

**Secretariat of the Commission for Environmental Cooperation
of North America**

**Article 15(1) Notification to Council that Development of a
Factual Record is Warranted**

Submitter: Comisión de Solidaridad y Defensa de los Derechos
Humanos A.C. (Cosyddhac)
Party: United Mexican States
Submission Number: SEM-00-006 (Tarahumara)
Date of Receipt: 9 June 2000
Date of this Notification: 29 August 2002

I. EXECUTIVE SUMMARY

Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (the “NAAEC”), the Secretariat of the Commission for Environmental Cooperation (the “Secretariat”) may consider submissions asserting that a Party to the NAAEC is failing to effectively enforce its environmental law. If the Secretariat finds that the submission meets the requirements of Article 14(1), it then determines whether the submission warrants requesting a response from the Party named in the submission, in accordance with Article 14(2). If the Secretariat considers that the submission, in light of any response from the Party, warrants developing a factual record, the Secretariat informs the Council and provides its reasons (Article 15). By a two-thirds vote, the Council may instruct the Secretariat to prepare a factual record. The final factual record, again by a vote of two-thirds of the members of the Council, may then be made public.

This Notification contains the Secretariat’s Article 15(1) analysis with respect to the submission filed 9 June 2000 by “Comisión de Solidaridad y Defensa de los Derechos Humanos, A.C.” (the “Submitter”) in accordance with NAAEC Articles 14 and 15.

The submission asserts that Mexico is failing to effectively enforce its environmental law by denying environmental justice to the indigenous peoples of the Sierra Tarahumara in the State of Chihuahua, Mexico. In particular, it asserts failures to effectively enforce the environmental law relative to the *denuncia popular* citizen complaint process, to the prosecution of probable environmental crimes, and to other alleged environmental violations with respect to forest resources and the environment in the Sierra Tarahumara.

On 6 November 2001, the Secretariat determined that some of the assertions in the submission do not meet the requirements of Article 14(1), while others do. In addition,

considering the criteria set forth in NAAEC Article 14(2), the Secretariat determined that a response from the Party was warranted in relation to those assertions meeting the Article 14(1) criteria.

On 15 February 2002, the Party filed its response with the Secretariat in accordance with NAAEC Article 14(3). Mexico asserts that it properly processed the citizen complaints and appeals for review (*recursos de revisión*) in regard to which the Secretariat requested a response. The Party further states that it resolved 139 additional citizen complaints filed by Tarahumara communities between February 1998 and March 2000, and that it took other actions to improve the participation of these communities in the environmental protection of the region. In regard to the alleged failure to prosecute probable environmental crimes, Mexico's response asserts that the authorities determined that the facts of which they had knowledge do not constitute specific environmental crimes, except in those cases allegedly pending resolution.

Having reviewed the submission in light of the response of the Party pursuant to NAAEC Article 15(1), the Secretariat hereby notifies Council that the submission warrants the development of a factual record with respect to some of the assertions for which the Secretariat considered the submission to warrant a response from the Party. Mexico's response provides detailed information on how the citizen complaints were addressed, but it cannot be concluded from the information provided that the relevant authorities took the proper enforcement actions as prescribed by the General Law on Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA) in the majority of the specific cases discussed in the submission. The matters raised by the submission concerning the effective enforcement of the citizen complaint procedure as a mechanism allowing the indigenous peoples and other communities of the Sierra Tarahumara to participate in environmental protection, as well as the actions mentioned in Mexico's response that the authorities have taken to improve the participation of those communities, warrant documentation in a factual record. In addition, the matters raised in the submission concerning the prosecution of probable environmental crimes remain open despite the response of the Party, and warrant documentation in a factual record. The effective enforcement of the environmental law that establishes these procedures is fundamental to the promotion of citizen participation in environmental protection and natural resource conservation. While alleged failures to enforce environmental law of the kind in question might not individually warrant preparation of a factual record, taken together, and considering the importance of the effective participation by indigenous peoples and other communities of the Sierra Tarahumara in the environmental protection of that region, the allegations of this submission pose a central question about effective enforcement of environmental law that warrants preparation of a factual record.

II. SUMMARY OF THE SUBMISSION

The original submission consisted of five chapters and 45 pages. The Guidelines for Submissions on Enforcement Matters (the “Guidelines”) suggest a limit of 15 pages, excluding appendices and supporting information (see section 3.3 of the Guidelines). On 19 June 2000, 20 February 2001, and 6 April 2001, the Secretariat requested the Submitter to amend the submission so as to correct this minor error of form. In its last letter, the Secretariat proposed to the Submitter a way of abridging the submission. This recommendation and the Secretariat’s Article 14(1) and (2) analysis are based on the abridged submission.¹

In the submission, Cosyddhac asserts that Mexico is failing to effectively enforce its environmental law in relation to the effective processing of citizen complaints (*denuncias populares*), the prosecution of environmental crimes, the consultation of indigenous peoples prior to issuing logging permits, and access to environmental information.² According to the Submitter, the Party is failing to effectively enforce its environmental law as follows:

- A. Failure by the Party to effectively enforce Article 189 in relation to Article 191 of the LGEEPA, by failing to guarantee the indigenous peoples, as social groups, access to environmental justice through the filing of citizen complaints, or from another standpoint, the Party’s failure to enforce through its denial to these peoples of legal interest in the broad sense, as well as *legitimatío ad processum* and *legitimatío ad causam*.
- B. The Party’s failure to effectively enforce Articles 189 in relation to Articles 190 and 191 of the LGEEPA, with respect to its refusal to allow to proceed a citizen complaint that meets all the legal requirements.
- C. The Party’s failure to effectively enforce LGEEPA Article 176, through its failure to guarantee the affected parties, following a final decision pronounced by an administrative tribunal, access to environmental justice through the filing of an appeal for review against it, or from another standpoint, the Party’s failure to enforce through its denial to the Indigenous Peoples of legal interest in the broad sense, as well as *legitimatío ad processum* and *legitimatío ad causam*.
- D. The Party’s failure to effectively enforce LGEEPA Article 176, in that every appeal for review must result in a decision that concludes the appeal.
- E. The Party’s failure to effectively enforce Article 15.2 of Convention 169 of the ILO [International Labour Organization] in connection with authorizations issued for the exploitation of timber resources.
- F. The Party’s failure to effectively enforce Article 199 in relation to Article 189 of the LGEEPA, in connection with its failure to resolve or conclude citizen complaint files.

