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North American
Environmental
Law and Policy

Commission for
Environmental Cooperation
of North America

Final Factual Record Tarahumara Submission (SEM-00-006)

Prepared in Accordance with
Article 15 of the North American
Agreement on Environmental
Cooperation



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of North America

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PROFILE

In North America, we share a rich environmental heritage that includes air, oceans and rivers, mountains and forests. Together, these elements form the basis of a complex network of ecosystems that sustains our livelihoods and well-being. If these ecosystems are to continue to be a source of life and prosperity, they must be protected. Doing so is a responsibility shared by Canada, Mexico, and the United States.

The Commission for Environmental Cooperation of North America (CEC) is an international organization created by Canada, Mexico, and the United States under the North American Agreement on Environmental Cooperation (NAAEC) to address regional environmental concerns, help prevent potential trade and environmental conflicts, and promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA).

The CEC accomplishes its work through the combined efforts of its three principal components: the Council, the Secretariat and the Joint Public Advisory Committee (JPAC). The Council is the governing body of the CEC and is composed of the highest-level environmental authorities from each of the three countries. The Secretariat implements the annual work program and provides administrative, technical and operational support to the Council. The Joint Public Advisory Committee is composed of 15 citizens, five from each of the three countries, and advises the Council on any matter within the scope of the Agreement.

MISSION

The CEC facilitates cooperation and public participation to foster conservation, protection and enhancement of the North American environment for the benefit of present and future generations, in the context of increasing economic, trade and social links among Canada, Mexico and the United States.

NORTH AMERICAN ENVIRONMENTAL LAW AND POLICY SERIES

Produced by the CEC, the North American Environmental Law and Policy series presents some of the most salient recent trends and developments in environmental law and policy in Canada, Mexico and the United States, including official documents related to the novel citizen submission procedure empowering individuals from the NAFTA countries to allege that a Party to the agreement is failing to effectively enforce its environmental laws.

**Factual Record
Tarahumara Submission
(SEM-00-006)**

**Prepared in Accordance with Article 15
of the North American Agreement on
Environmental Cooperation**

July 2005



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1. Executive Summary

Articles 14 and 15 of the *North American Agreement on Environmental Cooperation* (“NAAEC”) establish a process allowing residents of Canada, Mexico and the United States to file submissions alleging that a Party to the NAAEC (Canada, Mexico or the United States) is failing to effectively enforce its environmental law. Under the NAAEC, this process can lead to the publication of a factual record. The Secretariat (“Secretariat”) of the North American Commission for Environmental Cooperation (“CEC”) administers the NAAEC citizen submissions process.

On 31 May 2000, *Comisión de Solidaridad y Defensa de los Derechos Humanos, A.C.* (“Cosyddhac” or the “Submitter”) filed a submission with the Secretariat alleging that Mexico is failing to effectively enforce its environmental law in regard to the processing of citizen complaints and prosecuting of probable environmental offenses in connection with illegal logging and other resource extraction activities alleged to have occurred in various indigenous communities of the Sierra Tarahumara mountains in western Chihuahua state, in the late 1990’s and 2000. On 22 April 2003, in Council Resolution 03–04, the Council instructed the Secretariat to prepare a factual record with respect to the submission. To develop the factual record, the Secretariat considered publicly available information as well as information provided by Mexico and the Submitter.

In this factual record, the Secretariat presents the facts relevant to whether or not Mexico is failing to effectively enforce the provisions of its *Ley General del Equilibrio Ecológico y la Protección al Ambiente* [LGEEPA, General Law on Ecological Balance and Environmental Protection] regarding the citizen complaints process (LGEEPA Articles 189, 190-93, and 199) and Articles 416, 418 and 419 of Mexico’s *Código Penal Federal* [CPF, Federal Penal Code] (and related Articles 169 and 202 of LGEEPA) regarding the reporting and prosecuting of probable environmental offenses in connection with the cases covered by the submission for which the Secretariat recommended development of a factual record.

