

Chile, 25 May 2009

To:
Environment Directorate
Organisation for Economic Co-Operation and Development. OECD
Paris - France

Re: Requests a revision of Chile's compliance with commitments to OECD concerning the reform of environmental institutions, by reason of severe legal and procedural failings in relation to civil-society participation.

Dear Sirs,

1. We request that a revision be made of the degree of compliance, on the part of Chile, with the commitments it has undertaken with the Organisation for Economic Co-Operation and Development (OECD) concerning the reform of its environmental institutions. Said reform stems partly from the recommendations made in 2005 by the OECD following an assessment of the performance of Chile's environmental institutions¹, and partly from demands made by civil society. These demands arose as the result of numerous environmental conflicts provoked by several large projects that were approved by the existing environmental institutionality, and which have caused grave damage to the country's natural resources and infringed the rights of local communities.

A central aspect of both the OECD recommendations and civil society demands is the need to correct the existing gaps or omissions concerning civil society participation in environmental matters. There is also the necessity of conforming the proposed law to the global challenge of preserving biodiversity and natural resources including, specifically, the protection of water, the most vital of elements, and ensuring respect for native peoples.

2. The bill that reforms Chile's environmental institutionality and that was approved by the Chamber of Deputies (the Lower House of Parliament) on 28 April of this year, does represent a certain degree of progress in the matter, but it excludes civil society, communities, and their organizations from participating in the deliberations. In short, it excludes those parties that have been pressing for this important reform. **We consider that this exclusion, and the limitation of public debate on such an important issue, are unacceptable, especially in view of the fact that the Government itself, members of Parliament, and specialists who have been called in to provide expert testimony, have all stated that one of the major driving forces behind said reform is that of citizens' groups concerned about the impact of projects submitted to the Environmental Impact Assessment System (SEIA)**². Moreover, this omission is also totally inconsistent with the 2006-2010 Agenda on Behalf of Civil Society Participation, which is promoted by the Government of Chile. Over the last three years in Chile, the Government has asked

¹ OECD /ECLAC (2005) Environmental Performance Review: CHILE.

² See the "REPORT OF THE COMMISSION ON NATURAL RESOURCES, NATIONAL ASSETS, AND THE ENVIRONMENT, REGARDING THE BILL THAT CREATES THE MINISTRY, THE ENVIRONMENTAL ASSESSMENT SERVICE, AND THE ENVIRONMENTAL SUPER-INTENDENCE". 1st April 2009. 310 pages. Chamber of Deputies. Bulletin N. 5947-12.

for open debate, and has set up national commissions on matters such as education, pension plans, childhood programs, probity, and social justice. But this has not happened in relation to the reform of environmental institutions. We question the Government's commitment to broadening the existing venues for participation in environmental matters; we object to debate being confined to Parliament – an institution which in Chile is lacking in full democratic legitimacy.

3. Concerning the core issues of this reform, the environmental performance assessment of Chile undertaken by the OECD stresses the following aspects: the non-existence of “*an official mechanism for participation in local and regional territorial planning*”³; the need to “*integrate environmental problems into the planning of land use*”⁴; and the “importance of “*making progress towards an effective territorial planning system that is capable of incorporating the values of biological diversity*”⁵. The new bill incorporates the Strategic Environmental Assessment (SEA) recommended by the OECD – which will apply to instruments of urban and territorial planning and to government policies – but it completely omits those aspects of land-use planning that are essential for adequate environmental planning. Thus, the proposed reform will perpetuate the existing procedures for environmental assessment – case by case – of large-scale projects, and will preclude any consideration of the spatial and synergistic compounding of environmental impacts. In this fashion, there will be no institutional means of tackling the growing pressure on this country's natural resources and biological diversity, which are having serious effects on the life systems and on the territories of local and indigenous communities.

4. Just as worrisome is the fact that the proposed reform condemns civil society to continue expressing its points of view and interests in a fragmented manner whenever a large-scale project is submitted to environmental impact assessment, but without any real possibilities of influencing decisions concerning developmental options for the territories they live in. The proposed environmental reform improves some aspects of civil-society participation in the SEIA, for example, the broadening of instances for participating in suggesting substantial modifications to projects. However, it perpetuates the legalistic and bureaucratic nature of the mechanisms for environmental participation which has prevailed in Chile till now, and it avoids defining the ultimate purpose of these mechanisms.

