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Contract labour mobilisation in Chile's copper mining and forestry sectors

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Abstract

Purpose – The purpose of this paper is to provide an overview of recent developments in employment relations in Chile, focusing on recent episodes of contract labour mobilisation in the forestry and copper mining sectors.

Design/methodology/approach – This paper is based on a consolidation of existing evidence from a range of primary, secondary and tertiary sources.

Findings – The paper demonstrates the inadequacy of Chile's employment relations institutions to protect vulnerable workers and shows the capacity of contract workers to overcome such limitations by recurring to mobilisation. It argues that contract labour mobilisation rather than a shift left in government seems to offer a more plausible explanation of current developments in Chilean employment relations.

Research limitations/implications – The paper identifies salient issues but further research is necessary to understand the actual social processes of collective action involved in recent episodes of contract labour mobilisation.

Practical implications – This information could contribute to better policy making, better management of the employment relationship, and informing the revitalisation of labour movements.

Originality/value – There are few studies on contract workers' collective action particularly in developing countries, and a contribution is made to critical debates on the sustainability of Chile's neoliberal socio-economic and employment relations system.

Keywords Chile, Outsourcing, Subcontracting, Labour utilization, Mining industry, Forestry

Paper type Research paper

1. Introduction

Chile entered the new millennium popularly perceived – and actively promoted – as a model of political stability, economic growth and social peace. At the same time, that a substantial number of Latin American countries had begun to vigorously contest neoliberal restructuring, the Chilean model appeared solidly in place. After three decades of neoliberal administrations, even the election of Socialist President Michelle Bachelet in 2006 appeared unlikely to disrupt the country's conservative socio-economic policy. By the mid-2000s however, a largely unprecedented wave of discontent and mass rank-and-file mobilisation began to shake the neoliberal establishment. Contract workers in flagship commodity-export sectors-hitherto the invisible pillar of the

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so-called "Chilean miracle" – have played a crucial role in arguably the most important episodes of labour militancy since the restoration of democracy in 1990.

This paper is structured in following sections. Section 2 provides a brief politico-economic background and introduce the main features of Chile's employment relations system. Section 3 clarifies the meaning of outsourcing and contract labour, and describes the realities of outsourcing in the Chilean context. Section 4 introduces the main aspects of the 2006 Outsourcing and Labour Supply Act. Section 5 reviews the most recent episodes of contract labour mobilisation in the forestry and copper mining sectors. Finally, Section 6 discusses the limitations of regulatory changes and the broader significance of contract labour mobilisation. A brief conclusion will follow.

2. Politico-economic and employment relations background

The political, economic and social transformations initiated by the Pinochet dictatorship (1973-1990) have come to be seen as "one of the most internally consistent and comprehensive neoliberal models in the world" (Kurtz, 1999, p. 399). The brutal imposition of neoliberal restructuring involved the complete rejection of the model of inward-looking development (1930s-1973), or the recognisable milieu of political, economic and social adjustments that develop after the great depression under Chile's constitutional democracy, import-substitution industrialisation (ISI) and the 1931 labour code[1]. Neoliberal policies rapidly transformed Chile from a highly-protected industrialising economy to an open, free-market economy based on commodity exports (Schurman, 2001; Silva, 1993, 2007). The regime revamped labour legislation along authoritarian and neoliberal lines between 1978 and 1979[2], and market logic informed the new institutional order sanctioned by the new "Protected Democracy Constitution" in 1980.

Chile returned to democracy in 1990 after 17 years of military dictatorship. The *Concertación*, a centre-left coalition led by Christian democrats and socialists has remained in power ever since. Although given a broad mandate for reform, the *Concertación* quickly backed away from any plan to change Chile's economic model. Partly a reflection of the compromises made as a result of Chile's transition to democracy, but also a manifestation of economic pragmatism and the conversion of important sectors of the coalition into neoliberalism, the deep structure of Pinochet's neoliberal model remains firmly in place after four consecutive democratic administrations. The *Concertación* governments have reduced the social deficit accumulated under military rule however "a conspicuous tension remains in the discrepancy between the *Concertación*'s rhetorical commitment to "growth with equity" and the reality of pronounced social polarisation" (Taylor, 2004, p. 76)[3]. The unbalanced nature of Chile's socio-economic development can be seen as the consequence of privileging economic growth without correcting the structural inequities of the market, in particular those of the labour market. Indeed, it can be argued that the so-called "Chilean miracle" owes a great deal of its success to an employment relations legal framework originally designed to workers and trade unions disadvantage.

Chile's current legal framework displays remarkable continuity with that of the dictatorship as the latter's key principles and features are still in place. Several rounds of reform (1990, 1993, 2001 and 2006) have certainly encouraged pluralism and improved the level of social protection for the most vulnerable, but the enjoyment of labour rights typically associated with mature employment relations systems remains limited

(Cook, 1998; Durán-Palma *et al.*, 2005; Frank, 2002a, b; Haagh, 2002; Taylor, 2004). In respect of individual employment relations, Chilean law grants ample discretion to employers in the contracting and deploying of their labour force in what can arguably be described as a prominent example of neoliberal labour market flexibility. Under this model, "flexibility is conceived as the capacity for downward adjustment of terms of employment, quantitatively, through wage cutting and substandard contracts, and qualitatively as the restoration of managerial authority" (Streeck, 1987).

