

Living under risk

Copper, Information and Communication Technologies (ICT) and Human Rights in Chile



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CONTENT

INTRODUCTION	01
THE POLITICAL-ECONOMY OF COPPER IN CHILE	
History of dependency	03
Economics and politics of copper	06
Copper, ICTs and Supply chains	08
LOS PELAMBRES	
Economic and political context	13
Socio-Environmental Impacts	16
Labour conditions	30
Supply chain	34
CONCLUSION	39



INTRODUCTION

CHILE, COPPER & ICT

Chile is currently the largest copper producer in the world, holding 29% of the world reserves of the red metal. Copper represents a crucial portion of the Chilean economy and the copper industry -as will be shown in this report- is highly influential in national politics.

But the extent and intensity of copper extraction across Chile's territory has precipitated negative impacts in the environment and on communities that resist extractivism.

Through the analysis of a case study, this report unveils the adverse socio-environmental impacts of copper extraction and discusses the role of the company, the national government and international actors in addressing the consequences brought by the copper mining industry.

Within this last group, this report highlights the role that ICTs -which represent 24% of the usage of copper (Comisión Chilena del Cobre, 2016a) - could play in the improvement of social, environmental and labour conditions at the local level.

THE CASE STUDY

Caimanes is a small agrarian town situated in northern Chile that has been at the centre of opposition to the Los Pelambres (hereinafter MLP or the Company) mining project, the fifth largest copper mine in the world. The community does not have political relations with national or local elites, and therefore, as will be seen, its opportunities for mobilisation have been mostly limited.

Yet, the local community reacted against the construction of El Mauro tailings dam -the largest in Latin America- identifying various negative socio-environmental impacts on issues of water, health and security. As will be detailed in this report, the capacity of the community to mobilise resources has varied across the 20 years of struggle. Through its history of resistance, the community has gone through different phases of mobilisation: from a period of direct action to a process of formalising its demands in a judicial lawsuit, which has marked the last 10 years of mobilisation.

This case also reveals a process of counter-mobilisation to the protest. Given the significant scale of the project, and its high levels of associated investment, the mining project has been assiduously defended by the state and the Company, restricting the possibilities for social contention. As will be seen throughout the report, both the Company and the state have deployed direct techniques of repression such as forced displacement, the criminalisation of local leaders, and use of police forces to suppress protests. Additionally, the corporate-state nexus, has also used more sophisticated forms of counter-mobilisation such as using company-community interactions to divide the inhabitants of Caimanes, and diminishing their capacity to decide in formal spaces of community engagement.

By analysing the mechanisms that explain the rise of the Caimanes mobilisation and its main shifts, this report explores the emergence of micro-dynamics of contention in territories that lack political opportunities and resources. Its insights allow us to understand episodes of protest in an unfavourable context for social contention; and how, despite this restrictive context, the community has been able to create opportunities, resources and solidarities at different stages of the conflict.

The report begins with a contextualisation of the political economy of copper in Chile, highlighting how it relates to consumption at a global scale, with a specific emphasis placed on the consumption of ICTs. It then generates a process-tracing analysis of the episodes of contention marked by two significant stages of protest: (i) a period during which the community aimed to, and were successful in receiving compensation from the company and (ii) a period during which the community sought to legally demonstrate the negative impacts of the project. This part of the report includes a discussion about the interlinked relationship of the community with a growing labour movement that has not yet been able to coordinate their demands with the socio-environmental movement. The concluding section summarises these two periods of protest highlighting the most important elements that have generated conflict in the last 20 years. It also shows how the global consumption of copper (especially from ICTs), the closed political opportunities at the national level, the process of counter-mobilisation by the Company and lack of networks have ended up dividing and isolating the community, diminishing its capacity to self-organise.

METHODOLOGY AND COLLECTION OF DATA

This report builds from data collected in June 2018 and previous in-person research done in 2015 and 2016. During the fieldwork, the research team had the opportunity to conduct nineteen semi-structured interviews. During these interviews, the team gathered information from key actors (governmental, academic, companies and civil society organisations). The majority of the data contained in this report stems from the conversations held with leaders of the community and community members affected by extractive projects. This information was complemented with official documents both from the government (for example Chamber of Deputy documents and Environmental, Mining and Energy ministry documents) and the annual reports of the companies involved. The research team also analysed the most relevant judicial cases presented by the community against the company. In total, this work is based on the analysis of 23 judicial and administrative cases. Finally, the data was also corroborated against the analysis of press clippings reporting on direct action activities, and information provided by networks that support socio-environmental movements.

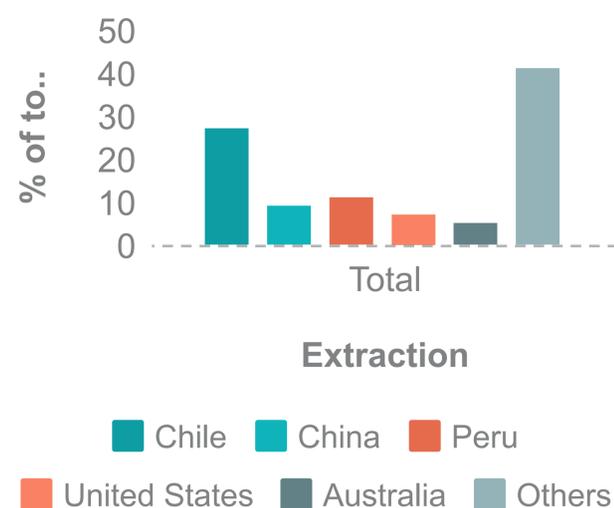


THE POLITICAL-ECONOMY OF COPPER IN CHILE

1.1. Copper in Chile: a history of dependency

Chile is well known for being a country with an extensive and historic extractives industry. Within the mining sector, copper has become the most important mineral for the national economy. In 2015, 28% of the global extraction of copper took place in Chilean territory (Comisión Chilena del Cobre, 2016a), maintaining a trend that, since 1982, has made Chile the largest extractor of copper in the world (CEPAL and UNASUR, 2013). Moreover, Chile has 29% of the copper reserves in the world (see Figure 1). Chile also occupies the second place in the global league table for the extraction of molybdenum, with an extraction of 55.65 thousand tons in 2016 (Comisión Chilena del Cobre, 2016a); fourth place with regard to silver, with 1,500 tons; and 14th place in terms of the extraction of gold, with 43.32 tons (COCHILCO, 2016). With regard to non-metallic mining, Chile is the world's second largest extractor of lithium; in 2012, the country extracted a total of 65,620 tons, accounting for 37% of total global production (Comisión Chilena del Cobre, 2013).[1]

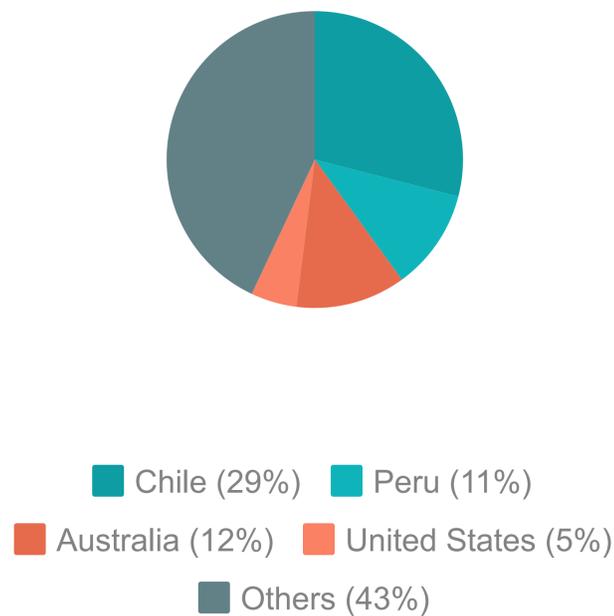
Figure 1: Extraction and Reserves of Copper (Global)



Source: Own creation based on COCHILCO(2016)

[1] In terms of fossil fuel extraction, Chile does not have an important role globally. In 2013 Chile extracted 401,428 m³ of crude oil and 893 million m³ of natural gas (Comisión Chilena del Cobre, 2014a).

Figure 1: Extraction and Reserves of Copper (Global) - continued



Source: Own creation based on COCHILCO(2016)

Chile remains a key actor in the global extraction of copper (highlighted in the red bar of Figure 2). As the green line shows, the price of copper has constantly decreased since 2011 (with a new increase initiating in 2017). Yet, despite the decrease in the price of copper, it is possible to observe a global increase in the extraction of the mineral.

Figure 2: Extraction and price of Copper 2003-2017

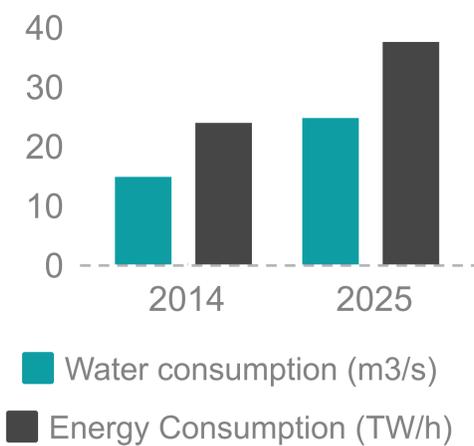


Source: Own creation based on COCHILCO (<http://www.cochilco.cl/estadisticas/produccion.asp>)

Directly related to the scale of extraction is its intensity. Chilean copper mining activity uses approximately 14.7 m³ of water per second, and the Chilean government estimates that in the next decade this sector will increase its water consumption by 66%, reaching 24.6 m³ per second, equivalent to filling approximately 850 olympic pools per day (Comisión Chilena del Cobre, 2014b). Efforts have been made to increase the sector's use of desalinated seawater but so far, the mining sector has mostly consumed freshwater.

The use of energy is also intrinsically linked to mining activity. In 2011, Chile's mining sector consumed 33% of the country's total energy (Comisión Chilena del Cobre, 2016b: 5) and the Chilean authorities project that the mining sector will require more energy in the next 10 years. Currently the mining sector uses 23.79 TW/h, and it is expected that by 2025, it will use 37.41 TW/h; 1,700 MW additional electricity would need to be incorporated into the national grid to supply this growing demand.

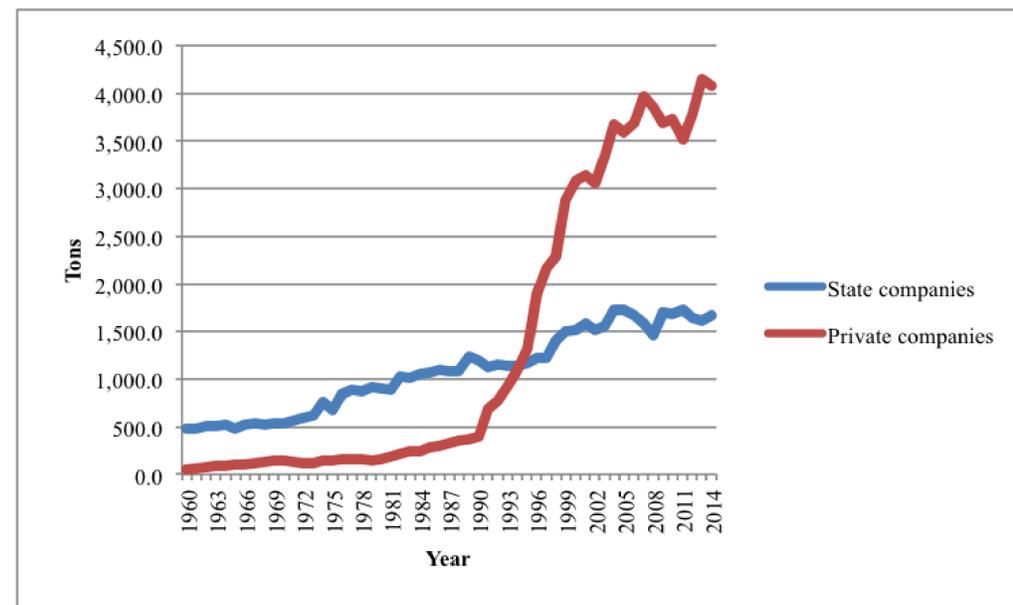
Figure 3: Water and Energy consumption (2014) and projected (2025)



Source: Own creation based on COCHILCO(2016)

Chile's copper extraction industry involves a combination of public and private entities. On the one hand, the country has a major state-owned consortium of companies,[2] which prevailed as the most important vehicle for extraction until the beginning of the 1990s; in the 1980s, private extractive entities started to gain more importance in the country's copper landscape (see Figure 4). Chile's extraction was largely controlled by the state until 1994, after which the liberalization of markets and the introduction of new technologies reduced the percentage of government exploitation of the total amount of copper extraction from 84% in 1973 to 29% in 2014. The remaining 71% of the copper in the country is extracted by private companies (Comisión Chilena del Cobre, 2015).[3]

Figure 4: Private and Public exploitation of copper in Chile 1960-2014



Source: Own creation based on COCHILCO (<http://www.cochilco.cl/estadisticas/produccion.asp>)

[2] Mainly led by the state companies CODELCO and ENAMI.

[3] BHP Billiton, Rio Tinto, Antofagasta Minerals, and Anglo American, among others.

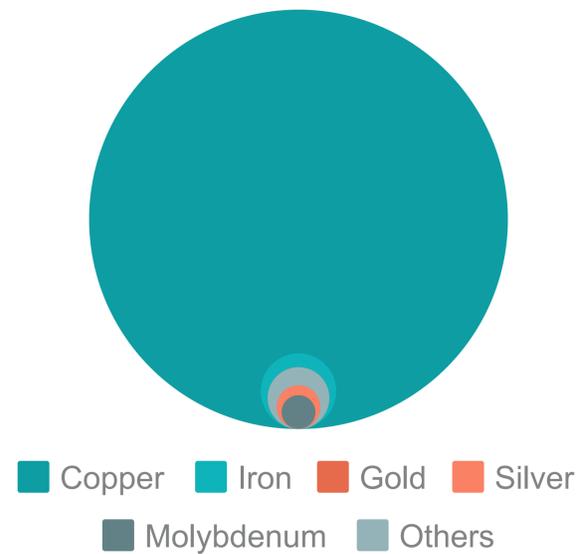


1.2. Macro-economics and macro-politics, demands, prices & trends

a. Dependence on International Markets:

The export of minerals represents 54% of the total exports of Chile, a proportion that has been maintained in the last 10 years. From the total mineral export, copper represents 91% of Chile's total metal and mineral exports, whereas gold represents 2%, molybdenum 0.6%, and silver 1% of the total exports (see Figure 5). While some discussions regarding the possibilities of generating regional markets have gained salience in Chilean politics, the reality is that such intentions are far from becoming realities. The total value of mining exports in 2014 was \$44,121 million, of which only \$7,219.3 million was exported to countries in the Americas. The United States (\$3,230.8 million) and Brazil (\$3,344.9 million) are the most important markets in the region. Exports of minerals in Chile are highly concentrated in the Asian market (\$28,183.5 million), particularly in China, the destination of 35% of the total minerals exported by Chile (\$15,332.6) (Comisión Chilena del Cobre, 2014).

Figure 5: Chilean exportations of minerals

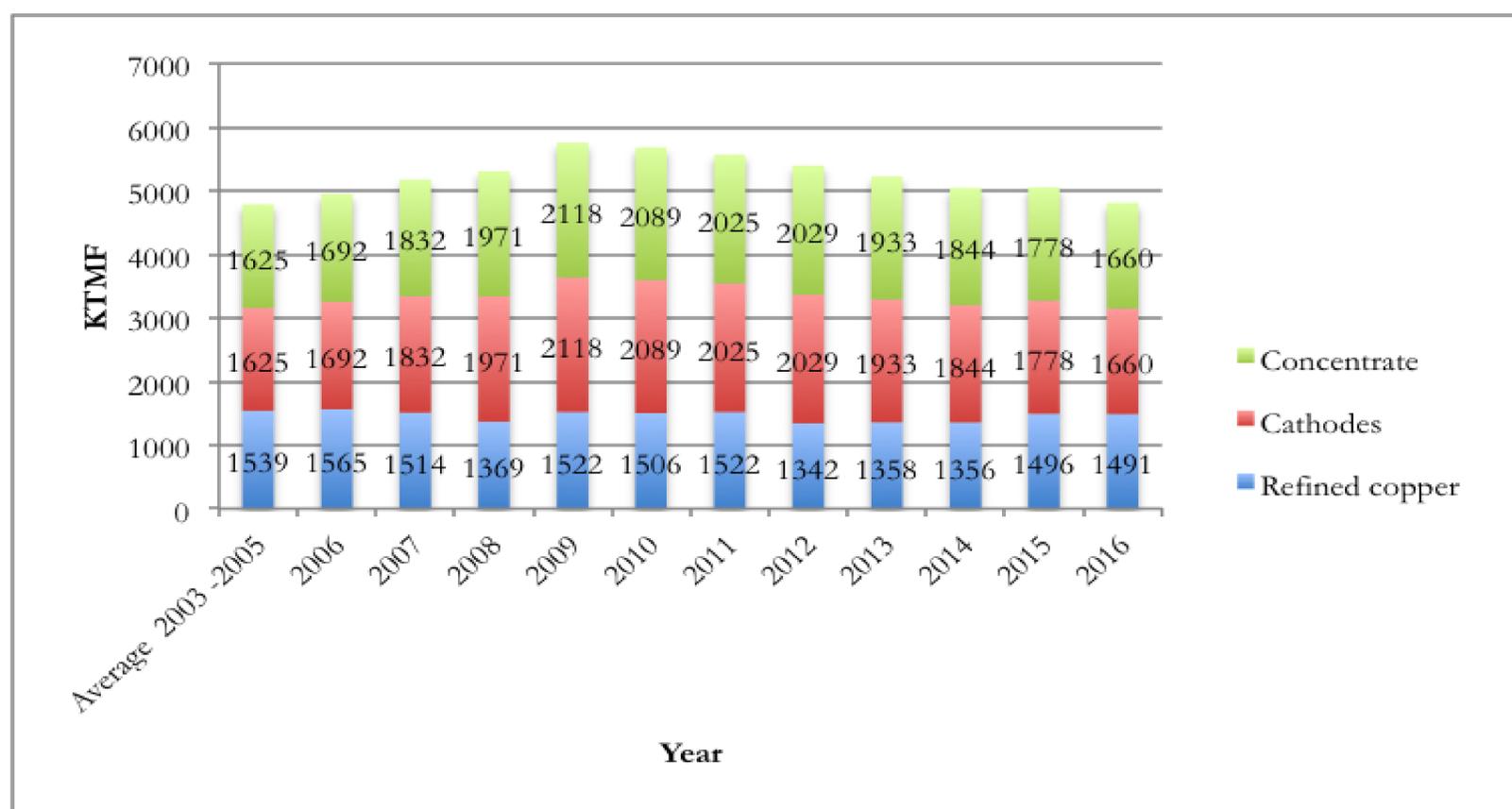


Source: Own creation based on COCHILCO(2016)

b. What kind of copper is Chile exporting?

