

## Biodiversity and Development

**The risk is that the bill which creates the Service of Biodiversity and Protected Wild Areas (SBAP) becomes a bearer of bad news for the freedom of entrepreneurship. Forbidding the development of economic activities in certain territories, under any condition whatsoever, may have ominous consequences for the country. It would seem more convenient not to forbid specific activities but rather the possible damages that these could generate.**

The concern for the environment and the protection of the flora and fauna is not new in Chile. The National Park Vicente Pérez Rosales was created almost ninety years ago, in 1929.

This concern for the environment has increased over time; in 1987, the Global Commission on Environment and Development published the report "Our Common Future", which set forth an economic growth based on sustainability policies and expansion of the environmental resources' base, through the application of policies oriented towards the proper management of these resources. This gave rise to the concept of "sustainable development", defined as the one which allows *fulfilling the needs of the present*

*generations without compromising the possibilities of the future ones in order to satisfy their own needs.*

It is surprising to confirm that the economic development issue is so frequently in apparent contradiction with the environment care. A clean environment, and respectful of the flora and fauna, is no doubt a desirable good and, therefore, it is to expect that as the development level increases, the access to what the society appreciates, such as biodiversity and a pollution-free environment, improves.

Nevertheless, businesses are often caricatured as a source of negative externalities, as opposed to nature, which is positive by

definition. This image is incomplete and unfair. The productive activity has benefits for society, such as the creation of value, employment creation, infrastructure construction, energy generation, and many other goods and services which benefit society. On many occasions, the economic activity causes an impact on the environment, which must be repaired or compensated, and the consequence of this is generally positive for society.

The perception exists that the benefits from environment care are not adequately internalized by individuals in their decision-taking. This conviction would justify that the State intervenes in favor of this superior good – the environment care -, which would allow it to curtail the individuals' activities. It is always risky to reduce individual liberties in favor of a superior good which each individual is apparently not qualified to achieve by himself.

Is this the only possible way? Wouldn't it be feasible to generate the necessary institutional framework that enables members of the society to reach a balance which the community truly appreciates, in a free and sovereign way? Human creativity has allowed generating instruments to solve so many conflicts concerning the resources which have turned scarce as time goes by. Therefore, we must not abandon the concept of freedom arguing that people do not internalize the costs and benefits of their acts.

Chile has shown important growth rates in the last decades, with equally favorable progress in environmental issues. In fact, it is a country whose environment performance is widely recognized – confirmed by the international Environmental Performance Index (EPI) 2010<sup>i</sup> -, something which is not always admitted by those who call for more radical advances.

The international evidence indicates that as the income levels increase, the environmental quality also improves. It is important to seek more international agreements to improve the global environmental conditions, but always safeguarding that the development capacity is not inhibited by restrictions which are not consistent with the social and economic situation of a country where uprooting of poverty is still the main challenge.

### **The rules of the game in Chile**

Concerning issues of environment preservation and conservation, the global trend has had a major influence in Chile, which has signed

agreements imposing obligations and duties in environmental matters. These agreements are not an imposition, and are neither above the internal legislation, but they are a possible and eventually desirable way to go.

In relation to the national legislation, the Environment Framework Law (Law Nr 19,300) was approved in 1994. A particular feature of this Law is that it did not assume restrictive positions *a priori* regarding the productive activities to be developed in the national territory. As a matter of fact, the Law actually considered the possibility to evaluate the convenience of performing productive activities in any area, including those of protected nature, as long as the projects presented and approved their environmental impact study.

In 2010, the Law Nr 20,417 entered into force, modifying the Environment Framework Law, and thus strengthening the institutional framework. Nevertheless, the institutional framework in charge of protecting the natural resources and biodiversity is still pending; this is what gave birth to the bill currently being discussed. The purpose of the bill which creates the Service of Biodiversity and Protected Wild Areas (SBAP, in Spanish) is to protect the biological diversity, preserve nature and conserve the country's environmental asset. The main functions assigned to the SBAP would be to: (i) administrate a national system of protected wild areas (SNASP, in Spanish) and the administration and management of those areas; and (ii) apply and control standards for the conservation and sustainable management of biodiversity.

### **Comments on the bill which creates the SBAP**

The bill represents a change of paradigm in environmental issues, since it modifies the rules of the game concerning the development of economic activities. In fact, the bill generates doubts as to how the projects in protected areas are going to be regulated.

The protected areas are considered an essential instrument for the preservation and/or conservation of biodiversity and the protection of natural resources.<sup>ii</sup> In Chile, those with a biodiversity protection purpose comprise an area of 15.7 millions hectares, representing 20.7% of the national territory. From these, the highest proportion corresponds to National Parks (12.3% of the national territory), followed by National Reserves (7%), while National Monuments, Nature Sanctuaries and Fiscal Real Estates represent 1.4% in whole.

These numbers do not include the 64 Priority Sites for the conservation of biodiversity declared by the National Environment Commission (CONAMA, in Spanish), which are equivalent to an additional 6% of the national territory (46,340km<sup>2</sup>). Neither is being considered the native forests which are not part of the protected areas, but that are protected under the Native Forest Law, and adds another 100,000km<sup>2</sup>. On the other hand, the protected marine areas represent 1.7% of the coastal area.