With regard to collective employment relations, labour law restricts the rights of freedom of association, collective bargaining and strike, in what Valenzuela (1989) once described as a "market containment strategy for union control". First, the law recognises four types of unions: firm level, inter-firm, of temporary workers and of independent workers, but unions are not considered exclusive bargaining representatives as the law allows two or more workers to form a "bargaining group" (*grupo negociador*) with the sole purpose of bargaining and signing a collective agreement. Second, collective bargaining remains largely decentralised and a privilege of firm-level unions. Although the ban on conducting collective bargaining at any level other than the level of the firm or lower was lifted in 2001, inter-firm bargaining remains restricted in practice as it requires employers' consent and the latter typically decline. Third, Chile's legal framework limits the right to strike by imposing numerous conditions to render it ineffective. Employers are allowed to hire replacements (strike breakers) paying a compensatory bonus to the union and to lock employees out. Crucially, a strike is only legal when bargaining a new collective contract and after a series of provisions is met[4]. Finally, yet importantly, this entire legal apparatus is built around the narrow notion of "enterprise". Under Chilean labour law, an enterprise – and an employer for that matter – is exclusively understood as individual registered name and tax code (*razón social* or RUT). Workers can organise and bargain solely within the strict limits set by a particular registered name. This operates as an unfair advantage for business and a threat to labour rights because firms tend to operate with numerous registered names – hence fragmenting unionisation – and concentrate employment under registered names formed only to manage personnel without assets or profits, hence debilitating collective bargaining.

Low incentives for unionisation and collective bargaining have rendered effective collective representation a rarity. Union density as percentage of wage and salary earners in the private sector has declined from its post-dictatorship peak of 21.1 per cent in 1992, to 14.8 per cent in 2007 (Dirección del Trabajo, 2008a)[5]. Likewise, the percentage of workers participating in collective bargaining each year has declined from 10.1 per cent in 1991 to a mere 6.1 per cent in 2007 (Dirección del Trabajo, 2008b). Moreover, the outcomes of collective bargaining have worsened with wage improvements "uncomfortably close to the level of inflation" (Frank, 2002b, p. 11) and the number of legal strikes has decreased markedly (Armstrong and Águila, 2002).

3. The "contract labour question"

The meaning of outsourcing and related terms varies greatly across countries, and it is therefore important to clarify the manner in which we employ such concepts[6]. With outsourcing (*subcontratación*), we mean to refer to triangular employment relationships where a worker ("contract worker") employed by an enterprise (the "provider") performs work for a third party (the "user") to whom their employer provides labour

or services (ILO, 2006). The ILO (2006) distinguishes between two types of outsourcing: the performance of work and services on the one hand, and the supply of labour under commercial contracts on the other. In this paper, we focus exclusively on the first type, and references to outsourcing herein should be taken to refer solely to the performance of work and services.

Outsourcing relationships imply two types of contracts. While user and provider enterprises are linked to their respective workforces by employment contracts, they are linked with each other by commercial contracts. Although as a result there should be a clear distinction between who is employing and managing whom, outsourcing can be far more problematic in practice. Indeed, an early ILO (1997a, p. 2) definition of contract labour encompassed "situations where the conditions of dependency on or subordination to the enterprise using contract labour are similar to those that characterise an employment relationship between the user enterprise and its employees". When this occurs, argues the ILO (2006, p. 48), there is often a demand to equalise conditions of employment. This urge may be more pressing if work takes place in the user's premises or worksites, alongside the user's employees and if both perform work of equal value.

Outsourcing in Chile has increased rapidly as large user enterprises have developed extensive networks based on the contracting out of work, services and labour, provided by hundreds of small and medium enterprises[7]. For example, while in the 1970s the number of contract workers employed in mining was negligible, one out of three miners was a contract worker in 1988, and two out of three miners were contract workers in 2004 (Echeverría, 2006). Similarly, the percentage of contract workers in the manufacturing sector increased from 32.8 per cent in 1999 to just under 50 per cent in 2006 (SOFOFA, 2007). According to statistics of the National Labour Bureau, in 2006 over half of all companies outsourced at least one function and 35 per cent of all employees were employed as contract workers (Dirección del Trabajo, 2007)[8].

User employers normally justify their outsourcing decisions on the grounds of specialisation, arguing that "we keep core competences in-house and we outsource non-core activities" (Heikkilä and Cordon, 2002). Although this argument may be valid in some cases, it fails to explain the fact that the most frequent type of outsourcing in Chile is precisely that of core activities and functions. Indeed, recent data indicates that in 2006, 32.6 per cent of user enterprises employed contractors to perform core functions, a larger proportion than those employed to perform any other non-core task such as IT, security, or cleaning services. Furthermore, 54 per cent of companies outsourced informally and 42 per cent did it in the same establishment (Dirección del Trabajo, 2007). What these figures reveal is that more often than not outsourcing is used to intentionally disguise the employment relationship that *de facto* exists between user enterprises and contract workers. In concealing the employment relationship, user enterprises are not obliged to observe labour legislation with regard to contract workers as these are legally employed by a third party. Rather than specialisation, outsourcing is predominantly conceived of as managerial strategy to reduce labour costs while remaining in control of the employment relationship.

