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CHILE: AMENDMENTS TO ENVIRONMENTAL INSTITUTIONS

By Diego Vio Gorget



Give it a twist
Let's Take Care of **Chile Together**

Ministry of Environment

In 2005, Chile was subject to an Environmental Performance Review process carried out by the OECD and the CEPAL¹, whereby the environmental progress undergone by the country during the decade of the nineties was recognized. Nevertheless, the corresponding report highlights that *“important challenges remain regarding further progress of environmental management and the inclusion of environmental considerations in sector policies”*. Furthermore, *“Chile has a long way to go in certain matters until it reaches the same environmental status of most OECD member countries”*.

Law No. 20,417 - published on January 26th, 2010 - addresses and resolves a great number of observations resulting from the Environmental Performance

Review, which highlighted, among other issues, the importance of reducing the existing gaps and improving aspects related to regulation, access to information, institutionalization, supervision and environmental considerations in land zoning/planning. The amendment therefore comes as a response in order to follow up on the recommendations that resulted from the mentioned review and intends to: i) apply environmental policies in a sound and efficient manner; ii) further integrate environmental considerations into economic, social and sector decisions; and iii) strengthen international environmental cooperation.

The reform does not constitute a total amendment of the

Chilean environmental regime currently in force but, instead, reflects an effort to strengthen such regime from an institutional point of view and endow it with environmental management tools.

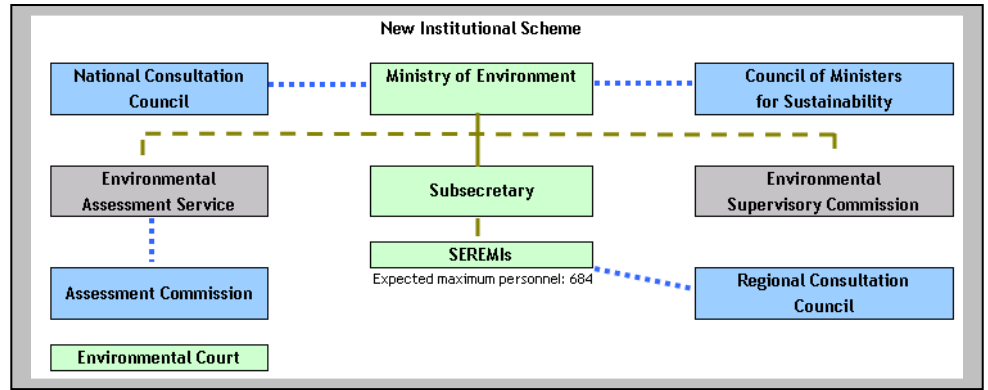
As of 1994, year in which Law No. 19,300 set forth the General Environmental Framework, the environmental institution was represented by the National Environmental Commission, a decentralized public body with legal personality and a patrimony of its own, which depended on the President of the Republic via the Ministry General Secretariat of the Presidency, and that acted as an environmental policy coordinator and environmental assessment system manager. When Law No. 20,417 came into force, the environmental institution was fortified upon acquiring greater hierarchy, specialization and responsibilities. This new model is structured under the novel Ministry of Environment, a body that occupies the highest hierarchical position possible

¹ Organization for Economic Cooperation and Development; Economic Commission for Latin American and Caribbean. OCDE Environmental Performance Reviews-Chile © OCDE, 2005.

within the public administration apparatus and whose main purpose is to cooperate with the President of the Republic in creating environmental policies, plans and rules. By means of this ministry, two decentralized services shall interact with the President of the Republic; both endowed with legal personality and personal patrimony. Such entities are the Environmental Assessment Service -the legal successor of the National Environmental Commission (CONAMA)- and the Environmental Supervisory Commission, an organism that shall oversee -with sanctioning authority- the environmental qualification resolutions, environmental prevention and/or standards, emissions and any other environmental instrument that the law may establish.

Within the structure of the Ministry of Environment, two consultation bodies stand out and seek to deepen and enrich public policy decisions with greater participation of both civil society, by means of Consultation Councils that shall have national and regional channels of expression, and of sector ministries, by means of the Ministry's Council for Sustainability that shall propose environmental policies and rules.

Regarding the newly introduced environmental management tools, the Law creates an instrument called the Strategic Environmental Assessment and modifies the Environmental Impact Evaluation System, thereby perfecting this main



environmental management tool.

Strategic Environmental Assessment is defined as the “*procedure carried out the respective sector Ministry in order to incorporate environmental considerations regarding sustainable development into the creation and implementation process of policies and general regulation plans that cause an environmental or sustainability impact, thus allowing such considerations to be included into the respective policy and plan and their material amendments*”.

