

Human Rights, Canadian Extractivism, and Water

Latinamerican Observatory of Environmental Conflicts (Olca)

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Contents

Executive Summary	3
Spanish Summary	4
Introduction	5
Water as a Human Right and Extractivism in Chile	7
The Chilean Water, and Canadian Interests and Actors	9
Export Development Canada (EDC) in Chile	10
Canadian Mining Companies in Chile	12
Canadian Pension Funds in Energy and Sanitary Infrastructure	15
Socio-environmental Conflictivity in the context of the Social Uprising	17
Free Trade Agreements and the Constitutional Process	21
Conclusions and Suggestions	24
References	26

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Executive Summary

The aim of this report is to complement the observations that Human Rights Organizations have made regarding the violations of human rights in the context of massive social protest in Chile since the 18th of October 2019, contextualizing the profound ecological crisis in the country and its various expressions in the protests, with a special emphasis on interests and actions of Canadian companies and state agencies such as the Export Development Canada. We present the water crisis in Chile and the role of privatization of water rights, as well as extractive companies, hereunder Canadian mining enterprises and sanitarian firms. We describe how socio-environmental demands have become widespread in the protests in urban spaces and how rural socio-environmental conflictivity have intensified, and point to some tendencies of militarization and human rights violations that have not been included in the official reports of human rights organizations, foregrounding the responsibility of Canadian companies in these. Lastly, we present our concerns regarding the obstacles that Free Trade Agreements, including those involving Canada, may pose to the constitutive process currently in course in Chile. We call for the “Canadian Mission of Observation and Solidarity with Chile regarding the Human Rights Situation” to, along with transmitting and condemning the systematic violations of Human Rights in Chile, call for the Government of Canada to cohere with its commitment to human rights and democracy, and to break its silence on the critical Chilean situation.

Summary in Spanish

El objetivo del presente informe es complementar las observaciones presentadas por Organismos de Derechos Humanos nacionales e internacionales en relación a las violaciones a los derechos humanos en el contexto de protesta social masiva a partir del 18 de octubre 2019, contextualizando la profunda crisis ecológica e hídrica y su importancia en las protestas, con especial énfasis en los intereses y acciones de empresas y agencias gubernamentales canadienses tales como Export Development Canada EDC. Presentamos la crisis hídrica en Chile y el papel que juega la privatización del agua y las empresas extractivas, entre ellas mineras, enegéticas y sanitarias canadienses. Presentamos como las demandas socioambientales se han masificado en las protestas urbanas y como la conflictividad socioambiental se ha intensificado en las zonas rurales, y señalamos algunas tendencias de militarización y violación a los derechos humanos que no han sido incluidas en los informes de organismos de Derechos Humanos. Subrayamos la responsabilidad de empresas canadienses en éstas. Por último, presentamos nuestras preocupaciones en relación a los obstáculos que podrán significar los Tratados de Libre Comercio, entre ellos los que involucran a Canadá, al actual procesos constituyente en Chile. Solicitamos a la *“Misión Canadiense de Observación y Solidaridad con Chile sobre la Situación de los Derechos Humanos”*, junto a transmitir y denunciar la violación sistemática de DDHH en Chile, trasmitan y se hagan parte del llamado al gobierno Canadiense a cumplir con su expreso compromiso con los DDHH y la democracia y romper el silencio respecto de la situación crítica en Chile.

Introduction

Since October 18, when massive protests started in Chile, we have witnessed human rights violations carried forth by Chilean police and military forces, as have been widely documented by national and international institutions¹. We, the Latinamerican Observatory of Environmental Conflicts, are interested in complementing this work from the perspective of our field of expertise and action, socio-environmental conflictivity. In particular, we aim at visiblizing the context of the severe ecological crisis in which protests erupted which is intimately linked to the current Chilean economic, political and legal model. In our view, the privatization of water has been a decisive factor in provoking the ongoing social protest. As a result, it has marked both the content and the forms of protest which emerged throughout the different territories of Chile. Given the aims of this report, we pay special attention to the participation of Canadian companies in creating the current ecological crisis in Chile, with emphasis on conflicts over water.