1.1 Legal Context Regarding Indigenous Peoples and Citizen Complaints

The Submitter alleges irregularities in the processing of citizen complaints filed by indigenous communities from the Sierra Tarahumara, and claims that such irregularities amount to a denial of environmental justice. In developing the factual record, the Secretariat gathered background information regarding the legal context of the complaints covered by the submission. This information concerns rights of indigenous peoples and communities in Mexico at the federal and state level, as well as background information on the citizen complaints process as a tool for environmental justice in Mexico. Although this information is relevant as contextual background for the Submitter's assertions, the Submitter did not assert that – and this factual record does not address whether – Mexico is failing to effectively enforce constitutional or statutory provisions not cited in the submission.

Regarding rights of indigenous peoples, the federal Constitution of Mexico contains criteria for identifying indigenous peoples and provides a framework for recognizing them and guaranteeing their right to self-determination, subject to further elaboration in state constitutions and laws. The State of Chihuahua recognizes indigenous rights in the state Constitution. State-level implementing legislation is pending. Under the federal Constitution, indigenous rights in regard to land ownership are subject to recognition and definition through the agrarian system. A report on the situation of indigenous peoples in Mexico prepared by the United Nations (“UN”) Special Rapporteur on the situation of human rights and fundamental freedoms in 2003 concluded that government policy towards indigenous peoples in Mexico “[...] is designed to produce negotiated solutions to conflict ‘hot spots,’ to promote and support productive activities and to provide various social services to the communities.” According to the UN Special Rapporteur, this policy “[...] does not depart significantly from the trend that has characterized indigenous policy for more than half a century, but it is very much restricted by the limitations and cuts in the public budget and the clear fact that the problem of the indigenous peoples is not one of high priority for the Mexican state.”

The citizen complaints process found in the LGEEPA allows persons to complain to the *Procuraduría Federal de Protección al Ambiente* [Profepa—Federal Attorney for Environmental Protection] when they become aware of activities carried out in violation of environmental laws or that disrupt ecological balance. Under the LGEEPA, Profepa has ten days to acknowledge receipt of a complaint and either begin processing it or turn it over to the government agency with jurisdiction over the

subject matter of the complaint, in a reasoned decision that is copied to the complainant. Profepa must investigate the facts alleged by the complainant and explain how it took into account information provided by the complainant. A citizen complaint can result in Profepa launching an administrative proceeding under the inspection and surveillance provisions of LGEEPA. When that is the case, complainants are notified of the outcome of the administrative proceeding when a resolution is issued. Under LGEEPA, the processing of a citizen complaint is intended to take forty working days.

In response to a request from the Secretariat for information regarding the processing of the citizen complaints covered by the submission, Mexico provided the Secretariat with a copy of a report commissioned by Profepa in 2002 containing an evaluation of the social impact of the citizen complaints process in Mexico. The study involved a survey of 368 complainants from the six states having registered the highest number of citizen complaints in the period 1999–2001. The report concluded that in approximately one third of cases, complainants were dissatisfied with the outcome of their complaints, particularly as regards the failure to resolve the underlying problem. Of eight complaints highlighted in the study report because they involved complicated enforcement operations, six involved natural resources issues. Five of these involved allegations of illegal logging and one involved alleged irregularities at sawmills. The report recommended strengthening enforcement of natural resources laws, but did not indicate whether satisfaction with the citizen complaints process could be correlated to the subject matter of the complaint (industrial vs. natural resources activities). The report concluded that the citizen complaints process is difficult for ordinary citizens to use, and that the flow of information to the complainant is slow, bad or nonexistent. The authors observed that there is an increasing willingness by local government and citizens to participate in the move toward sustainable development, and they recommended implementing a large scale training program within all levels of Profepa, focusing on improving knowledge of the law, sensitization to the social situation of complainants, and ways to process and capture information gathered during inspections and surveillance operations. The report also recommended increasing public awareness of the right to appeal to the Auditor General or the National Human Rights Commission in cases where the agency commits irregularities.

