Autonomous City of Buenos Aires, January 02, 2024

Presidency of the Chamber of Deputies of the Argentine Republic
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President of La Unión Mendocina Block - Álvaro Martinez
Deputies of the Argentine Republic
HONORABLE CHAMBER OF DEPUTIES OF THE ARGENTINE NATION
S / D

Ref: Draft Law of Bases and Points of Departure for the Freedom of Argentines

The undersigned civil society organizations are writing to you, and asking you to extend this note to the members of your blocs, in relation to the **Bill on Bases and Points of Departure for the Freedom of Argentines (hereafter referred to as "the bill"), recently submitted by the National Executive Power (PEN) for its treatment in extraordinary sessions of this Honorable Chamber (0025-PE-2023)**.

First of all, **we express our deepest concern about the measures contained in the bill in question because they represent serious setbacks in the environmental legislation that has been achieved after much effort, parliamentary discussions, and consensus decision-making among various social actors over the last few years in Argentina**.

We wish to expressly reiterate **Article 41 of our National Constitution** which states: "*All inhabitants are entitled the right to a healthy, balanced environment, fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the priority to repair it according to the law. The authorities shall provide the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of biological diversity, and shall also provide for environmental information and education. The Nation shall regulate the minimum protection standards, and the provinces, those necessary to reinforce them, without altering their local jurisdictions. The entry into the national territory of present or potentially dangerous wastes, and of radioactive ones, is forbidden".*

In pursuit of compliance with this constitutional mandate, Argentine society has

committed time and effort to the development of an important set of regulations which, although incomplete and only partially implemented, has made it possible to generate an adequate balance between promoting economic production, conservation and preservation of the environment, and social development.

It is important to note that current environmental legislation has been developed in accordance with the mandates of the General Environmental Law and with respect to participatory processes that have involved the most diverse social sectors.

In addition, we would like to request the expansion of committee referrals for the treatment of the bill since it covers numerous issues that do not fall under the sole competence and in some cases go beyond the capacities of the committees to which it is currently referred (Budget and Finance, Constitutional Affairs, General Legislation and Foreign Affairs). In line with the topics analyzed in this document, the missing committees for the analysis of the bill are: Natural Resources and Conservation of the Human Environment, Energy and Fuels, Maritime, River, Fishing and Port Interests, and Agriculture and Livestock.

As for what follows, we wish to point out some aspects of the bill:

TITLE VI: INTERIOR, ENVIRONMENT, TOURISM AND SPORTS. CHAPTER III,

ENVIRONMENT.

➢ **LAW 26,562 CONTROL OF BURNING ACTIVITIES**

ARTICLE 497.- Section 2 of Law No. 26,562 on Minimum Environmental Protection Requirements for the Control of Burning Activities is hereby replaced.
SECTION 498.- Section 3 of Law No. 26,562 on Minimum Environmental Protection Requirements for the Control of Burning Activities is hereby replaced.

The bill proposes amendments to Law 26,562 on minimum budgets for the control of burning activities. It maintains the definition of "burning", but adds the concept of "productive use" understood as any "*activity that has a profit-making purpose and has no relation whatsoever with the environmental protection of the land.*" **This would allow for burning, without control or prior authorization, for the development of various forms of infrastructure, plantations, crops that are not placed on the market, etc.**

The bill maintains the prohibition of unauthorized burning activities, but establishes a period of 30 working days for the competent authority to respond to the request. In the event of a lack of response, it will be considered that the burning has been "tacitly" authorized. In this way, **silence is interpreted as consent, generating a legal fiction that tacitly authorizes burning without the presence or control of local authorities specialized in fire management; without the consideration of cumulative and non-cumulative environmental parameters, technical criteria related to fire management, and care for public health and safety; and without sanctions in the event of eventual negative impacts, since it would be considered "legal burning".**

In recent decades in many provinces, fires have become an environmental disaster that

necessitates the effective implementation of the current fire control law and the entirety of the national fire management system. The bill is nowhere near to providing necessary solutions that build on the progress of prior achievements: contributing to robust permanent monitoring and preventive action by the authorities, working hand in hand with the community, to prevent burns and make for responsible fire management in Argentine territory.