First, we present the context of a profound and prolonged socio-environmental crisis in which the massive protests were sparked, underlining the human rights violations implicated in it. We then go on to reveal its interwovenness with Canadian corporate and financial activity by making reference to emblematic cases concerning mining, sanitation and electrical services. In the second part of the report, we describe first the central role of the movement's environmental demands - including the deprivatization of water and territorial claims. Thereafter, we show how socio-environmental conflictivity has intensified with the ongoing protests. We argue that this is a key point of consideration, evaluating the human rights violations carried forth by the state to suppress mobilizations, as it deepens the vulnerability of water and territorial defenders. Moreover, we express our concern that very grave cases of human rights violations in territorial conflicts are not being recorded and considered in the national and international reports that have been produced in the framework of the protests. We cite as an example the case of a

¹ Four international reports documenting human rights violations in the aftermath of the 18th of October in Chile have been published by Amnesty International, Human Rights Watch, the Inter-American Court of Human Rights, and the United Nations Human Rights Office of the High Commissioner.

community member shot and killed by a private security guard of the Tres Valles mine in Salamanca where 70% of shareholders of the mining operation are Canadian.

Finally, we present a short reflection on the possible international conflict that the constitutional process might spark, if the sovereignty of the new constituent enters into conflict with Free Trade Agreements such as the Canada-Chile Agreement or the TPP11.

Water as a Human Right and Extractivism in Chile

The massive protests in Chile commenced in the midst of the longest and most severe drought crisis in the history of the country. Five regions (Coquimbo, Valparaíso, Metropolitana, O'Higgins and Maule), representing 66,2% of the Chilean population (more than 11.8 million people), have been declared zones of agricultural emergency by the Ministry of Agriculture. Furthermore, in January 2020 the number of communes declared zones of water scarcity reached 136. That is, 40% of communes in Chile (DGA 2020). The drought that the country is enduring is the longest ever registered and possibly the longest and gravest of the past thousand years (Garreud et al. 2017). The crisis is not just circumscribed to the central-north, and several communes and encatchment areas all over the country are now facing scarcity. The water crisis has accelerated desertification, provoked massive death of cattle and other animals, increased the numbers of wildfires, and has left entire rural communities with inadequate access to water, with grave consequences for the future viability of non-industrial agriculture.

While climate change and global warming in Chile can account for the drop in the average precipitations of 23% between 2010 and 2018 (Biblioteca Nacional del Congreso 2019), the water crisis is intimately linked to privatization of water in Chile. Legally, throughout Chilean history, water has been considered a public good. But during the military dictatorship, the current Water Code (1981) was imposed without public debate through a process that excluded the majority of affected social sectors. The Water Code privatized water in Chile, and granted the so-called Exploitation Rights (ER) without cost to the agrobusiness, energy, and mining sector. This happened without regard for the natural recharge balance of aquifers. ERs are granted in perpetuity, and legally separate water rights from land rights. In the constitution of 1980, equally imposed during the military dictatorship, the ERs were granted the status of a transferable good through the article 19, Nr. 24. Through these two legal instruments, water was constituted as a business of exploitation and speculation that favors private actors through a system that allows for, and even foments the accumulation of ERs.

This process has been maintained and even accelerated since the return to democracy in 1990, favoring especially the mining, timber, and agribusiness sectors. In Chile, there is no

distinction between water use, that would, for example, prioritize human consumption, or ecological or industrial usage. This is justified on the basis of supposed ‘non-discrimination’ between water usages, assumedly permitting a more effective economic exploitation since market, and not social factors, mediate the usage. We find ourselves in a situation in which the most powerful economic sectors own the large majority of ERs, through profound wells and intervened water courses to ‘legally rob water, which together have caused an over-exploitation of aquifers in the country. Adding to this situation is the over-granting of ERs (granting different legal rights to the same water), that generates hydric stress in catchment areas and subterranean aquifers, as the consumption of water exceeds the rhythm of natural recharge.

The northern part of the country’s aquifers are contaminated by tailings and toxic waste from the mining sector, which has appropriated a significant amount of subterranean water reservoirs (though the so-called ‘miner’s waters’ (*aguas del minero*)). In central Chile, the ERs are largely in the hands of agribusiness and water sanitation companies, while in the South, monoculture tree plantations of pine and eucalyptus have dried out subterranean waters that used to nourish rivers. Fish farming has contaminated rivers, lakes, and the ocean, and hydroelectric dams dry and flood large stretches of rivers, irreversibly affecting their courses.

