



**CALL FOR SUBMISSION FOR THE REPORT OF THE SPECIAL RAPPORTEUR ON
THE IMPLICATIONS FOR HUMAN RIGHTS OF THE ENVIRONMENTALLY SOUND
MANAGEMENT AND DISPOSAL OF HAZARDOUS SUBSTANCES AND WASTES**

“The impact of toxics on Indigenous peoples”

Report submitted by: Associazione Comunità Papa Giovanni XXIII (APG23)

NGO in Special Consultative Status

Geneva 25 April 2022

Associazione Comunità Papa Giovanni XXIII (APG23) welcomes the decision of the Special Rapporteur on toxics and human rights to gather inputs from civil society organisations to inform his thematic report on “The impacts of toxics on Indigenous people and human rights”. To this end, the present submission provides answers to the questions 1 to 5 of the “Questionnaire to Indigenous peoples and civil society”.

APG23 would like to draw the attention of the Special Rapporteur on the situation of the Mapuche people in Chile, whose ancestral territory is subject to increasing exploitation by business entities that often operate in irresponsible ways, contaminating the environment and exposing local communities to hazardous substances. Regrettably, undiligent corporate behaviour and practices are fostered by serious shortcomings in the Chilean legal and administrative frameworks aimed at protecting the environment and the rights of indigenous people, as well as by the lack of national enforcement of international environmental and human rights obligations.

While the exposure to toxic substances in the absence of appropriate state control and protection affects several indigenous territories and communities in Chile, the present submission focuses on the case of the Mapuche communities living in the territory of Curacautín (region of Araucanía), whose ancestral lands are exposed to serious risks of contamination by the project to construct a geothermal power plant next to the Tolhuaca volcano.

The main source of this submission is based on APG23’s experience in Chile,¹ where it has been operating in four regions (namely: Araucanía, Biobío, Los Ríos and Los Lagos), visiting several Mapuche indigenous communities, carrying out interviews with activists and leaders, and closely monitoring the dynamics of the ongoing conflict between the Chilean State and Mapuche communities. Moreover, an essential contribution was provided by the Mapuche community “Pancho Kuramil” – which is directly affected by the geothermal project - and the NGO “Red de Acción por los Derechos Ambientales” (RADA) which has been closely following and monitoring the case.

¹ See Annex below.



Questionnaire

- 1. Is your Indigenous community (or one that you represent) suffering from the adverse effects of hazardous substances and toxic wastes? Please describe the case and circumstances of these effects in detail, including the source of the toxic exposure, the types of hazardous substances you are being exposed to, the degree of government/company consultation and consent to relevant activities, as well as any efforts made by the government/company to provide effective remedies.**

The Mapuche indigenous communities living in the territory of Curacautín, in the Chilean region of Araucanía, (namely, the communities “Pancho Kuramil del Iof Radalko”, “Liempi Colipi del Iof Kontué” and “Iof Pidenco Lafkenche”) are currently exposed to the risk of being affected by the adverse effects of toxic substances due to the project to build a geothermal power plant next to the Tolhuaca volcano, located in their ancestral lands. The business enterprise responsible for the project is Adobera SpA, a joint venture created and owned by the Dutch company Transmark Renewables and the Icelandic companies North Tech Energy and CEG Power.²

In April 2021, Adobera SpA submitted to the competent public authority (the “*Servicio de Evaluación Ambiental*”- SEA) a project for undertaking geothermal explorations in the territory of Curacautín (named “*Programa de Perforación Exploratoria Área Adobera*”), asking whether such project needed to be subject to the national public procedure aimed at assessing the risk of possible negative impacts on the environment of business activities (the “*Sistema de Evaluación de Impacto Ambiental*” – SEIA).³

The SEA assessed that Adobera SpA was not required to submit the project to the SEIA procedure, on the basis that it only concerned exploratory activities and not the construction of the geothermal plant.⁴ Chilean laws require indeed that all projects for the construction of power plants with a capacity of more than 3 MW must be subject to an environmental risk-assessment,⁵ whereas there is no specific legislation dealing with geothermal exploration activities. It must be noted, however, that the company has publicly declared its intention to build in the area a geothermal plant that would produce 9 MW,⁶ which was not made explicit in the exploratory project presented to the SEA.

