LATINLAWYER
THE BUSINESS LAW RESOURCE FOR LATIN AMERICA

Reference

Environment 2010 – Introduction

Rafael Vergara and Paulina Sandoval
Carey & Cía

As most Latin American countries have begun or begin to celebrate their 200 years of independence, it is time not only to look back but also to look ahead. This statement could not have been more suitable to what environmental law practice is experiencing in Latin America nowadays: a rapid growth and sophistication.

Those days when no specialised authorities or statutes existed for the protection of the environment have been left far behind. Currently, most Latin American countries have environmental institutions in place:either ministries, governmental agencies or intersectoral commissions; specific statutes and legislation to protect the environment and its components; and, environmental impact assessment provisions for the approval of development projects.

Currently, Latin America is exposed to enormous pressure given the richness and diversity of its natural resources, the justifiable aspiration to achieve development and its character as primary goods exporter. In this sense, governments are pressed to raise environmental standards and practice for their products to be admitted in their destination markets. Likewise, national and international civil society pushes for more stringent regulations and the protection of environmentally valuable areas. Additionally, the concentration of competing and sometimes mutually exclusive interests in the use of natural resources in a specific area makes the task of harmonising equally legitimate uses even more difficult.

In this context, environmental law is rapidly evolving and diverse new legislative and administrative requirements are changing the regulatory landscape on an ongoing basis. Considering this, an integrated and comprehensive view of what environmental law entails not only at the national but also at the regional and international level is fundamental to provide precise and sound legal opinions.

Given the historic, social, natural and cultural background shared by most Latin American countries, across-the-board issues are posing interesting challenges to the day-to-day practice of environmental law. In general terms, they refer to natural protected areas, citizen participation and indigenous people's rights.

Natural protected areas receive different protection in Latin American legislation, ranging from the banning to undertake any activity within its boundaries to the acceptance of certain activities once some requirements have been previously complied with, such as environmental impact assessment procedures. Given the richness and 'untouched' character of natural resources in the region, there is a permanent tension between development objectives and strict conservation interests.

Likewise, citizen participation mechanisms, community involvement in the assessment of development projects and the widespread availability of information have raised people's awareness regarding the effects of environmental issues on their daily lives. Such variables have made the approval of projects increasingly complex, requiring lawyers to develop additional skills to better comprehend all issues involved, not only from an environmental perspective but also from a social and political standpoint.

Similarly, the existence of indigenous people in the majority of Latin American countries and the ratification of the International Labour Organization 169 Convention on Indigenous and Tribal Peoples by such jurisdictions has added new challenges to the allocation of rights over natural resources.

In general terms, the identified issues are driving the legal and jurisprudential development of environmental law in Latin America; however, it remains to be seen how new issues such as climate change, ecosystem payment services, product stewardship and water basin management, among others, will be dealt with.

Finally, the objective of the following section is to provide a wide-ranging view of such legal approaches, thus allowing environmental law practitioners to grasp a general understanding of what is involved and compare different environmental legal regimes across the region.

LATIN LAWYER
THE BUSINESS LAW RESOURCE FOR LATIN AMERICA

Reference

Environment 2010 – Chile

Rafael Vergara, Paulina Sandoval and Paloma Infante
Carey & Cía

LEGAL AND REGULATORY FRAMEWORK

1 Is there a constitutional background for the environmental regulation in your jurisdiction?

Article 19 No. 8 of the Constitution of the Republic guarantees any person the right to live in a pollution-free environment. It is the state's duty to enforce the protection of this right and the preservation of nature.

2 What are the basic environmental statutes and regulations in your jurisdiction?

Law No. 19,300 or the Environmental Framework Law (Law No. 19,300), provides the basis for the organisation of environmental laws in Chile. It establishes the regulatory framework for environmental activity in Chile such as the environmental impact assessment system (EIAS), liability for environmental damage, air and water quality and emission standards, and pollution prevention and decontamination plans, among others. Pursuant to Law No. 19,300, rules on emission and quality standards, decontamination and prevention plans, and the environmental impact assessment procedure may be also considered basic environmental regulations.