¹ These documents are available in the Registry of Citizen Submissions on Enforcement Matters on the CEC website at www.cec.org, or may be requested from the Secretariat.

² The Submission recounts at least 112 specific situations (considering the examples from all the headings) in which it asserts that the Party failed to effectively enforce its environmental law. The original structure of this Submission contained a chapter (Chapter III, now Appendix I) providing a complete procedural history of each citizen complaint and action of the authorities employed in documenting each of the 21 assertions (contained in Chapter IV, which was kept in the body of the Submission).

- G. The Party's failure to effectively enforce CFPP [sic] Article 418, in relation to its failure to notify the agency responsible for criminal investigations and prosecutions (*Ministerio Público Federal*—MPF) of the probable occurrence of environmental crimes consisting of forest cutting, destruction of natural vegetation, and change of land use without authorization, despite becoming aware of these facts in the course of carrying out its duties.
- H. The Party's failure to effectively enforce CPF [*Código Penal Federal*- Federal Criminal Code] Article 418 in connection with forest cutting and land use changes without authorization under the Forestry Act (*Ley Forestal*).
- I. The Party's failure to effectively enforce CPF Article 418 in relation to its failure to notify the MPF of the probable occurrence of environmental crimes consisting of cutting, uprooting, felling or knocking down trees without authorization, despite becoming aware of these facts in the course of carrying out its duties.
- J. The Party's failure to effectively enforce CPF Article 418 in connection with the crime of cutting, uprooting, felling or knocking down trees, or exploiting forest resources, without authorization under the Forestry Act.
- K. The Party's failure to effectively enforce CPF Article 418 in relation to its failure to notify the MPF of the probable occurrence of environmental crimes consisting of intentionally causing fires in woodlands and forest vegetation, thus damaging natural resources, flora, fauna and ecosystems.
- L. The Party's failure to effectively enforce CPF Article 418 in connection with the crime of intentionally causing fires in woodlands and forest vegetation, thus damaging natural resources, flora, fauna and ecosystems.
- M. The Party's failure to effectively enforce CPF Article 419 in relation to its failure to notify the MPF of the probable occurrence of environmental crimes consisting of the transportation, storage and processing of forest resources without authorization under the Forestry Act, despite becoming aware of these facts in the course of carrying out its duties.
- N. The Party's failure to effectively enforce CPF Article 416 in relation to its failure to notify the MPF of the probable occurrence of environmental crimes consisting of discharging and dumping wastewater into national bodies of water, causing harm to public health, natural resources, flora, fauna, and water quality.
- O. The Party's failure to effectively enforce Article 169 *in fine* of the LGEEPA, a comprehensive reading of which establishes that once the decision referred to in Article 168 of the LGEEPA is issued and acts or omissions constituting one or more crimes are verified, the environmental authorities shall notify the MPF thereof.
- P. The Party's failure to effectively enforce LGEEPA Article 202, in that the Office of the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*—Profepa) in the State of Chihuahua, despite conducting inspection visits, arising in most cases from citizen complaints, on which visits it directly observed acts and omissions constituting environmental crimes, did not file corresponding denunciations of probable crimes.
- Q. The Party's failure to effectively enforce LGEEPA Article 191 by failing to consolidate a citizen complaint with a pre-existing file opened in response to a previous citizen complaint of a similar nature.
- R. The Party's failure to effectively enforce LGEEPA Articles 191 and 192, by failing to issue a decision on the admissibility of a citizen complaint, and consequently, failing to take the necessary steps to determine the existence of the acts or omissions alleged therein.

- S. The Party's failure to effectively enforce Article 191 in relation to 190 of the LGEEPA, in failing to process a citizen complaint appropriately by referring the matter to the competent body.
- T. The Party's failure to effectively enforce LGEEPA Article 193, by resolving a citizen complaint without informing the complainant of the considerations adopted in regard to the evidence and information provided.
- U. The Party's failure to effectively enforce Article 159 Bis 3 in relation to Article 159 Bis 4 of the LGEEPA, by refusing to provide environmental information in response to a request.

The Submitter asserts that these alleged failures to effectively enforce the LGEEPA, the CPF, the Forestry Law and the Indigenous and Tribal Peoples Convention (Convention 169) of the ILO amount to denying environmental justice to indigenous peoples in the Sierra Tarahumara, State of Chihuahua, in violation of NAAEC Articles 6 and 7. The final part of the submission states that the 21 assertions and supporting examples "constitute a persistent pattern."³

After analyzing the submission in light of Articles 14(1) and 14(2), the Secretariat requested a response from the Party only with respect to the assertions contained in headings A, C, D, F, G, H, I, K, M, N, O, P, R, S and T of the submission.⁴

III. SUMMARY OF THE RESPONSE OF THE PARTY

The Secretariat received Mexico's response to the submission on 15 February 2002. It contains a concise response to headings A, C, D, F, G, H, I, K, M, N, O, P, R, S and T of the submission, supported by a large number of attached documents showing in detail the processing of the citizen complaints and appeals for review mentioned in the submission. The response alleges the environmental authorities' adequate performance of their duties in responding to the citizen complaints mentioned in headings A, F, R, S y T of the submission.

The response states:

Mexico, based on NAAEC Articles 5(1)(j), 5(2), 6 and 7 [...] responded, in a timely manner and using a fair, open and equitable procedure, to a total of 173 citizen complaints filed between February 1998 and March 2000 relating to various violations of the LGEEPA committed in the Sierra Tarahumara; all the complaints were admitted by the Profepa and recorded in the National Citizen Complaint Response System (*Sistema Nacional de Atención a la Denuncia Popular*). It should be mentioned that, in accordance with LGEEPA Article 191 [...], Profepa's Environmental Petitions, Complaints, and Social Participation Unit in the State of Chihuahua sent the complainants an acknowledgement of receipt of each of the

³ Submission at 18.

