

### Case History: Obscurity in Chile's Rio Condor Valley

On 6 May 1998, three environmental activists, including one member of the Chilean parliament, filed an access to information request with the Chilean government for copies of the background and environmental checks on US-based company Trillium Corporation which had started a major logging project in the native *lenga* forest of the Chilean part of Tierra del Fuego, in the Rio Condor valley. They are still waiting for an answer.

The environmental activists who filed the request had a simple question: had the Chilean government, particularly Chile's Foreign Investment Committee, done a proper review of the possible environmental impacts of the Rio Condor Project, and had they checked out Trillium Corporation's track-record of sustainable logging, checks that were required by Chilean law before project went ahead? The only information they ever received was the total value of Trillium's investment in the project.

The staff of Terram, the environmental NGO that filed the request for information in 1998, were concerned about the possible deforestation of 285,000 hectares of native timber land, known as

**The Rio Condor Valley in Chile**



*photo courtesy of Greenpeace*

*lenga*, in the Chilean part of Tierra del Fuego, land which was owned by Trillium Corporation. So they submitted a request to the Chilean Government's Foreign Investment Committee, whose role is to supervise and approve the activities of foreign companies operating in Chile and to ensure that foreign investment and other laws are not broken. Terram's environmental activists were concerned about Trillium Corporation's poor record of sustainable logging in the United States and elsewhere.

The Chilean Foreign Investment Committee should have carried out background checks on the company as well as reviewed the environmental impact assessment conducted in 1995, before logging of the *lenga* started in 1996.

Terram requested copies of information in the possession of the Committee related to its approval of the Rio Condor logging project. There were serious concerns, which had been raised by Chilean and international environmental groups, about the impact of the logging on the fragile ecosystems in the area. The activists wanted to know if the Chilean government had carried out a proper evaluation of the environmental impact of the project before giving it the green light.

Shortly after filing the original request on 6 May 1998, Terram staff held a meeting with the Foreign Investment Committee on 19 May to discuss the information needed. The only information supplied to Terram was the total value of Trillium Corporation's investment. None of the other supervision reports or environmental impact assessments were supplied. Terram sent additional requests, but these went unanswered. And so the litigation started, to try to get access

to this information which was clearly of high public importance: had the Chilean government carried out the proper checks before giving Trillium Corporation permission to cut swathes of native forest and destroy irreplaceable ecosystems?

The Chilean courts rejected the claim that the right to information had been violated. They even failed to recognize that the right existed. All appeals were summarily dismissed as "manifestly ill-founded," including by the Chilean Supreme Court on 31 July 1998.

The Rio Condor project, which had even been halted from time to time, including once as a result of a Supreme Court order, was eventually abandoned. But the question of the behaviour of the Chilean government and its lack of transparency remained.

And so the three applicants took the case to the Inter-American Commission on Human Rights, which in turn passed the case to the Inter-American Court. The case is named Claude and others vs. Chile after the names of the applicants. The three applicants are:

- o Marcel Claude Reyes an environmental academic and activist, who was at the time executive director of the Terram Foundation, a registered environmental group based in Santiago.
- o Sebastian Cox Urrejola is a human rights lawyer and executive director of FORJA, a civil society organization that promotes access to justice.
- o Arturo Longton Guerrero who in 1998 was a Member of the Chilean Parliament.

**AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE"**

**Article 13. Freedom of Thought and Expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

On 8 July 2005, the Inter-American Commission on Human Rights concluded that the Chilean State has violated the victims' right of access to public information and their right to judicial protection, under Articles 13 and 25 of the Convention, respectively. In referring the case to the Inter-American Court for a final ruling, the Commission also concluded that, by virtue of its failure to "ensure the victims' rights to access to information and to judicial protection and [to] have mechanisms in place to guarantee the right to access to public information," Chile has also violated Articles 1.1 and 2 of the Convention.

The Inter-American Court has now heard the case, with arguments from the Inter-American Commission, the Chilean Government and the applicants, as well as from independent experts in the area of access to information. A ruling is expected by early 2007.

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