Additionally, there are several statutes that are environmentally relevant given their environmental content such as the Native Forest Law, which aims to protect native forests from indiscriminate logging; the Fishing Law, which establishes certain bans on discharging waste into seawater; and the General Urbanism and Construction Law, which contains certain rules on scenery protection, among others.

3 What environmental civil liabilities apply in your jurisdiction in the case of environmental damages or torts?

Anyone who causes environmental damage could be required, under Law No. 19,300, to restore the environment through an environmental restoration action for environmental damage or to compensate any monetary damages through an environmental civil tort action. The environmental restoration action may be filed by the affected person, the municipality in whose jurisdiction those damages occurred or the Chilean state through the State Defence Council. The environmental tort action may only be filed by the affected person.

According to Chilean Law, environmental liability is based on the negligence of the offender. Thus, it is necessary to maintain a high standard of care and precaution in performing activities that pose a risk to the environment.

4 What is the role of the courts in protecting the environment (constitutional remedies, civil and criminal procedures)? Please describe any noteworthy judgments issued by a court in your jurisdiction related to environmental issues.

Regarding constitutional remedies, the Constitution created an action (*recurso de protección*) by which anyone whose constitutional rights are being affected may seek a proper remedy and the adoption of measures to stop the infringement. Among the rights protected is the right to live in a pollution-free environment.

Regarding civil remedies, Law No. 19,300 contemplates the environmental civil tort action by which the affected person may seek compensation for environmental damage. On the other hand, there is no general statute on criminal environmental felonies in Chile. Some rules can be found in the Chilean Penal Code that punishes specific environment-related actions such as the propagation of animal plagues or diseases without permission from the authority, the poisoning or contamination of drinking water, and fraud committed by causing fires in forests and mountains, among other specific actions.

As to environmental cases, it is worth noting a Supreme Court's decision that confirmed a Court of Appeals's ruling that revoked the environmental approval resolution (EAR) of a coal-fired power plant. By means of a *recurso de protección*, several communities and environmental NGOs requested the EAR revocation since the plant was wrongfully located according to applicable land zoning regulations. Although relevant sectoral authorities favourably informed the location of the project and the project holder relied on such position, the Supreme Court held that the environmental approval was granted in violation of zoning land regulations and consequently revoked the EAR. Such ruling meant stopping the construction of the plant which had already started, based on the approval granted. This ruling is relevant since it is one of the few cases in which an EAR has been revoked through a constitutional protection action and has prompted the authorities to enact some modifications to the applicable regulation.

5 Please identify the major public agencies involved in environmental matters in your jurisdiction. What are their respective roles and environmental law enforcement jurisdictions?

Law No. 19,300 created the National Environmental Commission (CONAMA, a public agency headed by the minister of the environment), which coordinates the government's environmental action and policies, and manages the EIAS. This law was recently modified by Law No. 20,417, which creates new environmental institutions such as: the Ministry of the Environment, which will be in charge of environmental policies and programmes; the Environmental Assessment Agency, which will be in charge of managing the EIAS; and, the National Bureau of the Environment, which will be in charge of overseeing compliance with environmental laws. These institutions have not been implemented yet; thus, CONAMA is still operating.

Additionally, there are other public agencies with the authority to establish environmental regulations and oversee their compliance such as the Health Authority, the Agricultural and Livestock Service (SAG), the General Water Bureau (DGA), the National Mining and Geology Service (SERNAGEOMIN), the National Forest Corporation (CONAF), the National Monuments Council, the Superintendency of Sanitary Services, the General Directorate of Maritime Territory and Merchant Marine, and the Superintendency of Electricity and Fuels. Each of these agencies plays a specific environmental role in relation to their specific attributions.

6 What is the role of non-centralised (local, municipal, regional, departmental, etc) government in environmental protection?