This is precisely one of the principal demands of civil society which have been made in the context of the repeated conflicts that have derived from the environmental assessment of the large-scale projects over the last 12 years in Chile. In effect, the environmental participation of civil society has been stripped of the original purpose envisioned for it by Law N. 19,300, *Ley de Bases del Medio Ambiente* (Fundamental Law on the Environment) enacted in 1994, that is, to be a counter-weight to financial interests of the proponents of these large projects, so that environmental protection and the prevention of environmental impacts might be guaranteed by the State⁶. In fact, what has prevailed is the “*doctrine of accomplished environmental impacts*” (*fait accompli*), and which in practice means that “*no investment will be stopped or lost due to environmental considerations*”⁷. In this manner, civil-society participation has been reduced to a mere formal procedure having no power to

³ Ibidem. Page 155.

⁴ Ibidem. Page 156.

⁵ Ibidem. Page 23.

⁶ See Presidential Address N. 387-324 of 14 September 1992, which submits the bill for the Fundamental Law on the Environment.

⁷ This principle was established by virtue of Presidential Instruction N. 1161 of 28 August 1996, by President Eduardo Frei Ruiz-Tagle, and has remained a de facto environmental policy since then.

modify or influence the decisions taken by official evaluators. Thus, these mechanisms for civil-society environmental participation have no social legitimacy; this fact explains the high levels of mistrust towards environmental institutions and official decisions on environmental matters.

5. This lack of legitimacy of official mechanisms for granting environmental approval to large-scale projects, and the ensuing resistance to these projects among communities, has derived in the currently widespread, recurrent, and half-hidden practice of giving financial remuneration to individuals and families affected by the environmental impacts and risks. This is most serious, because these mechanisms operate in parallel to the SEIA, and are tacitly – and sometimes, openly – approved of by the authorities. By means of these mechanisms the companies pressure, extort, and harass affected families until they give in and accept the terms of the compensation agreements, thereby creating further conflict and division – in some cases, irreparable – within communities. In some cases, these agreements take the form of legal contracts, by virtue of which the affected parties give up their legitimate rights of defense in case of potential environmental damage or adverse health effects that may become evident in the future⁸. Such cases have occurred in several mining projects in the North of Chile, and in forestry or electrical-generation projects in southern Chile.

When questioned about such contracts, the authorities have limited themselves to stating that these are “agreements among private parties”, and that they will therefore not become involved. However, the climate of harassment that has accompanied these processes of social intervention on the part of companies has been matched by a simultaneous and growing “criminalization” of those groups and communities that have opposed the large projects. For the most part, this criminalization has affected members of indigenous communities, and has taken the form of legal actions against the many defenders of the rights of native peoples, application of anti-terrorism laws against their leaders, and police violence against many communities that oppose said projects. The gravity of this situation has attracted the attention of the international community, including, recently, the United Nation’s Human Rights Council, on the occasion of the universal periodic review of the State of Chile (May 2009).

6. In summary, the bill for reforming the environmental institutionality is devoid of procedures for land-use planning; it perpetuates the restrictions that affect civil-society participation in the Environmental Assessment System, and it fails to improve the participatory mechanisms for decision-taking regarding the use of natural resources. The opinions and the proposals of the most-concerned interested parties, i.e. citizens, local communities, and indigenous peoples who are affected by these environmental decisions, have been excluded from the debate on this environmental reform bill.

For these reasons, we request the OECD to revise Chile’s compliance with its environmental commitments, and to recommend to the Chilean Government that it improve the civil-society participatory mechanisms and broaden the debating spaces surrounding this reform bill. The following matters, among others, should be considered:

⁸ Such is the case in the “Contract for Mutual Assistance and Collaboration”, signed by the firm Arauco and the union representing fishermen in the Los Rios Region, in the context of a conflict about the company’s industrial-residues duct that will discharge into the sea.

- To take into account the experiences and recommendations submitted by the numerous local social agents and communities affected by the environmental impact of large-scale projects⁹. In particular, to ensure greater participation of diverse civil society groups, throughout Chile, in the legislative debate of the reform in the Senate.

