for failure to duly consider citizen observations in the assessment procedure. A complaint may be filed against these SEA resolutions before the competent Environmental Court within 30 working days of notification, and may be filed by any natural or legal person who has made citizen observations in the procedure and who has filed an administrative appeal alleging that their observations were not taken into account.</p>	<p>Law No. 20.600 establishing the Environmental Courts. Art. 17, No. 6.</p>
Complaints against resolutions concerning revocations	<p>This is a legal action brought before the Environmental Courts against the resolution issued in a procedure of the revocation of an administrative act of an environmental nature, for example, an Environmental Approval Resolution (RCA in the Spanish acronym). The term for the filing of the action is 30 working days from the notification of the respective resolution, and it may be filed by whoever has requested the exercise of the power to revoke of the Chilean State.</p> <p>It has been used to challenge an RCA before the Environmental Courts by those who did not make citizen observations during the process. A request for revocation must have been previously processed and resolved before the Environmental Assessment Service.</p>	<p>Law No. 19.880 on the bases of administrative procedures. Art. 21.</p>