We request the Chamber of Deputies to reject articles 497 and 498 of the bill.

LAW 26.331 ON NATIVE FORESTS

ARTICLE 500.- Article 26 of Law No. 26.331 on Minimum Standards for the Environmental Protection of Native Forests is hereby substituted
ARTICLE 501.- Section 31 of Law No. 26.331 on Minimum Protection Requirements is hereby substituted

The proposal submitted by the PEN to Congress indicates the largest setback in the protection of native forests that could be imagined. Law 26.331 promotes the conservation, sustainable use and restoration of native forests; it regulates deforestation with strict requirements of citizen participation, such as public hearings; and includes environmental impact assessment (EIA) processes, based on environmental management plans led by the provinces, and overseen by the national government.

There is no doubt that the state of native forests in Argentina would be very different from the current one if the country did not have Law 26.331. This law brought visibility to the problem of native forest deforestation and disseminated a message of importance around native forests and their environmental and social benefits. Although carried out with difficulty, it has succeeded in creating and strengthening national and local institutions for the management of forests. **The best strategy to face the socio-environmental problems caused by deforestation in Argentina is to work with the instruments provided by Native Forest Law since 2007: applying, financing and improving them.**

According to official data[1], the total area of native forests in Argentina is 53,184,501 ha. **If the modification proposed by the bill is approved, the legal requirements of EIA and citizen participation will no longer be enforced for forests categorized as green (category III)**, which amount to 10,192,063 ha (**19% of the total area of native forest in the country**). These requirements are important because they ensure that at the minimum, in the case of a green forest which can legally be cleared, an analysis will be conducted of the environmental and social impacts of the change in land use, which must involve citizen participation by those affected. Alternatively, if the funds designated by the current law were made available in compliance with said law, financial support could be offered to the owner of the land to invest in its recovery and sustainable management, discouraging possible deforestation.

In addition, the bill intends to enable clearings currently prohibited by Law 26.331 in the red (I) and yellow (II) categories. These are forests of very high conservation value, which must be protected and not altered at all costs; and forests of medium conservation value to be managed sustainably. Red forests represent 10,992,353 ha (21%), while yellow forests represent 32,000,085

[1] https://www.argentina.gob.ar/sites/default/files/inf._de_implementacion_2023_-_r2.pdf

ha (60%)[2] . **Thus, if the PEN's bill is approved, more than 42 million hectares, 71% of Argentina's native forests, currently under protection in perpetuity, will be unprotected and at the mercy of large-scale clear-cutting.** This would prevent their provision of biodiversity, social, environmental and cultural benefits to people. The bill also eliminates the specific mention of access to information by Indigenous peoples and peasant communities, **which contradicts the rights guaranteed by the General Environmental Law (LGA), the Law on Access to Public Environmental Information, the Escazú Agreement and ILO Convention 169 on Indigenous peoples.**

Concerning financing, the bill repeals the obligation of the national government to annually constitute the National Fund for the Conservation and Enrichment of Native Forests with 0.3% of the National Budget and 2% of the withholdings on exports of agricultural and forestry products. Therefore, it leaves the financing for the implementation of the Native Forest Law subject to whatever budget allocation determined by PEN.

In more than 15 years of the Native Forest Law, the budgetary allocation committed to in Article 31 of the current law has never been fully constituted. The funds allocated annually ranged between 3 and 15% of the amount established by law. **The allocation of sufficient funds to the Law 26.331 fund is fundamental to advance towards a progressive and definitive protection of our forests.** The fund provides the necessary resources to strengthen the provinces' capacities in their territories: the hiring of personnel, the acquisition of work materials, technology, vehicles and other tools to prevent illegal deforestation and promote projects for the conservation, sustainable use, and restoration of native forests.

The establishment of protection zones through territorial planning and a fund for the conservation of native forests is at the heart of the Forestry Law. They are essential to address the forest emergency in which the country still remains: the average rate of native forest loss does not fall below 0.5% per year (CIAM MAyDS), which in 2022 resulted in the loss of 211,974 ha of forest with more than 96,000 ha lost in prohibited areas (red and yellow).