Unsurprisingly, outsourced employment has been generally characterised as precarious. First, it is usual to observe significant differences in pay levels between direct and contract workers performing work of equal value. Caputo and Galarce (2007) for example, estimate that in the state-owned mining sector direct workers" earnings double or sometimes triple those of contract workers. A recent exploratory study of the

forestry sector detected a pay gap of 25 per cent between core and periphery workers (Díaz *et al.*, 2007). Second, contract work is normally performed in relatively unsafe working conditions (Bastías, 1988; De Laire, 1999; Dirección del Trabajo, 2007; Echeverría, 2006). The government concedes that "of all accidents, six out of ten affect contract workers, even though contract workers only represent three out of ten workers" (Bachelet, 2006). Third, contract workers present very low levels of unionisation and collective bargaining is nearly inexistent. Outsourced employment is usually disguised as temporary and/or independent work which makes it extremely difficult for workers to sustain permanent organisations within or between firms. In addition, the lawful possibility of conducting collective bargaining beyond the level of the firm is restricted in practice as it relies on employers' consent. Finally, contract workers are seen and see themselves as second-class labour force: casual, badly paid, neglected, disposable and ever available to buffer variations in supply or demand. In short, outsourced employment has come to symbolise Chile's "rough end of the labour market" (Heery, 2002, p. 27).

4. The 2006 Outsourcing and Labour Supply Act

Outsourcing remained poorly regulated until the presidential elections of December 2005 installed the "contract labour question" on top of the political agenda[9]. Unions representing contract workers labouring for state-giant *Corporación Nacional del Cobre de Chile* (CODELCO) initiated massive mobilisations demanding better employment and working conditions. As a result of the mobilisations, the government re-introduced in early 2006 a bill on outsourcing dormant in congress since 2001. After a rocky legislative process, newly elected President Michelle Bachelet (2006) promulgated the Outsourcing and Supply of Labour Act (Ley, 20123, 2006), henceforth "the Act") on 16 October, claiming that it represented "a definite, decisive, and clear step in terminating with the division between first and second class workers". In line with the ILO (2006), the Act distinguishes between two types of outsourcing regimes: "outsourcing" or the performance of work and services (*subcontratación*) on the one hand, and the "supply of labour" under commercial contracts (*suministro de trabajadores*) on the other. The Act aimed at improving the protection afforded to contract workers in the outsourcing regime – the focus of this paper – by introducing five new articles into the Labour Code.

The Act establishes that for a lawful outsourced employment relationship to exist a contract worker must be dependent on and subordinated to the provider enterprise that legally employs them. If, on the contrary, a contract worker is neither dependent on nor subordinated to the provider they must be understood as employed directly by the user enterprise (Article 183-A). The Act makes user enterprises jointly and severally liable for the salaries, pension contributions and redundancy payments of contract workers (Article 183-B). In the past, user enterprises could only be held vicariously responsible for the actions of a provider (*responsabilidad subsidiaria*). Contract workers were required to sue their direct employer to pursue their claims, and were only allowed to sue the user enterprise if the direct route failed. Under the principle of joint and several liability (*responsabilidad solidaria*) however, a contract worker may file a lawsuit directly against the user enterprise and "all those who may be held responsible for their rights" in case of default.

The Act gives user enterprises the chance of avoiding joint and several liability if they keep provider companies in check. The law gives users the right to request

information from providers about the fulfilment of their labour obligations either through certificates issued by the Labour Bureau or "other suitable methods that guarantee the veracity of the information" (Article 183-C). If a provider is found in fault, the law allows the user to withhold payments to the provider in order to fulfil the latter's obligations. The Act establishes that if a user enterprise does exercise its rights to information and withholding of payments, it will only be considered vicariously liable for such obligations (Article 183-D). Finally, the Act obliges user firms to adopt all necessary measures to protect the life and health of all workers labouring in their establishments, irrespective of their employment status (Article 183-E).

Immediately after the Act came into force on 16 January 2007, the National Labour Bureau began a comprehensive plan of labour inspections. The bureau detected numerous irregularities involving disguised employment relationships and, in a series of emblematic rulings, demanded user enterprises to internalise thousands of contract workers. Whereas some employers began to diligently employ these workers, many others chose instead to challenge in court the bureau's right to rule on such matters. In consonance with previous verdicts, the courts of justice upheld the position of employers arguing that the existence of an employment relationship cannot be determined solely based on an inspection visit, but must instead be the resolution of an Employment Tribunal. As the bureau's position was undermined and employer opposition to the Act grew stronger, a sudden wave of labour discontent, mass mobilisation and violent conflict began to engulf the country. It seemed that, for thousands of contract workers enough was enough.

