

 #NOLODEJEMOSPASAR

"DEFENSORÍA AMBIENTAL PUBLISHED REPORT ABOUT VIOLATIONS OF ENVIRONMENTAL DEFENDERS' RIGHTS IN CYBERSPACE"



WHAT HAVE WE BEEN WORKING ON?

- URGENT: ENVIRONMENTAL COURT ISSUES RULING IN FAVOR OF DOMINGA MINING PROJECT 01
- 2ND ENVIRONMENTAL COURT REJECTED A CLAIM AGAINST MALL VIVO SANTIAGO 02
- 2ND ENVIRONMENTAL COURT IS READY TO GIVE A JUDGMENT IN ALTO MAIPO CASE 03
- QUINTERO - PUCHUNCAVÍ: 2 YEARS AFTER THE HISTORIC RULING 04
- REPORT: LET'S NOT LET IT PASS 05

- APRIL INFORMATIVE -

Por Sara Jerez M.

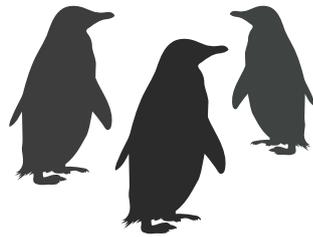
01 URGENT: ENVIRONMENTAL COURT ISSUES RULING IN FAVOR OF DOMINGA MINING PROJECT

The First Environmental Court of Antofagasta upheld the claim filed by Andes Iron. The ruling will allow the Dominga mining project, which could be located in the Humboldt Archipelago, to be voted on again by the Coquimbo Environmental Evaluation Commission.

The judgment justifies this decision by emphasizing that all productive activities have an impact on the environment, and therefore, national and international regulations have evaluation processes to determine the negative impacts and based on these, the project owner will adopt the corresponding mitigation, compensation or reparation measures.

The decision was made despite the fact that the project was rejected in various instances during the environmental assessment process, which also had considerable scientific evidence that proves that the construction of Dominga is incompatible with the ecosystem of the area and the sources of sustainable jobs that are employed in the area.

It is important to remember that in 2017, the Coquimbo Environmental Assessment Commission and the Committee of Ministers flatly rejected the project, arguing that it presented very risky technical flaws for one of the most biodiverse marine ecosystems in the entire Humboldt Current.



Faced with the court's negative result, the Humboldt Alliance stated that the ruling demonstrates the weaknesses in Chile's environmental institutions, especially because the Supreme Court had already ordered the Antofagasta Environmental Court to base its decision on environmental and technical aspects, something that ultimately did not happen. The grouped entities of the alliance, including Defensoría Ambiental, announced that they will go to the Supreme Court with the intention of reversing the ruling.

¡¡CONVERSA,
INFÓRMATE,
DIFUNDE!!

02 2ND ENVIRONMENTAL COURT REJECTED A CLAIM AGAINST MALL VIVO SANTIAGO

By unanimous decision, the Second Environmental Court rejected the claim filed by the Junta de Vecinos La Portada de Ñuñoa against the Metropolitan Environmental Assessment Commission. The intention of this claim was to invalidate the approval of the first stage of the project "Mall Vivo Santiago, demolition, excavation and undercutting."

The arguments of the "No al Mall Vivo" community were not accepted. They claimed that the environmental authority did not rigorously analyze the evaluation of the project and that the impacts on roads, the emission of particulate matter (PM10), the presence of rodents as a result of the project works and other pollutants were poorly evaluated.

In the words of Alejandra Donoso, lawyer representing the community in the case, "This case is complex because the owner presented its project in stages, the Law allows projects to be presented in stages as long as the project is not divided. And it is difficult to prove the division of the project. Therefore, the Environmental Court, by not accrediting the splitting of the project, which was one of the defects that we claimed, limited itself to reviewing only the first stage of the project and not the project as a whole. This explains why the court rejected the invalidation that we filed".

This was due to the fact that the Junta de Vecinos filed a constitutional action because there was no citizen participation in the second stage of the project. This appeal was approved and the Supreme Court annulled the Environmental Qualification Resolution (RCA) for that stage, the evaluation process was reversed and the community was able to participate, observations were made and it is expected that the company will address them.

"We are waiting to see what happens in this second stage, it is difficult to prove the fractionation, which is an infraction, because the regulatory framework is restrictive in terms of its configuration and this difficulty falls on the affected communities." Alejandra comments.

03 2ND ENVIRONMENTAL COURT IS READY TO GIVE A JUDGMENT IN ALTO MAIPO CASE

After almost 3 years of claims against the Superintendencia del Medio Ambiente (SMA), the Second Environmental Court is ready to give a judgment about the key case for Alto Maipo, which means that the Court has already made a decision and the case is awaiting judgment.

This process finally seeks to resolve the claims presented by organizations opposed to the hydroelectric complex, against the compliance program approved by the SMA, which was an alternative way instead of the sanctioning procedure against Alto Maipo for 14 breaches, even though 9 of these are considered serious.

"The serious problem with the compliance program is that it lowers environmental protection standards, under the pretext that the holder can carry out compliance with its environmental qualification resolution and that is not possible in all areas because, among other things, it has a deficient baseline particularly in hydrogeological terms." Explains Alejandra Donoso, Defensoría Ambiental's lawyer involved in the case.

It is important to mention the hydrogeological aspect, since one of the reasons why it has taken Alto Maipo so long to build the tunnel is that there is no clarity about the behavior and nature of the rock that is being drilled, nor is it known how the confinement of the subway aquifers is. This explains the lawsuit brought by the contractor against Alto Maipo a few years ago, because the execution of the project entailed a high risk for its workers.