While the legislative development in Chile regarding water has been characterized since 1980 by increasing privatization of waters and sanitation services, the tendency in international human rights law has been the reverse. Here, the fundamental character of water is increasingly recognized². The Committee of Economic, social and cultural rights recognized in 2002 the right to water as a ‘indispensable guarantee’, as its compliance is a

² The Center for Human Rights (2017) of the University of Diego Portales, for instance, holds that: “[T]he right to portable water and sanitary services was recognized for the first time in the General Observation Nr. 5 of the Committee of Economic, Social and Cultural Rights in 2002. This General Observation is based in the articles 11 and 12 of the ICESCR, that makes reference to water, but without conferring it the status of autonomous right. When the Human Rights Council created the Special Rapporteur on Water Right in 2008, they institutionally recognized this right. Finally in 2010, the United Nations’ General Assembly adopted the Resolution 64/292 that recognizes the right to water and sanitary services as a human right. With this, the human right to water was directly recognized by the states, while the General Observation Nr. 15 assigned its reach and content, by virtue of the Committee’s function as provider of the ‘authoritative interpretation’ of the ICESCR” (ibid.:12).

precondition for the fulfillment of other fundamental rights such as — between others — the right to life, work, health, participation in cultural life, adequate housing, alimentation and the enjoyment of territories by indigenous peoples and the enjoyment of a non-contaminated environment.

The Chilean National Institute of Human Rights (NIHR) indicated that “through a prism of Human Rights, governments hold obligations regarding the right to water, amongst others to (I) guarantee the access to the minimal essential quantity of water, apt for personal and domestic use, and to prevent illness, and; (II) assure the right to access water and to water installations and services, especially in regard to vulnerable and marginalized groups” (NIHR 2019:209). The fulfillment of these obligations, as NIHR points out, must be “characterized by availability, accessibility, acceptability and adaptability” (NIHR 2015:176).

The NIHR condemned violations of the right to water on several occasions (see for example NIHR 2012, 2013, 2015). In the Annual Report of 2012, they point out that “water is an indispensable element to life. This vital resource has become scarce, amongst other things, because of climate change and the desertification process associated with this phenomenon, the rise of demand caused by the demographic explosion, and the increasing requirements of the extractive, mining, energy, manufacturing and silvicultural industry” (NIHR 2012:248)

Chilean Water, and Canadian Interests and Actors

In this section we consider three economic activities, in which Canadian companies hold interests in Chile, that are directly related to the present legal conditions inherited from the military dictatorship. This is particularly relevant for the privatization of water and the so-called subsidiary state, that privatizes services that were formerly considered as social rights. The relevance of these cases derives from their interwovenness with a development model that has been strongly questioned by civil society in the protests that erupted on the 18th of October 2019.

First and foremost, the participation of Canadian capital in the current Chilean model from an environmental perspective requires a close look at mining operations, sanitation companies, and urban electrical distribution companies. In other words, Canadian activities in Chile are divided between, on one hand, mining activities, and on the other, through their participation in the country's vital infrastructure. The latter is characterized by regional sanitation concessions (granted by the state as regional monopolies), and refers to the participation of Canadian pension funds, especially the Ontario Teachers Pension Plan. The latter owns a number of sanitation companies, such as Assbio (the O'Higgins and Biobío regions), Aguas del Valle (Coquimbo region), Esva (the region of Valparaíso) and Nuevosur, as well as the Saesa Group, that provides electric distribution in three Chilean regions.

Export Development Canada (EDC) in Chile

One aspect of Canadian extractivist activities and the drought crisis in Chile that has not been publicly problematized, is the indirect subsidy to Canadian mining activities granted through and by Export Development Canada (EDC).

EDC is the Canadian export development and credit agency and directs its activities towards fostering and developing trade between Canada and other countries. It aims at fomenting exports by Canadian companies. While EDC enjoys a relative institutional autonomy, it is a 'crown corporation', which means that it is a governmental agency, and is responsible before the parliament through the Ministry of International Commerce (EDC 2020a).

EDC has fomented mining activities in Chile considerably during the last decades, facilitating loans with government-backing to Canadian mining companies, and, to a larger extent, to other mining companies operating in Chile. The latter is destined by contract to the purchasing of technologies, services, and goods from Canadian providers. In 2019 alone, these loans and credits added up to 1.5 billion Canadian Dollars. These loans were made with government guarantee to mining companies operating in Chile, preferably Canadian, but also to companies from other countries, including the Chilean state-owned CODELCO (MiningWatch Canada 2020).