As illustrated in Figure 6, around 35% of copper is exported in the form of copper concentrate. Copper concentrate contains between 20% and 40% copper with an average of 30% copper in 2014 (Sturla et al., 2017).

Figure 6: Tons of exportation by copper by-product 2003-2016



Source: Own creation based on COCHILCO (<http://www.cochilco.cl/estadisticas/produccion.asp>)

The nature of Chilean copper exports varies from company to company. While mining deposits such as Spence (BHP Billiton), El Abra (Freeport-McMoRan) or Cerro Colorado (BHP Billiton) mostly export refined copper, other deposits such as Escondida (BHP Billiton), Collahuasi (Anglo American), Los Bronces (Anglo American) or Los Pelambres (Antofagasta Minerals) mostly export concentrate (Correa, 2016: 62).

The export process of copper concentrate needs careful analysis, especially given its opacity; in 2016, the United Nations Conference on Trade and Development (UNCTAD) observed that there has been a systematic over-invoicing in the exports of concentrate and ore copper from Chile, which means that there was a common and systematic under-declaration of minerals exported from Chile (between 1994 and 2014) when compared to the copper imported by trading partners (UNCTAD, 2016).

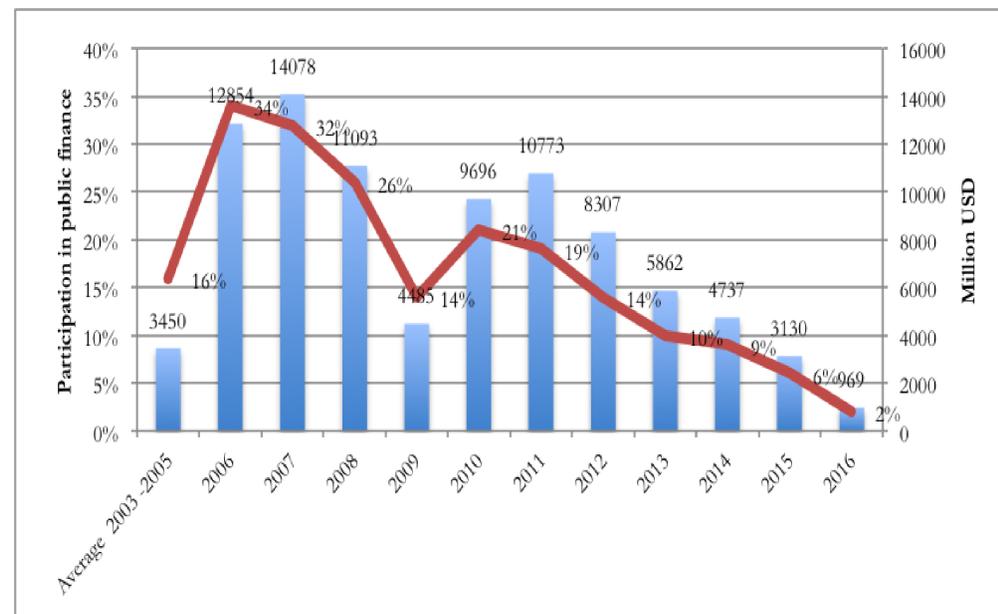
The under-declaration of minerals is permitted by Chilean legislation. The Customs legislation establishes that it is only necessary to declare the minerals that are payable by the purchase agreement between the mining company and the external company that buys the minerals (which are commercial partners in some cases). In practice, this means that if the concentrate contains other minerals – which is usually the case – that are not part of the commercial agreement, then they cannot be declared as exports.

c. Economic importance of mining for public revenues in Chile

Although the mining industry in Chile has grown in recent years, its contribution to the country's GDP has decreased: in 2008, mining extraction represented 18.4% of GDP, whereas in 2013 it was 12.11% (Banco Central de Chile, 2014). This is mainly due to the growth of other sectors of the economy such as business and financial services (18.9%), trade (11.2%), and manufacturing (10.1%). In this way, we could say that at the domestic level Chile has diversified its economy – something the country still needs to do in its exports matrix.

The under-declaration of exports has directly translated into less public revenue for the Chilean state. Despite its importance in the exports matrix, mining represented only 2% of governmental income in 2016 (Comisión Chilena del Cobre, 2016a). As Figure 7 highlights, the contribution of the mining sector has diminished over the last 6 years to a point of contributing less than 1,000 million USD (see bar).

Figure 7: Contribution and participation of mining in tax revenues 2003-2016



Source: Own creation based on Comisión Chilena del Cobre (2016a).

d. National and international regulation of extractivism

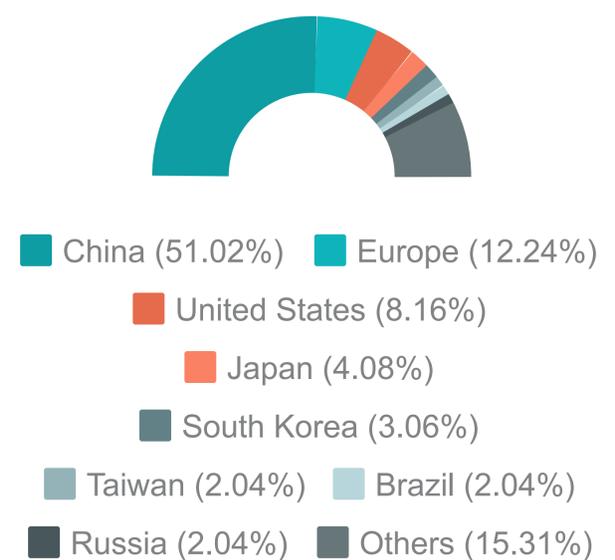
The liberalisation of the economy and the preferential status given to extractive projects within this model are possible only because of the Political Constitution, which is based on a liberal legal framework and supports the privatisation of mining activities (Yáñez and Molina, 2008). This model is not a response to an ideal form of development; it is instead, mostly part of a political architecture inherited from the dictatorship of Augusto Pinochet. From this brief political-economic context analysis, we could conclude that the extraction of copper is highly important for Chilean economy, an activity that – as will be further developed – has negative consequences for human rights and therefore stimulates the emergence and prolongation of social conflicts. This reality generates more pressing questions: have national and international human rights regimes advanced any solutions that will bolster resistance to the negative consequences of this form of extractivism? Additionally, to what extent can public procurers, or companies that participate in extractive supply chains, help to reduce the negative effects of extractivism (Martín-Ortega, 2018)?

1.3. Copper, ICT and supply chains

Electronic devices like smartphones contain more than forty different minerals, including tin, tantalum, gold, platinum, copper, cobalt, and rare earth metals. While some studies have already analysed the socio-ecological impacts of the usage of certain minerals such as tin, tungsten, tantalum and gold in the ICT supply chain (see for example OECD, 2016), the role of copper and its impact has been less analysed in the literature. This has to do, in part with the difficulty in opening up the opaque supply chain of copper. The information regarding the destination of copper concentrate has been kept a commercial secret and has allowed companies – in the case of Chile- to avoid paying taxes. Usually, companies refuse to disclose the commercial partners that smelt and refine their copper, unless these processes are administered internally within the company.

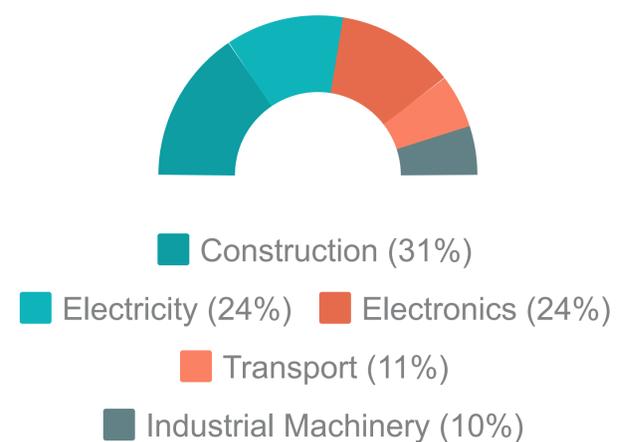
Despite such informational gaps, we still know some general figures regarding the usage and destination of copper. We know for example, the countries of destination and general uses of copper. For example, Figure 8 shows that China consumes over 50% of the total copper extracted in the world, followed by the European Union (14%) and the United States (8%). We also know that 24% of the copper is used in the electronics sector (see Figures 8 and 9).

Figure 8: Global consumption of copper (2016)



Source: Own creation based on COCHILCO(2016)

Figure 9: Use of copper per market sector (2016)



Source: Own creation based on COCHILCO(2016)

For a long time, ICT companies rejected any responsibility for the impacts generated by their sourcing of minerals. This situation changed in 2007, when companies began to fund research into the impact of sourcing minerals for ICT products (Sydow and Reichwein, 2018: 5). Yet, most of this research has focused on the consequences of tin, tantalum, tungsten, and gold extraction (3TGs). Based on the research on these minerals, the international community and some ICT companies have created a few mandatory and soft-law principles and standards. Most of them are applied to conflict minerals (also known as 3TGs), yet here we argue that such standards should also be applied to the extraction of copper. Expanding the scope of these principles this could help to address the intense socio-ecological burdens generated by the extractive practices of copper.

a. Mandatory Frameworks on extraction of minerals and supply chain

There are at least two mandatory frameworks that are relevant for the mineral supply chains of electronic devices: (a) the US-Dodd Frank Wall Street Reform and Consumer Protection Act (paragraph 1502) (US Dodd-Frank Act) and (b) the EU regulation on responsible mineral sourcing. The US-Dodd Frank Act makes it mandatory for companies listed on the New York Stock Exchange to report on the sourcing for conflict minerals. On the other hand, the EU regulation on responsible mineral sourcing, that will come into force in 2021, requires that EU importers of 3TG (tin, tungsten, tantalum and gold) meet international responsible sourcing standards, set by the Organisation for Economic Co-operation and Development (OECD).

While these frameworks are limited by geographical area and the type of mineral (in the case of the United States by size of the company), there are also other standards that apply along the supply chain and that take the form of conventions. These conventions, such as the Health in Mines Convention ILO C176/R183 and the ILO Convention 169 on Indigenous and Tribal People, do not have a regional focus and apply to all kinds of minerals. Such conventions however must be ratified by each country in order to come into force at the national level. While the focus of these two frameworks are different, they apply to a series of human rights, labour standards and have different scopes in terms of supply chains as seen in Figure 10.

Figure 10: Mandatory Regulatory frameworks

	Health in Mines Convention ILO C176/R183	ILO Convention 169
Environment		
Water Pollution	Yes	No
Air Pollution	Yes	No
Soil Pollution	Yes	No
Social		
Livelihood of communities	No	Yes
Cultural Rights	No	Yes
Forced displacements	No	Yes
Labour		
Forced labour	No	Yes
Health and safety	Yes	Yes
Health Insurance after accidents	Yes	No
Remedy		
FPIC	No	Yes
Access to remedy	No	No
Supply chain		
Monitoring Focus	Mine	Mine
Upstream	Yes	No
Downstream	No	No

Source: Own creation based on Governance of Mineral Supply Chains of Electronic Devices (Sydow and Reichwein, 2018)

US Dodd-Frank Act

└ New York Stock Exchange

EU regulation

└ EU importers of 3TG

b. Voluntary Frameworks on extraction of minerals and supply chain

There are at least twenty-two guidelines, initiatives, and approaches that focus on the extraction of minerals and the potential effect on the supply chain (see Figure 11). It is not our intention to focus on all of them here, but just to highlight those principles that could be potentially applied to the extraction of copper (Figure 12). These voluntary principles usually tend to cover more issues than the legally binding frameworks, yet they lack the capacity of enforcement that mandatory frameworks have.

Figure 11: Voluntary Initiatives

Guidelines
OECD Guidelines for Multinational Enterprises (OECD Guidelines for MNE)
OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence)
CCCMC (Guidelines for Social Responsibility in Outbound Mining Investments)
Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains Initiatives
Initiatives for Mines
Voluntary Principles on Security and Human Rights
International Council on Mining and Metals (ICMM)
Global Reporting Initiative (GRI) International
International Cyanide Management Code
SA 8000
Initiative for Responsible Mining Assurance (IRMA)
Initiatives focusing on 3TG
Better Sourcing Program
Certified Trading Chains Standards Certification
Conflict-Free Gold Mining
Responsible Minerals Initiative
International Tin Supply Chain Initiative (ITSCI)
Initiatives focusing on other or more than 3TG
Fairtrade Gold
Responsible Aluminium Standard (Aluminium Stewardship Initiative)
Responsible Business Alliance
Fairmined Gold Standard
London Bullion Market Association Responsible Gold Guidance (LBMA)
Responsible Jewellery Council
DMCC Rules for Risk Based Due Diligence in the Gold and Precious Metals Supply Chain

Source: Own creation based on Governance of Mineral Supply Chains of Electronic Devices (Sydow and Reichwein, 2018)

Figure 12: Voluntary Regulatory frameworks that could be applied to the extraction of copper

	OECD MNE	Chinese Guidelines for SR	Chinese Due Diligence	Security & HR
Environment				
Water Pollution	No	Yes	Yes	No
Air Pollution	No	Yes	Yes	No
Soil Pollution	No	Yes	Yes	No
Social				
Livelihood of communities	No	No	No	No
Cultural Rights	No	No	No	Yes
Forced displacements	No	Yes	Yes	No
Labour				
Forced labour	Yes	Yes	Yes	No
Health and safety	Yes	No	No	No
Health Insurance after accidents	No	No	No	No
Remedy				
FPIC	No	Yes	Yes	No
Access to remedy	No	No	No	No
Supply chain				
Monitoring Focus	None	Mine	Supply Chain	Mine
Upstream	Yes	Yes	Yes	Yes
Downstream	Yes	Yes	Yes	Yes

	ICMM	Global Reporting Initiative	SA 8000	IRMA
Environment				
Water Pollution	Yes	Yes	No	Yes
Air Pollution	No	Yes	No	Yes
Soil Pollution	Yes	Yes	No	Yes
Social				
Livelihood of communities	Yes	Yes	Yes	Yes
Cultural Rights	No	Yes	Yes	Yes
Forced displacements	Yes	Yes	Yes	Yes
Labour				
Forced labour	Yes	Yes	Yes	Yes
Health and safety	Yes	Yes	Yes	Yes
Health Insurance after accidents	No	Yes	Yes	Yes
Remedy				
FPIC	Yes	No	Yes	Yes
Access to remedy	Yes	No	Yes	Yes
Supply chain				
Monitoring Focus	None	Mine	Mine	Mine
Upstream	Yes	Yes	No	Yes
Downstream	Yes	Yes	No	Yes

Source: Own creation based on Governance of Mineral Supply Chains of Electronic Devices (Sydow and Reichwein, 2018)



LOS PELAMBRES

Why Pelambres?