⁴ Section IV.A of this notification summarizes the Article 14(1)/14(2) review.

aforementioned complaints, issuing a decision on the admissibility of each complaint, and notifying the complainants of those decisions within the ten days following the receipt of the corresponding complaint.⁵

Concerning the assertions about the effective enforcement of the appeal for review procedure in the cases mentioned in the submission (headings C and D), the Response states that the Party, “based on NAAEC Articles 7(3) and (4) and LGEEPA Article 176 [...] resolved two appeals for review filed against decisions of the Profepa State Office in Chihuahua, to which the Secretariat refers in its determination, in accordance with Article 91, paragraph II of the Federal Administrative Procedure Law (*Ley Federal de Procedimiento Administrativo—LFPA*) [...] by upholding the administrative decision under review.”⁶

Regarding the assertions in the submission on the investigation and prosecution of environmental crimes, the Party asserts that it cannot respond to the assertion in heading G because the article cited by the Submitter (Article 418 of the Federal Code of Criminal Procedure [*Código Federal de Procedimientos Penales—CFPP*]) does not correspond to the matter alleged (which in fact relates to *Código Penal Federal –CPF–* Article 418). Regarding heading H, the Party asserts “it refers to a denunciation of probable crimes filed with the MPF by the Community of Ejido San Diego de Alcalá on 21 September 1999. In that regard, this Party, based on NAAEC Article 14(3)(a), requests the Secretariat give no further consideration to the matter because it asserts that the complaint is the subject of a pending administrative procedure before the MPF, which shall determine whether or not to turn the file over to the competent judge”.⁷

Concerning headings I, K, M and O, which refer to the failure to notify the MPF of the probable occurrence of environmental crimes in various cases, the response states that the citizen complaints in question were resolved, inspection visits were conducted, administrative procedures were followed, and in some cases, administrative sanctions were imposed on the responsible parties. According to the response, the environmental authorities did not notify the MPF because the acts and omissions observed by the authorities did not qualify as environmental crimes.⁸ Finally, the response indicates that Mexico did institute criminal proceedings and issue an administrative decision in regard to the citizen complaint mentioned in heading N.

Mexico’s response states further that “starting in the year 2000, a series of meetings was held between the relevant authorities of this Party [and the affected indigenous communities and nongovernmental organizations], for the purpose of keeping them informed of the status of their complaints and clarifying any legal situation that might arise

⁵ Response at 2–3.

⁶ Response at 8–9.

⁷ Pages 10- 12 of the Response. The complaint in regard to which the Party invokes Article 14(3)(a) is also mentioned in heading M.

⁸ Response at 11–12.

in that connection, using those meetings as forums for discussion of environmental situations arising in that geographical area...”. Finally, Mexico’s response indicates that the Party intends to set up “participatory monitoring committees for natural resource conservation” in the region.⁹

IV. ANALYSIS

A. Introduction

The process in regard to this submission is currently at the NAAEC Article 15(1) stage. To reach this stage, the Secretariat must first determine that the submission meets the requirements of Article 14(1) and that it merits a response from the Party, considering the criteria of Article 14(2).

On 6 November 2001, the Secretariat determined that the submission met all the requirements of NAAEC Article 14(1).¹⁰ The submission meets the requirements of Article 14(1)(a), (b), (d) and (f) because it was filed in writing and in Spanish, one of the official languages of the Parties;¹¹ the Submitter clearly identifies itself in the submission as a nongovernmental organization (Cosyddhac) domiciled in the city of Chihuahua, State of Chihuahua, Mexico.¹² The submission appears to be aimed at promoting environmental law enforcement activities and not at harassing industry, since it focuses primarily on the manner in which the environmental authorities have addressed the complaints filed by the indigenous peoples and other groups interested in the protection of natural resources in the Sierra Tarahumara. The requirement set out in Article 14(1)(c) was also met since the submission and its appendices contain sufficient information to review it. The submission includes information on the means by which the indigenous peoples and other groups in the Sierra Tarahumara have attempted to participate in effective law enforcement for the protection of the natural resources of that area, on the manner in which the authority addressed its complaints, and on the reasons why the Submitter considers the authority’s actions to represent a failure of effective enforcement.

Regarding Article 14(1)(e), the Secretariat determined that the majority of the assertions in the submission refer to matters that have been communicated to the relevant authorities of the Party.¹³ In addition, the majority of the assertions in the submission satisfy the requirement in the opening language of Article 14(1), which states that a submission must assert “a Party is failing to effectively enforce its environmental law”. The Secretariat determined that some of the assertions do not meet that requirement, because they do not refer to provisions that are “environmental law” for the purposes of the NAAEC,¹⁴ or

⁹ Response at 16–17.

¹⁰ SEM-00-006 (Tarahumara), Determination in accordance with Articles 14(1) and (2) (6 November 2001).

¹¹ See also section 3.2 of the Guidelines.

¹² Submission at 1 and Appendix 0.

¹³ Submission Appendices 5, 10, 20, 49 and 51.

¹⁴ NAAEC Article 45(2) establishes the following definition of environmental law:

For purposes of Article 14(1) and Part Five:

because they refer to past situations in regard to which the environmental authorities could not have carried out any environmental law enforcement action at the time that the submission was filed, so that there cannot be an assertion that Mexico “is failing” to enforce in those cases.

The Secretariat proceeded to review the submission considering the criteria of NAAEC Article 14(2) taken together, and concluded in its determination of 6 November 2001 that the submission warranted a response from the Party in relation to the assertions contained in headings A, C, D, F, G, H, I, K, M, N, O, P, R, S and T.

The submission contends that the alleged lack of access to the citizen complaint procedure represents harm to the indigenous peoples and other groups of the Sierra Tarahumara in that it restricts the exercise of the right to participate in the protection of the environment by reporting possible violations of environmental law [Article 14(2)(a)]. The Secretariat considers that the effective enforcement of the citizen complaint procedure as a means of access to environmental justice, to which the submission refers, and the effective enforcement of the criminal law for the protection of the forest resources of the Sierra Tarahumara are matters whose further consideration in this process would advance the goals of the NAAEC [Article 14(2)(b)]. The submission addresses the available remedies pursued under the Party’s law, and the Secretariat considers that a reasonable effort was made to pursue those remedies [Article 14(2)(c)]. The matter raised by the submission is precisely that the efforts of these groups to use the available remedies under the Party’s law to denounce harm to the environment of the Sierra Tarahumara were not successful due to the Party’s alleged failure to effectively enforce its environmental law. Finally, the submission does not appear to be based on media reports [Article 14(2)(d)].

Further to the Secretariat’s determination of 6 November 2001, the Party provided its response on 15 February 2002, in accordance with NAAEC Article 14(3).

(a) “environmental law” means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through

- (i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,
- (ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or
- (iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party’s territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term “environmental law” does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

B. Why Development of a Factual Record is Warranted

In accordance with NAAEC Article 15(1), and in light of Mexico's response, the Secretariat considers that the submission warrants the development of a factual record.