On one hand, we are concerned by a Canadian governmental organism which adheres to financial policies that foment mining exploitation that have been criticized for years for causing irreversible environmental damage and that is directly linked to the alarming drought crisis that affects communities in Northern Chile. On the other, it is of even greater concern that this policy has continued after the eruption of massive social protests in Chile, and the systematic violations of human rights on behalf of the government. On November 19th 2019, EDC ratified a transaction to the massive mining operation “Minera Escondida Ltda” for between 50 and 100 million Canadian dollars to be destined for the purchasing services and/or goods from various Canadian providers (Ibid.).

Another striking example of this is the direct commitment established between EDC and the Chilean government in 2014, where a loan of 300 million US\$ made to CODELCO with an original repayment date of 2019 was extended in 2018 to extend for another 10 years, until 2028 (Lex Latin 2018). The relationship was further deepened in 2018, when another loan of 500 CA\$ was ratified. Both loans are aimed at financing the purchase of services and/or goods from Canadian companies. While these loans were negotiated and rectified before the massive protests began in October 2019, it is alarming that EDC is financing a state-owned company of national interest to Chile in the current local context of ongoing human rights violations.

We would like to stress the fact that the foreign investment policy of a governmental agency is profoundly *political*. The Canadian government itself recognized this fact, when it imposed economic sanctions against Venezuela in 2017 (still in force today) that considerably restrict the EDC subsidies to actors operating in the country (EDC 2020). Considering the commitment with human rights, reaffirmed numerous times by the government of Justin Trudeau,³ the inconsistency of governmental policies before different Latin American governments is very problematic. This is particularly grave considering the importance of Canadian investment in the Chilean economy that grants the Canadian government in a privileged position so as to put pressure on the Chilean government to adhere to international human rights standards legislation.

³ Canada affirms that their priorities towards Latin America is “strengthening democracy” and “promotion of Human Rights” (Government of Canada 2018).

Canadian Mining in Chile

Between 50 and 70% of all mining activities in Latin America are Canadian owned (GTMDHAL 2013). According to MiningWatch Canada, at least 100 projects and mines owned by at least 40 Canadian companies are currently operating in Chile (MiningWatch Canada 2019). The majority of these companies are “junior” companies carrying out prospecting and exploration of lithium and copper. Additionally, large corporations such as Barrick Gold, Teck, Yamana Gold, Lundin Mining and Kinross Gold Corporation have operating mines in Chile.

Many of these companies are involved in territorial conflicts with the local communities that inhabit the territories where mining activity happens. As we mentioned above, mining operations consume immense amounts of water. According to the Chilean Copper Commission (COCHILCO), in 2018 copper extraction consumed 16.25 cubic meters per second. This adds up to 512 million cubic meters a year, or 1,5 times the total annual consumption of the 2,8 million inhabitants of Toronto (MiningWatch Canada 2019). As the large majority of mining activities in Chile take place in the desert and semi-desert regions of the central-north, this produces hydrological stress in already fragile ecosystems. Therefore water often becomes the object of socio-environmental conflicts over mining projects which include the contamination produced by mining waste, toxic lixiviation chemicals, the extreme consumption of water, as well as destruction of glaciers and permafrost that are vital to the hydric recharge cycle of catchment areas.

The massive presence of mines in Chile’s north, also have palpable consequences in gender relations. Mining activities generate spacial reorganizations in which productive activities are masculinized and marginalize alternative uses of the territory, traditionally carried forth by women. Worker’s incorporation in mining production is differentiated by gender and, as women have less access to work in mines, they are confined to the margins of this economy, more often than not, in precarious labor conditions. In our experience, the mining conflicts in the north of Chile are largely organized and led by women. This is

key to bear in mind when evaluating the promotion of mining activities by Canadian mining companies or through the financial credit and insurance policies of EDC.

In the following, we present some of the socio-environmental conflicts surrounding Canadian mines in Chile. Water is a central component in all of them, and the majority of the involved communities have reinforced their demands in the context of the current social and political crisis. The Pascua Lama (Barrick Gold) and el Refugio Maricunga (Kinross Gold) cases are examples of Canadian companies that have been convicted of environmental crimes in Chile, while Vizcachitas and Lithium Chile Canada are conflicts that have escalated in the current national political conflict.