Adobera SpA’s project consists of the construction of 6 exploratory wells at a depth of 1,500 to 2,000 metres for a total of 20 months of execution. Moreover, the company has planned to realize 35x35 metre drilling platforms, water and mud pools, a piping system that will connect the wells to the storage pools, the installation of the drilling machines and complementary equipment, a camp with a capacity of between 15 and 20 people that will have accommodation services, a restaurant and chemical toilets.

² See SEA’s resolution, available at <https://www.piensageotermia.com/consorcio-internacional-acuerda-el-desarrollo-de-su-primer-proyecto-geotermico-en-chile/>

³ See the company’s “*consulta de pertinencia*”, available at <https://infofirma.sea.gob.cl/DocumentosSEA/MostrarDocumento?docId=44/6b/0080991cd46d0c8ab205c3cb6bede54953d6>

⁴ See <https://pertinencia.sea.gob.cl/api/public/expediente/PERTI-2021-6458#/>

⁵ Ley N° 19.300 Sobre Bases Generales del Medio Ambiente, art. 10 (c)

⁶ On the company website it is stated that: “The initial development plan foresees a modular development of the first power plant with a power generation capacity of up to 3 MWe, is planned to be operating with a start date in 2023, within less than three years from the initial reconnaissance studies and 9MWe with a start date in 2024”. See <https://transmark-renewables.com/news/transmark-renewables-and-its-consortium-partners-agree-development-adobera-project>



Such activities, despite being preparatory to the construction of the power plants, represent by themselves a clear risk to the environment, as well as a serious threat to the human rights of the indigenous peoples of the territory concerned. In fact, as argued in a study of the French institute INERIS, deep geothermal explorations, as the one at hand, might have grave negative impacts on people and the environment.⁷ More precisely, the exploitation of geothermal waters and vapours might cause surface contamination, especially due to their chemical composition and the high concentration of minerals, salts and heavy metals.⁸

Notably, the local communities had not been previously informed about the project. They only became aware of it when RADA's activists found online – while conducting researches not relating to the issue – that the SAE had decided to authorize Adobera SpA's project. The local society and the Mapuche communities of the territory immediately opposed the SEA's decision to authorize the explorations without any consultation and environmental risk-assessment. In particular, the Mapuche communities highlighted that the area concerned by the project and the Tolhuaca volcano are sacred elements of their spirituality and culture, which are strictly related to natural elements of ancestral lands.⁹

2. What are the adverse impacts of toxic and hazardous waste on your Indigenous community's (or the Indigenous peoples you represent) collective and individual rights, such as your rights to lands, resources, culture, health, livelihood, political and economic involvement, etc.?

The exploratory perforations planned by Adobera SpA imply a number of potential adverse impacts on the environment and the human rights of local communities.¹⁰

Firstly, as said above, the company's activities would expose the environment to the risk of contamination by minerals, salts and heavy metals contained in the geothermal waters. This is particularly worrying considering that the explorations would take place in the proximity of three protected natural areas: the Tolhuaca National Park, the Malleco National Reserve and the Malacahuello - Nalcas National Reserve. At the same time, the perforations planned by Adobera SpA would imply the deforestation of the area where the wells will be drilled, as well as serious risks of contamination of water reserves and the wetland ecosystem.

Secondly, the impact on the environment would imply grave violations of fundamental social and cultural rights of the indigenous Mapuche communities living in the affected territory, for whom the preservation of natural elements in ancestral lands is an essential part of their spirituality and culture; in particular, the Tolhuaca volcano is a sacred element representing the place where the earth (*Mapu*) breathes. Therefore, several fundamental individual and collective rights of the Mapuche communities would be seriously endangered by such an invasive exploration project in their ancestral lands.