1.2 Summary of Information Gathered Regarding Processing of Citizen Complaints Covered by the Factual Record

For each of the citizen complaints covered by the factual record, the Secretariat compiled existing information (information received from

the Submitter and information received from Mexico in its response to the submission filed with the Secretariat pursuant to Article 14(3) of the NAAEC) and asked Mexico for information on questions that remained open. Information received by the Secretariat is set out in Appendix 6 of the factual record and is summarized below.

Of the 28 citizen complaints covered by this factual record, 20 were decided upon as to their admissibility within a period exceeding 10 days. Files were closed within four to 28 months of complaints being filed, with the majority of files being closed within five to twelve months. During a meeting with a legal officer from the CEC Secretariat in Chihuahua City in October 2003, federal authorities explained that delays in processing complaints were caused by deficiencies in the complaints themselves, lack of enforcement staff, travel time, and a backlog of complaints dating to the mid-1990s, when Profepa inherited hundreds of pending complaints from another federal agency.

Of the 28 citizen complaints covered by this factual record, 7 were dismissed, 5 were referred to another agency in whole or in part, and 17 resulted in Profepa launching administrative proceedings. In 16 of the 17 cases in which Profepa launched administrative proceedings, Profepa issued orders of fines and/or corrective measures. In 9 of those cases, some or all of the corrective measures were implemented (though reforestation—ordered in nine cases—was never carried out by the perpetrators). Mexico did not provide the Secretariat with requested information regarding whether fines were paid and what actions—if any—were taken by Profepa in those cases where corrective measures were not implemented as ordered.

According to Mexico, of the 28 citizen complaints covered by this factual record, there were 13 cases in which environmental authorities filed a report of probable environmental offenses with MPF [*Ministerio Público Federal*—Federal Prosecutor General]. Regarding the remaining cases, Mexico stated that in five cases, environmental authorities did not notify MPF because the cases involved irregularities considered as minor. In one case Profepa did not conduct an inspection and therefore was not in a position to report any facts to MPF. In another, according to Mexico, MPF did not become involved because Profepa's administrative ruling was quashed on appeal. In the remaining cases, Mexico stated that facts were not reported to MPF because "the facts did not establish the existence of a criminal offense." Mexico did not provide the Secretariat with requested information regarding the outcome of the cases that were referred to MPF, or additional reasons regarding the decision not to refer complaints in those cases that were not referred.

1.3 Detailed Information Regarding the *Ciénega de Guacayvo, Rochéachi, and Pino Gordo* Cases

The factual record contains more detailed information regarding citizen complaints filed by persons from three indigenous communities in the Sierra Tarahumara: *Ciénega de Guacayvo*, *Rochéachi*, and *Pino Gordo*. A legal officer from the CEC Secretariat met with representatives of these communities in *Ciénega de Guacayvo* and Chihuahua City in October 2003.

The submission refers to six citizen complaints filed with Profepa in 1998 and 1999 in regard to alleged illegal logging and setting of forest fires in and around the *ejido* (political entity created by agrarian system) of *Ciénega de Guacayvo* and processing of illegally harvested lumber in sawmills of the nearby town of San Juanito. According to the Submitter, while the complaints did result in some illegally harvested lumber being seized, there was no satisfactory process for disposing of this lumber, with the result that it lay rotting in piles in the center of the *ejido*. Another outcome of the complaints was that the *ejido* itself was ordered to carry out reforestation work because government authorities considered the *ejido* to be responsible for having allowed illegal logging to occur. *Ejido* members complained that sanctions imposed on individuals did not prevent recidivism. They also asserted that in response to a complaint regarding illegal processing activities at San Juanito sawmills, Profepa claimed to have carried out the necessary inspections and imposed sanctions, though it never acknowledged receipt of the citizen complaint or provided complainants with supporting information regarding enforcement action.