5th

└ Largest copper mine in the world

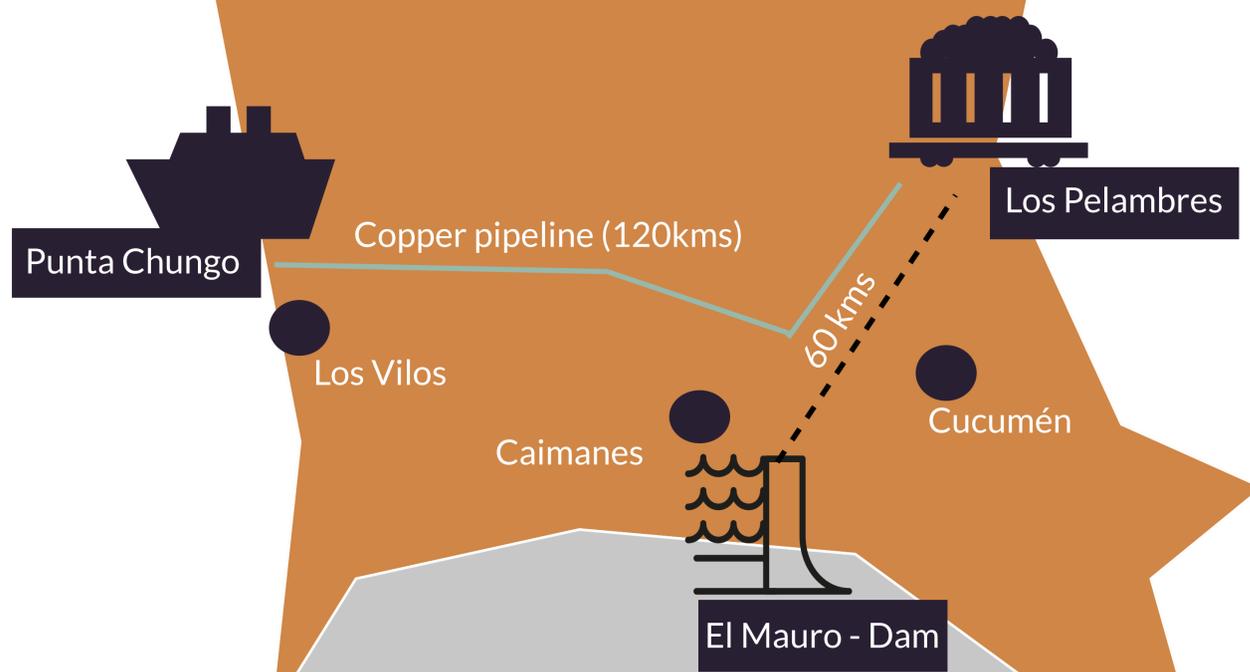
100%

└ Copper concentrate exportation

The analytical impossibility of establishing a general trend on the supply chain has led us decide to base this study on a single case study. We understand that this decision has limitations in terms of broader generalisations. Yet, the task of developing critical information regarding the supply chain and potential human rights and environmental impacts of mining companies can only be done effectively through a more fine-grained analysis of detailed case studies. Los Pelambres mine represents an emblematic case in the global copper mining landscape. It also represents an acute case in terms of transparency, in the sense that it does not open its supply chain; it exports only concentrate and is the fifth largest copper company in the world.

Los Pelambres

Geographically, MLP is situated in the Choapa Valley in the Andes mountain range (3,100 meters over the level of the sea) close to the Argentinian border. The minerals extracted in the mine are transported through a 120 kilometres long pipeline, directly to the port known as *Punta Chungo* for its exportation. The mineral wastes are transported, as liquids, through a 60 kilometres pipeline to the tailing dam El Mauro, where the Pupio estuary begins and is 8 kilometres in a straight line to its closest town: Caimanes.



2.1. Economic and Political Context

Historically the MLP mining project can be traced back to the beginnings of the 20th century. It was in 1914 that William Braden made the first explorations in the higher parts of the Choapa Province. But it was not until the beginning of the 1970s that the area began to be mined on a small scale by ENAMI, the state company, in collaboration with a special United Nations Program for the exploitation of mining activities.[4] During the dictatorship of Augusto Pinochet, which worked to privatise state operations across the economic spectrum, Anaconda Minerals Corporation (a US Company) acquired the right to exploit the Los Pelambres mining company in 1978 and in 1979, transferred this right to Anaconda S.A. (a Chilean registered company).[5] In 1986, the Luksic family group bought the Chilean branch of Anaconda.[6] Although the project was acquired towards the end of the dictatorship, the approval, development and intensified operation of the mining project would occur under democratically elected governments. In 1997, MLP received the environmental license to commence its large-scale extraction operations. Three years later, Los Pelambres S.A. (as the enterprise is known to this day), started to exploit an average of 350 thousand metric tons of copper a year, most of which is exported as raw material. Figure 13 shows the changes in the property of the project and its impact in terms of investment, tax payments and the creation of jobs.



[4] Loan given by CORFO, as stated in agreement of the 8th of September 1970, under the signature of the Notary Herman Chadwick V., found in the Judicial Archives (Fojas 291 N° 58, tomo 1640).

[5] Agreement of 14th August 1979 archived in the Notary of Eduardo González Abbot (fojas 421 N° 1.022). Anaconda S.A. incorporation was approved on the 14th September 1979, and its objective was "the exploration, development and exploitation of the mining field Los Pelambres", with a capital of USD\$ 25 million. See *Conservador de Bienes Raíces de Santiago*, fojas 11,658 number 7,299 from the *Registro de Comercio de Santiago* year 1979.

[6] Agreement made on the 17th of October 1989 in the Notary of Andrés Rubio Flores, registered at fojas 29,641 number 16,014.

Figure 13: MLP ownership and Impact

	1970	1978	1986	2000	2011	2015
Owner	ENAMI	Anaconda	Luksic Group	Antofagasta Minerals	AMSA + Marubeni + Mitsubishi	AMSA + Marubeni + Mitsubishi
Copper (th/T)	n/i	n/i	n/i	308.8	426.1	375
Molybdenum (m/T)	n/i	n/i	n/i	5,053	9,879	10,150
Copper exports	n/i	n/i	n/i	288.8	442.1	410.4
Investment (mm \$USD)	n/i	n/i	n/i	n/i	181	188.3
Income (mm \$USD)	n/i	n/i	n/i	n/i	3,682	1,827
Labour (people)	n/i	n/i	n/i	n/i	842	928
Taxes (mm \$USD)	n/i	n/i	n/i	n/i	611	142

Source: Own creation based on (Minera Los Pelambres, 2011, 2013, 2014, 2015) and COCHILCO statistics

In terms of impacts, the large extraction of minerals observed in the 1990s resulted in the modification of an agrarian way of life that the communities living in the Choapa valley had practiced - at least- since the 1960s.[7] The shift was provoked by several processes associated to the extension of the extractive industry, such as intensive water use by mines, the privatisation of territories, and the contamination of water sources, among others.

[7] The Chilean Agrarian Reform, which intended to give ownership of land to individual and collective groups of *campesinos*, affected the *Hacienda Choapa*, a piece of land with good quality soil, abundant sources of water and great communitarian spirit (La Nación, 1966: 3). This *Hacienda* and the process of restitution of land to *campesinos*, has been described in the following terms: "The foreigner that visits this land feels respect, when he observes the affection and attachment that farmers have to their own land. [...] In the riverside of these northern rivers and in the mountain valleys of the Hacienda Choapa, the Agrarian Reform has begun. This reform was the lonely, miserable and silent hope of the farmers. They are now the ones that raise their triumphant claims, conscious of being protagonist of one of the most important events of our history. Here is the Agrarian Reform: The most important event after National Independence" (La Nación, 1966: 16).

A resident of Caimanes remembers the availability of water before the mining operations started in the zone:

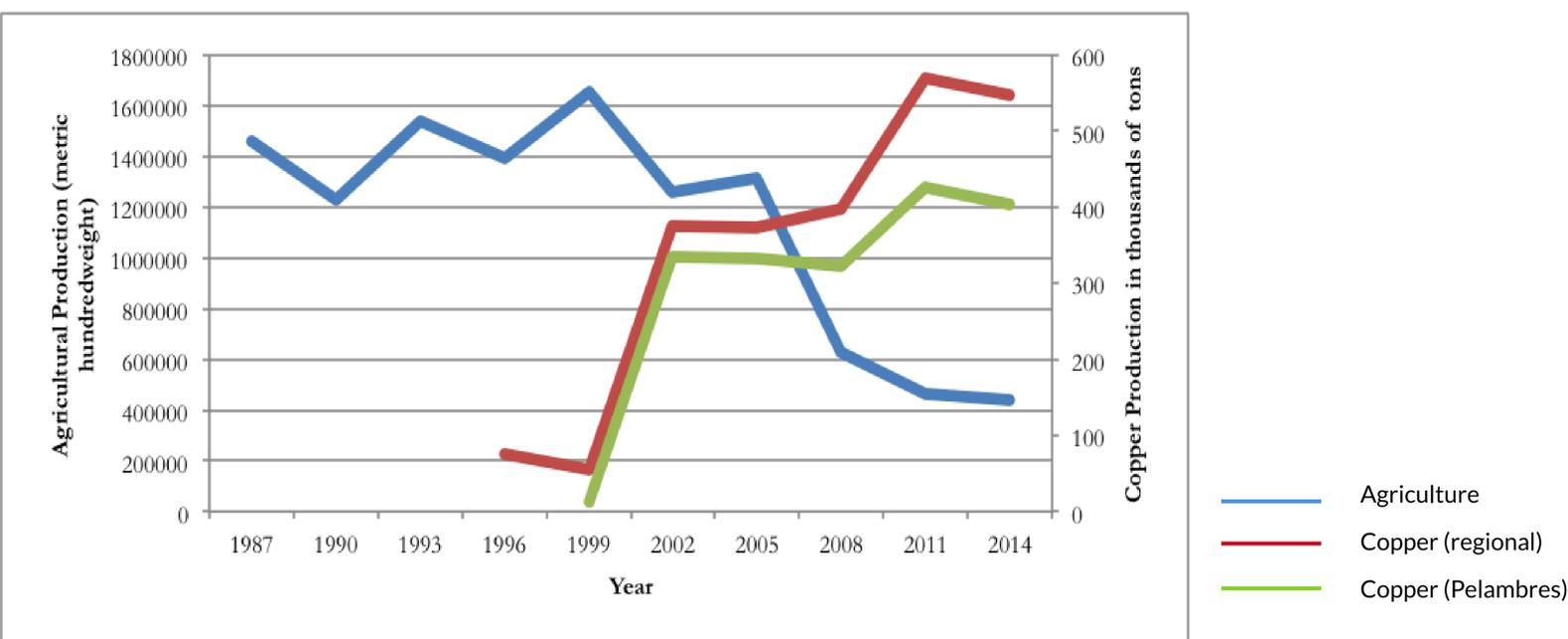
All the agricultural and farm activities are over. It is related to water. We used to sow beans, squash, vegetables and corn. I have a well here [in my house], it has water, but little. Then we water part of our garden one day and other parts other days and so on. We have no water; water has dried up, because the underground supply is finished. Down in the river the children used to swim, they fished; now they don't. That is over. It used to be so cute, now it is not. I would prefer a thousand times that the mine leave us alone, that they close the tailings dam. I tell you sincerely that I would prefer the tailings dam to be closed and to live calmly, without danger. But the damage is done and they will have to pay for it; they have polluted the water' (Interview Caimanes number 6; 24:56 – 26:32).

One of the main affected territories has been El Mauro, a piece of land that used to be a Hacienda (large-scale agricultural estate) for agricultural production and that is now buried under tons of mining waste.[8]

When we asked one of the former inhabitants of El Mauro about the patterns of agricultural life that they used to have, she responded stating that "we used to have a lot of water, each one could produce their own products, we were able to harvest potatoes, wheat, maize, lentils, beans. To produce the flour, we had a windmill. There was enough water available for us" (Interview Caimanes number 13; 00:07 – 00:47).

To empirically explore this sense of dispossession of the communities agrarian livelihoods, we compared historical data of the local production of wheat, maize, beans and potatoes and the exploitation of copper in the region. This exercise allows us to conclude that mining activities have a correlation with decreasing levels of total agricultural production in the region (see Figure 14).[9] In this figure we can clearly observe copper dramatically replacing agriculture as the main economic activity of the region toward the end of the 1990s, clearly affecting the local economy and community. This change in the pattern of economic life was a primary source of social discontent.

Figure 13: Copper exploitation (MLP) and agricultural production (Coquimbo region)



Source: Own creation based on (Minera Los Pelambres, 2011, 2013, 2014, 2015) and COCHILCO statistics Own creation based on (Comisión Chilena del Cobre, 2016a) and agricultural statistics from INE, retrieved from: http://www.ine.cl/canales/chile_estadistico/estadisticas_agropecuarias/estadisticas_agricolas/agricolas.php (las access 6 July 2016).

[8] Strategically important for MLP is the tailings dam El Mauro, where the waste of the mining exploitation is deposited. The dam has the capacity to store 2,060 million tons of mining waste, flooding the former Hacienda *El Mauro* through the construction of a wall 1,400 metres long and 237 metres high, blocking the path of the Pupío River.

[9] This figure is based in agricultural statistics from 1987 onwards (as the INE did not have previous data). Another problem with the data is that it is regional (Coquimbo region), while the best option would have been to have Provincial (Choapa) data. Mainly, because -as we have seen- the Choapa region was a huge agricultural cluster during the XX century.

"All the agricultural and farm activities are over. It is related to water. We used to sow beans, squash, vegetables and corn."



Photos of the community agricultural activity in El Mauro before the construction of the tailing dam.
Source: Community archive

2.2. Impacts of the mine

2.2.1 Social and environmental: A story of mobilisations

a) Previous mobilisations in the zone:

A key infrastructural element to allow for the large-scale exploitation of the mine was the construction of the tailings dam, where the by-products of mining operations could be stored. The initial plan of MLP was to build a dam close to Chillepín; a small town located just 20 kilometres from the mine. This initial proposal attracted great opposition from local communities, and in September 2001, the communities of Chillepín, Coirón and Panguecillo formed the Comité de Defensa del Valle Choapa (Committee for the Defence of the Choapa Valley), a local organisation that was supported by some environmental NGOs such as the Instituto de Ecología Política, Greenpeace and OLCA. The committee warned of the catastrophic consequences of the construction of the dam, arguing that the only solution was to stop its construction. The support from NGOs stopped once the committee lobbied to construct the tailing dam close to Caimanes, arguing that it was 'a place that has fewer inhabitants and that is not an agricultural community' (OLCA, 2002). The dichotomy of frames, between national and international organisations that wanted to stop the construction of the project, and local communities that wanted to relocate it, ended up in a fragmentation of the support network that decided to step out of this conflict.

The claims made by local organisations resulted in the company looking for an alternative location for the tailings dam. In its 2002 report, the company stated that 'a new Environmental Impact Study relating to a new tailings dam [...] [would] be submitted to the relevant authorities during the first half of 2003', adding that 'the most important feature is the Mauro Dam Project' (Antofagasta Minerals, 2003: 7). But the decision to construct the dam close to Caimanes was not driven primarily by financial consideration, not solely the will of the communities living in Chillepín. In 2003, the company recognised that the 'construction of the Mauro dam would have the advantage, over earlier proposals, of being in one location and needing less overall investment than estimated in the 1997 feasibility study' (Antofagasta Minerals, 2003: 7). With a cost of approximately USD\$ 450 million, the dam has a storage capacity of 2.1 billion tons of mining by-products, 'situated at a lower altitude than the alternative locations and in an isolated area in the Pupio Valley [...] located more than 10 kilometres from the nearest community' (Antofagasta Minerals, 2004: 7).

b) The first mobilisations in Caimanes:

The nearest community to the dam is Caimanes, a village of 1,600 people that refused this new plan.[10] In fact, during 2002 and 2003, two self-organised plebiscites found that 98% of the community opposed the construction of the dam; this majority would lead a process of opposition, resulting in street blockades, demonstrations in the main Chilean Highway (Pan-American: Route 5) and barricades (Coordinadora por la Defensa del Agua y la Vida, 2008: 10). The arguments made by the community were two-fold. On the one hand, the community established that the construction of the dam would block the sources of water that irrigate the Choapa Valley, as the construction of the dam would intersect the El Mauro territory, where the Pupio River rises. On the other hand, they alleged that the construction of the largest tailings dam in Latin America and one of the largest in the world, constituted a threat to the security of the community, particularly given the fact that the dam, constructed with sand and containing 2,100 million tons of mining by-products, could collapse in the event of an earthquake.[11] Such concerns are not without precedent. In November 2015 in Mariana (Brazil), the collapse of the tailings dam of the Samarco operation (operated by BHP Billiton and Vale) ended up killing 19 people. In the case of a breach or dam failure, the community in Caimanes believe that they will have as little as ten minutes to escape from any eventual catastrophe.

But, drawing lessons from the resistance faced in Chillepín, the company used a different approach and strategy to obtain its social license to operate in the area. Consultations with local communities began a full year and a half before the initiation of the project (Antofagasta Minerals, 2005: 41). We may denote the Company's renewed approach as the Corporate Social Responsibility (CSR) approach.

[10] Caimanes, a town with 1,600 inhabitants, represents 4.9% of the communal population of Los Vilos, a municipality that is part of the Choapa Province in the south of the Coquimbo region. According to the INE (2005), 623 people lived in Caimanes (census from the year 2002).
[11] El Mauro is situated in a tectonic setting (sitting at the intersection between Nazca and Antarctic tectonic plates). Of the total recorded dam failures in the world, 41% involved sand tailing dams (Villavicencio et al., 2014)

This CSR approach was based on the proposition of social and economic programmes that ended up dividing the community, as they had to compete to apply for grants supporting the 'production and sale of honey, educational grants for students, improvement of the irrigation and piping systems, plans to improve farmers production and technical educational programmes' (Antofagasta Minerals, 2005: 41). This approach proved successful for the company, as it ended up gaining the environmental license with low levels of community participation: only five organisations and five individuals opposed the project (COREMA, 2004). [12]

These low levels of participation were due, in part, to the division of the community. With the support of a portion of the community, the company created a new organisation to manage their CSR programmes. The company knew that the opposition to the construction of the tailings dam was coming from Neighbour Council number 4 led by Mirella Ardiles, so to diminish the power of the organisation they created Neighbour Council number 5. The President of the new council was the son of Mirella Ardiles, Claudio Herrera, who ended up opposing his own mother's fight against the mining company (Pizarro, 2010). The family disunity reflected the broader fractures that the community would experience, as an important number of people that had been historically part of Neighbour Council number 4 now joined the opposing council. A former community leader from Caimanes recognised that 'there are people that simply do not understand the level of the problem and others that are against the project, but cannot say it; places to work here are not abundant' (Coordinadora por la Defensa del Agua y la Vida, 2008: 13).

