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# NEW INTERNATIONAL SOCIAL AND ENVIRONMENTAL RULES: PUTTING PEOPLE OVER PROFIT?

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GONZALO DURÁN, PAULA VIDAL MOLINA Transferring Institutional Power Resources? Insights into Chilean Labour Struggles Under the EU-CSDDD and a Closer Look at Two Highly Unionised Sectors

ABSTRACT The purpose of this article is to explore the relationship between the recently approved Corporate Sustainability Due Diligence Directive and the Chilean labour struggle. Specifically, it aims to examine to what extent this directive can be viewed as a transfer of institutional power resources from workers of high power to those of low power. In order to achieve this, we use the Power Resources Approach as a theoretical guide and situate the problem in Chile, which has a weak union movement and poor institutional power of the working class. In spite of the generally weak picture, these two sectors have gained some organisational power. Therefore, by utilising it, we may be able to develop our analysis. Taking this into account, we emphasise the importance of defragmenting the Chilean labour movement in order to 'realise' the transferred institutional power resources.

KEYWORDS Power Resources, EU-CSDDD, Trade Unions

#### 1. Introduction

As a general rule, unions in Chile are weak, and collective bargaining is marginalised and fragmented. The reason for this is in large part due to unequal power relations that shape the industrial relations system (Narbona 2015).

This paper examines whether or not the enactment of the EU's Corporate Sustainability Due Diligence Directive (EU-CSDDD) could result in a transfer of power resources from workers with high power resources

to workers with low power resources. As such, we investigate the potential impacts of the EU-CSDDD on Chilean workers. There is a particular importance to this issue due to the fact that it is occurring in a country of the global south, and one of the most globalised, and which is currently experiencing serious inequality challenges as well as poor labour rights (Durán 2022). Our research questions include: What are the potential impacts of the EU-CSDDD on Chilean trade unions? What are the limits of such a directive in terms of labour struggles? In light of this directive, what lessons can be drawn from Chile?

Our research questions are addressed using the Power Resources Approach. In such a way, we understand that power relations are embodied in social relationships. We examine the conflict between capital and labour in order to gain a better understanding of its significance. To the best of our knowledge, the idea of transferring power resources, particularly from the global north to the global south, has not been extensively discussed. The Chilean case also presents some interesting points that may add more complexity to the analysis of the Directive from the perspective of the working class that should be receiving the transfer of power resources.

We use a deductive approach. Our study is based on the theory referred to above, and data has been processed from official sources such as the Labour Force Survey (National Statistics Institute), the Import/Export database (National Customs Directorate), the SIRELA database (Labour Directorate), the Chilean Mining Compendium (National Mining and Geology Service). Additionally, data are gathered from the World Inequality Database, the World Economic Outlook (from the IMF), and the CEPALSTAT database (from ECLAC). Documentary sources and relevant literature are reviewed.

The main focus is at national level, and we processed key information to highlight the case study using the mining sector, in particular the large-scale mining that exports to the EU, and the banking sector, especially through an EU company operating in Chile. Three factors led us to choose these two industries: i) the high share that each of these sectors contributes to the national GDP, ii) the high share of multinational companies that dominate the market, and iii) the relatively high union density (compared to other industries).

This text is organised as follows: the next section presents the Power Resources Approach (PRA), a theory we adhere to. After that, we outline the current state of the EU-CSDDD. In the following section, we apply the PRA to understand the effects of the EU-CSDDD on Chilean workers. As a final note, we provide some concluding remarks.

## 2. The Power Resources Approach

In order to understand the potential impact of the EU-CSDDD on Chilean workers, the so-called Power Resource Approach is used.

According to this framework, contending classes, the capitalist and the worker, are constantly engaged in conflict (as Marx pointed out), and it is the allocation of power resources between such contending classes that determines societal and economic change. Walter Korpi (1978) developed his analysis of welfare capitalism in Europe using this approach, and a variety of scholars have developed a comprehensive framework for understanding workers' power (and employers' power as well). The Jena School provides a synthesis of this work (Strategic Unionism 2013). While it is intended for use in the context of industrial relations, it can easily be adopted by other organised groups in order to gain an understanding of their power.