⁷ INERIS (2017). Etat des connaissances sur les risques, impacts et nuisances potentiels liés à la géothermie profonde. p.13. En: https://www.ineris.fr/sites/ineris.fr/files/contribution/Documents/DRS-16-157477-00515A-RAP-risques_geothermie-v19c-unique.pdf

⁸ Birkle et. al (2001). Impacto Ambiental de Campos Geotérmicos. Instituto de Investigaciones Eléctricas, Deplo. Geotermia, México. Available at https://inis.iaea.org/collection/NCLCollectionStore/_Public/29/032/29032344.pdf?r=1&r=1

⁹ <https://www.alianzatorritorialmapuche.com/2022/01/mapuche-dicen-no-planta-de-geotermia-en.html>

¹⁰ INERIS (2017). Etat des connaissances sur les risques, impacts et nuisances potentiels liés à la géothermie profonde. p.13. En: https://www.ineris.fr/sites/ineris.fr/files/contribution/Documents/DRS-16-157477-00515A-RAP-risques_geothermie-v19c-unique.pdf



Thirdly, the project is partially located on the touristic area named "*Zona de Interés Turístico Curacautín*", where there are several thermal centres. The extraction and injection of geothermal fluids can cause adverse effects on the geothermal reservoir, affecting the touristic value of the area: such impact on the thermal springs would therefore represent serious damage to the local economy.

3. Is the government implementing a right to free, prior, and informed consent regarding exposure to toxics and hazardous substances on your lands and territories?

No, the public authority (SEA) has adopted its decision not to require Adober SpA to submit the exploratory project to any risk-assessment – thus authorizing the company to conduct its exploratory activities – without informing in any way the local community. As said, the decision was found online by RADA’s activists, which means that it was public but had not been communicated to the population directly concerned. Therefore, the local population was not previously informed of the possible risks of such activities on the environment and their social, cultural and economic fundamental rights. In particular, the lack of consultation and involvement of Mapuche communities is in clear contrast with the ILO Convention 169:¹¹ in fact, under Article 15 on Land Rights, indigenous communities should be consulted and involved in the decision-making process also regarding exploratory projects and before business licences are granted.¹²

4. Is the company responsible for producing the toxics and hazardous waste implementing dialogue with regards to those substances and their consequences with your community?

No, the company tried to establish a dialogue with local community only after receiving the approval of the project by the SEA, and especially after that it was accidentally discovered by local activists. In addition, the project was presented to local communities in a reductive way, as the company only highlighted its benefits and positive outcomes for the territory (not verifiable) and associating it with the production of heat (considered harmless) and not electricity, without mentioning in this sense the 9 MW power plant that the company has planned to build in the area.

5. Have you tried to take action (either legal action, advocacy campaign, etc.) to raise awareness on the issue and/or have you tried to obtain compensation?

Mapuche communities and other civil society stakeholders directly affected by the exploration projects were prevented from challenging SAE's decision that the project should not be submitted to SEIA (the environmental risk assessment procedure), as they were not informed of the decision, which could only be challenged in court within 5 days.

¹¹ See “Indigenous and Tribal Peoples Convention”, 1989 (No. 169), art. 6 and 7 on consultation and participation; art. 15 on Land Rights.

¹² See “Indigenous and Tribal Peoples Convention”, 1989 (No. 169) art. 15 (2)



Final Remarks and Recommendations

In light of all the above, APG23 strongly condemns the SAE's decision to authorize Adobera SpA's geothermal exploration project in the territory Curacautín without asking the company to submit it to the SEIA procedure concerning possible adverse environmental and human rights effects.