[12] Only five institutions (Agrícola, Forestal y Ganadera Tipay, Comité de Agua potable Rural de Caimanes, Junta de Vecinos número 4 de Caimanes, Comité de Defensa Valle Pupío and Comunidad de Aguas Canalero Caimanes) and five individuals based in Caimanes (Abel Campos, Jaime Carvajal, Juan Olivares, Osvaldo Olivares, Juan Tapia) participated in the Environmental Impact Assessment (EIA) process, claiming the potential contamination of the waters, the effects on their rights to water and the potential security risk of the El Mauro tailings dam. Regardless of this participation process, their claims were ignored. On the 6th of October of 1997, the SEA approved the Environmental Impact Study that allowed MLP to exploit the open-pit mine located in the Choapa Province, the construction of three tailing dams (Quillayes, Quebrada Seca and Las Lajas), and the necessary infrastructure for the exploitation of the mine (see Resolution number 71 (1997) COREMA). Then on the 28th of May 2002, the Environmental authority allowed the expansion of the mining project to current levels of exploitation (see Resolution number 108 (2002) COREMA). After financial considerations, MLP decided to present the project for the construction of the Mauro tailing dam that was approved on the 7th of April 2004 (see Resolution number 38 (2004) COREMA). In order to approve the construction of the dam, the mining company needed the approval of the Chilean Water authority, which was obtained on the 30th of November 2005 under resolution 1791/2005.

The economic promises made by MLP and the creation of the new Neighbour Council ended up further dividing the community; as a member of the Caimanes community recognised:

"They came here with false advertising. They said they would give us work. They created the social neighbourhood committee number 5 to defend the mining operations. Historically we have had number 4 representing the community. I participated in the creation of number 5. I was a member, because I thought that it was going to be good, that the company would employ our children, but time passed and nothing happened" (Interview Caimanes number 6, 00:26-02:05).

Regardless of the division, some community members continued their opposition to the project. They argued that the construction of a 1,400-metre-long and 237-metre-tall dam would not just close the access to El Mauro valley and its agricultural potential but it would also need to displace 23 families living in the zone, decimate an archaeological zone with over 400 pre-Hispanic sites and destroy the hydrological system of the Pupío River. While the Environmental Qualification was approved, the construction still needed the approval of the National Water entity (Dirección General de Aguas - DGA). The opposing members of the Caimanes community directed their energies to impede such authorisation. The community's argument was based on the illegal appropriation by MLP of the waters of the Pupío River. They argued that MLP did not have rights over the waters of the Pupío River and that they were the ancestral owners of those rights. Despite the strength of these arguments, the DGA dismissed them on the 30th of November 2005, approving the construction of the project (resolution 1791/2005). But various organisations expressed concern over the validity of the legal judgment, claiming that the project was de-facto approved even before the resolution of the Environmental Service (CORAMA at that time). Their argument relies on the fact that a couple of days before the decision made by CORAMA, the former President Ricardo Lagos visited the zone getting everyone on board to approve the project (Coordinadora por la Defensa del Agua y la Vida, 2008: 9).

The unfavourable judicial decisions reflected deep asymmetries of power between Caimanes residents and the Company; these are starkly illustrated by the fact that the town is far from the central power and that the community (mainly constituted by farmers) was opposing a project that had high levels of political support. The isolation was both political and geographical. Far from big cities, deprived of the support of neighbouring communities, and inhabited by less than 1,600 people, it was difficult for the case of Caimanes to receive media coverage and to be recognised as an important socio-environmental conflict by national and international NGOs that decided not to continue in this struggle after the communities in Chillepín decided to relocate the tailing dam.

c) The judicialisation of the protest and division of the community:

The community found some windows of opportunity in local elites, specifically in the figure of Víctor Ugarte, an important landowner in the area, who wanted to follow a legal strategy to oppose the construction of the tailing dam that also affected his own land. [13] In May 2006 a group of eight community leaders representing the towns of Caimanes and Pupío, and Ugarte himself, filed separate legal claims against the decision made by the DGA.[14] At this point it was a 'win-win' strategy: Víctor Ugarte needed the support from the community to generate public pressure for his demands and the community benefited from Ugarte's legal strategy as he counted on the support of the lawyer Fernando Dougnac, president of the NGO Fiscalía del Medio Ambiente (FIMA) and recipient of the National Environment Award in 2002. The judicialisation of the protest reflected a key shift in the protest strategy adopted by the community, which argued the following: 'we will not protest in the street. It is useless. We put all our trust in the decision of the tribunals' (La Nación, 2006).

The judicial strategy generated some positive outcomes for the community. Six months after the legal claim was filed the Appeal Court in Santiago stated that:

"It has become evident to this Court that the territory chosen by MLP to place the dam, 45 kilometres from the mine, was chosen considering only economic factors [...] The Political Constitution of the State protects –in its article 19 number 21– 'the right to develop economic activities that are not against moral considerations, public order or national security'. So, economic activity cannot be privileged over the interest of the community, whether the local and directly affected community as in this case, or the national community that will once again see its environment seriously damaged. For this reason, this Court establishes that it is its duty not to stay impassive in the face of this serious situation, but it must prevent it from happening." [15]

The court ruling ended up being a key and strategic environmental judicial decision.[16] It was able to break the closed structural political opportunities and allowed the community to generate networks at the national and international level.[17] A concrete example of these opportunities can be observed in the capacity of the leaders of the community to present the case against the DGA and MLP to the Latin American Water Tribunal, an alternative justice system created in 1998 to observe the illegality of the norms protecting water sources in Latin America.[18] During the tribunal's 2007 session in Guadalajara, Mexico, the Court declared that the company and the state should repair the archaeological and ecological damage in the zone; this decision, while not legally binding, generated further support for the community's frame (Tribunal Latinoamericano del Agua, 2007). Despite the decisions taken by the Appeal Court in Santiago and the moral arguments established by the Latin American Water Tribunal, the company persisted with the construction of the dam in El Mauro.

[16] Paloma Infante (2016) recognise as 'emblematic' some cases that after being approved have been paralysed through judicial or conventional (social protest) acts, see for example the thermoelectric project Barrancones, Campiche, Punta Alcalde and Castilla, los hydroelectric cases of Hidroaysen, Ranco, Achibueno and Río Cuervo, and the mining projects El Morro, Pascua lama, Los Pumas and Pelambres (Infante, 2016: 156–157)

[17] Caimanes have tended to internationalise the conflict from the very beginning of the process by allying with organisations that are critical of mining operations or organisations that have lobbied for the preservation of water sources (OLCA, 2004: 4). Probably one of the most important has been the French organisation *France Libertés-Fondation Danielle Mitterrand* that has presented four reports of the case of Caimanes in the United Nations Human Rights Council (See reports A/HRC/20/NGO/62, A/HRC/21/NGO/76, A/HRC/22/NGO/33, A/HRC/26/NGO/10). The French organisation also had a permanent international observer living in Caimanes during 2014 and 2015. Another organisation that has supported the community is London Mining Network (LMN), an NGO based in London that fights against the abuses of big mining companies. LMN has made some contacts between the community and law firms in the United Kingdom (UK) to design a strategy to pursue the responsibility of MLP in the UK and has invited the leaders of the community to speakers' tours in order to lobby in Universities and with public authorities in the UK against Antofagasta Minerals.

[18] This alternative tribunal was created as a response to the insufficient reaction of local tribunals. It does not have any kind of jurisdiction over states and has been created as a moral and not a juridical tribunal (Armijo, 2010)

[13] He was owner of the Haciendas "Tipay" and "Romero" that were directly affected by the construction of the dam.

[14] See Corte de Apelaciones de Santiago (2006) *Agrícola Ganadera y Forestal Tipay/Dirección General de Aguas. Recurso de reclamación*. Rol: 11,915-2005 and Corte de Apelaciones de Santiago (2006) and *Comité de agua potable rural Caimanes/Dirección General de Aguas: Recurso de reclamación*. Rol: 12,004-2005

[15] Own translation from Corte de Apelaciones de Santiago, *Agrícola Ganadera y Forestal Tipay/Dirección General de Aguas. Recurso de reclamación*, Rol: 11,915. Decided on 03.11.2006, paragraph 27 and 34.

From a strictly legal perspective, the company could construct the dam, because it offered a judicial settlement to the claimants. The Supreme Court approved the settlement in May 2008, terminating the first attempts to stop the project and creating a huge division in the community. The agreement established that 1,250 UF (approximately USD\$ 45,000) should be paid to each of the claimants (5 organisations and 5 individuals).[19] On a separate claim, MLP agreed to pay USD \$ 23 million to the owner of the Haciendas Tipay and Romero, Víctor Ugarte. From this agreement, Ugarte paid USD\$ 3 million to the lawyer and \$2,227,680,000 Chilean pesos (approximately USD\$4.5 million) to 117 Caimanes inhabitants arguing that that money should allow them to 'move from Caimanes' to avoid the externalities of the construction of the tailings dam.[20]

A resident of Caimanes remembers the consequences of this settlement in the following way:

"The first fight was won; we could have stopped the construction of El Mauro [tailings dam]. Then, these thieves came and grabbed the money of the people. There is one person who is making a very nice house. I told him that his house was getting really beautiful with the sale of the town. At first, we said that we did not want to give the water to Los Pelambres, and Mrs Mirella went to talk with them. We had fresh, clean water. Now we drink water with worms". (Interview Caimanes number 6).

Indeed, the agreement raises important juridical and moral questions, such as: what is the capacity of people and communities to renounce inalienable human rights to life and water? What legal capacity does a group of people have to decide the collective future of a community, without consultation?

It also leaves some questions regarding the importance of the measures developed by the Courts: while the Appeal Court of Santiago decision was based on human rights of the community, it did not provide any kind of precautionary measures, such as for example stopping the construction of the dam until the Supreme Court decided the case.

The agreement was reached when the construction of the dam was in its final stage; one salient piece of evidence proving this absence of precautionary measure is that the dam started its operations on November 2008, a couple of months after the settlement was approved by the Supreme Court.

While the legal battle was going on, 23 families were displaced from El Mauro, a few archaeological sites were recovered (the rest lie under tons of waste), and the water flow of the Pupío River was choked off. Most of the families that received Ugarte's and MLP's compensation remained in Caimanes, generating a huge division with those who hold that they were 'falsely' representing the community. This situation ended up reconfiguring the social movement in Caimanes and the strategy that upcoming leaders followed.

d) New organisation and new strategies to oppose MLP:

While a few families received compensation from the company, a significant proportion of the community were now convinced of the damages generated by the construction of the dam. Those that did not receive the compensation from the company viewed the former leaders of the community as traitors and decided to create a new organisation: the Comité de Defensa Personal de Caimanes (hereinafter 'the Committee' or 'Committee'). The organisation was legally constituted on November 19th, 2008, just a couple of months after the Supreme Court approved the settlement with the former leaders of the community. The first step that they took was to find a group of lawyers that could assist them to overturn this agreement. The decision of the community was then to follow the same strategy adopted by its predecessors, i.e. the judicialisation of the protest. Using some of the funds from the extrajudicial agreement, the newly created Committee approached the law firm Ossa & Cia, who agreed to be the new representatives of the community. In December 2008, the community and the new lawyers presented a claim in the Juzgado de Garantía Local de Los Vilos (Local District Court of Los Vilos) arguing that though the construction was finished, the wall of the dam was in permanent construction, as it constantly receives sediments from the mining waste to increase the resistance of the wall ('obra nueva' claim). This action aimed to stop the construction of the wall and so to stop it receiving waste materials from the mine. Additionally, on the 29th December 2008, the Committee presented a claim arguing that the construction of the dam was wrongly executed, and posed a threat to the security of the community ('obra ruinosa' claim). The filing of these claims was aimed at demolishing the dam. Both claims were based on the decision taken previously by the Court of Appeal of Santiago.

[19] Junta de Vecinos de Caimanes, Junta de Vecinos de Pupío, Comité de Defensa del Valle del Pupío, Comité de Agua Potable Rural de Caimanes, Comunidad de Aguas Canal Comuneros Caimanes El Llano, doña María Stella Bañados Van Wyngard, don Ricardo Alfredo Meneses Paredes, don Juan Rubén Tapia Bonilla, don Felipe Hernán Montalvo Silva y Osvaldo Eduardo Olivares Godoy. As established in Corte Suprema, *Comité de agua potable rural Caimanes/Dirección General de Aguas: Recurso de reclamación*. Rol number 292-2007. Decision 08.05.2008,
[20] Juzgado de Letras Los Vilos, *Insinuación de donación*. Rol number 1,964-2008. Decision 03.09.2008.

"economic activity cannot be privileged over the interest of the community, [...] that will once again see its environment seriously damaged"



Photos of the construction and contamination of El Mauro tailings dam.
Source: Community archive

Even though this new group also judicialised the protest, their strategy was somewhat different. The distinction, when compared to the legal strategy followed by former leaders of the community, was that the Committee was not accusing public institutions (e.g. DGA) over the approval of the dam, but they were instead directly accusing the company and its ownership for the effects of the dam. The legal strategy of the community and their lawyers shifted from targeting the administrative responsibility of the State and its lack of capacity to protect human rights to a claim of private responsibility for the construction of the dam. Both legal actions presented MLP and the Luksic family as the main responsible parties for the effects on security and lack of water in the community. The identity of the Committee was then based on opposition to one of the most powerful economic group in Chile, the Luksic family. While the Committee understood that the inequalities in the distribution of the effects of extractivism were important, they also knew that to seek justice they had to gain a space in the political and communicational agenda, something that was encumbered by the political weight and clout of the Luksic family. [21] The Committee knew that to oppose such a well-connected elite they needed something more than just the judicialisation of their protest. So, they started local campaigns to generate a boycott to Luksic companies and generated a narrative frame around inequalities in the distribution of power and political privileges that benefited the owners of Antofagasta Minerals.

The community was sceptical of the political support that they sporadically received [22] and understood that the legal cases would take some time to be decided; therefore, they opted to follow a parallel strategy of direct action, to complement the judicial strategy. The first example of direct action that gained national recognition was the hunger strike initiated by 11 members of the community on the 28th of September 2010.

[21] The *Comité de Defensa de Caimanes* suggest that one of the clearer examples of this co-optation of the State may be found in the figure of Jorge Insunza, former member of the Chamber of Deputies and Minister of Michelle Bachelet's government in 2015. Twenty-seven days after being named Minister and Secretary General of the Presidency in Chile, he had to resign, recognising that while he was a deputy and president of the Mining Commission of the Chamber of Deputies, he received over USD\$ 300,000 through his company *Sistema Consultores*, for consultancies made to the mining companies CODELCO and Antofagasta Minerals (Alarcón, 2015). The community argues that there are other cases of co-optation of the government made by Antofagasta Minerals. Among the most important cases of potential corruption claimed by these movements are the funding given to the political campaigns of local politicians, such as the former Governor of the Choapa Province, who admitted the reception of funds for his campaign (Salamanca Chile, 2016). The community has also criticised that Aurora Williams, Minister for Mining in Michelle Bachelet's government was a former employee of one of Luksic family companies (Antofagasta Terminal Internacional) and that his secretary Adolfo Galindo, had to resign because of alleged cases of preferential treatment to MLP (The Clinic Online, 2015).

[22] For example, the community was invited to present their case in the Natural Resources and Environmental Committee of the Deputy Chamber see 52° Periodo Legislativo, Legislatura 358ª, Comisión De Recursos Naturales, Bienes Nacionales y Medio Ambiente, 11th session, 16 de June 2010.

The public declaration of the Committee argued that this decision was taken following the 'irresponsibility of MLP', which had decided to construct the El Mauro tailings dam, one of the largest tailings dam in Latin America in the head of the Pupío River, while arguing that the tailings dam had forced the community to live 'without water, air, vegetation and animals [...] underestimating the decision made by the Appeal Court of Santiago [...] moreover it oblige[d] the community to live at the foot of a dangerous structure'. The public declaration was based on the fact that the right to live in an environment free of contamination, and right to life, were recognised in the Chilean Constitution (Comité de Defensa Personal de Caimanes, 2010a). With this action, the Committee aimed to give visibility and recognition to their claims. Within a human rights framework, they tried to represent the unfair environment on which they were forced to live.

The hunger strike was the first of a series of demonstrations aimed at generating both local and national solidarity. Within this process of direct action, it is important to highlight the figure of Cristián Flores, one of the leaders of the community and the founder of the Committee. Cristián Flores was a young person that was born in, and displaced from, El Mauro, someone who had experienced the conflict from its genesis, and due to these circumstances had pushed the community to follow both a legal and a direct action strategy to stop the abuses committed by MLP (Claudia Pizarro, 2015).

The leadership of Flores combined with the momentum of the hunger strike brought the community to its first major demonstration. It occurred on the 4th October 2010, where 150 members of the community blocked the access road to El Mauro tailings dam. The demonstration attracted the attention of the local authorities, who tried to open a process of dialogue, but the protesters refused it. Their argument was based on solidarity with the community members who were on hunger strike, and recognised that they would maintain these forms of strike until MLP and the government secured a form of open dialogue between the community and the company (Comité de Defensa Personal de Caimanes, 2010b).