The bill mortally wounds our native forests, their biodiversity and the livelihoods and ways of life of entire communities. It also indicates the nullification of the 23 provincial native forest land use planning laws (OTBN) that were passed in accordance with the parameters of Law 26.331; this in turn nullifies many laws on activities permitted and prohibited in the provinces.

Further, the proposed rule contains the potential for an unprecedented impact on the country's economy: a policy permitting deforestation has the potential to be detrimental to exports in several world markets, where strong policies combating deforestation and forest degredation are required for entry. For example, the European Regulation on deforestation-free products, adopted in June 2023, has a direct effect on Argentina's exports of soybeans, cattle and timber. If a regulation such as the one proposed in this bill is confirmed, Argentina would have a greater chance of being considered a high risk country and therefore its exportable products would be subject to a higher intensity of control, and monitoring, by the European Union and other world markets that evaluate similar regulations.

We ask the Chamber of Deputies to reject these reforms outright.

➢ **LAW 26.639 ON GLACIERS**

ARTICLE 502.- Article 1 of Law No. 26.639, Minimum Budget Regime for the Preservation of

[2] https://www.argentina.gob.ar/sites/default/files/inf._de_implementacion_2023_-_r2.pdf

Glaciers and the Periglacial Environment, is hereby replaced by Article 1 of Law No. 26.639. SECTION 503.- Section 2 of Law No. 26,639, Minimum Budget Regime for the Preservation of Glaciers and the Periglacial Environment, is hereby replaced.

The bill intends to amend Law 26,639 on Minimum Requirements for the Preservation of Glaciers and the Periglacial Environment with the explicit purpose of enabling economic activity in the periglacial zone. This suggests a change in the orientation of the law towards economic objectives to the detriment of environmental and conservation ones, and generates concern as it would involve the deprotection of areas currently preserved by law.

In order to ease intervention in these protected environments, the proposed text cuts back on the broad definition of glaciers present in the current law and restricts it to a limited definition: only protecting certain glaciers. This motion answers to a historical claim of the mining sector that is undoubtedly detrimental to ecosystem protection and constitutes a clear violation of the principle of environmental non-regression contained in the Escazú Agreement. (one in full force and ratified by our country).

In turn, protection is conditioned to a series of restrictive and discretionary requirements that result in the deprotection of areas currently preserved by law. It limits the protection of rock or debris glaciers in the periglacial environment to those that are included in the National Glacier Inventory (despite having been repeatedly observed to be incomplete by excluding glaciers smaller than 1 hectare). And it requires that they also have an "effective and relevant water function". Further, **the presidential message at the beginning of the bill states that the "subjugation" of federal power over the provinces is reversed. This position ignores the constitutional mandate of the National government to establish a minimum threshold of environmental protection (Article 41, National Constitution).**

The bill alleges serious legal contradictions, flaws, and confuses the nature of tools such as the National Glacier Inventory. **As a consequence of all of the above, the protection of environments, already in retreat, central as freshwater reservoirs, and with key functions for the adaptation and mitigation of climate change, would be violated. The function of these resources for climate and water regulation, especially in desert areas, is not only necessary for human life but also to sustain the functioning of ecosystems.**

We request the Chamber of Deputies to reject articles 502 and 503 of the bill.

TITLE III - ECONOMIC REORGANIZATION CHAPTER VIII - BIOECONOMY SECTION III - FEDERAL FISHING REGIME (LAW 24922)

➢ **LAW 24.922 FEDERAL FISHING REGIME (LFP)**

ARTICLE 242.- Section 7 of Law No 24,922 is hereby replaced ARTICLE 243.- Section 9 of Law No 24,922 is hereby replaced ARTICLE 244.- Section 25 of Law No 24,922 is hereby repealed ARTICLE 245.- Section 26 of Law No 24,922 is hereby repealed ARTICLE 246.- Section 27 of Law No 24,922 is hereby replaced ARTICLE 246.ARTICLE 245.- Section 26 of Law No 24,922 is hereby repealed ARTICLE 246.- Section 27 of Law No 24,922 is hereby repealed ARTICLE 247.- Section 27 bis of Law No 24,922 is hereby repealed ARTICLE 247.- Section 27 bis of Law No 24,922 is hereby repealed ARTICLE 248.
ARTICLE 248.- The fourth paragraph of Section 28 of Law No 24,922 is hereby replaced

ARTICLE 249.- Section 29 of Law No 24,922 is hereby replaced.
ARTICLE 250.- Section 34 of Law No 24,922 is hereby repealed
ARTICLE 251.- Section 36 of Law No 24,922 is hereby replaced
ARTICLE 252.- Section 40 of Law No 24,922 is hereby repealed
ARTICLE 253.- Fishing permits, authorizations and quotas already granted by Law No. 24,922 shall be respected and valid until their expiration.