5. Discontent, mobilisation and conflict in the forestry and copper sectors

5.1 Forestry contract workers

Chile's forestry sector has been described as a "signature Pinochet-era success story" built on low wages, unsafe working conditions, rising worker poverty, community disintegration and environmental degradation (Klubock, 2004b; Winn, 2004a). Predictably, conflict between employers and contract labour is nothing new, and forestry unions were among the first ones to organise contract workers in the mid-1980s (González, 2007; Klubock, 2004b). However, the nature, extent and outcomes of the mobilisations described herein are largely unprecedented.

Arauco (*Celulosa Arauco y Constitución S.A.*) is a subsidiary of Empresas Copec S.A. property of the Angelini Group of Companies. Arauco is one the largest forestry companies in Latin America in terms of planted surface area and plantation yield, production of market Kraft wood pulp, and manufacturing of sawn timber and panels (Arauco, 2008a). Arauco is Chile's largest non-mining exporter, with sales and profits of US$ 3.6 billion and US$ 696 million in 2007, respectively, (Arauco, 2008a, b; Empresas Copec, 2008). Excluding international operations, the company is organised in 49 subsidiaries linked in turn with 577 "collaborating" companies (provider enterprises), employing a total of 28,367 direct and contract workers (Arauco, 2008a). In the province of the same name in Southern Chile, epicentre of recent mobilisations, Arauco provides work for about 14,000 workers or about 25 per cent of the working population through its subsidiary Bosques Arauco. Virtually all of them however are employed through provider enterprises in forestry operations, sawmills and factories owned by the company (BWI, 2007b).

On 23 January 2007, barely a week after the outsourcing act came into force, unions of contract workers labouring for Bosques Arauco formed the *Unión Sindical Forestal de Arauco* (USINFA). USINFA was established as an umbrella organisation to

coordinate the activities of the *Confederación Nacional de Trabajadores Forestales de Chile* (CTF), *Coordinadora de Transporte Forestal* and *Federación de Trabajadores Forestales*. The combined registered membership of these organisations is about 4,000 contract workers but they represent nearly three times as much (CTF, 2007b). USINFA's first initiative was to present Bosques Arauco with a 23-point list of demands (*Pliego de Peticiones*) that included the actual payment of the minimum wage, 40 per cent salary increments, respect of working time regulations and improvements of working conditions. Bosques Arauco declined to negotiate with USINFA arguing that their demands had to be settled between contract workers and their individual employers. Bargaining beyond the level of the enterprise, they (misleadingly) sustained, was illegal as it exceeded the scope of employment relations sanctioned by Chilean legislation (Arauco, 2008a).

As USINFA's demands were not met, on Sunday 11 March over 3,500 workers gathered in a mass assembly and agreed on an indefinite stoppage starting at midnight (CTF, 2007a). On Monday, workers blocked access to the pulp plant and occupied two sawmills in simultaneous actions in different cities, and by mid-day Bosques Arauco was completely paralysed (Mujica, 2007b). National and international pressure mounted on the company to negotiate with the strikers, including an online solidarity campaign in favour of Chilean workers launched by the 12-million strong Building and Wood Workers" International (BWI, 2007b). By Tuesday morning, the company reluctantly accepted the mediation of the Regional Director of Labour and agreed to reply to USINFA within 24 h. The strike, pickets and road blockades continued until Thursday 15 March when workers accepted the company's proposal to establish a joint task force to settle the list of demands in no more than 45 days. For USINFA this mediated agreement represented "a historic event for all forestry contract workers" as "in the past, we had never reached an agreement despite many negotiations" (BWI, 2007d).

A month and a half later, all but two crucially important issues had been settled: wages and bonuses (*aguinaldos*). As the parties failed to break the deadlock over pay – the company offered a 4.5 per cent increase while the unions demanded a 40 per cent rise – USINFA decided to conduct a vote. On 29 April, in a general assembly 5,500 workers rejected the company's offer and voted in favour of starting a new indefinite strike at midnight. On Monday, 3,000 workers blocked access to the Horcones pulp complex and 2,000 others occupied the sawmills. The BWI launched a second solidarity campaign and the Archbishop of city of Concepción began to mediate in the conflict (BWI, 2007a; Mujica, 2007a). Negotiations continued until Thursday 3 May when riot police stationed outside the pulp plant shot dead a 26-year old picketer (ILO, 2008). On Friday, eight thousand people marched in a mourning city of Curalinahue and similar manifestations were repeated in towns throughout the country. Twenty thousand joined for the funeral on Sunday. Next day, unions of other Arauco subsidiaries joined the strike in sympathy.