Following this demonstration, a series of further mobilisations occurred in the zone; actions that in some cases were subject to acute police repression (David Noticias, 2010). Other actions mobilised the community of Caimanes to Illapel (capital of the Choapa Province) in solidarity to the hunger strikers (OLCA, 2010b) and others blocked the entrance of the mine in the location of Portones (Ossandón, 2010a). These activities created a sense of solidarity within the community similar to what occurred in the initial periods of the mobilisations in 2003-2004.

Important symbols that demonstrate this internal unity were utilised by the movement across the town. Most of the houses in Caimanes hung black flags and wrote billboards representing their opposition to the mining project and the consequences of the tailings dam. The local cohesion was supported with national solidarity. Ten socio-environmental organisations organised a massive demonstration in front of La Moneda (the government palace) in solidarity with the hunger strikers (OLCA, 2010a), featuring participants from Caimanes and Santiago. A member of the community argued that it was necessary to come to Santiago to be heard, because the 'local authorities have never been part of the conflict, we need to come here to La Moneda because unfortunately they have never given us any support' (Comité de Defensa Personal de Caimanes, 2012: 5:29-5:45). This fact demonstrates once again an aspect of the inequalities that the movement had to face, in this case the acute centralisation of politics in Chile.

After the conflict generated national interest, political parties and representatives of the Catholic Church showed some solidarity with the community. While the movement has constantly requested political support, it was not until the hunger strike lasted some weeks that political representatives began to demonstrate their interest in the hunger strikers, inviting the company to begin a process of dialogue with the community. What was unclear for the community was whether the politicians were concerned with the interests of the hunger strikers or those of the company. A member of the Teachers Association in Illapel -where the hunger strike was taking place- remembers the emboldened political interest in the following way,

"Once the hunger strike started I got involved in the Caimanes problem. Then I saw the operation of the local parliamentarian Lemus very closely. He took over the hunger strike. The Socialist Party was there at the regional level; they operated as a party. Lemus had a political operator (who is his adviser) and formerly she was fighting with us. Lemus was ratified as an important interlocutor within the town of Caimanes, and they requested that he negotiate with the company to end the hunger strike. They told him that their problem was not about money, but security and water. Then, the following day the front pages of the newspapers said that the Caimaninos were going to stop the hunger strike for 350 million pesos, or something like that. This situation was not a coincidence; it was an indicator. Clearly there was pressure. This was being driven to other levels, at levels that seemed unnoticed to me. I always stayed with that image of how the environmental political operators work, and here it was very evident". (Interview Caimanes number 6, 18:47-23:29).

To avoid misunderstandings between politicians and the company, a representative of the Catholic Church was proposed as facilitator of a roundtable discussion. The Bishop of Illapel, Jorge Vega was elected to ensure the transparency of this process. With this guarantee, the protestors ended an 81 days' hunger strike on December 2010. The company accepted this condition but said that they were not able to dialogue with Cristián Flores, the leader of the Committee, arguing that his exclusion would be better for the interests of the community. But the community immediately reacted, saying that those conditions could not be accepted, and going further by requesting that the roundtable discussion should be filmed, to ensure the transparency of the process (MTP Coquimbo, 2010: 3:10). After long negotiations, the roundtable process did not reach an agreement and the Illapel Bishop withheld copies of the video recordings, without making them accessible to the community. The community voiced mistrust towards the Catholic Church, stating that the company had the privilege of storing and reviewing the videos, while the community was never able to do so (Ossandón, 2010b).

e) Counter-mobilisation and persecution of human right defenders:

The intention of the company to weaken Flores' leadership became evident when they started a process of counter-legal mobilisation against him. The hunger strike period left Caimanes, and especially the people participating in the Committee, with a sense of identity and an initial network of support, but also with a legal case presented by MLP against the leaders and lawyers of the movement. The community of Caimanes was now full of black flags representing the death brought by MLP; it had clear leadership, which enjoyed significant national and international support that recognised their reputation as a community of resistance. A telling example of this garnered reputation was the gold medal given to community representatives by Martine Lignères Cassou, the Mayor of Pau (France), in recognition to their fight in defence of water rights in April 2011 (Quillier, 2011). In this context, where the movement was rapidly acquiring increasing support and momentum, MLP decided to follow a counter-mobilisation legal strategy, accusing the leader of Caimanes (Cristián Flores) and the lawyers (Ossa & Cia) of prevarication, criminal association, public disorder and falsification of documents. This persecution of the defenders of the community was seen by the Committee as a renewed strategy to intimidate the leadership of the movement and divide the community, nonetheless, the strategy back-fired, generating exactly the opposite effect.

In November 2011, exactly one year after the hunger strike, the company presented the complaint against the leader of the Committee, Cristián Flores, and the lawyers supporting the community. Immediately the Committee responded with a campaign titled 'Defend those who defend you'. This campaign argued, in its own words: 'MLP has broken the social relations of Caimanes' inhabitants; through the distribution of economic benefits it has generated divisions within families. Today, through legal complaints against the lawyers and our leader, they seek to leave those that want to continue living in the Pupío Valley without possibilities of legal defence' (OLCA, 2011). The lawyer of the defendants (Flores and Ossa & Cia), Alex Carocca, described the campaign in the following terms: 'The community is key. They are people with an admirable spirit, because they have been subject to different types of pressures to desist, to be subject to different projects and intentions from the mining company, to maintain a passive attitude' (Porrás, 2012). To achieve this 'spirit' the support from the community and from external organisations was key. An example of this support was that given by the Asamblea del Agua, representing 75 local movements and institutions, which signed a petition supporting the leaders of Caimanes (OLCA, 2012b).

It was not until November 2012 that the public hearing of the case occurred in the Juzgado de Garantía Local of Los Vilos allowing the community to gain clarity about past conflicts and to create new networks of support. The public hearing was a perfect occasion to revisit past struggles. For example Mirella Ardilles, one of the former community leaders, recognised in this instance that she had 'sold the town' and that the donations that they received in order to get into a settlement in 2008 were made by MLP and not by the owner of the land (Víctor Ugarte), as the mining company had historically alleged (Correa, 2012a). Another witness in this case was the former lawyer of the community, Fernando Dougnac, who declared that Víctor Ugarte had paid him and that the idea to give a donation to some members of the community was decided before the extrajudicial agreement of 2008 (Ossandón, 2012). After 8 days of public hearings, the cohesion of the community was strengthened, for they were able to gain greater certainty over facts that were -until then- unknown. During this period, the community also received the support of several organisations that protested outside the Tribunal on December 2012 (OLCA, 2012a). Furthermore, the international networks were expanded as the French NGO Fondation France Libertés – Fondation Danielle Mitterrand represented the community in two periods of the United Nations Human Rights Council, denouncing the environmental catastrophe of the zone and the persecution of human rights defenders.[23] The identity created during the hunger strike, was now reinforced in support of the leaders of the community.

Finally, in December 2012, the Court ruled against MLP, declaring that the lawyers and the leader of the community were innocent of the four charges that MLP tried to present against them.[24] One of the accused lawyers expressed her happiness with this decision affirming that "that was all we asked for: an impartial tribunal [...] they were brave Judges as it is not easy to decide in these conditions" (El Observatodo, 2012). The company appealed this decision, but both the Appeal Court of La Serena[25] and the Supreme Court refused the appeals.[26]

[23] Human Rights Council, 20th Period of Sessions, Theme 3, 13 June 2012, A/HRC/20/NGO/62 and Human Rights Council, 21st Period of Sessions, Theme 3, 4 September 2012, A/HRC/21/NGO/76.

[24] Tribunal Oral en lo penal de Ovalle, *Minera Los Pelambres c/ Ramon Ossa y otros*. Rol: O-25-2012, decision 18 January 2013.

[25] Corte de Apelaciones La Serena, *Contra Flores Tapia, Cristian, Ossa Infante, Ramon; Arroyo Correa, Roberto; Dagnino Urrutia, Sandra; Sanhueza Belmar, Ivan*. Rol: 39-2013. Decision made on 9th May 2013.

[26] Corte Suprema, *Reposicion in cause Contra Flores Tapia, Cristian, Ossa Infante, Ramon; Arroyo Correa, Roberto; Dagnino Urrutia, Sandra; Sanhueza Belmar, Ivan*. Rol: 1527-2013. Decision made on 2nd April 2013.

f) Water Contamination. Contrary Institutional visions:

While the criminal case against the leaders of the community was pending, the Investigation Police of Chile (hereinafter PDI) presented the results of their water analysis in Caimanes, concluding that they had levels of contamination that were above the legal maximum established in Chilean legislation. The police report, released on the 27th of August 2012, declared that levels of mercury, iron and manganese present in the water sources were above the Chilean norm. The report also noted that the root cause of these levels of contamination was the construction and operation of the El Mauro tailing dam (Policia de Investigaciones, 2012: 14–15). This study was corroborated by another investigation carried out by the Medical Association of Chile, that declared that the water in Caimanes had concentrations of mercury that were 26% over the Chilean norm and levels of iron 50% above the national norm (Tchernitchin and Muñoz, 2012: 202).[27] This study argued that the excessive absorption of metals through contaminated water sources may produce chronic health effects; for example, an excess of manganese may produce psychiatric effects and excessive iron consumption may produce cardiovascular and neurological diseases, among other effects (Tchernitchin and Muñoz, 2012: 209).

The police report fuelled a series of new legal claims and protests. A few days after the PDI released the results of its investigation, on the 14th of September 2012, 60 people from Caimanes filed a protection claim in the Appeal Court of La Serena.[28] The claim was based on the report made by the PDI, but also on the decision made in 2005 by the Appeal Court of Santiago that declared that the construction of the dam was a danger to human life (a decision made before the extrajudicial agreement). The lawyers representing MLP argued that the lawyers representing the community (Ossa & Cia) had tried –since 2008– to judicialise the protest of the Caimanes community and that the report made by the Investigation Police was misleading, as the laboratory that analysed the contamination of the water was not accredited by public institutions. Finally, they argued that the construction of the dam was made with high levels of technology and that the areas where PDI retrieved the water samples were previously not fit for human consumption.

Similar arguments to those presented by the defence of MLP were given by the regional representative of the Health Minister, Dr. Osvaldo Iribaren, who went to the town of Caimanes to argue that the results of the PDI were misleading. In an act that challenged the legal arguments presented by the community, the public representative drank water in front of the Caimanes assembly, sparking widespread communal anger (Correa and Trejo, 2013 min 54:13). The indolence of the authorities generated an immediate reaction in the community, which again blocked the entrance to the El Mauro dam, claiming that they should be treated –by public representatives– as humans (Correa, 2012b). The problems with the contamination of the water and security of the community were reactivated on October 2012, when an employee from MLP told the leaders of Caimanes that the dam had some leaks. While the company argued that the problem was promptly solved, the leaders of the community expressed the view that the authorities of the country had failed to support them.

The Appeal Court of La Serena argued that the right to health, as enshrined in the Chilean Constitution, had not been breached in this case, dismissing the protection claim presented by 60 community members.[29] This decision did not impede the community's strategy of judicialisation. The new evidence of leaks from the dam and the potential danger of its structure caused 80 people from Caimanes to present another protection claim at the La Serena Court of Appeal. Again, this Tribunal dismissed the claim of the community arguing that the pictures demonstrating the leaks were not enough evidence to conclude that the dam was a threat to human life.[30] But this time the lawyers defending the community appealed this decision, arguing that the Court of Appeal of La Serena had always decided against them. The strategy was successful, as the Supreme Court in Santiago, declared on July 2013 that the dam was a threat to the physical and mental integrity of the community and ordered MLP to create security evacuation plans and the public authorities (DGA and SERNAGEOMIN) to produce regular reports on the situation of the dam.[31]

[27] Also in 2004, the Water authority (DGA) recognized that the levels of contamination in the Choapa Province were provoked by the operations of MLP (Dirección General de Aguas, 2004: 102–3).

[28] Corte de Apelaciones La Serena, Protection claim made by Clodomiro Tapia Díaz y otros contra la Sociedad Minera Los Pelambres. Rol: 1008-2012

[29] Corte de Apelaciones La Serena, Protection claim made by Clodomiro Tapia Díaz and others against Sociedad Minera Los Pelambres. Rol: 1008-2012. Decision 9 November 2012, paragraph 15.

[30] Corte de Apelaciones La Serena, Protection claim made by Luis Nestor Fernandez Fernandez and others against Sociedad Minera Los Pelambres. Rol: 1106-2012. Decision 18 December 2012, paragraph 8.

[31] Corte Suprema, Protection claim made by Luis Nestor Fernandez Fernandez and others against Sociedad Minera Los Pelambres. Rol: 19-2013. Decision 4 July 2013, paragraph 9.

g) Legal results leading to the largest street blockade in El Mauro:

The decision made by the Supreme Court in July 2013, established the basis of a series of judicial victories for Caimanes. On February 2014, the Environmental Superintendence sanctioned MLP for non-compliance with its environmental license, ordering the company to pay 2,595 UTA (Annual Tax Units) due to archaeological damages (approximately 156,000 euros). In May 2014, the Los Vilos Tribunal declared the El Mauro tailings dam to be a 'ruinous construction'.^[32] This decision triggered a new demonstration in May 2014, where the community blocked the entrance to the dam arguing that 'if the justice system tells you that you live beneath a ruinous construction and that it is a threat to your physical and mental integrity, then the only solution is to stop the dam operations' (Correa, 2014). The community leaders argued that these decisions should be obeyed and that the only way of complying with them was by closing the tailings dam.

Moreover, in October 2014, the Supreme Court accepted the claims of obra nueva, overturning the decision made by both the Tribunal in Los Vilos^[33] and La Serena Appeal Court^[34]. The Supreme Court ordered MLP to allow "the natural runoff of the water that comes from the Pupío river", asserting that "the community of Caimanes should receive [the water] free of any contamination or waste that may come from the El Mauro tailing dam".^[35] To achieve this conclusion, the Supreme Court based its argument on international human right treaties, arguing that the "Chilean state cannot allow the development of activities that affect the environment and its inhabitants".^[36] However, the Supreme Court does not make reference to specific international treaties - despite them serving as the cornerstones of its argument- only declaring that the state should take preventive and reactive measures to protect the environment, stating that any activity (even those legally approved) that may cause a potential damage should be prevented. ^[37]

To comply with this decision the Supreme Court ordered the company to propose a plan to allow the natural flow of the water or to demolish the dam. This decision was the main motivation for the largest street blockade by the community.

Just after the decision of the Supreme Court, the community decided to block the entrance to the El Mauro dam.

The Committee argued in the following terms: 'during at least six years of judicial processes, we have shown the damage that the construction of the dam has done to our community. The tailings dam has brought the loss of our water sources, undermined our agricultural heritage and generated huge harm to our society and to families in our community' (Comité de Defensa Personal de Caimanes, 2014).

To comply with this decision the Supreme Court ordered the company to propose a plan to allow the natural flow of the water or to demolish the dam. This decision was the main motivation for the largest street blockade by the community. Just after the decision of the Supreme Court, the community decided to block the entrance to the El Mauro dam. The Committee argued in the following terms: 'during at least six years of judicial processes, we have shown the damage that the construction of the dam has done to our community. The tailings dam has brought the loss of our water sources, undermined our agricultural heritage and generated huge harm to our society and to families in our community' (Comité de Defensa Personal de Caimanes, 2014).

If the hunger strike of 2010 was the catalyst for the first massive mobilisations that attracted national interest, the favourable decisions of the Courts were now the driving force behind the blockade, an action that has been one of the most prominent and potent mobilisations of the Committee. It was a blockade that attracted the interest of the press, the voice of political figures, and support from NGOs. The Movimiento por la Recuperación del Agua y la Vida (MODATIMA) was one of the organisations that supported this new mobilisation. After 60 days of street blockade, the spokesman of this movement declared:

"As a movement, we are completely convinced that the fight given by Caimanes is an example of courage. Regardless of the difficult circumstances, they are engaged in a just fight. Different organisations that form this movement, wanted to join and support them. That is why we are here, because we know that the conflicts in different territories have the same cause and that it is fundamental to fight them with unity" (MODATIMA, 2015)

[32] Juzgado de Letras y Garantía de Los Vilos, *Sociedad Defensa Comunidad Caimanes against Minera Los Pelambres*. Rol: 7981-2008. Decision made on 16 May 2014. As it has been the tendency, the La Serena Appeal Court reversed the decision made by the Los Vilos Tribunal and declared that the construction was not ruinous. See Corte de Apelaciones de La Serena, *Sociedad Defensa Comunidad Caimanes against Minera Los Pelambres*. Rol: 946-2014. Decision made on 22 April 2015.

[33] Juzgado de Letras y Garantías Los Vilos, Flores, Cristian y otros con Minera Los Pelambres. Rol C-7957-2008. Decision 12.11.2012. [Obra nueva]

[34] Corte de Apelaciones La Serena, Flores and others against Minera Los Pelambres Rol 1326-2012. Decision 28.08.2013.

[35] Own translation from Corte Suprema, Flores and others against Minera Los Pelambres Rol 12938-2013. Decision 21.10.2014.

[36] Id., Paragraph 20.

[37] Id., Paragraph 23.