Pascua Lama (Barrick Gold, Huasco Valley)

The binational mining project Pascua Lama, situated in the Andes between Argentina and Chile, is owned by the Canadian company Barrick Gold and was projected to be the largest open-pit gold, silver, and copper mine in the world. The project has been in conflict with rural and Indigenous Diaguita communities in the Huasco Valley, that is home to approximately 70.000 people. It received environmental permission in 2001, which was later extended in 2006. Construction was initiated in 2009 but due to different accumulated legal infractions that caused severe environmental impacts, it was closed by the authorities and courts in January 2013, initially as a cautionary measure. Subsequently, in January 2018, the project was sanctioned with total and definitive closure by the Superintendency of the Environment. Currently an appeal filed by Barrick is being discussed in the Environmental Courts. In the exploration and later the construction process, the company destroyed several glaciers and contaminated the water of lakes, in addition to causing severe socio cultural impacts on the livelihood of Diaguita and peasant communities through the company's politics of division, co-opting and Corporate Social Responsibility. Once the sanction process recognized the irreparable environmental damage, the Defense Council of the State sued Barrick to place responsibility and demand reparations. This process is currently taking place in the first Environmental Court of Antofagasta.

El Refugio-Maricunga, Kinross Gold, Atacama Region

The open-pit gold mine, no longer in operation, is situated in the region of Atacama, close to the Maricunga Salt flat, in the ancestral territories of the Indigenous Colla peoples. It operated from 1998 and onwards but entered into conflict with the Chilean state over the environmental damage it was causing. In 2018 the Supreme Court rejected the company's appeal for annulment and confirmed the sanctions imposed by the Environmental Superintendency against the company for not having prevented, and not taking responsibility for, the environmental impacts in 70 hectares of wetlands that caused them to dry out. The wetlands were part of the Negro Francisco Lacustre and Santa Rosa Lagune complex, which is protected by the Wetland Convention (it is a Ramsar site).

Vizcachitas, Los Andes Copper (Putendo Commune)

The project, currently in the pre-feasibility phase, seeks to install an open-pit copper mine, whose pit would be constructed in the Rocín river, the only source of freshwater for local communities. The region has been declared a 'zone of hydric stress' due to the diminution of the water level of the Putaendo river, which was declared "depleted" in 2004. Furthermore, the project is to be installed in an area of rock glaciers that are essential for recharge in the encatchment area. The group "Putaendo, Resist!" have organized against the mine and in defense of water for several years, and have had a protagonist role in the ongoing local mobilizations which began on October 18th. The Superintendency of the Environment established that the company was performing an illegal drilling plan. While a sanction process was initiated, the authority since suspended it, giving the company a possibility to regularize its activities. Now, the company is applying for permission to expand their drilling program, despite the fact that the community and local authorities remain in opposition.

Lithium Chile Canada (Ancovinto)

The Aymara communities in the area of the Coipasa salt flat have organized in the group “Ancovinto Resists” against the activities of the junior company Lithium Chile Canada, that seeks to carry out lithium explorations in the salt flat. They carried out roadblocks to prevent company agents from entering the territory. The communities are alarmed by the experience in the Atacama salt flat where lithium extraction has exacerbated drought in the area. They also worry that lithium extraction would put an end to their traditional pastoral and agricultural activities due to the hydrological impact of their mining activities. Lithium Chile Canada filed a lawsuit against the community in 2019 for denying them access to their concession.. Ancovinto have intensified their mobilization in the context of national mobilizations.

Canadian Pension Funds in the Chilean Energy and Sanitation Infrastructure

The Ontario Teachers Pension Plan that administers the pension funds of teachers of the Ontario region in Canada, owns several sanitary companies in Chile (Aguas del Valle, Essbio, Esva, and Nuevosur) as well as the Seasa group that transmits and distributes energy in three regions in Chile (Los Lagos, Los Ríos, and Aysén).

Aguas del Valle, Essbio, Esva, and NuevoSur together hold the sanitary concessions of four Chilean regions (Coquimbo, Valparaíso, O’Higgins and Biobío), where they service a total of 1.945.258 clients, which corresponds to 37% of the total coverage in Chile⁴. The sanitary services were privatized in 1995 in Chile and are estimated to be the most expensive in Latin America. In four of the seven provinces of the Valparaíso region, where Esva operates, the cubic meter is one of the most expensive in the country. For citizens, this is aggravated by the fact that there are no public subsidies for water services. The companies justify the high costs arguing that the sanitation coverage is complete, but have not replaced the current piping system, which is made of cement with 18% asbestos. This material is toxic and it is prohibited in large parts of the world. Furthermore, Chile is the only country in the world in which sanitary companies are allowed to cut water supply to clients who are unable to pay.

⁴ According to Emol (2019), Aguas de Valle had in 2017 234.145 clients, Esva 630.014, Essbio 807.443, and Nuevosur 273.656. In 2016, the total of sanitary service clients was 5.256.206, which corresponds to a total of 17.350.812 inhabitants (SISS 2016).