There are four types of power resources. The first three are primary power sources and the fourth is secondary, due to its dependence on the first three. The primary power resources are: i) organisational, ii) structural, and iii) societal. Institutional power is a secondary power resource. These powers change constantly and can vary significantly over time (Webster 2015).

Organisational power refers to the worker's ability to form working class organisations such as unions, works councils, political parties, command structures, etc. (Schmalz/Dörre 2014). Workers may exert organisational power at different levels based on how they organise themselves. There are various levels of organisation, including those at local, sectoral, national, and international level. As capitalism becomes more globalised, the latter level is gaining traction. As such, global union federations are "acting

transnationally and supporting wage earners above all in countries with weak organisational or institutional resources" (Schmalz/Dörre 2018: 3).

Organisational power encompasses not only quantitative (numerical) but also qualitative strength (Lehndorff et al. 2018). There are at least four resources that contribute to the exercise of organisational power (Lévesque/Murray 2010): infrastructure resources, organisational efficiency, member participation, and internal cohesion. Each of these resources is beneficial to the other.

Infrastructural resources include financial stability, office space and meeting rooms, full-time employees, technological tools, and research facilities. In the absence of financial solvency, organisations are unable to raise campaign funds for the purpose of increasing membership or advocating for a specific cause. Research agendas are also a critical component of organisational power. As a consequence, the working class is able to discover new findings and intervene publicly in the battle of ideas. It involves the distribution of internal resources, the definition of the role of organisers, and the formalisation of routines through norms and rules. Professionalisation of some members is also part of the process. Member participation refers to the engagement of the rank-and-file in a wide range of activities such as campaigns, dissemination of ideas, discussion, strikes, etc. Finally, internal cohesion is related to solidarity among union members and the rank-and-file in general. Internal cohesion can be the outcome of sharing daily experiences such as being on strike. The ideological common background plays a role in shaping such cohesion.

Structural power refers to workers' power that arises from their position in the economic system (Schmalz/Dörre 2018). Position is understood here as a strategic position with disruptive potential (Perrone 1983, Womack 2006). This means that if work stops in this position, the damage caused to capitalists is not only in the immediate vicinity but in the whole production chain. This understanding of structural power is usually referred to as workplace bargaining power (Silver 2003). Furthermore, structural power is also seen in tightened labour markets, due to the possession of certain unique skills or a low level of unemployment (Wright 2000). This second form of structural power is marketplace bargaining power (Silver 2003).

Societal power is related to workers' ability to build alliances with other organised groups to achieve a common goal (Schmalz/Dörre 2014).

The discursive, and the coalitional power are typically referred to as societal power resources (Lévesque/Murray 2010). By narrative or discursive power, spokespersons can communicate messages that make sense to the majority of the population. This implies that trade unions can gain public image and respect and through it organised groups can frame agendas, articulate and learn (Lévesque/Murray 2010). Coalition in turn, means the capacity to build bridges, network solidarity and cooperation. Trade unions and communities can activate this power to achieve mutual benefits at a certain time.

Lastly, institutional power is defined as a secondary power resource that is dependent on the interaction of the other three powers (Jürgens 1983). In essence, institutional power is the result of past struggles (defeats and victories). The lack of institutional power indicates that past struggles were in favour of capital. There are several examples of high institutional power, such as the recognition of different levels of collective bargaining under the Labour Law or even at the constitutional level. Codetermination systems, as well the Ghent system, through which unions manage a portion of social security, are also examples. Institutional power has a dual nature: controlling and empowering (Durán 2022). By controlling, capitalists can proceed comfortably. By empowering, workers can shape more favourable labour relations.

### 3. The EU-CSDDD

The EU-CSDDD is intended to require "obliging firms to alleviate the adverse impact their activities have on human rights and the environment, including slavery, child labour, labour exploitation, biodiversity loss, pollution and destruction of natural heritage" (European Parliament 2024 [online]).

Naturally, this is not a directive that companies would like to see. Rather, it is one that the European working class has long sought. This directive demonstrates that voluntary corporate social responsibility does not work and that it needs to be enforced. Furthermore, this underpins what Karl Marx had already observed, namely, that capitalism tends to destroy both of its sources of wealth, namely, nature and human beings.