Caimanes also received the support of the No Alto Maipo movement. Marcela Mella, the spokeswoman of No Alto Maipo declared that they were supporting Caimanes, because: “[...] Since 2013, when the Luksic group bought 40% of the hydroelectric project Alto Maipo and signed an agreement with AES Gener to expand the operations of MLP, our fights have become sister fights with Caimanes, because MLP has been the worst environmental disaster of this valley” (MODATIMA, 2015)

After 74 days, the national police forcibly displaced the road blockade. The police came to the place at 6:30 a.m. attacking the provisional tents that blocked the route. The community alleged that the police did not have an order to evict the families and that they were receiving orders from the company. One of the leaders of the Committee declared: “rich people are passing over the judicial branch ... the fact that a private guard is giving orders to Carabineros is a symptom of a serious problem” adding that “people should stand up to enforce the Tribunals’ decisions”. As a reaction to the repression, the National Institute of Human Rights made observations about the conditions of the community and declared that ‘the police acted with a disproportionate use of force’ (INDH, 2015: 31).

h) Current status of the movement: New approach from the company and new division of the community:

Facing unfavourable judicial decisions and constant protests, the company elaborated a new strategy of relations with Caimanes based on dialogue with the community. This new approach emanated from MLP’s growing recognition that of the company’s decrease in the copper extraction in 2015 was linked to the surge of community protests (Antofagasta Minerals, 2015a: 41). Furthermore, the local tribunals whose decisions have usually favoured the company were now started to rule against it. A good example may be found in the Los Vilos local Tribunal, a Court that had the responsibility to enforce the decision made by the Supreme Court in 2013, and that decided that the plan presented by the company was insufficient, as it did not allow the natural flow of the Pupío River, ordering MLP to demolish the dam.[38]

Simultaneously, the Committee was then gaining momentum not just from the support it was receiving from diverse organisations, but also from the judicial decisions made at the local level. This new judicial victory of the Committee motivated the organisation to organise a massive march in front of La Moneda to draw attention to the repression that they suffered during the street blockage (Gutierrez, 2015). In this adverse context for the company, MLP started a new approach of lobbying and working to enhance its community relations.

In terms of the judicial strategy, MLP appealed the decision made by the Los Vilos Tribunal on March 2015 stating that “the demolition of the dam was an impossible physical and juridical fact” (Antofagasta Minerals, 2015b). In terms of political lobbying Jean Paul Luksic, President of Antofagasta Minerals and also President of the Chilean Mining Council, organised a meeting with high-level representatives from the government to analyse possible the circumstances that had led MLP to lose 8,000 tons of copper through impeded extraction operations (Esturillo and Pozo, 2015).[39] The Chilean government declared that they were working on a long-term and a short-term strategy to support mining activities. Within the short-term strategy, the government recognised that they would continue supporting companies with the deployment of security forces to impede the blockade of mining activities (Esturillo and Pozo, 2015). This government promise was kept. In April 2015, the community again blocked the access to El Mauro; the same day the police suppressed this act and evicted the protesters, using machines belonging to MLP (El Clarin, 2015).

In terms of its community approach, the company started –in September 2015– a process of dialogue with the lawyers that represented the community and members of the Committee to achieve an agreement on security, water and community investment. The community alleged that previous conversations between the lawyers defending the community (Ossa & Cia) and the company had resulted in a pre-designed agreement that was the basis of the three points that would lead the dialogue process (water, security and compensation). The leaders of the movement argued that the lack of community participation in the definition of these topics divided the community (Claudio Pizarro, 2015).[40] While the three points were previously decided, the conditions to implement them were agreed upon over the course of ten public assemblies.[41]

[38] Juzgado de Letras y Garantías Los Vilos. Flores, Cristian y otros con Minera Los Pelambres. Rol C-7957-2008. Decision 06.03.2015, paragraph 13. [Compliance obra nueva]

[39] On a Price of 0.266 dollars/lb. is approximately USD\$ 4,2 million

[40] To have transparency in the dialogue with the community, MLP asked *Chile Transparente*, the Chilean branch of Transparency International to document the whole participatory process. But, the community has alleged that that MLP is a financier of Chile Transparente.

[41] The public assemblies took place between September and November 2015.

The agreement covered the topics of security, water (complementary infrastructure to bring water through canals), a community development fund of approximately USD\$ 8.5 million and a personal donation of approximately USD\$ 42,000 per family (if 350 families approved it would be USD\$ 14,7 million). In order to approve the agreement, the company and the community agreed that the minimum quorum of votes should be 70% of the people living in Caimanes (Chile Transparente, 2015: 5).[42] The leaders of the Committee resisted the agreement arguing that the lives of the people in Caimanes could not be bought.[43] Finally, the vote to approve or disapprove the agreement occurred on the 8th of December 2015. Only 64% of the people living in Caimanes voted, therefore the referendum was not valid (Caimanes Resiste, 2015).

Despite the refusal of the community, MLP continued with their intentions to achieve an agreement with the community. The intentions were clear; they wanted to present this agreement as evidence of extrajudicial agreement in the cases of obra nueva and obra ruinoso. In order to achieve it, Ossa & Cia and 466 members of the community sent a letter to MLP asking them to respect the agreement previously presented (Ossa & Cia, 2015). But this event raises a crucial question: why did lawyers that had already won a protection claim in the Supreme Court - declaring that the tailings dam was a physical and mental threat - and won the obra nueva case in the Supreme Court wanted to achieve an agreement? The intentions of the lawyers supporting the community were also clear as they would receive 10% of the money paid by the company for their representation and none of the pending decisions in tribunals were asking for monetary compensations.

This decision by the legal team ended up breaking the trust that the community leaders had placed in the lawyers, as in 2008, when the strategy of the lawyers represented by Fernando Dougnac was to achieve an extrajudicial agreement enabling construction of the dam. Now, the lawyers who were defended by the community in the campaign "Defend those who defend you", and who had won important cases in different Tribunals for over 8 years, wanted to achieve an agreement with the company to receive a payment (Maher, 2018). This specific episode reflects some of the important limitations of legal mobilisation when there aren't effective protections and regulations in place. The rights of communities should not rest on the decision of lawyers who want to gain monetary compensation of a case; rights are not negotiable.

After a process of negotiation, on the 18th of May 2016, 552 people from Caimanes (representing 81.3% of the people over 18 years of age in the community) signed the agreement. The Committee ended up representing a small proportion of the community that still believe that the dam is a threat to the security of the community and that the complementary works to bring water to Caimanes will not be sufficient to recover the agricultural potential that the valley once had. Moreover, they believe that the money offered per family (USD\$ 42,000) is not sufficient compensation for the violations committed. For the company, the strategy was successful, as they could present the agreement in the case of obra ruinoso, achieving an extrajudicial agreement.[44] They also presented it as evidence in the case of obra nueva in the La Serena Appeal Court. This was a case where the Supreme Court had asked MLP either to create a plan to allow the natural flow of the Pupio River or to demolish the dam. Regardless of this decision, the Appeal Court decided that: "The complementary works proposed by MLP and the agreements signed by many inhabitants of Caimanes on May of this year are suitable to allow the free flow of the waters of the Pupio river to Caimanes"[45]

The Supreme Court accepted these arguments in November 2016,[46] leading the constituents of the Committee to present a new legal claim that aims to pursue the criminal responsibility (prevarication) of the lawyers that represented the community and that ended up negotiating the case with the company (Fuentes, 2017; Medrano, 2017). This issue opens a new cycle in the judicial strategy of the movement, similar to what occurred in 2011, when a group of neighbours tried to pursue the legal responsibility of the lawyer Fernando Dougnac (Labrín, 2011). The conflict therefore continues.[47]

[42] According to a census created by the company and the community, only those that were over 18 years old could vote.

[43] It is noteworthy that this represents a completely different approach when compared to the decision made by the Committee that represented the community in 2008.

[44] Corte Suprema, *Sociedad Colectiva Civil Defensa Comunidad Caimanes con Minera Los Pelambres*, Rol 6991-2015. Decision 01.06.2016.

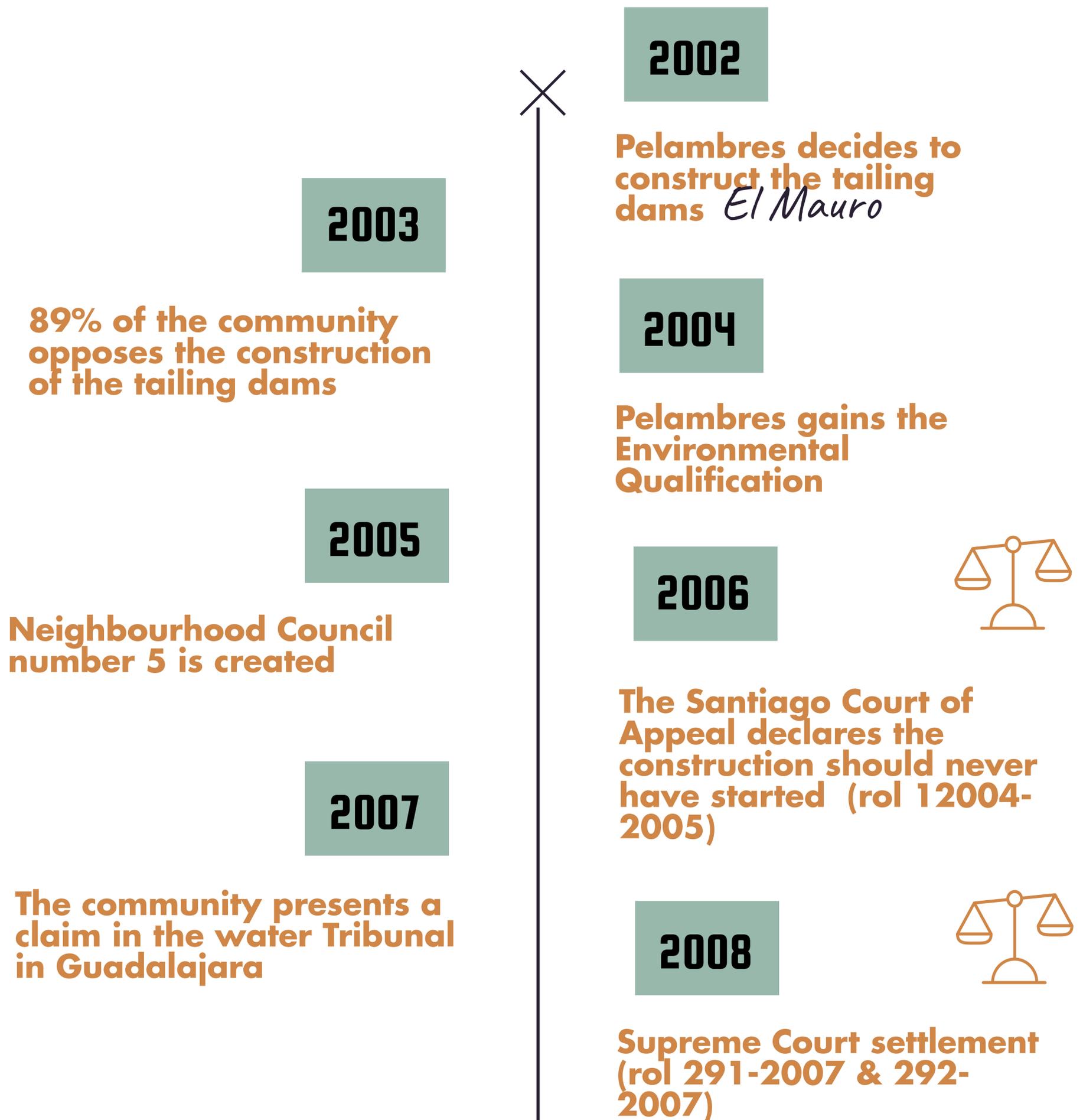
[45] Corte de Apelaciones La Serena, *Sociedad Colectiva Civil Defensa Comunidad Pueblo de Caimanes / Minera Los Pelambres: Denuncia de obra nueva*. Rol 551-2015. Decision 08.08.2016.

[46] Corte Suprema, *Flores, Cristian y otros con Minera Los Pelambres*, Rol 76323-2016. Decision 21.11.2016.

[47] In fact, in October 2017, the community that continues the opposition to the project have decided to elect a new leader to continue the struggle (Mr Alvaro Badillo).

CAIMANES

conflict chronology



2008

The Committee is created in December.



2010

81 days of hunger strike

2012

Investigation police confirms that the water in Caimanes is polluted



2014

The Supreme Court declares that Pelambres should allow the free-flow of the waters of the Pupío basin (rol 12938-2013)



2015

The local Court of Los Vilos declares that the dam should be demolished (rol C-7957-2008)

Committee

2008



The community present civil claims

2011



Pelambres sues the lawyers and members of the community

2013



The Supreme Court declares that the tailings dam is a physical and psychological threat (rol 19-2013)

2014



The community block the access to El Mauro for 74 days

2015



Ossa & Cia settles the legal claims with the company

3. Labour conditions and labour rights in Los Pelambres:

In this section, we will further develop the impacts and potential impacts that MLP may have on labour conditions (wages and workday), union representation and occupational health and safety (OHS).

a) Remuneration and workday:

First, we will identify the potential impacts of remuneration and workday. We will assess whether MLP is paying salaries that are in line with the economic reality of mining in the country, or whether there are differences between direct employees and subcontractors, and how the company complies the different definitions of workdays that exist in the Chilean law.

In general terms, as identified in the first section of this report, the mining sector represents around 2% of total employment of Chile. Yet, the mining sector has the highest real salaries in the country, a proportion that continues to rise. The real wages in the sector in 2015 were 12.8% higher than in 2010. However, nominal wages, measured in current U.S. dollars, were 11.6% lower, as the sharp depreciation of the Chilean peso against the U.S. dollar by a cumulative 34.2% over 2010-2015 mitigated the increase of labour costs.

Figure 14: Number of employees in Mining Sector, year end and Nominal Wage in Mining Sector vs CPI, year end



Source: Own creation based on (Comisión Chilena del Cobre, 2016a)

In the specific case of Los Pelambres the members of the Los Pelambres union said that when compared with other large-scale mining companies, Pelambres offers average wages.[48] Workers tend to have a good base salary, but worse bonuses when compared to mines such as Escondida (BHP Billiton). The members of the Union said: “On the one hand this is bad, because we get less money than other workers in the mining industry, however, on the other hand it is good, because the base salary is used for pensions and to negotiate the end of the contract”.

Usually the wage scale is negotiated with the union, through collective bargaining process. As of November 2018, there are 3 unions in MLP. The Los Pelambres Union (Sindicato de Empresa Minera Los Pelambres) represents around 470 employees, the union of workers of the concentration plant (Sindicato MLP Concentradora) that represents around 100 employees, and the supervisor’s union (Sindicato de Supervisores Minera Los Pelambres). The Los Pelambres union has always negotiated these issues in advance, that is, without a legal deadline and without the pressure to strike (as established in Chilean legislation). In other words, the union has historically had a good relationship with the company in terms of salary and benefits negotiations. However, this changed in 2018 due to changes in the management leadership. In fact, the union was unable to reach an agreement within the timeframe, so they decided to move to legal negotiations. The breaking point came during the negotiation around extra working days. According to members of the Los Pelambres union, the company negotiated with the Sindicato MLP Concentradora union and reached an agreement for the value of the extra days. With this, the Los Pelambres union was -unsuccessfully- pressured to negotiate and in fact, through regulated negotiation, reached better terms than the other union, leading the company to raise the amount offered to the Sindicato MLP Concentradora union, which is in itself an anti-union practice.

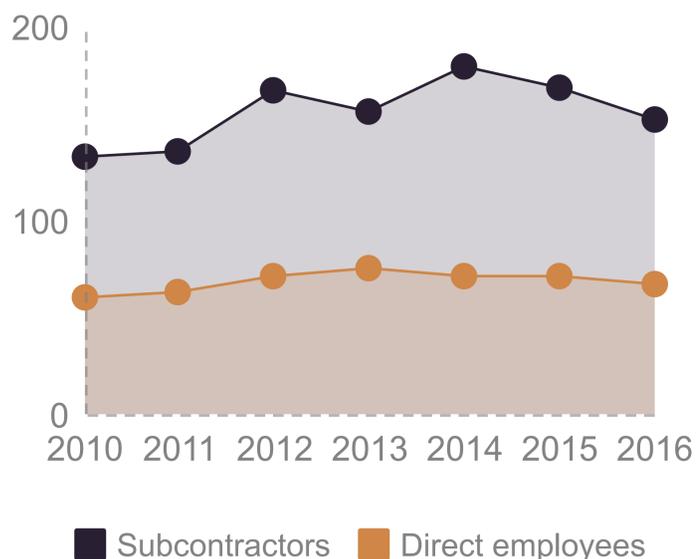
The labour conditions for direct employees are not the same as those of subcontractors; these are workers employed by an agency but working on the same site. As of December 2017, only 30% of the workers in Chile were employed directly by mining companies; this proportion has become regular in the last 10 years, with the remainder being outsourced employees to contractors.

[48] As of November 2018, there are 3 unions in Los Pelambres, Los Pelambres union, the union representing those working as supervisors and the union representing those working in the concentration plant of the mine.

The proportion of direct employees and subcontractors raises important questions in relation to workers rights. For some unions, temporary and “subcontracted workers in the copper industry have become the slave labour of the 21st century. Lacking rights and social protection, they are vulnerable and defenceless,” complained Cristián Cuevas, the leader of a union for outsourced Chilean copper workers (Jarroud, 2012).