CONAMA operates throughout the Chilean territory by regional offices (COREMA and CONAMA's Regional Director). Thus, the undertaking or modifications of projects that require environmental assessment must be submitted to the relevant COREMA of the region where the project is located. Additionally, public agencies such as CONAF, SAG, DGA and SERNAGEOMIN have regional offices nationwide that oversee compliance with relevant environmental regulations according to their subject matter and geographical attributions. Additionally, municipalities are obliged to file an environmental action when anyone who has suffered environmental damage requests that they take such action. The municipality will represent the claimant based on the background information provided by the claimant. Municipalities may act ex officio in other civil actions contained in Chilean Law, known as 'municipal action'.

7 What administrative penalties may be imposed when an environmental law is violated? What, if any, are the criminal penalties?

Relevant public agencies have the authority to impose administrative penalties according to their sphere of competence for breaches by the project holder (ie, closure of the facility by the relevant health authority). Moreover, the violation of an environmental law by a project that has been submitted for environmental evaluation may be subject to fines up to US$35,000 for each breach, or even the revocation of such approval, imposed by the relevant COREMA.

Chilean criminal laws contain no specific penalties for the violation of environmental laws. Any criminal action for the breach of an environmental law must equate the environmental breach behind the action to its equivalent criminal typology.

8 How may decisions regarding breaches of environmental law be appealed?

Law No. 19,300 and Law No.19,880, the General Administrative Procedural Law, grant several actions that can be filed against sanctions and penalties imposed by public agencies for breaches of environmental law. Some of these actions must be filed before the same public agency that imposed the sanction and others must be filed before their superiors. Likewise, when the administrative procedure is over, the project holder may seek relief from such decisions before courts.

9 Does your jurisdiction allow environmental class actions?

Environmental class actions are not recognised in Chilean environmental laws. Nonetheless, Courts of Appeals have allowed a few constitutional remedies to be filed by multiple parties when environmental damage has affected locations or certain populations.

ENVIRONMENTAL IMPACT ASSESSMENT

10 Is an environmental impact assessment mandatory prior to the execution of a private or public project? What are the main projects and activities subject to environmental impact assessment?

Since the enactment in 1997 of the Executive Decree No. 30/97, or Environmental Impact Assessment System (EIAS) Regulations, public and private projects listed in those regulations (article 3) cannot be executed or modified unless they are first submitted to the EIAS. Projects and activities subject to environmental impact assessment refer to energy generation, mining and industrial activities and, in general, to projects that entail relevant environmental impacts whether by reason of their magnitude or hazardous nature. The assessment is based on an environmental impact study (EIS) or environmental impact declaration (EID), which determine whether environmental impacts of a project or activity abide by governing law.

11 What are the main steps of the environmental impact assessment procedure, if any?

The project holder must submit the project to the EIAS through either an environmental impact study (EIS) or environmental impact declaration (EID), depending on the significance of its environmental impacts. Such documents must be submitted to the relevant COREMA, which after a formal admissibility check notifies them to public agencies with environmental attributions over the project. These public agencies comment on the project and deliver their observations to COREMA. The project holder must then answer such observations and comply with the requirements made by such authorities in a document called 'addendum'. Once the project holder complies with all requirements and observations made during the evaluation, the environmental assessment process culminates with the issuance of an environmental approval resolution (EAR), provided that the authorities consider the project complies with applicable environmental laws. This EAR is issued by the relevant COREMA and is based on the reports of the public agencies that participated in the evaluation of the project or activity.

12 How do NGOs and communities participate in environmental impact assessment? Are their observations binding to the authorities? If not, what is the legal value of them?

As opposed to the evaluation of an EID where no citizen participation is required, Law No. 19,300 establishes specific participation mechanisms for the evaluation of an EIS. That is, any individual or legal entity may participate in the environmental evaluation of an EIS of a determined project. For this purpose, an excerpt of the EIS submitted to evaluation must be published in the Official Gazette and in a local and national newspaper. After that, any individual or legal entity may submit their observations to the project within 60 business days from such publications. These observations must be considered by the authority during the evaluation process and weighted in the relevant EAR. Even though this phase contributes to inform the community of the environmental consequences of a specific project and to obtain communities' opinions, its results are not binding on the authority.