According to the announcements, the new service should order and reclassify the current classifications in 8 protection categories whose purpose is the protection of nature and biodiversity; we might assume that it will establish different restriction levels to the activities that might be developed in them, starting from research to the sustainable productive use. The idea is to later adequate these categories to those proposed by the International Union for the Conservation of Nature (IUCN), which has mutually agreed 7 management categories in terms of the desired targets, and has defined different levels of activity prohibitions and restrictions.

Table 1

TERRESTRIAL PROTECTED AREAS			
	Ha	% of national territory	% of protected areas
National Total	75,713,980	100%	
Protected Areas	15,657,733	20.7%	100%
National Parks	9,333,664	12.3%	59.6%
National Reserves	5,285,462	7.0%	33.8%
Natural Monument	38,193	0.1%	0.2%
Nature Sanctuary	438,520	0.6%	2.8%
Fiscal Real Estate	561,894	0.7%	3.6%

Source: Presentation Análisis de las Modalidades de Protección de la Biodiversidad en Áreas Terrestres y Marinas en Chile (Analysis of the Biodiversity Protection Modalities in Terrestrial and Marine Areas in Chile), CONAMA 2010.

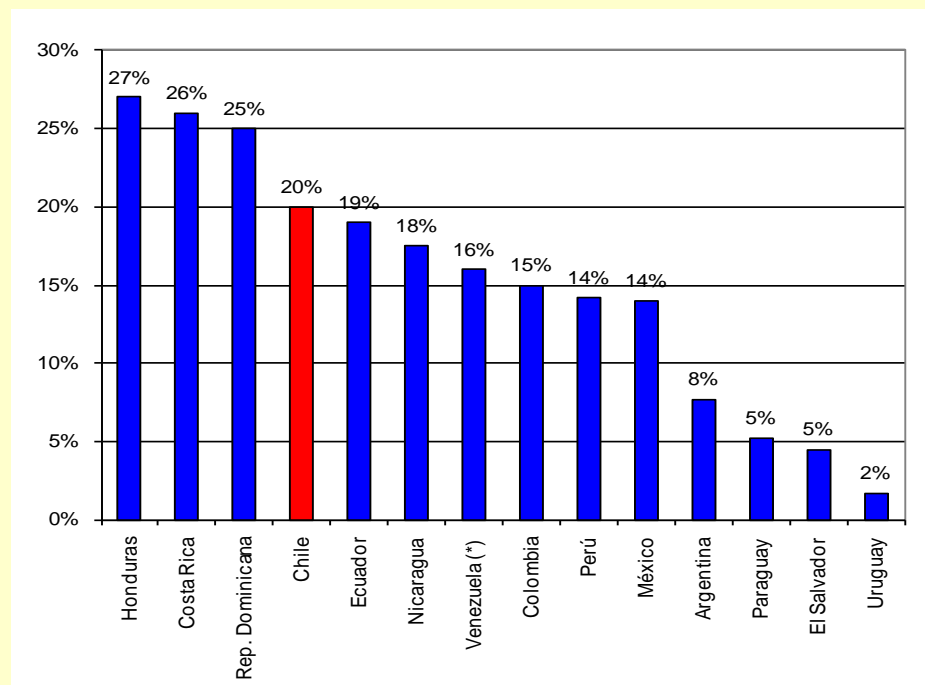
The first concern is related to the localization of natural resources. If the classifications follow the IUCN criteria there would be sectors where one could do practically nothing; but, what happens if big workable resources are discovered in the future and they are located within the protected areas? It seems fair to ask if it would be more

reasonable not to touch the area or rather develop the project with the corresponding mitigation and compensation measures which yield an equal or higher environmental value to the damage produced. Likewise, a project may also be compatible with the protection purpose, and therefore it has no sense to forbid it.

In any case, the main problem is that it is not clear enough if the bill admits the development of sustainable productive activities or not, as the spirit of the Law on General Environmental Framework provided for. This doubt is particularly relevant after the scenario generated in the Barrancones case, where President Piñera referred to the incompatibility of the development of productive activities in “places near” protected areas, even if they comply with the environmental requirements. This set an unfortunate precedent which has given rise to a series of even more restrictive parliamentary initiatives.

Chart 1

## COVERAGE OF PROTECTED AREAS (NATIONAL TERRITORY %)



Source: Financial Sustainability for Protected Areas in Latin America, FAO.

(\*) Venezuela reports 55% of the national territory as a protected area, but only 16% of the national territory is managed as such. The rest belongs to a category of integral management within a context of land management.