In addition, in the Las Lajas tunnel, the closest part of the tunnel to Santiago, Alto Maipo is outcropping water in quantities greater than the aquifer's recharge capacity, which is confirmed by the Court after the 2020 personal inspection. This is complemented with other situations that could be observed at the time of the inspection.

04 QUINTERO - PUCHUNCAVÍ: 2 YEARS AFTER THE HISTORIC RULING

Within the framework of the Atmospheric Decontamination Plan that has been implemented in the municipalities of Concón, Quintero and Puchuncaví since 2019, hourly SO2 concentrations were reduced by 84% by 2021.

While this figure is positive news for the community, it is important to keep in mind:

- The drop of 84% is compared to the measurements established by the previous standard, which the polluting companies themselves managed. For this reason, the values taken as a base were far from the environmental reality of the place.
- The affected bay is a place that in 2020 was 310 days under critical episode management, so even an 84% drop in SO2 keeps the population at risk.
- SO2 is not the only polluting compound for the bay; coal strandings, concentrations of particulate matter in the air, and concentrations of copper, zinc, lead and arsenic in the soils are also constantly occurring.

On the other hand, in February of this year, the redesign and modernization of the air quality monitoring network was published in the Official Newspaper, which will allow for the measurement of other pollutants in addition to those already evaluated on a daily basis.

Following this measure, the community of Quintero-Puchuncaví organized, through the Council for Environmental and Social Recovery during (CRAS) and challenged this network under the 2nd environment court, since they were not involved in the decision and there were no prior conversations with the community, even though there is a working group that allows them to be part of these processes.

Alejandra Donoso tells us that "The community was explicit in questioning the progress of this redesign of the monitoring network and the truth is that it is possible to say that it has rather regressive measures. Instead of advancing towards the protection of people's rights it is going backwards because there are monitoring stations in which the form of measurement is limited or the pollutants they measure are limited."

Massive poisonings occurred on 2018 in the bay. When that occurred, NGO Defensoría Ambiental among with others, filed a constitutional action seeking justice. The Supreme Court ruled in favor of the communities, ordering the State a series of concrete measures that have not been carried out yet, almost 2 years after the Supreme Court ruling. We are now asking the Supreme Court to establish disciplinary responsibility against the Appeal Court of Valparaiso (in charge of the compliance of the ruling) and that the sentence be executed in favor of the communities.

For the communities, the Court of Appeals is not concerned with the compliant of the sentence, but rather with finally closing the case.

CRITICAL EPISODES OF CONTAMINATION IN QUINTERO-PUCHUNCAVÍ IN THE LAST 3 YEARS

	2019	2020	2021
Alert	21	7	1
Pre-emergency	5	2	0
Emergency	2	0	0
Critical episode management (GEC) protocol app	221	310	76
Total Episodes	249	319	77

05 REPORT: LET'S NOT LET IT PASS

In a context of social crisis and pandemic, the struggle for environmental conflicts in the country has become a dangerous space for those who are constantly trying to protect their territories from large industries and pollution, especially in an era where people participate mainly through cyberspace, which although it is a medium that facilitates communication and dissemination, it also lends itself to different manifestations of online violence.

For Defensoría Ambiental it has become evident that environmental defenders are a particularly vulnerable group, since the role they play in protecting their territories brings them face to face with political and economic power, which are the main causes of contamination and destruction of the planet.



For this reason, Defensoría Ambiental worked hard on the report "NO LO DEJEMOS PASAR" (let's not let it pass). This report works on the harm and threats of human rights defenders of environmental issues in cyberspace, where different types of violence were investigated and the regulatory framework governing the protection of these people was critically analyzed. The full report is available on the website: www.defensoriaambiental.org

DEFENSORÍA AMBIENTAL COMPILED, ANALYZED AND SYSTEMATIZED INFORMATION AND CONCLUDED IN THE REPORT:

- 1 The perpetrators of violence against environmental human rights defenders have been private individuals (whose membership in organized groups is unclear), and the Chilean police (Carabineros de Chile).
- 2 The internet and social networks are a double-edged sword for human rights defenders on environmental issues; they democratize the means of mass dissemination and facilitate social organization, but they are a space that favors digital violence.
- 3 Chile needs a law on digital violence that recognizes the asymmetries of power between the two sides of conflicts.
- 4 Recently, members of social movements have been more exposed to digital violence.
- 5 Most of the special criminal regulations mainly protect the security of banking data and financial institutions, these points do not cover the different types of violence suffered by environmental human rights defenders.
- 6 The regulation that exists around cybercrime and the handling of digital information by public agencies is scarce and insufficient to protect civil society. This is important because defenders are constantly confronted with economic and political power groups in an unfair manner.
- 7 The lack of a specific norm for this type of violence makes it necessary to use special regulations to address violations, which are quite dispersed throughout the legal system and show serious limitations for these purposes.
- 8 The National Cybersecurity Policy has not concretized a gender approach, is not intersectional and does not guarantee the rights of women in the simultaneous exercise of different roles, such as activists, feminists and/or human rights defenders.
- 9 The National Cybersecurity Policy focuses mainly on the protection of critical infrastructure and national sovereignty against foreign or internal attacks affecting the internal security of the State, rather than on the protection of individuals.
- 10 The Escazu Agreement is the first treaty in the world to include human rights defenders provisions, however Sebastian Piñera's government decided not to sign it.