The EU-CSDD directive applies to both European companies and their foreign counterparts that trade with the European market. It is therefore a standard that aims to track the entire value chain (with the EU states at its centre). Simply put, if a company in Europe purchases goods from a country outside the continent, it must ensure that the company making the shipment is not involved in human rights violations. Therefore, goods exported into the EU must also comply with these standards. The companies may be subject to legal proceedings if they fail to comply. However, the EU-CSDDD is not applicable to all companies within the referred groups, but is only applicable to those companies that meet the eligibility criteria. The narrower the threshold, the more beneficial it is for employers, since more employers will be able to avoid compliance. This is exactly how the directive was undermined in discussions with the business lobby.

"The rules will apply to EU and non-EU companies and parent companies with over 1,000 employees and with a turnover of more than 450 million euro and to franchises with a turnover of more than 80 million euro if at least 22.5 million was generated by royalties." (European Parliament 2024 [online]).

With its light and shade, the EU-CSDDD is the culmination of a process that was initiated by unions and civil society organisations in Europe. Consequently, societal power resources (e.g., discursive power) have been fruitfully employed.

Bosch, Mayhew and Gautié (2010) argue that industrial relations systems with only a few employees which are covered by collective bargaining should be considered exclusive. This is because only workers with bargaining power are capable of influencing labour and wage conditions and there are no transfers to workers without such a power. Rather, when most employees are covered by collective bargaining, power resources are transferred from those who benefit from a high level of structural and organisational power to those who do not. By extending collective bargaining, labour protection can be extended (Visser/Hayter 2018).

Therefore, theoretically, it can be argued, based on the power resources approach, that the EU-CSDD represents an institutional power resource for the working classes in Europe, but that it also (could) represents an

institutional power resource for the working classes outside of Europe as well. A major difference between southern global workers and northern global workers is that such institutional power resources do not originate from the combination of their primary power resources, but rather are a result of an international transfer of power from workers who possess high levels of power to workers who have less levels of power. One of the most classic examples of labour rights violation is the dismissal of an employee for organising a union. This occurs frequently in the global south. In line with the EU-CSDDD, workers have the opportunity to report a violation of the due diligence plan that the company in the European Union country has established to comply with this directive, as well as to the union in the country of the parent company. As a result, their institutional power has increased.

#### 4. The Case: Chile

Chile is a small country situated in the south of South America, isolated from most commercial centres of the world, but rich in natural resources. In 2023, it had a population of nearly 20 million, and for the eighth consecutive year, it was the country with the highest per capita income in comparable dollars in the region (WEO-IMF, own calculations). In the late 1970s, Chile was one of the first countries to introduce neoliberal policies (Harvey 2005). Augusto Pinochet's iron-fisted dictatorship made this possible.

In this country, the Chicago Boys, a group of economists trained at the University of Chicago, were very influential (Edwards 2023). Their studies were guided by Milton Friedman and Arnold Harberger, both of whom adhered to the ideas of monetarism. They implemented a shock policy under Pinochet, which resulted in profound changes. Pensions, health care, and education were privatised, and trade unions were crushed (Ffrench-Davis 2018, Harvey 2005, Álvarez 2011, Narbona 2015). Despite the absence of a dictatorship, many of these transformations continue to take place to this day (Osorio/Gaudichaud 2018). All of this represents the continuity of the model (Fazio 2006).

## 4.1 The supply chain

Chile is one of the countries with the greatest number of free trade agreements [FTA] (Ghiotto/Laterra 2021). The signing of free trade agreements has been a counteracting factor to the decline in profit rates in Chile (Sato et al. 2024). This has provided enormous benefits to those capitals involved in the process (Fazio 2000).

The World Inequality Database indicates that Chile is one of the most unequal countries in the world (WID 2024). And, during the period of high exposure to FTAs, this condition did not change, but rather worsened (WID 2024; Durán 2022).

Chile mainly exports raw materials such as copper, lithium, fishmeal, and cellulose (Servicio Nacional de Aduanas 2024). Nearly 60% of exports correspond to mining raw materials (idem). By 2022, according to Sato et al. (2024) the main markets for exports were: China (39%), US (15%), EU (7%). It is noteworthy that the use of labour in these industries is low, for example, less than 3% work in mining (ENE 2022). The figures presented here contrast with the contribution of this sector to gross domestic product, which amounts to 14% (CEPALSTAT [online]).