Therefore, APG23 calls upon the Special Rapporteur on toxics and human rights to:

- Take into serious account and include in the forthcoming report on "The impacts of toxics on Indigenous people and human rights" the case described above, which is an example of the broader irresponsible economic exploitation of natural resources in the ancestral lands of the Mapuche people in Chile;
- Conduct the necessary research to deepen the implications of the shortcoming in Chilean legislations protecting the environment and the human rights of indigenous groups, and elaborate in this regard specific recommendations for the Chilean state.

ANNEX

ASSOCIAZIONE COMUNITÀ PAPA GIOVANNI XXIII (APG23)

The Associazione Comunità Papa Giovanni XXIII (APG23) is an International Catholic Association of the Faithful of Pontifical Right. Since 2006, APG23 has been accredited with Special Consultative Status to the Economic and Social Council (ECOSOC). Founded in Italy in the early '60s by the Italian Catholic priest Fr. Oreste Benzi, the Association is located in 40 countries on five continents.¹³ The Association runs 500 hosting structures all over the world, 298 of which are family homes where orphaned children, mentally and physically disabled, and others marginalised persons find a substitutive family. Moreover, it runs emergency shelters, fostering families, houses of fraternity, cooperatives and day-care centres, therapeutic communities for drug users and centres for alcoholics. APG23 carries out awareness campaigns, micro-credit programs, and it provides services for persons with disabilities, Roma and Sinti, homeless, prisoners, migrants, elderly, people infected and affected by HIV/AIDS, mothers in trouble and women forced into prostitution.

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Furthermore, the Association has a nonviolent presence in war zones in order to guarantee the respect of human rights on both fronts, assist displaced populations, and carry out activities aimed to combat the trafficking of human beings and assist its victims.

¹³ See https://www.apg23.org/en/where_we_can_be_found/

At UNOG, APG23 currently advocates the following priorities: Rights of the Child (especially, the right to have a family and the right to health); Right to Health and Access to Treatment; International Solidarity and Human Rights; Implementation of the Right to Development; Extreme poverty and Economic, Social, Cultural Rights; Protection of the Family; Right to Peace; Migration and Human Trafficking. Furthermore, APG23 monitors the implementation of the 2030 Agenda for Sustainable Development.

THE PRESENCE IN CHILE OF APG23

Since 1994, APG23 has been present in Chile in two cities: Santiago (Capital) and Valdivia (Region of Los Ríos). In 1998, the Association began to develop projects with the National Service for Minors (SENAME) and the Ministry of Justice and human rights, being recognized as a "Partner Organisation"; and in 2006, with the Ministry of Health (SENDA). We offer a wide variety of social actions in the field of children's rights and protection, we also care for battered women, people with physical, sensory, mental and drug addiction disabilities; we promote and defend human rights. All these areas are dealt with through specific projects and structures. In 2019 APG23 participated in the Italian government's call for Civil Peace Corps¹⁴ with the project "Civil Peace Corps: The Mapuche Conflict",¹⁵ through which our field volunteers have started to carry out monitoring activities on the human rights situation of the Mapuche population in Chile

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¹⁴ The Civil Peace Corps is an experimental project within the Civil Service, established by Law No. 147 of 2013 of the Italian Republic, which provides the possibility also for civil society operators to operate in conflict zones on a par with the armed forces. They became operational in 2017 and aim to seek alternative solutions to the use of military force, to promote positive peace, understood as the cessation of violence but also as an affirmation of Human Rights, to promote solidarity and cooperation, education for peace among peoples. What characterises the Civil Peace Corps is the analysis, prevention, and transformation of conflict, both potential and real, through activities of mediation, dialogue, reconciliation, information, promotion of democratic principles, entering directly into the communities that need support See <https://www.politichegiovani.gov.it/servizio-civile/corpi-civili-di-pace/>.

¹⁵ See <https://www.odcpace.org/new/index.php/corpi-civili-di-pace-2019-il-conflitto-mapuche>