- To bring this environmental reform bill into line with the new international instruments subscribed by Chile, such as ILO Convention 169¹⁰, and to comply with the OECD's recommendations concerning the multilateral environmental agreements ratified by Chile¹¹. ILO Convention 169, which was recently ratified, obliges the State to establish adequate procedures for consultation before undertaking or authorizing any program to explore or exploit natural resources in indigenous peoples' lands, in order to determine whether their interests will be harmed.

- To create and improve a legal framework to regulate and penalize, in adequate and proportionate manner, those individuals and companies who, having submitted projects to the environmental assessment system, are responsible for damage to the environment, and those who promote compensation mechanisms and undertake actions of coercion affecting the free will of individuals and groups.

The undersigned parties request that the OECD attempt to make the Government of Chile understand that the debate of environmental reform must necessarily include civil society and organized groups interested in defending the country's natural resources and their legitimate human rights.

Sincerely,

José Aylwin Oyarzún, Co – Director del Observatorio Ciudadano, *Claudia Sepúlveda Luque*, vocera de Acción por los Cisnes, Valdivia; *Lucio Cuenca Berger*, Director del Observatorio Latinoamericano de Conflictos Ambientales; *Bernardo Reyes*, Presidente de Ética en los Bosques; *Malú Sierra*, Defensores del Bosque Chileno; *Jorge Hueke*, Parlamento de Coz Coz, Panguipulli, *Eliab Viguera y Boris Hualme*, voceros del Comité de Defensa del Mar, San José de la Mariquina; , *Juan Moreira y Juan Manríquez*, Voceros de la Coordinadora de Defensa del Río San Pedro, Los Lagos; *Adolfo Fuentes*, Presidente del Comité por los Derechos Humanos y Medioambiente de Los Lagos; *Hugo Silva*, Concejal de la comuna de Los Lagos; *Cesar Aguila*, vocero de Salvemos Cobquecura, Región del Bío Bío; *Gino Bavestrello y Gustavo Sepúlveda*, Presidente y Vicepresidente de la Agrupación de Armadores y Pescadores Artesanales Históricas de Valdivia; *Galy Chavez*, Comité Pro Participación Ciudadana y Protección de Pirque; *Mauricio Ríos*, Consejo de Defensa del Valle del Huasco, Región de Atacama; *Jorge Godoy*, Coordinadora Regional por la Defensa del Agua y el Medioambiente de Atacama; *Luis Márquez*, Centro Cultural Social y del Medio Ambiente Ceibo, Maipú; *Vanessa Miller*, Coordinadora Ciudadana Ríos del Maipo; *Renate Benner y Ximena Rosales* de Acción por los Cisnes, Valdivia; *Patricio Herman*, Defendamos la Ciudad, Santiago; *Maira Barrientos*, Programa de Mujeres de la Corporación Codepu, Valdivia; *Claudia Rosales*, Red de Mujeres de Valdivia; *Alexandra Martínez*, Prodesam, Valdivia; *Marco Diaz*, Presidente de la Agrupación Comunitaria Defensores del Espíritu de la Patagonia, Cochrane;

⁹ An example of opinions expressed by civil society: "Synthesis of Conclusions: A CRITICAL DISCUSSION OF CIVIL SOCIETY ENVIRONMENTAL PARTICIPATION IN CHILE. DOCUMENT PREPARED BY COMMUNITIES IN CONFLICT WITH CELLULOSE PROCESSING PLANTS". Valdivia, 8 October 2007. 13 pages.

¹⁰ The ILO (International Labour Organization) Convention 169 comes into effect on 19 September 2009.

¹¹ Ibidem. Page 215.

Ninoska Vera, Presidenta de la Agrupación Defensores de la Cuenca del Murta, Río Ibañez; *Marcia Alvarez*, Presidenta de la .Agrupación Comunitaria Herederos de la Patagonia, Villa Cerro Castillo, Torres del Paine; *Alejandro del Pino*, Corporación Costa Carrera, Cuenca del Lago General Carrera, Región de Aysén; *Carolina Velazquez*, *Hugo Aparicio*, *Manuel Ruiz*, miembros de la Agrupación Nacional Jóvenes Tehuelches; y Red Ciudadana por la Defensa de la Precordillera. Región Metropolitana.

Cc

- Michelle Bachelet, President, Republic of Chile
- Jovino Novoa, President of the Senate, Republic of Chile
- José Antonio Viera-Gallo, Minister - Secretary General of the Presidency
- Ana Lya Uriarte, Minister for the Environment

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