In the export industries, such as mining and shipping, where raw materials are exported, small number of workers have high structural power (Fox-Hodess/Santibáñez 2020). Due to this, and in accordance with a capitalist strategy of pursuing alternatives to counteract falling profit rates, subcontracting of the main line of business was permitted in Chile dating back to Pinochet's time (Narbona 2015).

As Durán/Stanton (2022: 377) argues,

"behind the accumulation of incomes lies the fact that out of each 8 hours worked, only 3 finance wages and 5 benefit the owners of capital. That fraction of the unpaid labour received by capital but invested back as new capital, plus that 'excess' surplus value that is consequence of high copper prices, raises the physical, but not necessarily the value, capital-per-worker ratio."

## 4.2 Power resources and the EU-CSDDD in Chile

For decades, Chilean workers' organisations have struggled to gain greater institutional power. During the Pinochet dictatorship, the Chilean

working class suffered a defeat regarding the institutional power they had gained since the beginning of the twentieth century. The institution of sectoral collective bargaining (not fully developed but which was growing) was abolished in 1979, and since then, negotiations have been conducted only at lower levels (firm, plant inside a firm, departments of a specific company, etc.). Furthermore, since that year, workers' representation can be exercised by multiple unions in competition, thus eroding worker's organisational power.

By 2023, there were approximately 8,700 trade unions in the private sector economy (SIRELA 2023). The fact that it is so large does not imply a buoyant participation in unions. As a matter of fact, union density in Chile is below 20% (private sector, DIRTRAB 2023).

There is only a small percentage of salaried workers who are covered by collective agreements (ca. 13% according to Durán 2022). The ones who possess it do so in a very fragmented system in which it is very difficult to build organisational power and articulate societal power. Because of this, collective bargaining in this system can be characterized as marginal and fragmented (Durán 2024). Following the nomenclature of Bosch, Mayhew y Gautié (2010), the Chilean pay and industrial relation system is exclusive rather than inclusive. Chile has unions with high bargaining power, such as the mining unions. While they have high structural power (mostly workplace bargaining power) and an old union tradition in Chile (Velásquez-Orellana 2020), this power has not been transferred to the rest of the working class as a whole. Moreover, mining capitalists have successfully employed strategies to weaken this power. While union density in large scale mining exceeds 70% (Consejo Minero 2022), the capital share of the mining GDP is almost 90% (own elaboration based on National Accounts, Central Bank of Chile).

From the perspective of capital, decentralisation and fragmentation of collective bargaining would provide many benefits. This is what José Piñera (a former Minister of Labour during dictatorship) told Pinochet when convincing him of these ideas: "Decentralised bargaining tends to replace the class struggle (labour against capital) with company struggles (labourers from one company versus workers from another company competing with them), a function of a free market economy" (Piñera 1990: 50, own translation).

Upon the end of the dictatorship in 1990, a period of timid reforms began, all of which were peripheral (Rojas-Miño 2016), meaning that the core of the labour relations system remains unchanged. In the light of this situation, employers have plenty of room to decide unilaterally on the working conditions of their employees.

In this context, what may be the impact of the EU-CSDDD? This question can be answered in two ways: i) by considering potential counteracting factors from employers; and, ii) by considering the shortage of organised labour and its ability to 'realise' the transferred institutional power.

Let us examine the case of large-scale mining (LSM). We can reasonably assume that LSM companies do business with the European Union. There is a high probability of this occurring since Chile has an FTA with the EU and mining is one of Chile's primary exports. Listed below are the large-scale mining companies, their production levels, and their employment levels:

Company (Large Scale)	Copper Production (kMT Copper Content)	% rel.	Direct Employees	Contracted Employees
Compañía Minera Teck Quebrada Blanca S.A	9.5	0.2%	850	not informed
Compañía Minera Teck Carmen de Andacollo	39.5	0.7%	638	not informed
Minera Escondida Limitada BHP	1,054.3	19.8%	3,917	7,716
Minera Spence S.A – BHP	245.5	4.6%	1,635	5,119
Anglo American Sur S.A	311.0	5.8%	2,517	not informed
Compañía Doña Inés de Collahuasi SCM	570.8	10.7%	1,914	not informed