Finally, on Tuesday 8 May, Arauco compromised and presented USINFA with an offer that the union recommended to accept: 12 per cent pay increase for highest earners and 54 per cent for lowest earners (BWI, 2007c). Nonetheless, Bosques Arauco refused to appear negotiating with contract workers, and demanded to be formally excluded from the agreements requiring provider enterprises to sign the new contracts directly with their workers. This of course, did not affect the outcome but goes on to show how resistant some employers are to the whole idea of bargaining beyond the

narrow limits of the enterprise. The struggles of March-May 2007 sent shockwaves throughout the sector. Arauco's main competitor, the *Compañía Manufacturera de Papeles y Cartones* (CMPC), negotiated with its contract workers in a relatively "silent" bargaining process, with almost no public resonance. Furthermore, later in the year 2007, other Arauco subsidiaries reached agreements with contract workers that largely reproduced the terms and conditions agreed as a result of the mass mobilisations against Bosques Arauco.

5.2 Copper mining contract workers

CODELCO is the world's largest copper producer, wholly owned and managed by the Chilean state. In 2006, CODELCO produced 11 per cent of the world's copper and controlled 20 per cent of the world reserves, with sales reaching US$ 17 billion and profits in excess of US$ 9.2 billion (CODELCO, 2007). While CODELCO's own workers have long been considered Chile's "labour aristocracy", with employment and working conditions well above the national average. They are broadly seen as a privileged group, thanks to their public status, strategic weight on the economy and the strength of their organisation, the *Federación de Trabajadores del Cobre*. In recent years however, the number of direct workers employed by CODELCO has decreased from 24,000 in 1989 to 17,936 in 2006. Conversely, the number of contract workers has increased from 1,371 to just under 30,000 between the same years (CODELCO, 2007). Differences between direct and contract workers have been more of an issue in CODELCO than in the case of Arauco. While a typical worker employed by CODELCO takes home between £900 and £1200 pcm, a standard contract worker takes home £250 pcm on average, but many of them work for the minimum wage (Caputo and Galarce, 2007). These inequities have proved a severe blow for disintegrating mining communities – first ravaged by political repression and neoliberal restructuring in the early 1980s (Klubock, 2004a) – because a substantial number of contract workers are related to, or were themselves CODELCO employees. These disparities have had a great deal of impact on relations between families and children of first, second and third class workers, destroying family ties and the social fabric of mining towns and regions (Caputo and Galarce, 2007).

As in the forestry sector, conflict between CODELCO and its contract workers is not new and its first episodes can be traced back to the early 1980s and the struggles of the SINAMI and SITECO unions. Conflict and mobilisation continued throughout the 1990s especially around the El Teniente division (Agacino *et al.*, 1998; Klubock, 2004a). In 2001, contract workers belonging to all CODELCO divisions formed the *Coordinadora Nacional de Trabajadores Contratistas* (CNTC). The CNTC led the 2005 and 2006 mobilisations that led to the promulgation of the outsourcing act. These mobilisations ended in February 2006 when CODELCO and the CNTC agreed to form a task force to improve employment and working conditions of contract workers.

After more than a year of fruitless negotiations it became increasingly clear for the CNTC that CODELCO's commitment to meet their demands was not genuine. Merely six weeks after the Arauco dispute was settled, the CNTC decided on a new and wider mobilising offensive that required the creation of a new umbrella organisation. The *Confederación de Trabajadores del Cobre* (CTC) was established on 8 June 2007 to replace the CNTC, and represent contract workers throughout the mining sector, including those working for transnational private sector operators (CTC, 2008c). Two weeks later,

on Monday 25 June, the CTC began a general strike under the banner of "Equal Pay for Equal Work" to pressure CODELCO and the government to meet their demands. The strike involved 20,000 workers and extended to CODELCO's five divisions with the company losing an estimated US$ 10 million a day. Protests, pickets, roadblocks and confrontations with riot police began immediately. As repression increased, the mobilisations turned more violent, with buses set on fire and company lorries attacked and wrecked. On 23 July, after 27 days of strike, CODELCO announced that it had reached an agreement with three unions representing about half of those involved in the conflict and paid a substantial cash bonus to all contract workers not involved in the strike (Cooperativa, 2007a). The CTC dismissed the validity of these agreements and accused CODELCO of anti-union practices[10]. The strike continued for another ten days. On 1 August, after 37 days of strike, the CTC, CODELCO and provider enterprises signed a framework agreement that was widely considered a victory for the strikers.

The agreement focused mainly on substantive issues and it did not include key matters related to the internalisation of contract workers[11]. The parties agreed to wait until the National Labour Bureau would publish its inspection reports. Five months later, the bureau ruled that CODELCO had to internalise nearly 5,000 contract workers. In an unprecedented move for a state-owned company, CODELCO decided to challenge the bureau's competence in court in the same way as most private sector employers, questioning in this way an emblematic labour law promoted and supported by the same government responsible for managing the company. Meanwhile, President Bachelet – who in her campaign had lent strong support to contract workers – demanded the company to respect the law and internalise those workers. CODELCO refused and continued to delay the implementation of the framework agreement. The contradiction was evident and private sector employers felt immediately vindicated by CODELCO's decision: what was not good for the public sector could not possibly be good for a private company.