As detailed in this section, the information provided by the Party in its response shows how the citizen complaints discussed in the submission, by which the indigenous peoples and communities of the Sierra Tarahumara reported acts of illegal destruction or exploitation of the woodlands in the Sierra, were processed. Based on this information, the matters raised in the submission concerning the effective enforcement of the environmental law with respect to two of the 33 complaints in question are deemed resolved.¹⁵ In the case of the remaining complaints, either questions persist as to whether the authorities failed to carry out one or more of the specific actions comprising the procedure, or it appears that these actions were carried out but not within the period prescribed by law. In regard to the investigation and prosecution of probable environmental crimes, except in one case, the authorities decided that the facts of which they had knowledge do not constitute crimes, without providing any grounds and reasons for that decision (the minimum requirements set forth by the Political Constitution of the United Mexican States) and without notifying the complainants of the decision. On the other hand, concerning the allegations in the submission relating to the appeals for review filed further to citizen complaints, the Submitter's assertions are not confirmed and do not warrant documenting in a factual record, because Mexico's response shows that they were in fact resolved.

As mentioned above, the response of the Party consists of a concise response to the assertions in headings A, C, D, F, G, H, I, K, M, N, O, P, R, S and T, and numerous appendices documenting the processing by the relevant environmental authorities of the citizen complaints and appeals for review as to which the Secretariat requested a response from Mexico.¹⁶

To simplify the review of the submission in light of the Party's response, the allegations were grouped under three titles:¹⁷

1. Alleged failures to effectively enforce the provisions relating to the citizen complaint procedure (LGEEPA Articles 189, 190-193 and 199) mentioned in headings A, F, R, S and T of the submission;

¹⁵ See Submission Appendix 15 and Response Appendix I. Complaints filed by Ricardo Chaparro Julián (Tepehuán de las Fresas Indigenous People) on 12 October 1998 and Ejido Rocoroyvo, on 18 February 2000.

¹⁶ The Secretariat was unable to identify the case to which the document contained in Response Appendix II referred.

¹⁷ A complaint may appear under more than one heading, (i.e., that of 12 October 1998, filed by the Tepehuán de las Fresas People, which was stated as an instance of failure to enforce by the Submitter in points A.2, F.3, I.3 and O.1). The same applies to the inspections. Appendix A of this recommendation contains a list of the citizen complaints or denunciations of probable crimes, remedies and inspections, indicating the headings in which each is mentioned.

2. Alleged failures to effectively enforce the provisions relating to the investigation and prosecution of probable environmental crimes (CPF Articles 416, 418 and 419 and LGEEPA Articles 169 and 202) mentioned in headings G, H, I, K, M, N, O and P of the submission;
 3. Alleged failures to effectively enforce the provisions relating to appeals for review (LGEEPA Article 176) mentioned in headings C and D of the submission.
1. *Alleged failures to effectively enforce the provisions relating to the citizen complaint procedure (LGEEPA Articles 189, 190- 193 and 199)*

Under headings A, F, R, S and T of the submission, the Submitter asserts that Mexico is failing to effectively enforce its environmental law by inadequately processing 30 citizen complaints about illegal logging and forest destruction in the Sierra Tarahumara. These citizen complaints were filed between February 1998 and March 2000 by various groups: the Community of San Ignacio de Arareco; the communities of Ejido de Ciénega de Guacayvo, Ejido de San Diego de Alcalá and Ejido de El Consuelo; the Rarámuri and Tepehuán Indigenous Peoples, and the Coalición Rural/Rural Coalition. The majority of the citizen complaints refer to activities or facts which the complainants consider to pose a threat to the ecosystem of the Sierra Tarahumara, as well as the subsistence, heritage and resources of the Sierra-based cultures.

Pursuant to LGEEPA Articles 191-199, the citizen complaint procedure may be summarized as follows:

- Upon receipt of a citizen complaint, the authority shall issue a decision on the initial status of the complaint (*acuerdo de calificación*), i.e. to allow or disallow it or to consolidate it with one or more other complaints, and shall notify the complainant of this decision within the ten days following the filing of the complaint.
- Where the authority receiving the complaint is not competent to process it given the facts alleged in the complaint, it shall refer the complaint to the competent authority. This referral process entails the following: acknowledging receipt (without allowing the complaint); referring the complaint to the competent authority for the latter's decision and resolution; and notifying the complainant that the complaint was referred to that authority, by means of a reasoned and justified decision.
- Where the complaint is allowed, the authority shall notify the respondent so that the respondent may submit appropriate documents and evidence within a maximum period of 15 working days.
- The authority shall verify the acts or omissions raised in the complaint, taking any necessary measures and initiating any relevant inspection and enforcement procedures, as well as any administrative procedures arising therefrom.

- The complainant may assist the authority, and the authority shall, in resolving the complaint, state the considerations adopted with respect to the information provided by the complainant.
- The authority shall notify the complainant where it is not proven that the acts or omissions denounced cause or could cause ecological imbalance, harm the environment or natural resources, or violate the law, and the complainant shall then be given an opportunity to make any observations it sees fit.

According to the submission, the complaints filed by the indigenous peoples and other groups of the Sierra Tarahumara were not processed as prescribed by the LGEEPA: some were disallowed; others were allowed but not resolved or processed as prescribed by law; and for some, the follow-up actions prescribed by law have not been taken. The submission contends that the alleged lack of effective access to the citizen complaint procedure represents harm to the indigenous peoples and other groups of the Sierra Tarahumara, by restricting the exercise of the right to participate in the protection of the environment by reporting possible violations of environmental law.

In its response, the Party asserts that it appropriately processed the complaints filed by the indigenous peoples and communities of the Sierra Tarahumara to which the submission refers, and it provides copies of numerous related decisions and communications. A detailed review of these indicates the following:

In heading A of the submission, the Submitter asserts that the environmental authorities failed to guarantee the indigenous peoples, as social groups, access to environmental justice through the filing of citizen complaints, by disallowing citizen complaints filed by these groups. In heading R of the submission, the Submitter asserts that the environmental authorities did not issue a decision on the admissibility of a citizen complaint, and therefore ceased to conduct the procedures necessary to determine the existence of the acts or omissions alleged in the complaint. From Mexico's response, it is evident that the authorities only issued proper decisions on the admissibility of two of the 19 complaints about which the Submitter asserts in these headings that Mexico is failing to effectively enforce the LGEEPA.¹⁸ For four of the complaints, no such decision was issued,¹⁹ while in the remaining 13 cases, a decision was issued but within a period exceeding, by a few days to over a month, the 10 days prescribed by the LGEEPA.²⁰

¹⁸ See Submission Appendix 15 and Response Appendix I. Complaint filed by Ricardo Chaparro Julián (Tepehuán de las Fresas Indigenous People) on 12 October 1998, and complaint filed by Ejido Rocoroyvo on 18 February 2000.