The Submitter alleged that Profepa conducted inspections in the *ejido* in June, August and October 1999, and that despite finding evidence of forest arson, it did not notify MPF of the probable existence of an environmental offense, nor did it do so in regard to matters covered by the six citizen complaints filed by *ejido* members. In its response to the Secretariat's Request for Information, Mexico stated that preliminary criminal investigations had been conducted as a result of the 1999 inspections, and it mentioned two file numbers (without providing the Secretariat with supporting information). Mexico referenced the same file numbers in asserting that it had notified MPF of other incidents referenced in citizen complaints covered by the submission, though the other incidents involved illegal operation and storage of lumber in San Juanito sawmills, storage and transportation of logs that are still found stacked in *Ciénega de Guacayvo*, and illegal logging. In other cases, authorities stated that complainants had themselves reported matters to MPF, and that it was therefore unnecessary for Profepa to do so as well.

Complainants in the Ciénega de Guacayvo cases and government authorities agreed that enforcement of forest legislation was impeded by legislative amendments adopted in 1992 that dispensed with transport manifests (documents certifying the legality of goods being transported) in favor of a log “marking” system. Though manifests had been reintroduced through legislative amendments in 1997, the amendments only became operative in 1999. Government authorities also stated that Profepa was concerned not to refer minor matters to MPF, in accordance with the “principle of minimum intervention,” though recent legislative and policy changes give penal complaints (complaints from the public directly to MPF) more prominence as a tool for citizens to combat environmental crimes.

The submission covers a series of citizen complaints filed with Profepa by the Rarámuri Indigenous People from the *ejido* of Rochéachi in the late 1990’s alleging illegal extraction of sand and destruction of streamside vegetation amounting to forest conversion. Profepa referred the matter to CNA [*Comisión Nacional del Agua*—National Water Commission], which conducted inspections and concluded that the activities complained of were being carried out legally, in compliance with a sand mining concession issued by CNA. Nevertheless, the citizen complaints resulted in the suspension of the mining concession and the conclusion of a series of interagency agreements between Semarnat [*Secretaría de Medio Ambiente y Recursos Naturales*—Ministry of Environment and Natural Resources], CNA and Profepa containing an acknowledgement of overlapping jurisdictions (Semarnat has jurisdiction to conduct environmental assessments and is in charge of restoration programs, CNA has jurisdiction over watercourses, and Profepa receives citizen complaints and has jurisdiction over environmental law enforcement). The Secretariat did not receive any information regarding follow-up to the interagency agreements signed for Rochéachi. According to Mexico, a subsequent complaint of illegal sand extraction gave rise to enforcement measures by Profepa and CNA, but no supporting information was provided to the Secretariat.

At a meeting with the legal officer from the CEC Secretariat in October 2003, in discussing the Rochéachi case, CNA representatives commented that due to the fact that only a small portion of CNA’s overall budget is dedicated to enforcement action and considering that CNA has no offices in the Sierra Tarahumara, the agency has to prioritize enforcement measures. For the State of Chihuahua (Mexico’s largest state), CNA’s budget allows for twenty inspection visits annually to respond to citizen complaints. CNA representatives also mentioned that sand extraction activities in Rochéachi were not doing harm to the river

or affecting water supply. *Ejido* members who met with the legal officer from the CEC Secretariat stated that while their complaints resulted in an informal moratorium on sand mining within the *ejido*, the current head of the *ejido* assembly was not committed to enforcing the moratorium; residents attempting to enforce the moratorium were being intimidated; no sanctions were imposed by Profepa or CNA against those having engaged in illegal extraction activities; and there was no assurance that mining concessions would not be issued in the future.