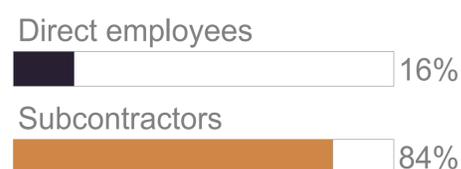
The relation of direct employees and subcontractors is even worse in the case of Los Pelambres. The Los Pelambres working force is comprised of 5,647 employees, out of which only 16% are direct employees; the other 84% are subcontractors. This situation is especially worrying. As argued by Cristian Cuevas, “payrolled employees definitely enjoy decent rights, but the situation of contracted workers is dire” and he continues “for instance, at Minera Escondida (the world’s largest private copper mine, owned by the Anglo-Australian company BHP Billiton), 200 workers share four showers, and they sleep according to the ‘warm beds’ system (several workers sleeping in turn in the same bunk), a practice that should be consigned to history,” he described (Jarroud, 2012)

Figure 15: Composition of direct employment in mining per type of company (2003-2017) in Chile



Source: Own creation based on (Comisión Chilena del Cobre, 2016a)

Figure 15: Percentage of direct employees and subcontractors in MLP:



Source: Own creation based on (Antofagasta Minerals, 2016, 2017)

In terms of workday, the normal workday in Chile is 45 hours a week: 9 hours a day during 5 days, leaving 2 days of rest. In some exceptional cases, the Employment Directorate in Chile can permit other types of workday. The most common in the mining sector are 7x7, an arrangement which allows employees to work for 12 hours a day during 7 days, and then rest for a subsequent period of 7 days. This is a combination (still with 12 hours a day) that can also be seen in the 4x4 workday. These workdays are designed to make travel to remote areas –where mining deposits are usually located- more efficient and to increase the productivity in the extraction of minerals.

Figure 16: Chile exceptional workdays

	Workday	Rest
5X2	5 days (9 hours)	2 days
4X4	4 days (12 hours)	4 days
7X7	7 days (12 hours)	7 days

Source: Own creation based on Chilean legislation.

As argued by the Los Pelambres Union representative, most of the workers affiliated to the union work on a 7x7 basis and some of them also work on a 4x3 or 5x2 basis.

The exceptional workdays used in mining activities have been linked to a series of impacts in terms of quality of free time, adaptation to circadian and biological cycles, socio-familiar life, productivity, security, mental and physical health, and well-being (Smith et al., 1998). The labour shift turns could be revised by the company, especially taking into consideration that –according to the representatives of the union- around 95% of the people that work in the mine live in the Choapa Valley where the mine is geographically located.

b) Union representation:

According to members of the Pelambres Union, they have good union representation. Union membership is not mandatory in Chilean legislation, and despite the fact that just 20% of the total workers in Chile are members of a trade union (Gattavara, 2018) the case of Pelambres represents an anomalous situation. In fact, according to members of the Union, almost 99% of the direct employees (excluding contractors) are members of a trade union. They argue that the incentives to become a member are very strong, mainly because the benefits given by the company after the processes of collective bargaining, are only given to those that have union membership.

The strength of the unions in Los Pelambres is demonstrated by several key incidents. For example, in March 2018, 99% of workers in the mine's largest union rejected an offer for a new labour contract, triggering a period of government mediation and raising the spectre of the possibility of the first-ever strike at los Pelambres. After six months of negotiations the workers reached a satisfactory deal with the company that included a signing bonus of \$USD 30,500 per worker, and an average salary increase of 3 percent. The new contract was agreed by 82 percent of union members.

As we have previously highlighted, there are three unions in Los Pelambres. Such internal division is creating certain problems; the Los Pelambres Union argues that the company is using the Sindicato MLP Concentradora (concentration plant) to negotiate previous agreements, and then come with preestablished benefits to the Pelambres Union: a process which, in Chilean legislation, is declared as an anti-union practice. Apart from these three unions, there is another union that represents sub-contracted workers. According to members of the Pelambres Union, they have a good relationship with them and the company has managed to establish proper negotiation processes with them, avoiding further conflicts.

Apart from the negotiation of benefits, the Union also has influence over decisions relating to safety and security. Yet, some employees recognise that there is a need for further power to be granted to safety groups (known as *Comités Paritarios* in the Chilean legislation) as they are the ones that should be participating in these kinds of decisions. The problem with the '*Comités Paritarios*' is that they have dual representation from the company and the employees, so employees negotiate directly with their bosses, which is something that usually tends to threaten the employees' representatives. Moreover, while there are some processes to interpose anonymous claims, these procedures usually do not work very well as in the end, the identity of the employee is usually revealed.

c) Operational Health and Safety:

The highly-publicised accident at the San Jose mine, where 33 men were trapped underground for a period of 69 days, issued a stark reminder that digging for copper in Chile can be a dangerous business. The risk of accidents and fatalities rises particularly when the price of copper is high; according to a report by the BBC, 'in 2007 and 2008, at the height of the boom in copper prices, there were more deaths in Chilean mines than in any other years during the decade (see Figure 18 in next page). In 2007, when the copper price averaged a record \$3.24 per lb, 40 miners died in accidents. In 2008, when copper was at \$2.88 per lb, the death toll hit 43. The average for the decade was 34' (Long, 2010).

Between 2007 and 2017, Antofagasta Minerals have had 18 fatalities within their operations. The mine that has had the worst numbers is Los Pelambres, where 8 people have died. One of the most well-known cases was the death of Elena Ávila Zepeda in 2014, a 25 year-old woman and mother of a 6 year-old girl that lost her life while driving a 100-ton mining truck. She was working as an apprentice in the job, hired only two months before her death, working a double shift for a fixed term of one year. The former Mining Minister, Aurora Williams argued, 'This accident is undoubtedly a sad milestone in the history of the country, because it is the first time a woman dies in mining activities. It is a fact that will be remembered and must necessarily serve to learn and improve safety standards' (Cuenca, 2014).

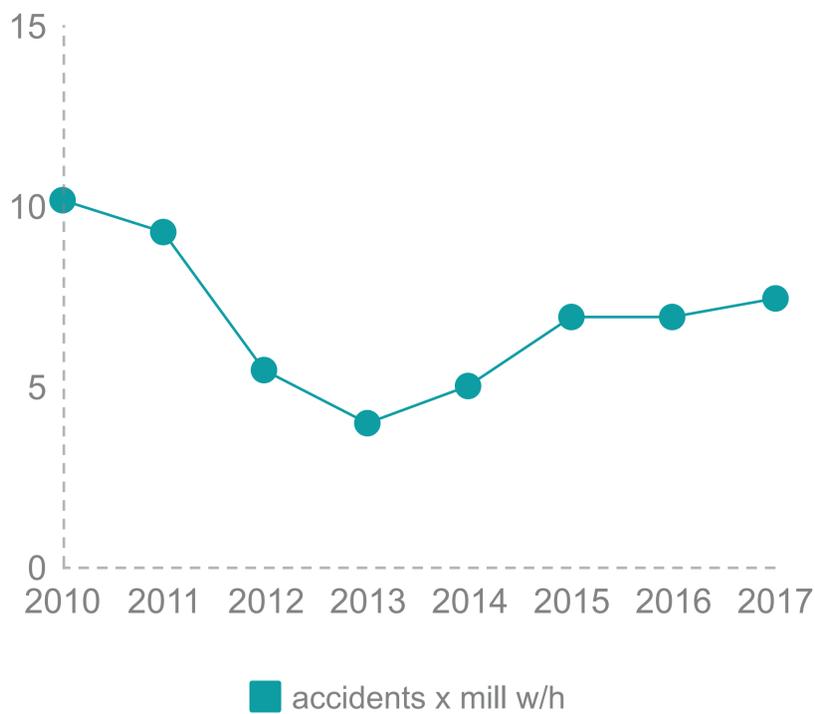
The death of Elena must be added to a list of 7 other people who have lost their lives at Los Pelambres:

- 3 February 2009: Jaime Godoy, Cristian Quezada and Osvaldo Cortés
- 1 September 2009: Reynaldo Sanhueza
- 20 August 2010: René Arancibia
- 31 November 2010: Esteban Maldonado
- 20 March 2013: Uvidio Gómez

Apart from Elena, all the other seven people that lost their life in Los Pelambres were subcontracted workers. Another relevant fact is that seven of the deaths occurred late at night or at dawn; the operations at the mine are active 24 hours a day, creating significant risks to the health and safety of workers.

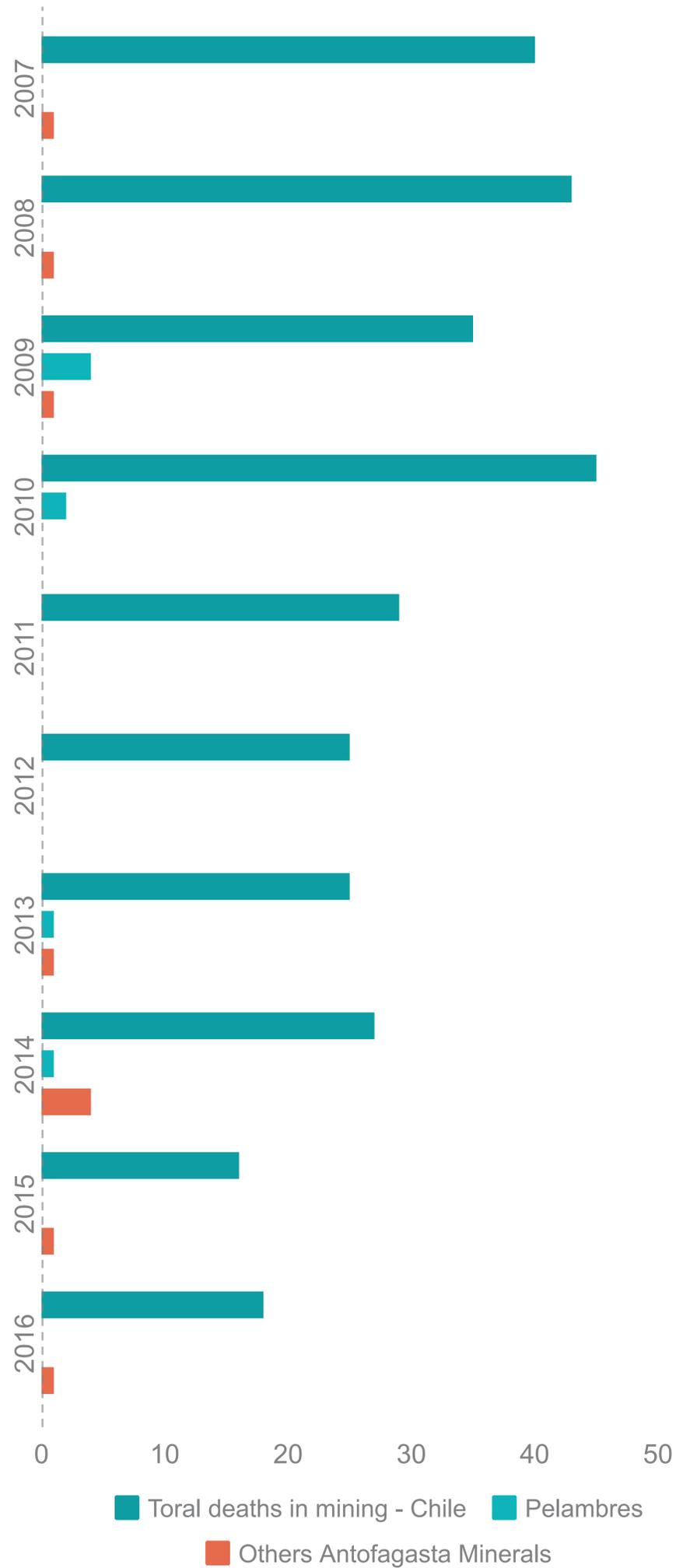
According to members of the Los Pelambres union, since the death of Elena Ávila, the company has adopted new security measures. Since then, Pelambres has invested significant sums in security. What remains unchanged is the worker's safety culture. The protocols are there but the workers do not have a culture of care.

Figure 17: Accident ratio (incidents x million of working hours) - Los Pelambres



Source: Own creation based on Antofagasta Minerals reports.

Figure 18: Total death in mining in Chile, Los Pelambres and other mines by Antofagasta Minerals (2007-2016)



Source: Own creation based on (SERNAGEOMIN, 2017)

4. Los Pelambres Supply Chain

Understanding the supply chain of ICTs - from raw materials to consumer use and beyond - is now a critical part of the human rights and business agenda. Global supply chains, hosting 80% of all trade, are increasingly complex and constantly changing, making it challenging to establish what state and non-state actors should be doing to respect and protect human rights. In other terms, a good understanding of supply chains can enable companies and their stakeholders to show that they care about human rights.

The case highlighted in this report represents primary copper production for international supply chains, beginning with the extraction of copper-bearing ores by mining processes and ending in end-of-life management processes for copper-containing products, such as ICTs (International Institute for Sustainable Development, 2011).

As argued at the beginning of this report, identifying the supply chain of copper is not an easy task. In this section, we use downstream and upstream methodology to identify how MLP copper is used. In the downstream exercise, we take information from both the company reports presented to Chilean authorities and information provided by Chilean customs authorities. Los Pelambres uses one port (Puerto Chungungo) to export the minerals extracted from the mine. Therefore, the information of the country of destination is information that is available. Within those countries of destination, we researched the most important smelters. Through an analysis of their reports and press reports, we were able to identify some of the smelters that process the minerals extracted from Los Pelambres. Beyond this point, it is impossible to be clear about the supply chain of the Pelambres copper.

Here is where we used an upstream approach. We are especially interested in analysing the use of these minerals in ICT products. Therefore, we took into consideration the list of smelters of Apple, Dell and HP and matched these smelters used by Los Pelambres. This methodology has an important gap, as the lists of smelters developed by these companies only take into consideration materials considered to be 'conflict minerals', a designation that does not incorporate copper.

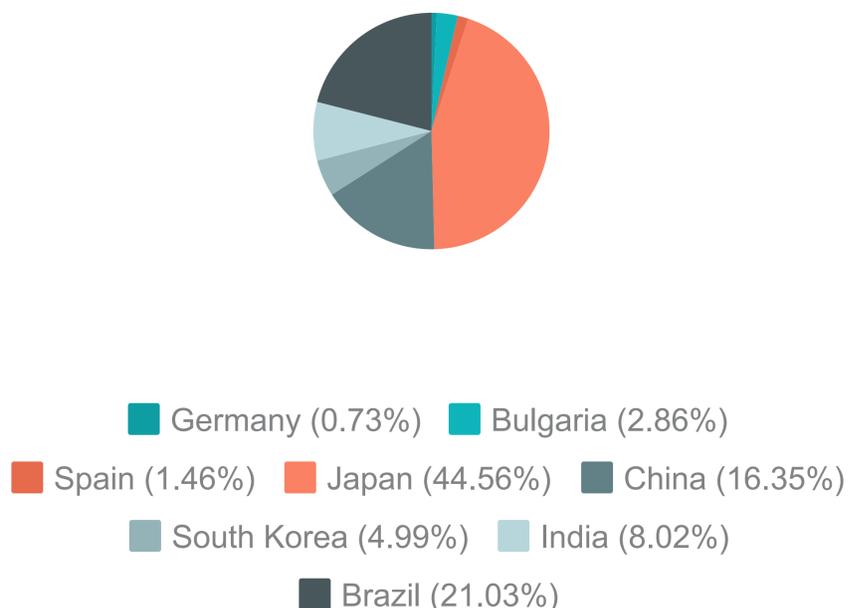
The mapping of the supply chain at this point relies on conjecture and inference; for example, it may be expected that if Dell buys gold from Jiangxi Copper Co., Ltd. in China, it is possible that they also buy copper from the same supplier. Yet, the lack of transparency in the market generates an enormous information gap. This absence of data leads us to one of the recommendations highlighted in the conclusions: if ICT companies are expected to commit to human rights across their supply chain, they should be transparent about their smelters and refining lists for all minerals, including copper, for which we have already highlighted the potential for human rights and environmental impacts.

4.1. Smelters, countries of destination of copper

The information of the countries of destination of Los Pelambres copper is available both through the information provided by the company to the Chilean authorities (Superintendencia de Valores y Seguros) and through information provided by Chilean Customs authorities.

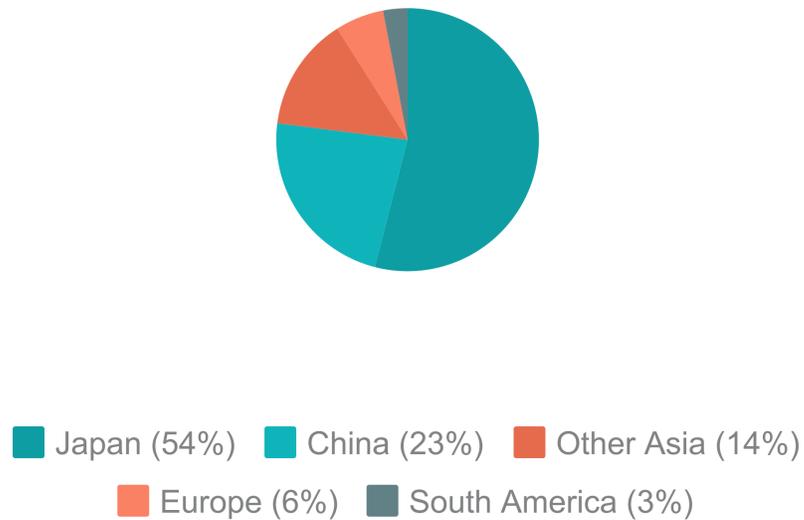
The first thing to highlight is that there is some difference in the information provided by the company (2016) and that provided by customs (2017), as demonstrated in Figure 19 and 20 (next page).