¹⁹ See Submission Appendices 1, 2, 3, 4, 16, 17 and 19, and Response Appendices I and III. Complaints filed by José María Fuentes Rodríguez *et al.* (Choguita Community) on 26 October 1998; by Ricardo Chaparro Julián (Tepehuán de las Fresas Indigenous People) on 4 December 1998 and by members of the ejido council of Ejido Ciénega Guacayvo on 26 July and 4 October 1999.

²⁰ See Submission Appendices 57 and 66–80 and Response Appendix I. Complaints filed by various Rarámuris Indigenous Peoples through the intermediary of Agustín Bravo Gaxiola, 7 December 1998, 7 and 18 February 2000, and 15 March 2000.

In heading F of the submission, the Submitter alleges that the authorities did not properly conclude the procedures for 10 citizen complaints by issuing a final decision further to the administrative procedure arising from forestry inspections.²¹ Pursuant to Article 17 of the LFPA, the administrative authority shall issue a decision within a period of four months.²² The documents provided by the Party show that the authority issued decisions on the ten complaints, but in each case outside the period prescribed by law. For three of the complaints, the authority did not inform the complainant, even when the authority carried out administrative procedures and imposed corrective measures and fines.²³ In regard to the last complaint, Profepa allowed it only with respect to matters under its jurisdiction, referring to the National Water Commission (*Comisión Nacional del Agua*—CNA) those matters for which the latter has jurisdiction. The response does not indicate that the CNA processed this complaint.²⁴

In heading S of the submission, the Submitter asserts that the environmental authorities, having received a citizen complaint outside their jurisdiction, failed to refer it to the competent authority, which in turn should have allowed the complaint. Mexico's response states that "it does not possess information enabling the determination of the status of those complaints."²⁵

Finally, in heading T of the submission, the Submitter states that in resolving one complaint regarding allegedly illegal logging, the authorities failed to state their considerations to the complainant with respect to the information that the complainant provided, as required by LGEEPA Article 193. The resolution of the complaint attached to Mexico's response indicates that the logging complained of does not merit sanctions because it was authorized. However, the resolution does not "state the considerations" of the authorities in regard to the information provided by the complainant, as required by law.²⁶

In summary, notwithstanding the detailed nature of Mexico's response, the documents provided with it do not allow the conclusion that the relevant authorities took the enforcement actions provided by the LGEEPA in the majority of the specific cases raised by the submission. It follows from the decisions and communications attached to the response that the authorities strictly enforced the environmental law with respect to only

²¹ Heading F, Submission at 8.

²² LGEEPA article 160, paragraph 2 establishes the LFPA as suppletive law for administrative procedures and appeals, among others.

²³ See Submission Appendices 15, 26 and 27 and Response Appendix II. Complaints filed by Ricardo Chaparro Julián *et al.* (Tepehuán de las Fresas Indigenous People) on 12 October 1998 and by Oscar Romero Vieczas (Community of Ejido San Diego de Alcalá) on 16 June and 1 September 1999.

²⁴ See Submission Appendices 26-27 and Response Appendix II. Complaint filed by Oscar Romero Vieczas (Community of Ejido San Diego de Alcalá) on 1 September 1999.

²⁵ See Submission Appendices 22-25 and Response at 6-7. Complaints filed by Félix Baiza Duarte (Tepehuán de las Fresas Indigenous People) on 13 October 1999 and by the Tepehuán de Malanoche Indigenous People on 9 July 1999.

²⁶ See Submission Appendices 58- 60 and Response Appendix IV. Complaint filed by Prudencio Ramos Ramos (Rarámuri Indigenous People of Ejido Pino Gordo) on 7 August 1998.

two of the 33 complaints covered by this notification.²⁷ For the remaining complaints, the authorities either omitted one or more specific actions comprising the procedure, or performed them outside the period prescribed by law (by a few days in approximately half the cases, and by approximately a month in the others). The failure to process these citizen complaints within the required time period is especially relevant in light of the other alleged failures to effectively enforce the citizen complaint procedure in the cases mentioned in this submission.

The Mexican legal system only allows persons with a recognized legal interest to initiate a legal proceeding against persons who, in violation of the applicable law, cause harm to the environment or natural resources. The citizen complaint procedure is the only means available to any interested party to set in motion the government's environmental protection apparatus. For that reason, the effective enforcement of the citizen complaint procedure by the environmental authority is fundamental to the promotion of citizen participation in environmental protection. Furthermore, the Mexican legal system emphasizes the importance of ensuring the right of indigenous peoples to protect their environment and natural resources.²⁸ The matters raised by the submission with respect to the effective enforcement of the citizen complaint procedure as a mechanism allowing the indigenous peoples and other communities of the Sierra Tarahumara to participate in environmental protection in that region warrant development and documentation in a factual record. The Secretariat considers the development of a factual record to be warranted in relation to the effective enforcement of LGEEPA Articles 189, 190-193 and 199 with respect to the citizen complaints in question.

2. *Alleged failures to effectively enforce the provisions relating to the investigation and prosecution of probable environmental crimes (CPF Articles 416, 418 and 419, and LGEEPA Articles 169 and 202)*

²⁷ See Submission Appendix 15 and Response Appendix I. Complaints filed by Ricardo Chaparro Julián (Tepehuán de las Fresas Indigenous People) on 12 October 1998 and by Ejido Rocoroyvo on 18 February 2000.

²⁸ Political Constitution of the United Mexican States, Article 2, A. This Constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination, and in consequence, autonomy to:

...V. Conserve and improve their habitat, and preserve their lands in the terms established in this Constitution.
...VIII. Full access to State jurisdiction. To guarantee this right, in all trials and proceedings in which they participate, individually or collectively, their customs and cultural characteristics will be taken into account, respecting the precepts of this Constitution....

LGEEPA, Article 15: In formulating and conducting environmental policies and in issuing official Mexican norms and other instruments stipulated in this Law, in the area of preservation and restoration of ecological equilibrium and environmental protection, the Federal Executive Branch will observe the following principles:

XIII. Guarantee the right of communities, including indigenous peoples, to the protection, preservation, use and sustainable exploitation of natural resources and the safeguarding and use of biodiversity, in accordance with this Law and other applicable ordinances....