Company (Large Scale)	Copper Production (kMT Copper Content)	% rel.	Direct Employees	Contracted Employees
Compañía Minera Cerro Colorado Ltda.	51.4	1.0%	708	1,096
Sociedad Contractual Minera El Abra	91.7	1.7%	1,351	not informed
Compañía Contractual Minera Candelaria	126.3	2.4%	1,639	not informed
Compañía Minera Zaldívar SpA – Antofa- gasta Minerals	88.9	1.7%	903	not informed
Los Pelambres – Antofagasta Minerals	284.1	5.3%	1,114	not informed
Minera Centinela – Anto- fagasta Minerals	247.6	4.6%	2,408	not informed
Minera Antucoya – Anto- fagasta Minerals	79.3	1.5%	894	not informed
Sierra Gorda SCM	172.7	3.2%	1,513	2,669
SCM Lumina Copper Chile (Caserones)	124.0	2.3%	961	4,282
Lomas Bayas (Glencore)	72.5	1.4%	950	1,380
Codelco (29% Copper Production)	1,552.7	29.1%	15,973	47,127
Rest of producers	208.7	3.9%	-	-
Total	5,330.5	100%	-	-

Table I: Large-Scale Mining, Copper Production and Employment, 2022 Source: Own elaboration based on Annual Reports of companies, Mining Yearbook 2022, SERNAGEOMIN, and Glencore's Webpage.

Table I shows the following:

- I) A group of companies has already meet the thresholds of the directive (number of employees) and should be included in the target zone.
- 2) There is another group that is very close to the number of employees criterion. However, due to the corporate strategy of fragmenting employees, they have not been able to reach 1,000 employees. A potential solution for employers could be to increase the proportion of outsourced workers to direct employees.
- 3) There are some companies that have already divided their operations. Due to this, they have divided the number of direct employees and revenues. The use of this method is also an option for avoiding compliance.

Through the fissuring labour process, large companies have intercepted structural power resources and it is possible that they will be able to do so with the transferred institutional power (EU-CSDDD). It is therefore possible for LSM companies to split themselves in order to avoid being covered by this directive.

The production process was progressively fissured, and workers were relocated and replaced by subcontractors. The mining industry in Chile is the most extreme example of employers intercepting the structural power of the working class. Approximately 20 out of every 100 workers in this sector are directly employed, according to SERNAGEOMIN Mining Yearbooks. The majority, the remaining 80%, are involved in the operation of the business through independent contractors. By using on-site outsourced workers, employers weaken workers' organisational power resources, as reported by Durán (2022). Now, under a due-diligence scheme, trade unions in Chile should have an argument to fight this practice not only locally but also in European courts, since outsourcing has been considered to function as a manoeuvre to avoid strikes.

The relationship between the state, the private sector, and civil society in the mining industry is complex. Getting a mining job is seen as an opportunity to escape from poverty in the short term due to the relatively high wages paid in the mining sector (Durán/Kremerman 2024). In spite of this, extractivism in mining (and other fossil industries) has led to pollution and contamination, which has resulted in some towns being referred to informally as 'sacrifice zones' (by the mass media and local communities). Due to

the fact that mining requires a great deal of water, the struggle over natural resources, especially water, is quite common in mining communities. An example of this is the town of Caimanes, which is short of water as a result of the activities of the Minera Los Pelambres (CIPER 2015). In addition to extracting large quantities of resources, mining companies also generate significant amounts of waste, which adversely affects the hydrogeological balance and reduces the quality of life in nearby communities (Laboratorio de Alternativas 2024). The mining sector also consumes the greatest amount of energy, accounting for 37% of total energy consumption (Idem).

Another challenge for the Chilean working class in relation to EU-CSDDD lies in the fragmentation of organised labour and the limited possibility of realising the transferred institutional power.