On the other hand, the Saesa group is owned by the Ontario Teachers Pension Plan and Alberta Investment Management Corporation who own a 50% distribution of shares. The transmission and distribution lines of the Saesa group connect approximately 59,569 units. In 2016 the company fell under public scrutiny in connection to the first corporate femicide registered in Chile; the case of Macarena Valdés. Macarena was Mapuche (the largest Indigenous group in Chile), and she and her spouse and their four small children lived in Tranguil, Panguipulli (Los Rios). On August 21st she received a death threat from RP Global (today RP Arroyo), the Austrian company that was constructing a run-of-river hydroelectric station) and the day after, Valdés was found dead by her 11 year old son, hanged in the kitchen. Her 1 year old toddler was in the room with her body. The next day, August 23rd, the company proceeded to install electric cables and masts, in spite of the circumstances, on the family's property. The case is being investigated by the public prosecutor in Panguipulli. Her body was exhumed for a second autopsy which established that Macarena was dead before being hanged. The cause of her death was changed from the initial 'suicide' to 'homicide'. As of today, no one has been charged with her murder. The role of the Saesa Group has been completely invisibilized in this violent and tragic case.

Socio-Environmental Conflictivity in the Context of the Mobilizations

As mentioned above, the outbreak of protests was sparked in the midst of a long-term drought crisis. As a result, multiple demands that have emerged in the mobilizations have had a strong socio-environmental emphasis. The slogan “it’s not drought, it’s plunder” reproduced in many different cities and territories represents a general demand for the de-privatization of water, and adds to demands for the end of the so-called “zones of sacrifice”, the de-privatization of sanitation and electricity services, along with the right for Indigenous peoples’ to reclaim their territorial rights.

The category of territorial organization has been transversal in the political articulations of the multiplicity of new political subjects that entered the stage in Chile through the protests. Some examples of this have been the territorial assemblies appearing all over the country, as well as direct actions such as squadron occupations, occupation of mining companies’ water pumps, numerous road blocks related to territorial and water defence, and actions directed at mining installations and timber plantations, as well as new territorial occupations by the Mapuche people. The resurgence and forcefulness of the category of territory is related to the demand for democratization and decentralization of decision making. This is intimately linked to the socio-environmental crisis, as the participation of civil society in the evaluation and approval of extractive projects is non-binding, and highly de-legitimized.

A tendency that has surprised many has been the strong mobilisation in the north of Chile in cities such as Antofagasta, La Serena, Copiapó, and Iquique. These are territories that have not traditionally been associated with social protests, and they are emblematic mining regions, where the GDP per capita lies well over the national average. These regions are, however, also some of the regions most affected by the drought crisis, as they are located in desert or semi-desert areas. The landscape is highly affected by the mining sector’s contamination of water and soil. Although the cities of the central north have historically been characterized by their mining identity, the insurrection of the 18th of October have not been led by mine worker’s unions. Rather, they have been led by social sectors like youth, students, Indigenous Peoples, and squatters who have not directly

benefited from large-scale mining, but are forced to live with its negative socio-environmental consequences.

Socio-environmental demands have also been massively present in urban protests. But additionally, there has been a tendency towards intensification of local socio-environmental conflicts since the 18th of October. This is an important and under-documented perspective in considering the human rights violations and criminalizing policies deployed by the state. These have included severe police and military repression, the government's new anti-protest laws (for instance the so called "anti-looting", "anti-barricades", and "anti-hoodie"-laws), as well as the utilization of exceptional legislation such as the Law of Internal Security of the State, and an proposed law which seeks to restrict the right to assembly (cf. CNN 2020). The repression and the violations of human rights also means the criminalization of environmental defenders. This is particularly concerning as the Piñera government has refused to sign the Escazú Agreement, that identifies and guarantees the protection of environmental defenders.

In this regard, we are especially concerned by a legislative project which was sent to congress on November 26th 2019 (Boletín 13.088-02), and approved by the High Chamber on January 20 2020, that "modifies the Constitutional Organic Law of the Armed Forces to establish the role of these in the protection of the country's critical infrastructure when indispensable for national security." The law allows for military forces to intervene in matters of "internal security" to protect 'critical infrastructure' without the president declaring a State of Siege and contemplates "the exemption of penal responsibility applicable to military personnel," grounded in "the President of the Republic's determination of the use of force through Supreme Decree." The critical infrastructure includes "energy infrastructure, networks and systems of telecommunication, sanitary infrastructure [...] The protection includes buildings, equipment, and systems of critical infrastructure (Ibid.). This opens up the possibility of further militarization and state repression of the socio-environmental protests described above, as well as mobilizations more generally. Critically, it also allows for the institutionalized impunity of human rights violators. It is important to underline that parts of the 'critical infrastructure', such as the sanitary and electric systems, are Canadian-owned.