Quoting from the message accompanying the bill of law presented by the Government², the objective of the Strategic Environmental Assessment is to “*anticipate eventual adverse environmental consequences associated with or that could result from the definition of a particular policy or plan and, in such manner, to evaluate the prevention or mitigation of such consequences or the mechanisms required in order to avoid the generation of cumulative environmental*

consequences”. By means of the above, the Law replies to another recommendation ensuing from the aforementioned review, by furthering the integration of environmental considerations into financial, social and sector decisions.

Application of the above instrument depends on the sector ministries and may be observed by the Ministry of the Environment, during its corresponding approval stage, and prior to its subjection to public consultation by means of the responsible body.

It is mandatory to carry out a strategic environmental evaluation regarding regional land use planning, interborough planning, borough and district planning, urban development plans, costal and maritime zoning and integrated basin management, as well as when, at the proposal of the Council of Ministers, the President of the Republic so decides.

Regarding the Environmental Impact Assessment System, the main reforms have to do with achieving the system's greater efficiency in terms of procedure and content.

² Message 352-356, dated June 5th, 2008, Message from Your Excellency the President of the Republic, by means of which the Ministry, the Environmental Assessment Service and the Environmental Supervisory Commission were created. (Gazette No. 5947-12)

In particular, the law -among other innovative matters of reform- incorporates an admission exam that analyzes the type of project and the assessment channel, allows electronic processing of the procedure, provides the grounds for rejection of an environmental impact study or declaration due to insufficient information, harmonizes the rules regarding administrative silence with those of Law No. 19,880 that sets forth the General Administrative Procedure Framework and creates a public registry of Environmental Qualification Resolutions, administered by the Supervisory Commission. As for the law's terms, it forbids project or activity fractioning intended to alter the entrance thereof into the system or the review by the assessment instrument; it establishes the obligation to consider - at base line - the existing and authorized projects, as well as the strategically assessed policies and plans; and requires an explanation as to how such projects, policies and plans relate to the regional policies, plans and programs. Furthermore, the law sets forth prescription rules for Environmental Qualification Resolutions, administered by the Supervisory Commission.

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explanation as to how such projects, policies and plans relate to the regional policies, plans and programs. Furthermore, the law sets forth prescription rules for Environmental Qualification Resolutions related to projects that do not carry out commencement work activities.

Finally, the reform contains material amendments related to information access and citizen participation. Regarding information, the reform recognizes the right to access information of environmental nature existing under the Administration's custody, thereby ordering the Ministry of Environment to implement and administer the National Environmental Information System in order to minimize, as stated in the message accompanying the bill of law "*the unbalanced distribution of information existing among the State, the private sector and the communities*"³. Meanwhile, with regards to extending citizen participation, the system in force to date is amended in two ways. Firstly, subject to the conditions stipulated by the Law, citizen participation in the assessment of projects entering via Environmental Assessment Declaration⁴ is admitted. Secondly, Environmental Impact Studies that have suffered substantial amendments resulting from annexures, whether due to clarifications,

rectifications or extensions, shall be submitted to a new participation process and, therefore, a new term for observations must be stipulated and the Environmental Assessment Services shall be in charge of such observations. This amendment seeks to do away with an incentive that encouraged the incomplete filing of projects as citizen participation was limited to the first stage of environmental assessment. In this manner, if an Environmental Impact Study was later amended by means of the so-called "annexures", it could no longer be subject to observations by means of the citizen participation mechanism.

Still pending are two issues addressed during the legislative discussions of Law No. 20,417, and which leave certain provisions of the mentioned law that seek to complete the new institutional model hanging. Such issues are: i) the delivery of a bill of law intended to create the Biodiversity and Protected Area Service and to transform the National Forest Corporation into a decentralized public service; and, ii) the passing of a bill which plans to create the Environmental Courts of Justice⁵, the creation of which depends on certain important rules connected with the sanctioning authority of the Environmental Supervision Commission.

³ Vid. President's message ...quote.pg.24.

⁴ The Chilean Environmental Law distinguishes two channels of entrance into the environmental assessment system. The first, the Environmental Impact Declaration, is a simplified procedure and basically consists in a sworn declaration regarding the project's impact. The second, the Environmental Impact Study, operates in the situations set forth by Law No. 19,300.

⁵ Message 1419-357, dated October 28th, 2009, Message of Your Excellency the President of the Republic, which gives way to a bill intended to create the Environmental Courts of Justice (Gazette No. 6747-12)



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