In view of CODELCO's intransigence, in February 2008 President Bachelet herself instructed the company's CEO to return to the bargaining table but by the end of March the CTC was "on state of alert" (CTC, 2008a). Negotiations failed and, on 9 April, the CTC called a new general strike to force the company to deliver on the agreements signed the year before. On this occasion however, CODELCO simply refused to bargain with the strikers forcing the government to intervene. In the end, the CTC bargained directly with the government against the background of a strike that involved more than 25,000 workers, lasted 20 days, and cost millions in lost revenue. Workers only returned to work after securing a government-brokered agreement that included the internalisation of contract workers. Barely a week afterward, the Supreme Court ruled that the Labour Bureau rulings in respect of CODELCO were illegal and upheld the position of the company. Presuming that this verdict would encourage CODELCO to withdraw from the agreement just signed, the CTC leadership went on hunger strike immediately (CTC, 2008b). Four days later, Bachelet herself endorsed the accords and gave her word that CODELCO would comply with them ending the hunger strike (Reuters, 2008). At the time of writing, it is yet unclear how much of the 2006, 2007 and 2008 agreements has been materialised.

6. Discussion

Recent episodes of contract labour mobilisation have revealed the inadequacy of Chile's employment relations institutions to protect vulnerable workers as well as the capacity of the neoliberal establishment to resist fundamental change. But the mobilisations

have also uncovered growing discontent among thousands of contract workers and their determination to mobilise outside the realm of the law to obtain what legislation does not provide for. At one level, this suggests a promising reconstruction of union organisations as effective social actors. More generally, contract labour mobilisation suggests profound cracks in Chile's socio-economic model. We discuss these issues below. However, due to space restrictions our analysis will remain brief and may at times oversimplify the complexity of the matters involved.

Despite government claims to the contrary, the 2006 Outsourcing and Supply of Labour Act has been ineffectual in "terminating with the division between first and second class workers". The Act failed to correct the legal concept of "enterprise" in respect of outsourced employment relationships. The original bill contained an article, which stated that in such relations the concept of enterprise should no longer be exclusively associated with an individual registered name and tax code (RUT). Although this modification was passed in congress, the Constitutional Tribunal later withdrew it arguing "problems of form rather than of substance". The Act did not attempt to regulate the outsourcing of core tasks and functions either, thus permitting user enterprises to function with 100 per cent of outsourced personnel. Moreover, the Act avoided the crucial issue of pay inequality between direct and contract workers. In fairness however, regulating such issue was unlikely as Chilean law does not require employers to respect the principle of "equal pay for equal work" (López, 2008).

Although significant progress could have been made in some aspects (e.g. internalisation of contract workers), resources and enforcement mechanisms have been insufficient. Piore and Schrank (2007, p. 22) for example, have revealed that the average number of labour inspectors in Chile is 19 for every 100,000 workers, and while 47.3 per cent of companies were visited by tax inspectors, only 11.3 per cent of companies received labour inspections. But as comparative evidence shows, the effective implementation and enforcement of rights associated with employment depends not only on resources but on the existence of adequate legal frameworks for labour inspection and administration (ILO, 2006). In this case, the act failed to give the National Labour Bureau any additional powers to ensure compliance with the new legislation. This has been particularly evident in disputes concerning the employment status of contract workers where the courts have ruled that cannot be determined by labour inspectors but must instead be the resolution of an employment tribunal. The courts have thus rendered inspections ineffective, stripping the bureau of the authority to monitor and enforce the new law. Ultimately more important, these rulings oblige individual workers to file lawsuits against employers, which is not the best route to ensure compliance, as the process is long, complex and expensive.

Examining the process of reform as well as the limitations of the regulatory framework is to invite a sense of *déjà vu*. Indeed, Chile's latest round of labour reform has shown once again the capacity of the neoliberal establishment to resist fundamental change in the field of employment relations. The Bachelet government, less identified with the model than their predecessors, has appeared incapable of reforming social policy, let alone "touching the basis of the model" (Riesco, 2007, p. 13). Research examining the conservative nature of Chile's transition to democracy as well as the limitations of labour reform offers useful insights in trying to explain the model's resilience (Agacino, 1998; Cook, 1998; Frank, 2002a, b; Haagh, 2002; Roberts, 1998; Silva, 1996; Taylor, 2004; Winn, 2004b). A synthesis seems to involve at least three main

factors (Durán-Palma *et al.*, 2005). First, the compromises made as a result of Chile's transition to democracy included the acceptance of a political system designed to over

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mobilisations against BHP Billiton's Minera Escondida. A few months earlier, an unprecedented example of inter-firm bargaining took place in the fruit export industry where unions and employers agreed on salaries for fruit pickers well above the minimum wage. A week after the end of the Arauco and CODELCO conflicts of 2007, the Catholic Church began speaking about the necessity of an "ethical wage" that should replace the minimum wage (Goic and Contreras, 2007). As the mood proved catching even the hitherto largely silent CUT, Chile's top national union, led a national day of protest for "Equity and Social Justice" on 28 August.