It goes beyond the scope of this work here to systematically document the human rights violations that have occurred in the framework of the socio-environmental conflicts and land reclamations since October 18th. Still we want to call attention to rural areas, where conflict levels are rising. These are places where access to human rights organizations is limited, as they rarely have offices in small towns and rural areas and are not present to document the ongoing violations in the protests. We are concerned about the existence of the undocumented cases of human rights violations related to socio-environmental conflicts that have occurred outside the massive urban protests that have characterized the movement since October 18th. Also, we want to call attention to human rights violations that have been perpetrated by non-state agents. The Tres Valles Case, that is not listed in the reports of human rights organizations, is exemplary in this regard.

On Saturday November 2nd, 2019, a private security guard shot and killed a community member in the Salamanca commune. The guard, who is retired from the military (El Diario de Salamanca 2019), was contracted by the Tres Valles mining company, 70% of which is owned by Canadian Sproutt Resource Holding. The company had enhanced security measures after an arson attack on their entrance installations one week before, that is to say, in the context of the national mobilizations. The mining operation is situated inside the agricultural community, and the company has closed off access to the installation, restricting the free circulation of community members. According to the community: “they never informed us specifically which areas were restricted, which exposed the community to fatal situations, as this one” (El Observado 2019). The guard is currently being held in custody and the company denies having authorized the use of the weapon.

This case, where a company makes the decision to intensify security measures and where ultimately a community member is killed by a private security guard, is not counted among the cases of human rights violations in the reports released on the national protest post October 18th by human rights organizations. While the company denies having authorized the carrying and use of a firearm, we want to emphasize the fact that it was an agent contracted by Tres Valles that ultimately shot and killed the community member, and did so in order to protect the company's installations. States as well as extractive

companies that employ private security have an obligation to respect human rights and prevent their violation (Cf. UN 2019).

In this case we are concerned that the political character of this incident has been omitted in press coverage. The community member was shot and killed in the context of socio-environmental conflict and of national mobilization. Still this case has not been considered, neither in the press, nor in courts, nor in human rights organization's reports, as a case of violation of human rights.

Free Trade Agreements and the Constitutive Process

The demand for a constituent assembly that could write a new constitution to replace the current one which was enforced during the military dictatorship, has rapidly become transversal during the first days of protest after the 18th of October. In this section, we want to briefly sketch out how Free Trade Agreements (FTAs) can condition and pose obstacles to a sovereign constitutive process in Chile. We are especially concerned by the FTAs that involve Canada; the FTA Chile-Canada, signed in 1996 and re-negotiated in 2018; and the TPP11 (The Comprehensive and Progressive Agreement for Trans-Pacific Partnership), currently in the process of approval in the Chilean senate and already approved by Canada.

On November 15th, after roughly a month of protest, the majority of Chilean parties signed the so-called Agreement for Social Peace and a New Constitution, to initiate the institutionalization of the constituent process in Chile. It is important to mention that when the agreement was announced publicly, legislators stressed that the new constitution would be written on a 'blank page' - that is, that it would not be a mere change of the current constitution, nor would there be any preconditions to the final text.

Subsequently, the change in the current constitution that establishes the legal possibility to start a constituent process (a mechanism that was not stipulated in the constitution), was approved on December 23rd 2019 in the law nr. 21.200. The law, formulated by the Technical Commission, integrated by members of the signing parties, and contrary to what was initially announced, imposes important preconditions on the final text. According to the Article 135, "The text of the new constitution that will be submitted to a referendum, must respect the character of Republic of the State of Chile, its democratic regime, the signed and executed sentences, *and the international agreements ratified by Chile and currently in force*" (italics are ours). This means that the promised 'blank page' has not been fulfilled, because the new constitution must respect the international agreements signed by Chile, including the FTAs.