The bill aims to make the process for granting fishing permits more flexible with changes to the conditions and priorities currently in place. It also aims to concentrate the granting of permits in the enforcement authority, without the involvement of the Federal Fisheries Council (CFP).

In addition, the bill repeals the obligation to unload the production of fishing vessels at Argentine docks; vessels may then be unloaded at other ports or through transshipments on the high seas, which may affect the transparency and traceability of fishing.

There are a plethora of global policies that discourage illegal, unreported and unregulated fishing. The elimination of Article 25 of Law 24.922 or the various deregulation measures affecting activity in waters under national jurisdiction **will result in a very bad rating for the fishing sector with regard international standards concerning illegal, unreported and unregulated fishing that have been adopted by Europe and the United States; and it will make it impossible for Argentina to enter those markets.**

Another very serious aspect of the reform is the transfer of functions from the CFP to the national implementation authority, which implicates a reduction of the rights of the coastal provinces that participate in this body. The CFP adopts decisions both for the provincial domain sector (art. 3 LFP) and the national domain and jurisdiction sector (art. 4 LFP) i.e., the Nation and the coastal provinces agree and share the political decisions of all the areas of national jurisdiction. A unilateral reform attacking the exclusive competences of the provinces that had adhered to the current law through article 69 LFP, will require a review and update of such provincial laws accepting the new text. **This reform will necessitate the opening of a new review process with uncertain resolution, which could lead to a collapse of the regulatory and economic structure of the sector.**

Law 24.922 already lacks sufficient provisions regarding the impacts of fishing on the environment, as with any other productive activity. It is necessary to address this policy with an intention toward improvement, interweaving the principles that brought the environmental legislation in force: an ecosystemic approach, access to information and citizen participation. The current capacity to control quotas, incidental fishing and closed areas in the Exclusive Economic Zone (EEZ) is already limited, which is why the set of reforms proposed by the PEN's omnibus law could **facilitate a deepening of extractivism in the sea**, **with exploitation that would not follow conservation guidelines or consider the impacts on marine biodiversity**.

We request the Chamber of Deputies reject articles 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252 and 253 of the bill.

TITLE III - ECONOMIC REORGANIZATION CHAPTER IX - ENERGY SECTION IX - ENERGY

TRANSITION

ARTICLE 320.- For the purposes of complying with the absolute net Greenhouse Gas (GHG) emission targets committed by the Argentine Republic in the Nationally Determined Contributions within the framework of the Paris Agreement, the NATIONAL EXECUTIVE BRANCH is hereby empowered to assign GHG emission allowances to each sector and subsector of the economy compatible with the compliance with the GHG emission targets committed by the country for 2030 and subsequent years.

ARTICLE 321.- The NATIONAL EXECUTIVE BRANCH is hereby empowered to annually establish limits of GHG emission rights, compatible with the committed objective, of annual and mandatory compliance for all the subjects of the public and private sector, in such a way that those who pollute are responsible, to the extent that corresponds to them, for complying with the GHG emission goals committed by the country and assuming that there shall be a percentage of new capacity/production/demanders to whom emission rights shall also be assigned without cost so that this mechanism is not discriminatory or represent a barrier to entry.

ARTICLE 322.- The NATIONAL EXECUTIVE BRANCH is empowered to monitor the progress in the compliance with the GHG emission goals and in case of non-compliance, to penalize it.

ARTICLE 323.- The NATIONAL EXECUTIVE BRANCH is empowered to establish a market of GHG emission allowances, in which those who have complied beyond their goal may sell the services to those who need them to achieve their goal and avoid penalization.

ARTICLE 324.- The NATIONAL EXECUTIVE BRANCH is hereby empowered to establish the rules of the GHG emission allowances market, the platform for the registration of transactions and to safeguard that there are no dominant positions or oligopoly.