13 What is the main legal feature of the environmental impact assessment approval? Does it operate as an 'umbrella environmental licence'?

The EAR operates as a global environmental permit, which certifies that a project complies with all applicable environmental requirements and regulations. It entitles the project owner to obtain the relevant environmental permits related to specific environmental components described in the EAR. Once the EAR is granted by COREMA, no specific environmental permit may be denied for environmental reasons, although they may be denied for any other reason such as non-compliance with specific obligations or conditions. Hence, the EAR may well be considered as an 'umbrella environmental licence'.

Furthermore, an EAR may be reviewed on an ongoing basis by COREMA's own initiative or by request of the project holder or an affected third party. In this review process, the EAR could be modified by COREMA when environmental variables have not been evolved or verified as foreseen. In such a case, the COREMA may require stricter measures to correct the situation.

14 What are the legal consequences of implementing an activity without performing a mandatory environmental impact assessment?

There is no specific penalty contemplated either in Law No. 19,300 or in any other environmental law for projects or activities that are carried out without environmental approval. The consequence of such breach is that no environmental specific permits will be granted for that project and negligence will be presumed from the project holder if any environmental damage arises.

NATURAL RESOURCES, WILDLIFE AND PROTECTED AREAS

15 What is the legal regime applicable to protected areas in your jurisdiction? What are the main categories or units of protection (national parks, reserves, etc)? Is it legally possible to develop activities such as mining, logging or electric generation within the boundaries of a wildlife protected area in your jurisdiction?

The National System of Wildlife Protected Areas (SNASPE) is an environmental management tool used to administrate certain state-owned areas of the national territory, in which an environmental policy of sustainable development must be observed. This system is run by CONAF. Accordingly, the SNASPE can be classified as: national parks, national reserves, natural monuments and virgin

region reserves. This classification is found in several specific laws (ie, the Forest Law) and especially in the 1940 Convention for the Protection of Flora, Fauna and the Scenic Natural Beauties of America, or the 'Washington Convention', which has been enacted as internal law. Law No. 19,300 promotes private wildlife protected areas which can be created voluntarily by landowners. However, it also provides that requirements and procedures to eventually consider private land as private wildlife protected area must be set down in regulations that have not yet been enacted.

According to the Washington Convention no commercial exploitation is allowed in national parks, natural monuments and virgin region reserves; only activities for educational, research, scientific or recreational purposes are allowed. Commercial exploitation is possible only in national reserves, provided that sustainable development principles are respected. Additionally, the undertaking of works, programmes and activities in SNASPE sites must obligatorily enter the EIAS.

Please note that this has been a controversial issue in Chile. Recent rulings have accepted on a regular basis the development of productive projects on national reserves, provided adequate environmental measures are adopted. Lately, a Supreme Court ruling accepted the development of a small hydroelectric power project in a national park in the south of Chile, which has led to productive development inside national parks.

16 Does your jurisdiction protect private land? Is it possible to establish conservation easements to protect private lands?

Law No. 19,300 promotes the creation of private protected land, but the specific regulations have not yet been enacted. In April 2008, a bill of law regarding 'conservation easements' was submitted for discussion to the parliament. This conservation easement would be based on the landowner's decision to establish limitations on his property for environmental reasons and for the protection of the land ecosystem or environmental components, or both. This easement would be established in favour of a certain holder or trustees related in some way to the project such as NGOs and certain environment-related governmental agencies.

17 What are the main regulations applicable to flora and fauna? Are endangered species protected?

Executive Decree No. 701/74, or the Forest Law, regulates the protection of flora, specifically forests. Any activity that involves logging or exploiting native forest can be implemented only after a management plan is approved by the National Forest Corporation (CONAF). This obligation must also be fulfilled by planting forests on land apt for forestation. Additionally, Law No. 20,283, or the Native Forest Law, restated criteria regarding logging native forests, the intent being to recover and enhance native forests in order to assure forest sustainability and related environmental policies. On the other hand, Law No. 4,601/96, or the Hunting Law, stipulates that species of endangered wild fauna can only be hunted or caught in certain areas prior to authorisation of the Agricultural and Livestock Service. Finally, Executive Decree No. 75/05, or Regulations on the Classification of Wildlife, sets down a procedure to be followed to classify wild species of flora and fauna in any of the conservation categories contained therein, according to their risk of extinction.