Under these circumstances it will be impossible to attend to the civic demands that fueled the initiation of the constituent process. This, because FTAs secure the interests of

transnational corporations that operate and/or provide services to citizenship in areas such as health care, sanitation and electrical services, education, etc. However, given the unpredictability of the Chilean process, it is still possible that this condition will be eliminated, as it has received thorough criticisms by social organizations and constitutional lawyers. But even in the case of revocation of the article 135, the FTAs can still pose obstacles to the sovereignty of the constitutional process in Chile. In the following, we put special focus on those involving Canada.

The FTA between Canada and Chile is the first of its kind in the Americas, as its legislative scope goes beyond the mere exchange of goods and services, and establishes a shared regulatory regime. This includes the so-called “Investment Dispute resolution mechanisms” which provide that transnational corporations dispose of the faculty to sue host-states that make political decisions affecting their commercial interests. The lawsuits are resolved in the highly controversial ‘arbitration panels’ (the International System of Controversy Resolution) in sessions that are not open to the public. Rulings are made by lawyers who are assigned by the same transnational corporations and state representatives involved in the controversy. If the state is found guilty, it is obliged to indemnify the companies and/or pull back the public policy in question. Rulings have been made against countries such as Argentina, Columbia, Venezuela, amongst others, and they have obliged the states to pay millions of dollars in compensation because of lawsuits filed by Canadian companies (Marchini et al. 2018).

In the current scenario of the constituent process, FTAs (including those involving Canada) are relevant because of the possibility for the Chilean state to be sued by foreign companies for installing a new constitutional regime. This can put a direct and/or indirect pressure upon the constituent power during the formulation of the new Carta Magna. And, in the case that a new constitution would install significant changes in the relation between public policies and the rights of private actors, the state may face lawsuits filed by transnational corporations. This could be the case if new public policy, for instance, nationalize strategic resources such as mining activity, de-privatize water, education, pension system, health care, or introduce restrictions regarding extractive activities under references to social, environmental or other priorities. If the TPP11 is approved,

transnational companies based in Canada and the other ten signing countries, can argue that loss of private profit is expropriation, which should be immediately compensated. As we have seen in other cases, this could mean a significant economic destabilization of the post-constitutive Chilean state.

Conclusions and Suggestions

In the present report, we have situated the current social mobilizations against the backdrop of the profound ecological and social crisis that Chileans endure. We have paid special attention to Canadian actors, companies, and governmental organizations, and their part in generating this crisis.

In Chile, in addition to the serious and repeated violations of human rights that have affected the population massively since the beginning of social protests on October 18th 2019, economic, social, cultural and environmental human rights are constantly violated. The background of the protests are marked by the prolonged drought and ecological crisis. To the contrary of the tendency in international legislation of recognition of water as a fundamental human right, in Chile water is privatized and no prioritization is made regarding its use and administration.

We have shown how transnational companies take advantage of this, knowing that the legislation in the countries of their headquarters, the same conditions would be considered severe violations of human rights. There are strong Canadian corporate interests at play in the current Chilean socio-environmental model, as well as a significant participation of Canadian pension funds in the vital infrastructure of Chile, and a direct government policy by the Canadian government to foment investments through its crown corporation, EDC.

Within the protests, socio-environmental demands have gained a central role in massive urban mobilizations, and socio-environmental conflict has intensified in rural territories. We are concerned that protesters engaging in socio-environmental defence have been victims of state repression, a tendency that does not seem likely to decline in the near future, as the response of the Chilean government continues to be one of the criminalization of civil protest. Furthermore we have pointed out the concerning tendency of invisibilization of human rights violations in rural territorial conflicts.

We have called attention to the legislative obstacles that FTAs pose to the current constitutive process in addition to the participation of Canadian agents and capitals in mining investments in Chile. We consider the corporate conglomerates, including

Canadian companies that have consciously taken advantage of the situation, to be actively complicit. They are now pressuring through lobbying activities and threats to defend their privileges against the possibility of a constituent assembly that expresses the popular sovereignty of the Chilean people. This perhaps represents the most transcendent violation, because of its consequences that invisibilize and affect both present and future generations of communities and ecosystems.

We call on the *Canadian Mission of Observation and Solidarity with Chile regarding the Human Rights Situation* to transmit and condemn the systematic violations of human rights occurring in our country which they have verified on their visit. We also call on them to demand the Canadian government comply with their expressed commitment to human rights, adopt a coherent attitude and emphatically condemn the human rights violations of the government of Sebastián Piñera, and apply the economic sanctions at their disposition. We are especially referring to cease any new financing through credits of the EDC to Canadian companies operating in Chile and to other companies that would receive these to acquire Canadian services, goods or technology, as is the case of Codelco.

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