The risk is that the bill under discussion may bring bad news for the freedom of entrepreneurship, expressed in the Constitution. Forbidding the development of economic activities in certain territories, under any condition whatsoever, may have ominous consequences for the country, because excluding territory from development and establishing non-qualified areas for the productive activity sounds dangerously close to land planning. Along these lines, and contrary to the announcements, it would seem more convenient not to forbid specific activities, but rather the possible damages that these could generate. What really has to be defined is the compatibility of the project developments with specific goods or values you seek to protect, and not to prohibit activities *per se*. This defends the idea of defining a protected area in terms of the goal to be achieved and not as a planning of activities to be developed, since it seems reasonable that any activity can be accepted as long as the nature and volume of the proposed activity indicates the compatibility of the project with the purposes of the protected area.

Likewise, the bill should deal with the criteria for defining protected areas. In particular, the declaration of protected areas must be based on real, justified and financially feasible objectives. The latter is relevant, since nothing is gained by declaring protected areas if there is no budget to implement prevention or conservation plans, so the declaration of protected areas must rely on adequate public budget.

In brief, both the criteria for the definition and categorization of protected areas, and the possible restrictions applied to the activity are worth being analyzed, and eventually reconsidered in relation to the bill's proposition.

### **Some particular questions concerning the bill**

There are a series of additional aspects in the debate about the bill concerning the SBAP and which contributes to create an undesirable scenario of uncertainty. A preliminary and non-exhaustive analysis of the project allows indicating the following:

1. If more strict prohibitions are defined in current or future areas where the development of productive activities has already started, what happens with the existing works or productive facilities?

2. What happens with the projects which are currently in the Environmental Impact Evaluation System (SEIA, in Spanish), whose location risks to be redefined in a category of protected areas with more severe restrictions?
3. Will there be exception situations which give any feasibility to the projects located in areas within more restrictive categories?
4. What happens with the subsoil of the protected area?
5. What do we understand by protection of the “landscape value”?
6. What is the legal situation of the Priority Sites during the time it takes for them to be declared protected area or not (which can last up to three years)?
7. Does the Technical Committee participate in the approval of the management plans in private property protected areas?
8. What types of concessions are feasible in the protected areas?
9. Which are going to be the parameters defining if the execution of the concessions is to be made through an executive decree of the Ministry of Environment or a resolution from the National Director?
10. Under what conditions shall the Technical Committee stipulate that a concession in State-owned protected areas may be granted by direct allocation?
11. Is there any claim instance in case the parts do not agree with the resolutions of the Technical Committee with regard to the concessions granting?
12. When could the State rescind keeping the improvements of the concession?
13. How can we prevent private individuals from appropriating areas in the places analyzed for project developments in order to avoid their execution?



14. Is it reasonable that the monitoring functions in the State-owned protected wild areas are performed by people who are in charge of these areas?
15. Will there be enough information and advertising to prevent visitors from wrongdoing by ignorance?

Despite the existence of the doubts and apprehensions mentioned above, the project has also a series of positive elements and it would be important to keep and defend them during the legislative proceeding. Among them, we can highlight the following:

- a) State interference is limited to the public-owned grounds; the appropriation of private areas will be subject to the voluntary approval of their owners, either because they receive a benefit in exchange or due to expropriation.
- b) It seems adequate to separate the conservation functions from activities encouraging sectoral growth and development. However, it is important to continue to carry out the latter.
- c) The participation of the Council of Ministries in the decision taking process is positive, and it is an opportunity to give political support to the decisions of the Ministry of Environment, safeguarding in turn the legitimate interests of each one of the sectoral ministries. It also avoids that arbitrary decisions end up unnecessarily limiting the country's productive development.
- d) The creation of a grant fund is also positive and better than giving direct subsidies which tend to be more arbitrary. It would be advisable for this fund to receive contributions from third parties in the form of compensation measures.

### **Conclusions**

The bill that creates the SBAP goes far beyond the sole creation of a public service, since it establishes management instruments for



protecting biodiversity and preserving nature that can turn into great obstacles for the country's productive activity development. There is also an increasing public opposition to all kinds of ambitious projects, especially in the energy field. Therefore, we hope that the classification of the different protected areas is properly evaluated, considering that to condemn large productive areas of the country to inactivity would only delay the necessary impulse for our socioeconomic development.

It seems more reasonable to allow productive uses in any area, but with different restriction levels that allow taking into account the established protection objectives for each one of the protected areas. To achieve this, it is necessary to strengthen the environmental evaluation system, based on technical criteria and goals that serve as a basis for the approval or refusal of development projects. If these and other environmental conservation instruments are properly developed (conservation plans, environmental education, etc.), the task should not focus with such priority on the protected areas, as it currently happens. In fact, the evident mistrust regarding the existing management instruments imposes a tough load on the country's economic development.

Finally, it is important to take the necessary steps to obtain international resources that, in accordance with the Agreement of Biological Diversity, allow developed countries to provide resources in order that the developing countries may face the additional expenses which imply the application of measures to comply with the obligations contracted by virtue of the subscribed international agreements.

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<sup>i</sup> According to the EPI 2010, Chile obtained 73.3 points, from a total of 100, ranking in place Nr 16 in the world.

<sup>ii</sup> The protected areas are specific and delimited geographical spaces, whose purpose is the long-term conservation of the country's biodiversity, and the natural and cultural asset, and the landscape value contained in that space.