18 How is the use of genetically modified organisms regulated?

Law No. 19,300 does not prohibit transgenic material, but it regulates this activity accordingly. The main principle is the unacceptability of initial releases of genetically modified organisms. They must first have been released in their country of origin where the respective authority must have certified that they were not harmful to the environment or to agriculture. Transgenic material can be imported only under prior authorisation of the Agricultural Protection Department of the Agricultural and Livestock Service (SAG).

19 How are marine ecosystems are protected?

The Fishing and Aquaculture Act establishes three conservation and management categories:

- Marine Park, the objective of which is to preserve significant ecological units and protect the ecosystem and species diversity, and for that no activities can be carried out unless of research or scientific purpose;
- Marine Reserve, the objective of which is to protect hydrobiological resources, and for that only temporary extractive activities may be authorised; and
- Benthonic Resource Management Areas, which are assigned to fishermen organisations for the sustainable exploitation of benthonic resources.

Likewise, other regulations establish different categories of protection such as:

- Genetic Reserves that are areas located in marine or continental waters in which some restrictions regarding species or capture methods for hydrobiological resources are established;
- Nature Sanctuary, which correspond to terrestrial or marine areas of research interest or that have natural formations the conservation of which is of the State or science interest; and
- Protected Coastal Marine Areas of Multiple Uses, which are delimited areas for the regulation of protection and conservation purposes and the development of sustainable activities.

On this matter, Chile has ratified the Protocol for the Conservation and Management of Protected Marine Coastal Areas of the Southeast Pacific, which establishes the obligation to create protected marine and coastal areas. Additionally, some international conventions have been ratified regarding the protection of specific species such as whales, Antarctic seals and migratory species, among others.

POLLUTION CONTROL

20 What regulations apply to air pollution control (point sources and non-point sources)?

Quality standards establish the maximum limits of air pollution allowed in the atmosphere. These standards determine whether the affected area must be declared as 'latent' or 'saturated' by a pollutant, in which case a prevention or decontamination plan must be prepared and implemented. Some of the most important quality standards relate to sulphur, arsenic, particulate matter, lead, ozone, sulphur dioxide, nitrogen dioxide and carbon monoxide. On the other hand, emission standards establish the maximum limit of air pollutant emission allowed for point sources. Emission standards relate to particulate matter, arsenic and annoying smells arising out to the production of cellulose.

21 How is the generation, transportation, treatment and disposal of industrial solid waste regulated?

Executive Decree No. 594/99 provides that the generation, handling, accumulation, treatment, commercialisation or final disposal of solid industrial waste, in or outside the industrial facility, is subject to the Sanitary Authority supervision, which grants the pertinent approvals and authorisations. In 2005, the Sanitary Regulations on Solid Hazardous Waste Treatment came into force (Executive Decree No. 148 issued by the Ministry of Health), which established the minimum sanitary and security conditions applicable to the generation, holding, storage, transport, treatment, reuse, recycling, final disposal and other forms of hazardous waste disposal.

22 How do the water pollution control regulations operate (BAT, quality or emissions standards, both)?

Water pollution control considers quality and emission standards and the establishment of prevention and decontamination plans. Very few quality standards have been enacted so far, only regarding seawaters and for a specific lake in the South of Chile; however, several standards are under preparation and review. On the other hand, several emission standards that regulate the discharge of liquid waste into seawater, continental surface waters, groundwater and sewers have been enacted such as the Executive Decree No. 90/01, which regulates liquid waste discharges into seawaters and continental surface waters; the Executive Decree No. 46/03, which establishes emission standards for liquid waste discharged into groundwater; and, the Executive Decree No. 609/98 which refers to waste water discharges to sewers.