More generally, contract labour mobilisation suggests profound cracks in Chile's socio-economic model. For an increasing number of Chileans patience is wearing seriously thin with a political system that has failed to deepen democratic participation, with an economic model that has failed to deliver growth and equity; with an employment relations legal framework that make employment precarious and fails to protect labour rights; with a coalition in government that has consistently promised reform but time and again has failed to deliver change; with recalcitrant and principled anti-union employers; and with an ineffective and at times fatalist labour movement.

While the neoliberal establishment has so far been able to resist challenges from above by employing constitutional prerogatives and relying on the hegemony of the ruling elite (e.g. labour law reform), it appears far less prepared to contain the direct challenge represented by subordinate forces mobilising outside institutional channels. As the mobilisation of nearly a million secondary students demonstrates, contract workers are just one of several portions of society opting out of largely ineffectual structures of democratic governance and employment relations. Thus, for example, although participation in electoral politics among registered voters remains high, the number of valid votes has declined significantly (Carlin, 2006). Similarly, a decrease in the number of legal strikes has been accompanied by a marked increase in the number of illegal strikes among workers who enjoy the right to strike (Armstrong and Águila, 2002). In this sense, the mobilisations can be seen as part of a broader trend that has even begun to impact the neoliberal elite (Riesco, 2007). Though promising, whether mass mobilisation is sustainable in the long-term and a viable alternative for the revitalisation of Chile's labour movement remains an open question as further research is necessary to understand the actual social processes of collective action operating in these cases (Kelly, 1998). Nevertheless, and judging from what contract workers have achieved so far, we may very well be witnessing early indications of post-neoliberal collective action in Chile.

7. Conclusions

Contract workers' perennial transition between formality and informality, social mobility and stagnation, decent work and working poverty encapsulates some of the many contradictions of the "Chilean miracle". The Bachelet government, less identified with the neoliberal model than their predecessors, has nevertheless appeared incapable of reforming employment relations institutions in the interest of workers needing protection. Recent episodes of contract labour mobilisation show that discontent is running high among thousands of contract workers. But they also suggest a promising reconstruction of union organisations as effective social actors mobilising outside the realm of the law to obtain what legislation does not provide for. Contract labour mobilisation rather than a shift left in government seems to offer a more plausible explanation of current developments in Chilean employment relations.

Notes

1. ISI aimed to "develop industries oriented toward the domestic market by using trade restrictions such as tariffs and quotas to encourage the replacement of imported manufactures by domestic products" (Krugman and Obstfeld, 2003, p. 258).

   The 1931 Labour Code explicitly recognised the power imbalance between labour and capital, and "reflected the belief that the state should intervene to protect the individual worker against employers" (Cook, 1998, p. 313). Individual legislation in this period has been characterised as protective as well as extensive and highly detailed (Cook, 1998; Mizala and Romaguera, 2001; Walker, 2002). With regard to collective regulation, the code was restrictive subjecting unions to the supervision of the state (Córdova, 1996).

2. Although the 1931 Labour Code was formally maintained after the *coup*, between 1973 and 1978, most labour rights were suspended indefinitely, and series of executive decrees severely restricted freedom of association, suspended collective bargaining, abolished the right to strike, and allowed politically motivated job dismissals among other measures. The dictatorship's re-regulation of individual employment relations commenced in 1978 with Decree Law No. 2950 which derogated previous legislation, and continued with the enactment of the Decree Law No. 2200 on Individual Labour Rights. The area of collective labour relations was re-regulated according to a set of three acts better known as the 1979 Labour Plan. Decree laws No. 2756 on Union Organisations, No. 2758 on Collective Bargaining and No. 2757 on the Right to Strike. All pieces of legislation were later merged in the 1987 Labour Code (Walker, 2002).

3. Despite officially halving the percentage of the population living in poverty to 13.7 per cent in 2006, Chile is far from "abolishing poverty" as it has been claimed lately (*The Economist*, 2007). Indeed, the percentage of people "exposed" to poverty remains stubbornly high. Between 1996 and 2006, 34 per cent of the population was poor in at least one occasion, which shows the high vulnerability of those who overcome poverty to fall back under the poverty line (FNSP *et al.*, 2007). Furthermore, 59 per cent of employees earned less than two minimum wages, or just over £200 pcm (MIDEPLAN, 2007).

   It is also important to note that Chile's poverty line is set in absolute terms at about US$ 90 pcm. As the article cited above concedes, using relative indicators such as those employed in developed countries, at least 27 per cent of Chileans would be poor (*The Economist, 2007*). Poverty has been reduced thanks to public spending concentrated in direct cash transfers to the poor as well as to steady increments in the minimum wage, but not because Chile's labour market is functioning in an equitable manner.

   Income inequality on the other hand, has remained high and largely unchanged since 1990. In 2003, Chile's Gini Coefficient reached 54.9, while the share of income of the richest 20 per cent of families was 60 per cent, and that of the poorest 20 per cent was a mere 3.8 per cent (UNDP, 2007, p. 281). Reducing inequality is of course a much harder task without massive government intervention which in the Chilean case "would violate the limits of the model" (Drake, 2004, p. xi).