The submission refers to two citizen complaints of illegal logging filed with Profepa in 1998 and 1999 by residents of the *ejido* of Pino Gordo. Logging was being carried out in the *ejido* pursuant to an authorization issued by Semarnat to the community of Colorada de los Chávez. The grounds for the citizens' complaints were fourfold. The complainants asserted first, that the authorization should not have been issued because a majority of residents of Pino Gordo were opposed to any logging, but were not entitled to vote on the forest management proposal because they lacked birth certificates (issued under the agrarian system) recognizing their indigenous status. Second, they asserted that the *ejido* of Pino Gordo and the community of Colorada de los Chávez had a pending boundary dispute, and that under the law, forest management authorizations cannot be issued while such disputes are ongoing. Third, they alleged that the forest management plan had been authorized despite the fact that in the area covered by the plan, there are endangered species, and the plan contained no mitigation measures intended to protect such species. Finally, they alleged that logging activities were not complying with the terms of the forest management plan.

A forest audit carried out by Profepa in 1999 led to the cancellation of the forest management plan and Profepa ordering the adoption of emergency measures. The Submitter claims that Profepa should have notified MPF of the facts that led to the cancellation of the forest management plan. In its response to the Secretariat's Request for Information, Mexico agreed, but did not indicate whether this was done. Regarding whether there were endangered species in the area covered by the forest management plan, government authorities stated that the plan itself did not mention the presence of any such species and that authorities therefore assumed that no such species were present.

1.4 Challenges to Enforcement in the Cases Covered by the Factual Record

In developing the factual record, the Secretariat gathered additional information relevant to a consideration of whether or not, in the

cases referenced in the submission, Mexico is failing to effectively enforce its environmental law. This information relates to challenges involving relations between indigenous communities and government authorities, as well as challenges associated with intergovernmental and interagency cooperation.

Regarding relations between indigenous communities and government authorities, challenges regarding the effective enforcement of environmental law in the cases covered by the submission include geographical, cultural, economic and legal factors. From a geographic perspective, due to the absence of Profepa and CNA offices in the Sierra Tarahumara, enforcement requires significant (8–24 hours) travel time to reach remote mountain communities from Chihuahua City. From a cultural perspective, language acts as a barrier to citizen communication with government authorities regarding law enforcement and access to government-sponsored natural resources programs. Differing conceptions regarding the value of forests (as tools for economic development or as part of a cultural context needing to be preserved) come into play in reaching consensus on what is effective law enforcement. Another factor is concern in indigenous communities regarding the independence of Profepa staff. It is acknowledged by government authorities that there are too few Profepa inspectors and that their salaries are not in line with the rest of the federal civil service. Economic and social factors limit the ability of indigenous communities to develop, adopt, implement and enforce local rules on forest management, making them vulnerable to exploitation from outside and within. Legal factors such as agrarian disputes affect perceptions regarding the efficiency of citizen complaints as a tool for environmental justice, because Profepa, Semarnat and CNA do not have jurisdiction to resolve the underlying legal matter. Another legal factor is lack of follow-up by Profepa to matters raised in submissions. Although follow-up is not required by law, when underlying matters are not resolved, the citizen complaints process is viewed as less effective.

Regarding intergovernmental and interagency cooperation, federal-state delegation initiatives, while contemplated by LGEEPA, have been hampered by a lack of resources at the state level for taking over the administration and enforcement of federal environmental laws. In regard to interagency cooperation, in 2004, recognizing that between a quarter and a third of the lumber sold in Mexico is harvested illegally, the federal government mounted a cross sectoral initiative aimed at combating illegal logging in 15 critical priority forested areas throughout the country, including the Sierra Tarahumara. Under this initiative, Profepa is committed to developing a plan with each municipality to

respond to citizen complaints of illegal logging in under two hours, and Profepa has signed an agreement with PGR [*Procuraduría General de la República*—Federal Attorney General’s Office] detailing Profepa’s responsibilities in assisting PGR (within the limits of their respective budgets) to provide a timely response to allegations of environmental crimes. Additional enforcement initiatives include concerted action involving the army and state and local governments and police forces, as well as intelligence operations, aerial and remote surveillance, road closures, sawmill inspections, checkpoints, and improvements to the system of transport manifests. Under this initiative, enforcement measures also aim to reduce demand for illegally harvested timber, with specific actions designed to address impunity in business and political circles, and programs seeking to ensure that only crates and pallets made of legally harvested lumber are used in the agricultural sector, by beer and refreshment companies, and by the automotive industry.