Headings G, H, I, K, M, N, O and P of the submission contain assertions about the alleged failure to effectively enforce environmental law with respect to the investigation and prosecution of probable environmental crimes.

The submission indicates that by means of citizen complaints, the environmental authorities were made aware of facts that possibly constituted environmental crimes. It further states that the authorities conducted at least 15 inspection visits on which they allegedly have identified probable environmental crimes. The submission asserts that Mexico is failing to effectively enforce the environmental law in two respects: by failing to exercise the powers invested in the environmental authorities to initiate investigations or notify the agency responsible for criminal investigations and prosecutions –the MPF– of facts that might constitute such crimes, pursuant to LGEEPA Articles 169 and 202, and by failing to apply to the alleged crimes CPF Articles 416, 418 and 419, which define and sanction criminal conduct that harms the environment.²⁹

LGEEPA Article 169 provides that the authorities shall notify the MPF of the occurrence of acts or omissions that they have observed in the course of their duties that “may constitute one or more crimes.”³⁰ In particular, the authorities shall: determine whether the facts of

²⁹ CPF, Article 416.- Anyone who performs any of the following acts without the required authorization, or in violation of the laws, regulations and Mexican official standards, is liable to a penalty of three months to six years imprisonment and a fine of 1,000 to 20,000 times the daily minimum wage:

I.- Discharging, dumping, or infiltrating, or authorizing or ordering the discharge, dumping or infiltration of wastewater, chemical or biochemical liquids, refuse or pollutants into soils, marine waters, rivers, watersheds, reservoirs and other water bodies or watercourses under federal jurisdiction, causing or possibly causing harm to public health, natural resources, flora, fauna, water quality in watersheds, or ecosystems.

Where the water in question is water for bulk delivery to population centers, the penalty may be increased by up to three additional years...

CPF, Article 418.- Anyone who, without the required authorization under the Forestry Law, cuts or destroys natural vegetation, cuts, uproots, knocks down or fells trees, exploits forest resources or causes land use changes is liable to a penalty of three months to six years imprisonment and a fine equivalent to 100 to 20,000 times the daily minimum wage... The same penalty shall apply to anyone who intentionally causes fires in woodlands, forests, or natural vegetation which damage natural resources, flora, fauna, or ecosystems.

CPF, Article 419.- Anyone who transports, deals in, stores, or processes timber resources in quantities greater than four cubic meters roundwood equivalent or the equivalent without authorization under the Forestry Law is liable to a penalty of three months to six years imprisonment and a fine equivalent to 100 to 20,000 times the daily minimum wage, except in cases of exploitation of forest resources for domestic use, as prescribed by the Forestry Law.

The relevant paragraph of LGEEPA Article 169 provides that: “Where applicable, the federal authorities shall notify the Office of the Attorney General of the performance of acts or omissions observed in the course of carrying out their duties which may constitute one or more crimes.”

LGEEPA, Article 202.- The Office of the Federal Attorney for Environmental Protection, within the scope of its competence, is empowered to initiate any relevant proceedings before the competent judicial authorities where it becomes aware of acts or omissions that constitute violations of administrative or criminal law.

³⁰ The same provision is made, for all public servants, by CFPP Article 117. Likewise, LGEEPA Article 202 provides that Profepa is empowered to initiate any relevant proceedings before the competent judicial authorities where it becomes aware of acts or omissions that constitute violations under administrative or criminal law.

which they have knowledge may or may not constitute crimes; notify the MPF if there are facts that may constitute a crime; communicate to the MPF all the relevant information in their possession; and place the indicted persons at the disposal of the MPF, if they have been detained. In the case of a citizen complaint, the authority may make its determination of whether the facts referred by the complainant may or may not constitute a crime either in the decision to allow the complaint or separately (regardless of whether the complaint is allowed or not) but—as with any act of authority—that determination must be reasoned, justified and in writing, and it must be communicated to the complainant. It is not necessary for the environmental authorities to ascertain that the activities constitute crimes (since it is the responsibility of the court to determine that), but merely to know of the existence of acts or omissions that may be considered crimes. Likewise, LGEEPA Article 202 provides that the Profepa may initiate the relevant proceedings before the competent authorities where it becomes aware of acts or omissions that violate administrative or criminal law.

The process the MPF shall follow in prosecuting and sanctioning crimes is, in general terms, as follows. The MPF is required to investigate the crimes of which it has knowledge (CFPP Article 113). It shall order any measures and provisions necessary to afford security, safety, and assistance to victims; prevent from being lost, destroyed or altered all traces or evidence of the crime, as well as the instruments or things affected by it, or its effects; ascertain the identity of witnesses; prevent the crime from continuing to be committed; and, in general, prevent the investigation from being impeded, detaining those who took part in committing the crime where they are caught in the act (CFPP Article 123). Where the MPF deduces from the preliminary investigation that both the *corpus delicti* and the suspect's probable responsibility are proven, it shall bring legal action (CFPP Article 134).

The submission asserts that the environmental authorities are failing to effectively enforce the law by failing to notify the MPF of the probable occurrence of environmental crimes.³¹ It follows from Mexico's response that both in the cases involving only the filing of citizen complaints or denunciation of probable crimes, and in those involving inspection visits arising from the complaints, the authorities had knowledge of acts or omissions that probably constituted environmental crimes. However, with respect to the 45 points (complaint and visits) in headings G, I, K, M, N, O and P of the submission for which this failure to enforce is asserted, the environmental authorities do not appear to have determined, in a timely manner and by means of a reasoned and justified decision, whether the facts in question could constitute crimes. In its response, Mexico simply asserts that the competent authority considered that the facts did not constitute crimes. The information provided to the Secretariat does not show that in each case the competent authority provided its reasons and justification in a written decision.

Regarding headings I, K and O of the submission, Mexico's response indicates that on 35 occasions, corrective measures and sanctions were imposed on the persons responsible for the corresponding facts; in these cases, Mexico contends that the facts were not reported to

³¹ Headings G(p. 9), I (p. 10), K (p. 12), M (p. 13), N (p. 13) and O, Submission at 13.

the MPF because they were not found to constitute crimes.³² However, it is not clear that this determination by the environmental authorities was made properly given that each of these cases involved facts that potentially constituted crimes, and it is not necessary for the authorities to determine that the facts constitute a crime in order to notify the MPF.³³ For example, in eight of the citizen complaints filed by indigenous peoples and various communities through Agustín Bravo Gaxiola on 15 March 2000, which report the illegal logging and storage of timber resources, among other probable crimes, the acts complained of potentially fall under the crimes contemplated in CPF Article 418. There is no indication that the authorities notified the MPF of these acts, or that they applied the correct standard for determining whether to notify the MPF.

