

## client alert

---

Mexico City, February 26th, 2024

# AMPARO IN REVIEW 709/2023

## Why is the amparo of the Rarámuri community of "El Trigo" so relevant?

On January 10 of the current year, the First Chamber of the Supreme Court of Justice of the Nation, unanimously resolved the amparo review 709/2023, filed by the **Rarámuri community of "El Trigo,"** Municipality of Uruachi, in the state of Chihuahua, **against the issuance and promulgation of a Decree that eliminated the restricted areas of the Hydrological Subregion of the Fuerte River** and established reserve areas for the use of river waters for industrial and urban purposes; as well as the revocation of four concession titles granted to mining companies El Fresnillo and Coeur Mexicana for the industrial use of water, whose granting implied a threat to the "El Trigo" community as it endangered the water source they used to rely on.

The relevance of this matter lies in the importance and practical usefulness of the prior, free, and informed consultation in favor of indigenous communities, which must be carried out before an authority issues administrative acts that may cause any type of harm to an indigenous community, as was the case here.

Additionally, the First Chamber acknowledged that the "El Trigo" community has a legitimate interest and emphasized the importance of the role that indigenous communities play in protecting the environment and ecological balance, stating that nature is fundamental to the development of their culture, worldview, beliefs, heritage, and identity.

### Legitimate Interest of Indigenous Communities in Administrative Acts

Traditionally, the general rule conditioned the admissibility of the amparo lawsuit to the existence and accreditation of legal interest<sup>1</sup>. However, derived from the jurisprudential development of recent years and the new amparo law of 2013, legitimate interest has been recognized as that personal, individual, or collective interest, qualified, current, real, and legally relevant, which can translate, if the amparo is granted, into a legal benefit in favor of the complainant resulting from an affectation to their legal sphere in a broad sense. This affectation may be economic, professional, public health-related, or of any other nature.

In the specific case, the District Court decided not to review the substance of the amparo to address the rights violations claimed by "El Trigo" under the rationale of not recognizing legitimate

---

<sup>1</sup> The thesis P. XIV/2011, titled: "LEGAL INTEREST FOR THE PURPOSES OF THE AMPARO PROCEEDINGS. ITS INTERPRETATION BY THE SUPREME COURT OF JUSTICE OF THE NATION HAS NOT UNDERGONE A MAJOR VARIATION, BUT THERE HAVE BEEN CHANGES IN THE UNDERSTANDING OF THE SITUATION IN WHICH THERE MAY BE TALK OF THE EXISTENCE OF AN "OBJECTIVE" RIGHT GRANTED BY THE LEGAL SYSTEM," available for consultation in the Judicial Weekly of the Federation and its Gazette, Volume XXXIV, August 2011, page 34 and registration 161286, defines legal interest as a direct harm to the legal sphere of the complainant arising from the ownership of a subjective public right, that is, a direct and immediate injury to the person or assets of the petitioner is required, and such situation must be susceptible to objective appreciation.

interest to said community because it was not directly located in the same area where the water concessions were issued (even though it was located in a different entity<sup>2</sup>).

However, the First Chamber of the Supreme Court of Justice of the Nation, in resolving the aforementioned matter, determined that the judgment issued by the district court was improper in denying the legitimate interest of the complainant. This violates the precautionary principle in environmental matters since the expert opinion presented in the trial indicates that the community did indeed lack an alternative water source.

### What is Prior Consultation?

Prior consultation is a mechanism that guarantees the right of citizen participation to the members of an indigenous community, whose purpose is to inform them in advance and submit to their consideration the appropriateness of any project that could affect the community members and their rights.<sup>3</sup>

In addition to the above, the Plenum of the Supreme Court of Justice of the Nation, when resolving the **unconstitutionality action 81/2018**, filed by the National Human Rights Commission, regarding the establishment of a criterion applicable regarding the duty of local congresses to establish a prior phase to consult the representatives of indigenous communities whenever local congresses consider enacting or amending legislative measures susceptible to affecting the rights of such communities, determined that prior consultation consists of the following phases:

- i. pre-consultation,
- ii. informative,
- iii. internal deliberation,
- iv. dialogue, and
- v. decision.

During the aforementioned phases, the following characteristics must be present: i. prior, in terms of temporality, the consultation must take place before the authority makes a decision regarding the project, ii. free, iii. informed, iv. culturally appropriate, and v. in good faith.

### Importance and Need for Consultation

The conduct of prior consultation allows for the assessment of the social, spiritual, cultural, and environmental impact that development activities may have on indigenous communities and their members, with these results being considered fundamental criteria for the execution of such activities, as well as to take measures to protect and preserve the environment of the territories they inhabit.

Moreover, prior consultation also protects natural resources that may be involved if authorities intend to authorize the execution of any activity or project, the realization of which would generate a negative impact on the natural resources on which indigenous communities depend and Benefit.

<sup>2</sup> This is so, given that the hydrological subregion of the Fuerte River is within Hydrological Region number 10 of Sinaloa and is a water system that encompasses different federal entities, including Chihuahua.

<sup>3</sup> In Mexico, prior consultation has legal basis in articles 2 of the Political Constitution of the United Mexican States and 6 of Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization.

ECIJA

Torre Mural. Av. Insurgentes Sur 1605 piso 27  
Col. San José Insurgentes, C.P. 03900,  
Ciudad de México, México  
Tel: (+52) 5556626840  
www.ecija.com

---

**ECIJA México**

socios.mexico@ecija.com

(+52 55) 56 62 68 40

www.ecija.com