The level of demand and those responsible for GHG emitting activities must comply with the country's GHG emission targets generated by the National State, which will include instruments to facilitate the achievement of these objectives and access to climate finance for private companies, for the public sector and other organizations.

This section of the bill is far from proposing how the energy transition towards a cleaner energy matrix will be carried out in Argentina, and what will be the roadmap to comply with the international commitments to reduce emissions by 2030 and carbon neutrality by 2050 within the framework of the Paris Agreement.

The project focuses on the establishment of markets for greenhouse gas (GHG) emission rights, which has the potential to stimulate higher emission levels, and suffers from a **mercantilist vision of nature**. It intends to assign GHG emission rights to each sector and subsector of the economy *"compatible with compliance with the GHG emissions targets committed by the country for 2030 and beyond"*. However, it **makes no reference to the need and urgency of reducing GHG emissions from sources, such as the energy sector and Agriculture, Livestock, Forestry, and Other Land Uses (AGSOUT) which take up the largest portion of the National Greenhouse Gas Inventory.**

Likewise, the National Executive Power is empowered to assign GHG emission rights, establish emission limits, monitor progress, establish a market and its rules, as well as the registry platform, and penalties in case of non-compliance. The question that arises from this is: if these activities are linked to the PEN, **what is the role and function of the other governmental and non governmental areas competent in the subject?**

Further, it mentions the possibility that there is a *"percentage of new capacity/production/demanders that should also be allocated emission allowances at no cost so that this mechanism is not discriminatory and a barrier to entry."* This provision, besides being highly contradictory to the emission reduction targets, implies an unclear and noncommittal approach: it leaves unclear whether emission allowances will be higher for a particular sector/subsector, or that other emission allowances would have to be readjusted to comply with the international commitments for 2030 and 2050.

It establishes that compliance with GHG emissions targets will be monitored and that, in the event of non-compliance, penalties will be imposed. Although this point is important, the bill does not establish what methodologies will be employed, how monitoring will be carried out, nor does it mention how penalties for alleged non-compliance will be established.

Carbon market mechanisms can be a valid tool after the measures aimed at reducing emissions have been exhausted and must be framed within a strategy that takes into account international commitments, particularly the carbon neutrality commitment to 2050; but its implementation must also guarantee socio-environmental safeguards and take into account key stakeholders such as academia, civil society, indigenous and local communities, young people, the environment, and vulnerable groups, among others. This section of the bill makes no reference to how the implementation of a carbon market will be articulated among the various actors and sectors, besides including no mention of what will happen with the National Strategy for the Use of Carbon Markets sanctioned through Resolution 385/2023 by the previous government. Moreover, Congress should move towards a discussion of a new Energy Transitions Law that incorporates, among other issues, the accounting of GHG emissions.

We request the Chamber of Deputies reject articles 320, 321, 322 and 324 of the bill.

FINAL WORDS

The bill on which we are convening makes a partial and fragmented reading of the National Constitution.

It emphasizes the benefits of the freedom referred to in the Preamble, but makes no mention to the right to a healthy, balanced and sustainable environment and the duty to preserve it, as recognized in section 41 of the constitutional text. It is essential that, when debating the bill under analysis, deputies and senators do not lose sight of this right and duty.

The principle of non-regression contained in the Escazú Agreement (Law 27,566) establishes that legislation may not worsen the situation of existing environmental law with regard to its scope and breadth. **The bill violates the principle of non-regression of the environment since the proposed changes to the current regulations would imply a decrease in the levels of environmental protection achieved under current law.**

In order for Argentina to be a world power, it is crucial to build on what has already been built and not, on the contrary, destroy what we have accomplished. Among these accomplishments are the regulations that this bill intends to reform and which form the backbone of the protection of the environmental and natural resources in our country.

Any attempt to roll back the levels of environmental protection and conservation achieved must

be considered illegal and unconstitutional.

We urge the Chamber of Deputies not to accept these proposals that collide with legal principles and national and international regulations in force in the country, affect the economic and productive results of various beneficial socioeconomic activities, and risk compliance with the commitments assumed by the country in multilateral environmental forums.