23 Are there any special regulations on cleaning up contaminated sites or reclamations?

There are no generally applicable regulations regarding the cleaning of contaminated sites. However, this issue may arise when an EAR imposes certain clean-up obligations upon the project owner. Failing to clean up the site would breach the relevant EAR, triggering consequent penalties.

24 When real estate is acquired, what liability do the previous and new landowners have for polluted land?

Chile does not stipulate liability either of the previous or actual owner related to the recovery of polluted real estate. Additionally, no regulations similar to the USA CERCLA (Comprehensive Environmental Response Compensation and Liability Act) have been enacted in Chile so far. Nonetheless, it may be possible for the new owner of the polluted real estate to file a civil action against the previous landowner to seek the clean-up of the site or an indemnity if the pollution was not duly informed to the potential buyer during the sale process.

ENVIRONMENTAL MANAGEMENT

25 Are there any market-based instruments, such as environmental taxes or tradable permit systems that aim to improve the environment in your jurisdiction? Are there any experiences or regulations regarding ecosystem services payments?

The only tradable permit system in Chile was enacted by Executive Decree No. 4/92. It establishes a particulate matter emission standard for point sources of the Metropolitan Region, distributing a certain amount of maximum daily emission units to each point source according to their emission needs. These units can be acquired, lent and transferred only among these sources, creating an emission transfer stock market. Additionally, in 2003 the Decontamination Bonds Law was submitted for discussion to the Chilean parliament, but it is still under debate.

Regarding ecosystem services payments (ESP), Chile has no extensive experience in the implementation and management of them. However, the Native Forest Law has introduced a definition of environmental services and created the Conservation, Recovery and Sustainable Management for the Native Forest Fund, which establishes a rebate system for those who undertake forestry activities aimed at obtaining non-timber forest products such as recreation and tourism. The application of this legislation is recent so there is no major experience on the matter.

Likewise, the Forest Law has established some incentives that may be considered as ESP since it contemplates subsidies and tax incentives for those who undertake forestation as well as recovery of degraded soil activities.

26 What are the most common environmental matters and conflicts in the major economic activities in your jurisdiction?

Since one of the major economic activities in Chile is mining, environmental conflicts arise from the construction and operation of tailing dams and mineral and hazardous waste management. Likewise, and considering that the majority of mining projects are developed in dry areas, the scarcity of water and the existent of competitive uses is very important. Regarding industrial or manufacturing projects, main issues stem from location and applicable zoning regulations which are used to decide how well projects are developed and completed. Regarding power generation projects, main environmental issues arise from the use of water and the generation of liquid waste in the case of hydroelectric projects, and air pollution in the case of coal fired power plants. Finally, the major issue in one of the South of Chile's major activities – salmon farming – relates to water pollution and the imposition of measures to avoid it.

27 What are the most relevant issues to consider in a merger or acquisition?

One of the most important issues to consider in the merger or acquisition of a company that conducts activities which might affect the environment is whether the obligations imposed by the EARs that approved the project have been properly fulfilled. A breach of these obligations may lead to the imposition of fines, sanctions and penalties, while repetitive breaches may result in the revocation of the EAR. Hence, the analysis of how well environmental mitigation and compensation activities are being implemented and the proper level of this compliance are particularly important in any merger or acquisition. Additionally, several other environmental-related issues may be considered important such as the review of whether specific environmental permits have been granted, the location in accordance with zoning plans, the relationship with environmental authorities and communities, etc.

28 Do local banks consider environmental risks when financing a project? How do they assess such risks?

When financing a development project, local banks require full disclosure of its environmental approval status and often require legal risk assessment based on how non-compliance contingencies regarding environmental issues may affect the feasibility of the project in the short and long term.

29 How are non-conventional renewable energies promoted in your jurisdiction?

In 2008, Law No. 20,257 amended the Electricity Law and imposed the obligation on all electric utilities that withdraw electric energy from interconnected electrical systems with an installed capacity of over 200MW to guarantee a pre-set percentage of energy coming from non-conventional renewable energy whether self-owned or purchased from third parties. This pre-set percentage is gradually increasing from 5 per cent to reach up to 10 per cent in 2024.