Figure 19: Destination of MLP exports (according to customs)



Source: Own creation based on Chilean customs information.

Figure 20: Destination of MLP exports (according to MLP)



Source: Own creation based on Antofagasta Minerals reports

The main difference between year and source is given by the increase in the South American (Brazilian market). Taking into consideration the countries of destination, we researched the main copper smelters in the world. In terms of capacity, the distribution of smelters is divided in the following terms:

Figure 21: Distribution of smelters per region

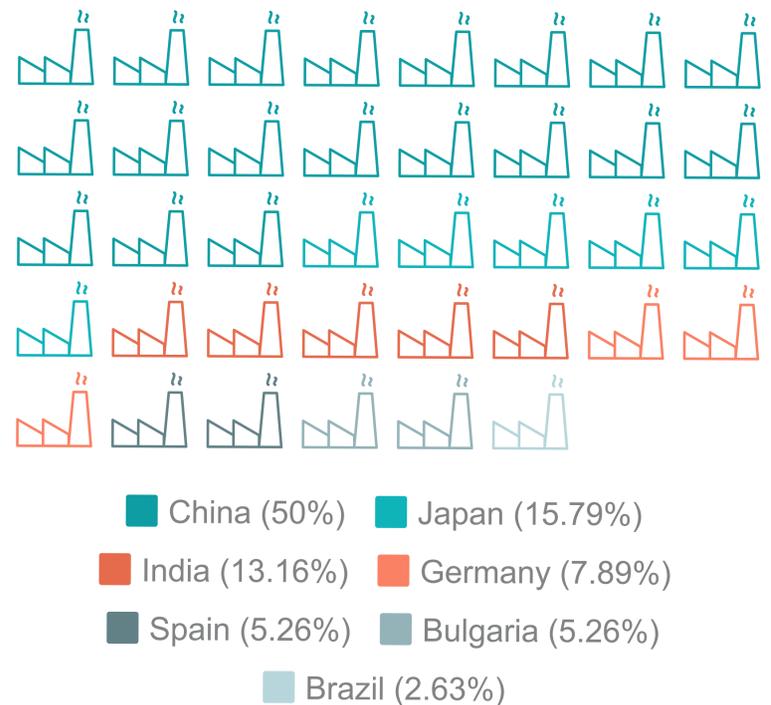
Country/region	No. of smelters	Capacity [kton]
Chile	7	2,008
Latin America (Others)	3	995
China	14	4,515
Asia (Others)	10	4,166
Other parts of the world	21	5,193



Source: Comisión Chilena del Cobre (2015)

Taking into consideration the list provided by Chilean customs (which is more detailed than the one provided by the company), we can create a list of 40 potential companies smelting Los Pelambres copper:

Figure 20: Distribution of smelters situated in countries importing MLP copper



- Brazil:** Camacari, Bahia Caraiba Metais S.A.
- Germany:** Hettstedt, Mansfeld Kupfer und Messing GmbH · Lunen (Huettenwerke Kayser), Norddeutsche Affinerie AG · Hamburg (Norddeutsche Affinerie), Norddeutsche Affinerie AG
- Bulgaria:** Eliseina, Eliseina Ltd. · Pirdop, Umicore
- Spain:** Asua-Bilbao, ELMET · Huelva, Atlantic Copper S.A.
- Japan:** Besshi/Toyo, Ehime Sumitomo Metal Mining Co. Ltd. · Kosaka, Akita, Dowa Mining Co. Ltd. · Naoshima, Kagawa, Mitsubishi Materials Corp. · Onahama, Fukushima, Onahama Smelting & Refining Co. Ltd. · Saganoseki, Oita, Nippon Mining & Metals Co. Ltd. · Tamano, Okayama, Hibi Kyodo Smelting Co. Ltd.
- China:** Baiyin, Gansu Baiyin Non-Ferrous Metals Co. · Changzhou, Jiangsu Provincial Government · Chengdu, Sichuan Sichuan Copper Nickel Co. · Chizhou, Anhui Provincial Government · Chongqing, Chongqing Nanfeng Medecine · Daye, Hubei Daye Nonferrous Metals Co. · Fuyang, Zhejiang (Fuchunjiang) Hangzhou Construction Bureau · Guixi, Jiangxi Jiangxi Copper Co. · Houma, Shanxi Zhongtiaoshan Nonferrous Metals Group · Huludao, Liaoning Huludao Zinc Co. · Tongling, Anhui (Jinchang) Tongling Nonferrous (Group) Co. · Jinchuan, Gansu Jinchuan Nonferrous Co. · Tongling, Anhui (Jinlong) Tongling Nonferrous (Group) Co. · Liangshan, Shandong Local Government · Shuikoushan, Hunan Shuikoushan Mining Co. · Wuhu, Anhui Hengxin Copper Industry Group Co. · Yantai, Shandong Provincial Government · Kunming, Yunnan Yunnan Copper Industry Group · Zhuzhou, Hunan Zhuzhou Smelter Co.
- Korea, Republic of:** Onsan (Onsan I) LG-Nikko Copper-Onsan (Onsan II) LG-Nikko Copper
- India:** Dahej (Birla Copper) Indo Gulf Fertilisers and Chemical Corp. · Ghatsila Hindustan Copper Ltd. · Bharuch (Jhagadja) Swil Ltd. · Khetri Hindustan Co. Ltd. · Tuticorin Sterlite Industries (India) Ltd.

Making a brief review of the smelters' annual reports, it is possible to observe that in Japan, both Nippon Mining & Metals Co. Ltd. through its smelter Saganoseki (JX Holdings, 2016: 33) and Mitsubishi Materials Corp. through its smelter Naoshima (Mitsubishi Materials, 2018: 46) have relations with Los Pelambres. In China, Antofagasta Minerals has achieved agreements with Jiangxi Copper Co., Ltd. that pays \$97.35 per tonne and 9.735 cents per pound (Yan, 2015). Also, Brazil and Korea have just one smelter company each and in Germany, Aurubis runs the two largest copper smelters, so we may expect that the copper from Pelambres is smelted in these dependencies.

Taking into consideration those smelters that we know that are receiving copper from Los Pelambres, we then reviewed the list of smelters and refineries from 3 ICT companies (HP, Dell and Apple) to observe if they use these smelters to obtain conflict minerals. As has been noted, these lists do not incorporate copper. But we can presume that these companies may be using the same smelters to gain copper. All the identified smelters that smelt and refine Pelambres copper are providers of conflict minerals for HP, Dell and Apple, as highlighted in Figure 21.

Figure 21: Smelters and ICT companies

Country	Smelter	Owner	HP	Dell	Apple
Germany	Hamburg	Aurubis	X	X	X
Bulgaria	Pirdop	Aurubis	X	X	X
Japan	Naoshima	Mitsubishi	X	X	X
Japan	Saganoseki	Nippon Mining	X	X	X
China	Guixi	Jiangxi Copper Co.	X	X	X
China	Tongling	Tongling Nonferrous	X	X	
Korea	Onsan I	LG-Nikko Copper	X	X	X
Korea	Onsan II	LG-Nikko Copper	X	X	X

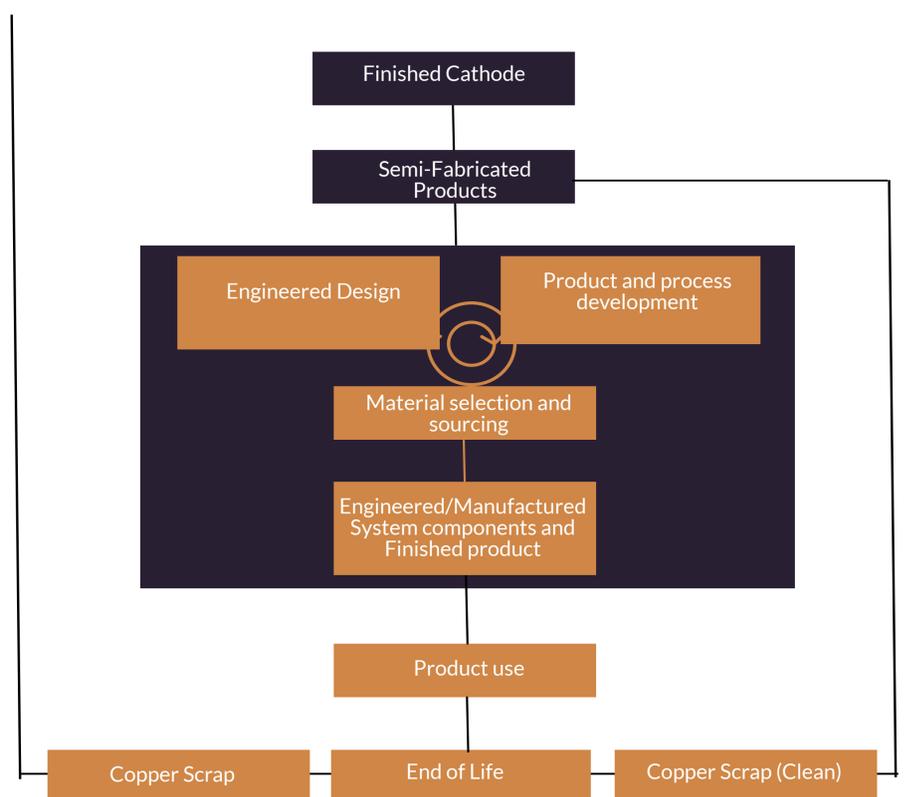
Source: Own creation based on (Apple, 2016; DELL, 2017; HP Inc., 2013)

In other words, we can assume that there is a commercial connection between the smelter used both by Pelambres and by the ICT companies.

4.2. Production and consumption of copper

Once the copper is refined, semi-fabricators process it into semi-finished copper and copper alloy products such as wires, rods, tubes, sheets, castings and other shapes. Once the semi-fabricated products are ready, copper enters a phase of engineered design, product development and material selection to prepare it for the manufacture and finished product. The product ends up being used and finally it gets into either the end-of-life or it can be scrapped and re-utilised following the same cycle highlighted in Figure 22.

Figure 22: Production and consumption of copper products



Source: Own creation

Currently, the largest exporter of semi-fabricated copper products in the world is Germany, followed by the Russian Federation, France, Taiwan and the Republic of Korea. The largest importers of semi-fabricated copper products are China, the United States, Italy, Germany and the United Kingdom, respectively (International Institute for Sustainable Development, 2011: 14).

Most of the analysed smelters that use Pelambres copper also produce and manufacture copper products that can be directly used in ICTs.

Figure 23: Smelters copper products

Country	Smelter	Owner	Semi-product and manufacturing
Germany	Hamburg	Aurubis	Rod, cables (including oxygen free), shapes, architectural solutions, cathodes and industrial
Bulgaria	Pirdop	Aurubis	
Japan	Naoshima	Mitsubishi	Copper Billets & cakes, also copper wirerod, including oxygen-free copper wirerod and copper alloy wire in sizes ranging from 2.6 to 22 mm
Japan	Saganoseki	Nippon Mining	Copper Alloy and Foil
China	Guixi	Jiangxi Copper Co.	Copper Foil, cable (including fotovoltaic and medical cable) and wire
China	Tongling	Tongling Nonferrous	
Korea	Onsan I	LG-Nikko Copper	Continue the process with Mitsubishi
Korea	Onsan II	LG-Nikko Copper	Continue the process with Mitsubishi

Source: Own creation based on smelters webpages

The consumption of copper products is more difficult to determine. After reviewing the lists of suppliers provided by the three ICT companies analysed (Dell, HP and Apple) there is no direct relation with any of the smelters that they provide in their smelter and refiners lists. The exception is the case of Nippon Mining, which is a direct supplier of Apple.

The lack of direct relations between the smelter and the ICT companies means that most of the engineering, design and product process of copper and other minerals are done by other companies which then supply specific parts or accessories to the ICT companies, making it impossible –with the available information – to generate a link between the copper that comes out from the smelter and that used in ICT products.

With this information, we can now create a first 'probable' supply chain of Pelambres copper (developed in the next page).



Copper extracted and concentrated in Chile



EXTRACTION

CONCENTRATION



REFINERY

SMELTING



We know the countries of destination. And there is some public information regarding some agreements with some of the smelters.



FABRICATION



Most of the identified smelters also carry out the semi-products and manufacture of copper products.



MANUFACTURING



Usually the manufacturer is not listed directly in the ICT supplier list. A deeper understanding of use of copper in ICT parts and component is needed to complete the supply chain



USE IN ICT





CONCLUSIONS & RECOMMENDATIONS

CONCLUSIONS

In this report, we have evidenced the importance of copper for Chilean markets, and the current and potential human rights and environmental violations incurred by mining activities. We have seen the incapacity of the state to protect human rights abuses of non-state actors, the limitations of companies in terms of their responsibility to respect human rights, including companies situated throughout the supply chain; and the incapacity of the international community to establish prompt and secure mechanisms to respond to those human rights abuses.

Taking the case of Pelambres, we have observed how mining operations may affect communities, the environment and workers' rights. The report also evidences the lack of transparency in the usage and distribution of copper.

Building on these facts, we want to propose the following recommendations for the Chilean state, for the international community and for companies to ensure the protection of the environment and human rights of people affected by mining operations.

HOST STATE (CHILE)

According to International Human Rights Law and particularly the UN Guiding Principles on Business and Human Rights, the host State is responsible for the protection of human rights within its territory; this responsibility involves the protection of its inhabitants from the potential violation of non-state actors, in this case mining companies. In particular, the Chilean state should:

- a) Comply with international and regional human rights standards, including the interpretation of policies according to these standards;
- b) Guarantee the free, prior and informed consent of communities when a project affects their territories. Safeguarding this right includes ensuring the right of communities to independent consultation, and a procedure whereby no project is advanced until there is certainty that the community has comprehensively agreed to such a project;
- c) Guarantee a clear and transparent process for land titling, that is planned through proper consultation with local communities;

d) In cases of resettlement, such as those seen in El Mauro, guarantee the participation of the community, establish a remedy process and bear the ultimate responsibility for the implementation of any resettlement action plans;

e) Guarantee an open, inclusive and transparent process of Environmental and Social Impact Assessment, with the full participation of affected communities and conducted by competent state institutions or independent and technically competent organisations;

f) Guarantee the transparency of mining concessions and territorial planning policy. Ensure a public, geo-referenced and updated cadastre, and enable the full disclosure of the process of granting mining concessions, legislation must require the disclosure of contracts that the state may have with any mining company;

g) Guarantee the correct payment of taxes, ensuring companies uphold their obligation to inform authorities of all the elements contained in copper compounds; this process should be certified through the laboratories currently registered in the National Customs Service, which must monitor all those minerals that are “taxable”.

h) Guarantee a democratic participation process to reinvest the profits of the mining projects and enterprises into the communities adjacent to territories designated for mining.

OTHER STATES

a) Recognise that the standards applied for conflict minerals and 3TGs such as US-Dodd Frank Wall Street Reform and Consumer Protection Act (paragraph 1502) (US Dodd-Frank Act) and the EU regulation on responsible mineral sourcing could also be applied to other minerals such as copper;

b) As noted by the International Learning Lab on Public Procurement and Human Rights, public procurements usually do not explicitly refer to human rights obligations by member states and when they do so they usually refer to: specific human rights issues such as human trafficking and child labour; to specific human rights instruments such as ILO core standards; and to specific economic operators usually primary contractors (International Learning Lab on Public Procurement and Human Rights, 2016). Such limitations are clearly inconsistent with international human rights standards that emphasise that governments should protect all international human rights throughout the supply chain (see for example UN Guiding Principles on Business and Human Rights).

COMPANIES

a) Companies have a responsibility to respect human and environmental rights. As such, they need to transparently report on any human rights violations and environmental degradation;

b) Companies should be transparent about their supply chain as they have a responsibility to respect human rights throughout their operations, including their supply chains;

c) Companies consult with communities and develop human rights impact assessments;

d) Companies should respect any process of free consultation, placing special emphasis of attention on vulnerable groups (women, children, indigenous peoples, among others);

e) Companies should establish effective grievance mechanisms (either at the company or project level) to address human rights violations. Such processes should be monitored by an independent third party;

f) Companies should promote gender equality in community engagement policies and practices, in order to avoid negative impacts along gender lines;

g) Companies should transform their business policy to be more sustainable, introducing material recycling and circular processes to further SDG12: Responsible use and consumption of resources.

REDRESS AND REMEDY

In cases of human rights violations:

a) The state should ensure the adoption of affordable, prompt, and effective judicial remedies before independent and impartial tribunals for extractive industry-related human rights abuses. The state should also guarantee the non-recurrence of human rights violations;

b) Access to justice must take into consideration geographic, linguistic, and cultural barriers;

c) The state should facilitate access to information in relation to available remedy mechanisms, including judicial and other state-based grievance mechanisms;

d) Home states should exercise extraterritorial jurisdiction over the actions of businesses headquartered or registered therein, or their subsidiaries, for human rights abuses committed abroad, particularly in relation to extractive-industry operations;

e) Companies should establish non-state grievance mechanisms. When they identify a human rights violation they must redress the victim(s) and ensure the non-repetition of their actions.

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