4. The most important of these provisions relates to the "format" of collective bargaining. Chilean law establishes two collective bargaining formats. Regulated collective bargaining takes place according to detailed procedures and time limits set in legislation, and contemplates the right to strike. Non-regulated collective bargaining is not vested with the minimal procedural rights typically associated with collective bargaining and does not contemplate the right to strike.

5. Since 2008, Chile's National Labour Bureau recommends this form of measurement as opposed to the more familiar based on the total employed labour force. The bureau argues that the latter is misleading in the Chilean context because its calculation includes people not susceptible to unionise. The trends are nevertheless the same. Union density as percentage of the employed labour force has declined from 15.1 per cent in 1991 to 11 per cent in 2007 (Dirección del Trabajo, 2008a, p. 7).

6. This paragraph draws on several ILO publications concerned with the changing nature of the employment relationship. They include the reports prepared by the Office for the Conference Committee on Contract Labour (ILO, 1997a, b, 1998); the series of country studies written for the Meeting of Experts on Workers in Situations Needing Protection (ILO, 2000); and the documents prepared for the 2003 general discussion on the scope of the employment relationship (ILO, 2003), which served as a basis for the Employment Relationship Recommendation (No. 198) adopted in 2006 (ILO, 2006).
7. Provider companies are normally small firms that make use of legal provisions that attenuate the demands of labour legislation. Even so, the great majority of them present a high level of non-compliance due to their economic vulnerability. Although some providers enjoy long-term contracts with large user enterprises, most must periodically compete to renew or win a contract. Contracts are generally non-negotiable for providers, and unilateral changes as well as the termination of contracts with 30 days notice without expression of cause are common practice. Furthermore, it is usual for managers at user enterprises to resign only to set up their own contractor firms and provide services to their former employers in nearly exclusive fashion. Most providers are thus economically dependent and hierarchically subordinated to user enterprises. Official figures show that in 2006 43.6 per cent of all contract companies acknowledge to have one client only, and 61.5 per cent worked for one or two clients (Dirección del Trabajo, 2007).
8. The percentage of workers employed in "standard" employment relationships is about 45 per cent because nearly 36 per cent of Chile's labour force works in the informal sector (Tokman, 2007).
9. The first regulations affecting the practice of outsourcing date back to 1931 when the Labour Code introduced the principle of vicarious liability (*responsabilidad subsidiaria*) limited to specific cases in the construction industry. In 1968, legislation was introduced to limit the practice of outsourcing by prohibiting the externalisation of core or permanent activities and functions (Law No. 16757) (Walker, 2002). This legislation was repealed in 1979 because it represented an "unacceptable rigidity in a market economy" (Piñera, 1990). A labour reform bill that President Lagos (2000-2005) introduced in congress in 2001 included norms regulating outsourcing and the supply of labour. The bill faced such strong opposition that, in order to pass the points where compromise had been reached, the government offered to remove the norms on outsourcing and supply of labour and discuss them later as a separate bill. The opposition accepted but the prospective law remained dormant in congress for the next four years.
10. There is ground for these allegations as one of these unions, SINAMI, has never been affiliated to the CTC, and the other two unions never took part in the strike (FUTC and ASIC). In addition, unions at companies supposedly covered by the latter rejected the agreement arguing that it had been signed by leaders censored by their members since 2 June – hence forbidden to bargain in their behalf – and that it had not been ratified by the rank-and-file (Cooperativa, 2007b).
11. The deal included overtime to be paid on total pay instead of on the basic wage; a bonus of 450,000 pesos (or two months wages, about £450) with no limit on attendance (previously bonuses had only been offered to workers with a 97 percent attendance record, which would have excluded all strikers); pay for eight of the 36 days on strike (initially no pay was offered); and no sacking of strikers (except those prosecuted for damage) (Stanton, 2007).
12. Although the episodes of mobilisation described here have been unique in several respects, it is important to clarify that this approach to trade union strategy is not an entirely development. Unions in these and other industries have applied similar approaches for nearly 30 years. In fact, this strategy was pioneered in the early 1980s and successfully applied throughout the 1990s by highly skilled construction contract workers (*montajistas*)

labouring in large engineering and building projects (dams, power stations, observatories, etc.). Their union, SINAMI, achieved incomparable gains in a grim union landscape but never accomplished the prominence and demonstrative effect of the cases described here.

13. While the ever so powerful employer associations operated largely in ideological and political terms branding inter-firm bargaining illegal and demanding repressive action by the state, some of the largest and most important of user enterprises – forcefully or not – opted to pragmatically conclude negotiations with their contract workers. In so doing, large user employers rendered their associations' case unsustainable. Furthermore, the fact that vertically integrated groups of companies signed collective agreements which significantly improved employment and working conditions for contract workers without damaging employment, productivity or investment, destroyed the familiar argument of Chilean employers that inter-firm bargaining is not economically viable for groups of companies. The mobilisations also uncovered the incapacity of the current government to manage the tensions between the different roles of the state in employment relations (Crouch, 1993). While the government promulgated new labour legislation, the most emblematic of state enterprises chose to challenge the law undermining the authority of the state agency charged with enforcing the new legislation.

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