30 What are the principles or policies underlying the environmental law in your jurisdiction?

Law No. 19,300 sets forth the foundation of a modern environmental policy which is expressed in policy instruments that are mainly based on precautionary and citizen participation principles. The precautionary principle refers to the causes and sources of environmental problems and aims to reduce and prevent the negative effects that could be caused to the environment. The citizen participation principle intends to give communities and groups an opportunity of informed interaction with authorities regarding environmental issues that affect them.

CULTURAL HERITAGE

31 How is cultural heritage protected (archaeological, historical, etc)?

Cultural heritage is protected by a specific public agency, the National Monuments Council (the Council). Law No. 17,288, or the National Monuments Law, establishes the classification of sites, artefacts, constructions and ruins that are considered national, public and archaeological monuments and, thus protected by the Council and considered part of the nation's patrimony. The National Monument Regulations on archaeological, anthropological and paleontological excavations establish that no sites with cultural or historical value may be used or excavated without prior authorisation of the Council. Additionally, they establish the obligation to immediately report to the Council when archaeological, historical or cultural sites or artefacts are found during any work. An authorisation must be granted to conduct any work (mining, drilling, construction activities for projects, etc) after the Council has finished the archaeological conservation of the finding.

32 What, if any, are the environmental issues related to indigenous peoples' rights? Are there any restrictions on developing projects in indigenous protected lands?

Law No. 19,253, or the Indigenous Law, establishes a special statute applicable to indigenous peoples and communities living in Chilean territory, their ethnic and cultural manifestations and customs. It recognises land as the principal reason for their existence and cultural background, thus the protection of indigenous land is regulated thoroughly in this Law.

Environmental issues regarding indigenous people's rights generally stem from the declaration of indigenous development areas (IDA) which correspond to lands where indigenous peoples and their ancestors have historically populated, allowing them to depend on the natural resources existing in that territory. Although IDAs are not considered protected areas within Chilean legislation

and do not impose any specific legal restriction or requirements, investments projects carried out within its boundaries must be subject to consultation or participation procedures. Furthermore, Chile ratified in 2008 the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries. As a result, actions for the recognition and promotion of rights and the adoption of measures aiming at the development of indigenous populations acquired a relevant importance in Chilean legislation.

INTERNATIONAL TREATIES

33 What are the main environmental international treaties ratified by your jurisdiction?

Chile subscribed and enacted as Chilean domestic law a number of environmental treaties. The main Conventions are the following:

- the Convention for the Protection of Flora, Fauna and the Scenic Natural Beauties of America of 1940, or the Washington Convention;
- the International Convention for the Regulation of Whaling;
- the Convention for the Protection of the Marine Environment and Coastal Area of the Southeast Pacific;
- the Vienna Convention for the Protection of the Ozone Layer;
- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- the Stockholm Conventions on Persistent Organic Pollutants;
- the Convention on Biological Diversity; and
- the United Nations Climate Change Convention, and the Kyoto Protocol, among others.

34 How are the United Nations Framework Convention on Climate Change and the Kyoto Protocol addressed in your nation? Are there any special procedures to promote the Clean Development Mechanism?

In 1998, Chile subscribed the Kyoto Protocol and enacted it as Chilean domestic law in 2002. In order to promote the Clean Development Mechanism (CDM), special government funds have been allocated to supporting projects that contribute to a decrease in greenhouse gases emissions and sustainable development. As of June 2010, 37 projects were registered under the CDM scheme, most of them related to biomass and hydroelectric power generation.

Carey & Cía

Rafael Vergara
rvergara@carey.cl
Paulina Sandoval
psandoval@carey.cl
Paloma Infante
pinfante@carey.cl

Miraflores 222, 24th Floor
Santiago
Chile
Tel: +56 2 365 7200
Fax: +56 2 633 1980

www.carey.cl