Since collective bargaining occurs only at firm level or below, unionism is also deployed at this level. Furthermore, because of the radical fragmentation and competition between unions for membership, most trade unions in Chile are underfunded. This is an advantage for employers who can violate norms and promote systematic violations of human rights, as was the case with the Starbucks union case (Durán 2022). There are companies that, based on a cost-benefit analysis, prefer to violate human rights, pay the fines, and continue their practices (Gamonal 2017). There are few resources available to small unions to hire well-trained teams of professionals (to represent the interests of workers) in court.

In order to illustrate this point, let us consider the multinational Spanish company Banco Santander. The Santander Bank had revenues of more than 5,000 million EUR in Chile in 2022 (Annual Report Banco Santander Chile). Around 9,400 employees were employed by this Spanish bank in Chile (idem). In the case of trade unions, what happens? It is estimated that there are approximately 20 trade unions in competition in this bank, with memberships ranging from 33 to 4,500 (SIRELA, own calculations). Due to this extreme fragmentation, workers face a dilemma/challenge in order to realise the EU-CSDDD (when necessary). There are a number of reasons for this, not only a lack of financial resources (especially in the case of tiny unions), but also because there is a strong rivalry among organisations which could jeopardise any attempts to take the Bank to courts in Europe when human rights are violated.

#### 5. Conclusions

At the beginning of this text, we set ourselves the challenging task of analysing the potential impacts of the new EU-CSDDD on Chile's working class.

There are two dimensions of size considered in the directive, namely turnover and employee count. This applies both to European flag companies operating in non-EU territories as well as to non-European companies operating in the EU as long as they export to those territories and meet the requirements.

According to the theory of power resources, there are primary powers and secondary powers. The former is necessary in order to crystallise the latter. Institutional power is always a secondary power, which means that the struggle of workers is founded on organisational, structural and societal power. Therefore, it is not sufficient to have a labour-friendly law in order to understand the union power. The EU-CSDDD as an institution seems to be an example of this thesis as well.

An ultra-fragmented system – such as (pertains) in Chile –is unlikely to take advantage of the international transfer of institutional power given the limits on the working class primary power resources. This does not mean that the transfer of institutional power is useless, but it should be complemented by organisational power at the international level. Capitalist production, transnational and based on centre-periphery logic, demands an internationalist trade union response. An example of this can be seen in U.S. autoworkers and their Mexican counterparts (Mancilla 2024).

The EU-CSDDD represents a step forward in the international trade union movement that can be interpreted as a transfer of institutional power resources. In this instance, such transfer has been done from workers with high power to workers with low power. We argue that, although positive, this step may not be sufficient to fulfil an enhanced compliance with human rights requirements (which is what the directive seeks).

There is a considerable degree of atomisation and rivalry among Chilean trade unions. In part, this results in many unions being small and underfunded. Against this backdrop, the low level of organisational power resources could undermine the top-down transfer of institutional power from the global north. A directive like this from the EU may provide

opportunities for the global south to fight back. However, institutional power alone will never constitute a primary power resource. A combination of local self-organisation, as well as international working-class solidarity, is capable of making a significant impact on the situation.

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Abstract Ziel dieses Artikels ist es, die Beziehung zwischen der kürzlich verabschiedeten Richtlinie zur Sorgfaltspflicht von Unternehmen im Bereich der Nachhaltigkeit und dem chilenischen Arbeitskampf herauszuarbeiten. Insbesondere soll untersucht werden, inwieweit diese Richtlinie als eine Übertragung institutioneller Machtressourcen von Arbeitnehmer\*innen mit hoher Macht auf solche mit geringer Macht angesehen werden kann. Um dies zu erreichen, verwenden wir den Machtressourcen-Ansatz als theoretischen Leitfaden und konzentrieren uns auf Chile, das eine schwache Gewerkschaftsbewegung und eine geringe institutionelle Macht der Arbeiterklasse aufweist. Trotz des allgemein schwachen Bildes haben diese beiden Bereiche eine gewisse organisatorische Macht erlangt. Daher können wir hier mit unserer Analyse von einem starken Gegensatz ausgehen. In Anbetracht dessen betonen wir, wie wichtig es ist, die chilenische Arbeiterbewegung zu defragmentieren, um die übertragenen institutionellen Machtressourcen zu "realisieren".

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