Heading P of the submission also asserts that the environmental authorities failed to denounce probable environmental crimes despite having observed facts that were probable environmental crimes on 15 inspection visits.³⁴ In two of these cases, the residents of the *ejido* had filed denunciations of probable crimes in connection with the same facts, so that it was not necessary for the authorities to notify the MPF thereof.³⁵ In the other cases, however, it is evident from Mexico's response that the environmental authorities found indications of criminal activity that they did not report to the MPF.³⁶ Mexico's response indicates that the complaints were resolved by imposing administrative corrective measures and sanctions on the persons responsible for the facts observed during the inspection visits. Again, Mexico's response contends that the facts were not reported to the MPF because they did not constitute environmental crimes, but the response does not include any reasoned and justified determination by the environmental authorities to support the decision not to notify the MPF.

Regarding the six points referred to by heading G of the submission,³⁷ the Submitter made an error in citing the provision that Mexico allegedly is failing to effectively enforce. The Party asserts that this error prevented it from responding to the assertions in that heading.³⁸ However, in view of the description in the submission of the actions to which these assertions refer, it is clear that this is a typographical error and that the Submitter was referring to Article 418 of the *Código Penal Federal* –CPF– and not the *Código Federal de Procedimientos Penales* –CFPP. Furthermore, the Secretariat noted this error in its request

³² See Submission Appendices 1, 2, 7-12, 15-17, 19, 22-27, 42, 43, 49, 50, 58-63, 66-70 and 74-80, and Response at 11, 12, 14 and 15.

³³ See Response Appendices VIII, IX and XII.

³⁴ Heading P, Submission at 13.

³⁵ See Response Appendix XIII.

³⁶ See Response Appendix III.

³⁷ See Submission Appendices 13, 14, 14A, 26, 27, 57, 64 and 65. Complaints filed by the Community of San Ignacio de Arareco on 18 July 1999; by Oscar Romero Vieczcas (Ejido San Diego de Alcalá) on 16 June and 1 September 1999, and by Prudencio Ramos Ramos (Rarámuri Indigenous People of Ejido Rocheachi) on 7 December 1999 and 10 March 2000, as well as the Technical Forestry Audit performed in the Community of Colorada de los Chávez in September of 1999.

³⁸ Response at 10.

for a response from the Party.³⁹ Because Mexico did not respond to these assertions, they remain open.

Regarding the complaint referred to in heading N of the submission, Mexico's response states that the authorities reported the facts to the MPF on 23 May 2000.⁴⁰ However, the report provided with the response refers to the alleged unauthorized removal of natural vegetation and land use change (CPF Article 418) while heading N refers to the alleged discharge and dumping of wastewater into bodies of water under federal jurisdiction, causing harm to public health, natural resources, flora, fauna, and water quality (CPF Article 16). This appendix does not include information on the manner in which the CNA (the competent authority in this matter) processed the complaint in question. Consequently, it is not clear whether the CNA took any action with respect to the facts indicated in heading N.

In the case of the complaint filed 4 October 1999 by the Community of Ejido Ciénega de Guacayvo, the subject of heading M of the submission,⁴¹ the Party states in its response that the complaint is the subject of a pending proceeding before the MPF, and requests the Secretariat proceed no further concerning this complaint. However, the Party does not include information enabling the Secretariat to confirm that it is in fact a pending procedure in the terms of NAAEC Article 14(3)(a). Beyond the Party's statement that the matter is the subject of a pending proceeding, there is no information on the manner in which the denunciation of probable crimes in question was processed. The Secretariat cannot determine from Mexico's response and its appendices that the matter is the subject of a proceeding initiated by the Party in accordance with Article 14(3)(a), and therefore it is appropriate to proceed further with respect to this allegation.⁴² Because Mexico did not respond to this assertion, the question of whether Mexico is effectively enforcing its environmental law with respect to this complaint remains open.

Finally, heading H of the submission asserts that Mexico is failing to effectively enforce the law in the processing and resolution of a denunciation of probable crimes filed 21 September 1999.⁴³ Mexico's response reiterates its request to the Secretariat to proceed no further with respect to this allegation, stating that the complaint in question is the subject of

³⁹ SEM-00-006 (Tarahumara), Article 14(1) and (2) Determination (6 November 2001), page 2.

⁴⁰ Response at 13 and Appendix XI.

⁴¹ See Submission Appendix 1, point G.7 (p. 28) (without appendix) and Response at 12–13.

⁴² The Secretariat has determined on other occasions that in order to apply Article 14(3)(a), it must show that there exists a pending proceeding in the sense of the NAAEC, and that this proceeding refers to the same matter as the Submission. In this case, the Secretariat was not provided with the information necessary to determine this. See NAAEC Articles 14(3)(a) and 45(3); SEM-99-001 (Methanex), Secretariat Determination under Article 14(3)(a) (30 June 2000); SEM-97-006 (Oldman River II) Secretariat Notification to Council under Article 15(1) (19 July 1999); SEM-97-001(BC Hydro) Secretariat Notification to Council under Article 15(1) (27 April 1998); SEM-98-004 (BC Mining) Secretariat Determination under Article 15(1) (11 May 2001); SEM-00-004 (BC Logging) Secretariat Determination under Article 15(1) (27 July 2001); and SEM-01-001 (Cytrar II) Secretariat Determination under Article 15(1) (29 July 2002).

⁴³ Submission at 10.

a pending administrative proceeding.⁴⁴ However, on this point as well, Mexico's response includes no information enabling the Secretariat to determine that this matter is the subject of a pending proceeding in the terms of NAAEC Article 14(3)(a), and therefore it is appropriate to continue reviewing this allegation. Here again, the question of whether Mexico is effectively enforcing its environmental law with respect to this complaint remains open, given that the Party did not respond to this allegation.⁴⁵

In summary, it is not clear from Mexico's response that the environmental authorities and the MPF have effectively enforced the environmental law as it concerns the investigation and prosecution of probable environmental crimes. The factual record that warrants development with respect to this submission will allow documentation of the process whereby the environmental authorities determined whether the facts in question of which they had knowledge constitute probable environmental crimes, as well as the decisions on whether to notify the MPF of these facts, in accordance with LGEEPA Articles 169 and 202. In addition, a factual record is warranted to develop information on whether Mexico is effectively enforcing CPF Articles 416, 418 and 419 in regard to the facts that according to the submission constitute probable crimes.

3. *Alleged failures to effectively enforce the appeal for review provisions (LGEEPA Article 176)*

Headings C and D of the submission contain assertions relating to the processing of the appeals for review filed further to the citizen complaints in question.

LGEEPA Articles 176–181 provide that affected persons may challenge a final administrative decision issued as a result of various acts of enforcement of that law. Based on a comprehensive reading of Article 8 of the Constitution, LGEEPA Articles 176–181, and LFPA Articles 17 and 83–96, the appeal for review procedure may be described as follows. The authorities either allow or dismiss the appeal; as applicable, they grant or deny a stay of the act appealed and review the harm or injury alleged by the appellant. The authorities are required to issue a final decision within the following four months. The decision may be to dismiss or stay the appeal; to uphold the act appealed; to declare the nonexistence, nullity, or voidability of the appealed act or nullify it in whole or in part; or to order the amendment of the appealed act or dictate or order the issuance of a new one in its place, where the appeal is resolved wholly or partially in favor of the appellant. The authorities are required to notify the appellant of the final decision without delay.

Regarding the Party's alleged failure to enforce in connection with its allowance or dismissal of the appeals for review referred to in heading C of the submission, Mexico's response shows that the appeals in question were allowed, and it exhibits the corresponding decisions. Likewise, regarding the Party's alleged failure to enforce in connection with the

⁴⁴ Response at 10–11.

⁴⁵ *Ibid.*

issuance of a final decision in the appeals for review contemplated in heading D of the submission, Mexico's response shows that these appeals were resolved, and it includes the corresponding resolutions.⁴⁶ Therefore, the Secretariat considers that the development of a factual record is not warranted in relation to the allegations in the submission concerning the appeals for review filed further to citizen complaints.

4. *Summary*

The matters raised by the submission in regard to the effective processing of citizen complaints as a mechanism for notifying the authorities of the existence of alleged violations of environmental law warrant development of a factual record, even though the response of the Party does provide information on the processing of the citizen complaints filed by the indigenous peoples and communities of the Sierra Tarahumara that are referenced in the submission. For the majority of the specific cases discussed in the submission, the communications and decisions attached to Mexico's response do not resolve the matters raised in the submission as to whether the relevant authorities took proper enforcement actions as prescribed by the LGEEPA.⁴⁷ Mexico's response provides a considerable amount of relevant information on the manner in which the complaints in question were processed, but this information does not resolve the central issue of whether Mexico is failing to effectively enforce its environmental law in these cases. The submission warrants the development of a factual record in order to shed more light on that matter.

Similarly, it is appropriate to address in a factual record the matters raised in the submission in relation to the investigation and prosecution of probable environmental crimes. In particular, the factual record would document the status of the denunciations of probable crimes filed with the MPF that are mentioned in the submission; the process whereby the environmental authorities determined whether the facts in question of which they had knowledge constitute probable environmental crimes; and the decisions on whether to notify the MPF of these facts.

The Submitter asserts that the failures to process the citizen complaints filed by the indigenous peoples and communities of the Sierra Tarahumara constitute a persistent pattern of denial of access to environmental justice to those communities. The NAAEC stresses the importance of public participation in conserving, protecting and enhancing the environment, and contemplates, among the goals of the Parties, the achievement of high levels of environmental protection and compliance with the law.⁴⁸ The submission also states that the alleged failures to enforce fall within the context of NAAEC Articles 6 and 7,

⁴⁶ See Response at 8–9 and appendices VI–VII.

⁴⁷ Specifically, this refers to the cases discussed in Submission headings A (except the complaints filed by Ricardo Chaparro Julián [Tepehuán de las Fresas Indigenous People] on 12 October 1998 and by Ejido Rocoroyvo on 18 February 2000), F, G, H, I, K, M, N, O, P (except for the inspection visits on which facts already complained of by the ejido residents were observed, as discussed in Response Appendix XIII), R, S and T.

⁴⁸ NAAEC Preamble, sixth paragraph, and Articles 1(a) and (g) and 5(1).

which establish the commitment of the Parties to initiate, in a timely manner, judicial proceedings to seek appropriate sanctions or remedies for violations of their environmental law. The effective enforcement by Mexican environmental authorities of the citizen complaint procedure is fundamental to the promotion of citizen participation in environmental protection. Equally important is cooperation between the environmental authorities and the MPF in the proper investigation and prosecution of probable environmental crimes. The development of a factual record with respect to this submission would promote the effective enforcement of the Party's environmental law provisions that enable the indigenous peoples and other rural communities of the Sierra Tarahumara to participate, by filing complaints and denunciations, in the protection of the region's forests and the conservation of its ecosystems.

In the case of the alleged failures to enforce in connection with the appeal for review process, Mexico's response resolves the matters raised in the submission, and the Secretariat considers that the development of a factual record is not warranted in this regard.

While the alleged failures to enforce environmental law of the kind raised in this submission might not individually warrant preparation of a factual record, taken together, and considering the importance of the effective participation by indigenous peoples and other communities of the Sierra Tarahumara in the environmental protection of that region, the allegations in this submission pose a central question about effective enforcement of environmental law that warrants preparation of a factual record.

V. RECOMMENDATION

For the reasons set forth in this Notification, the Secretariat hereby informs the Council that in light of the response of Mexico, it considers that those assertions in submission SEM-00-006 (Tarahumara) that previously warranted a response from the Party, concerning the alleged failures to effectively enforce LGEEPA Articles 169, 189, 190–193, 199 and 202, as well as CPF Articles 416, 418 and 419, warrant the development of a factual record. The submission asserts failures to effectively enforce environmental law with respect to the citizen complaint procedure and the prosecution of probable environmental crimes, in the cases presented by indigenous peoples and communities of the Sierra Tarahumara, which, in light of the response from the Party, warrant documenting in a factual record. The effective enforcement of the environmental law that establishes these procedures is fundamental to the promotion of citizen participation –particularly of indigenous peoples– in environmental protection and natural resource conservation.

Respectfully submitted for your consideration on this 29th of August 2002.

(original signed)
Victor Shantora
Acting Executive Director