2. Summary of the Submission

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 offenses, the consultation of indigenous peoples prior to issuing logging permits, and access to environmental information.¹ According to the Submitter, Mexico is failing to effectively enforce its environmental law as follows:

- A. Failure by Mexico to effectively enforce Article 189 in relation to Article 191 of the LGEEPA [*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—General Law on Ecological Balance and Environmental Protection] by failing to guarantee the indigenous peoples, as social groups, access to environmental justice through the filing of citizen complaints, or from another standpoint, Mexico’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. Mexico’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.

1. If the examples from all the headings in the submission are counted, there are at least 112 specific situations for which it is asserted that the Party failed to effectively enforce its environmental law. The original structure of the submission devoted one chapter to facts (Chapter III, now Appendix I to the submission), which recounted the procedural history of each of the citizen complaints and actions by the authority employed as examples to document each of the 21 assertions (contained in Chapter IV, which was kept in the body of the submission).

- C. Mexico'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, Mexico's failure to enforce through its denial to the indigenous peoples of legal interest in the broad sense, as well as legitimatio ad processum and legitimatio ad causam.
- D. Mexico's failure to effectively enforce LGEEPA Article 176, in that every appeal for review must result in a decision that concludes the appeal.
- E. Mexico'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. Mexico'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.
- G. Mexico'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 offenses consisting of forest clearing, 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. Mexico's failure to effectively enforce CPF [*Código Penal Federal*—Federal Criminal Code] Article 418 in connection with forest clearing and land use changes without authorization under the Forestry Act [Ley Forestal].
- I. Mexico's failure to effectively enforce CPF Article 418 in relation to its failure to notify MPF of the probable occurrence of environmental offenses 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. Mexico'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. Mexico's failure to effectively enforce CPF Article 418 in relation to its failure to notify MPF of the probable occurrence of environmental offenses consisting of intentionally causing fires in woodlands and forest vegetation, thus damaging natural resources, flora, fauna and ecosystems.

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- L. Mexico'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. Mexico's failure to effectively enforce CPF Article 419 in relation to its failure to notify MPF of the probable occurrence of environmental offenses 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. Mexico's failure to effectively enforce CPF Article 416 in relation to its failure to notify MPF of the probable occurrence of environmental offenses consisting of discharging and dumping wastewater into national bodies of water, causing harm to public health, natural resources, flora, fauna, and water quality.
 - O. Mexico's failure to effectively enforce LGEEPA Article 169 *in fine*, 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 offenses are verified, the environmental authorities shall notify MPF thereof.
 - P. Mexico'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 offenses, did not file corresponding reports of probable offenses.
 - Q. Mexico's failure to effectively enforce LGEEPA Article 191 by failing to join a citizen complaint to a pre-existing file opened in response to a previous citizen complaint of a similar nature.
 - R. Mexico'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. Mexico'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. Mexico'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. Mexico'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 Act and the *Indigenous and Tribal Peoples Convention* (Convention 169) of the ILO constitute a denial of 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."²

After analyzing the submission in light of Articles 14(1) and 14(2), the Secretariat requested a response from Mexico 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.³

3. Summary of Mexico's Response

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 how the citizen complaints and applications for review mentioned in the submission were processed. The response maintains that the environmental authorities adequately performed their duties in responding to the citizen complaints mentioned in headings A, F, R, S and 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 aforementioned complaints, issuing a decision on the admissibility of each

2. Submission at 18.

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

complaint, and notifying the complainants of those decisions within the ten days following the receipt of the corresponding complaint.⁴

Concerning assertions about effective enforcement in connection with the procedure to apply for judicial review in the cases mentioned in the submission (headings C and D), the response states that Mexico, “based on NAAEC Articles 7(3) and (4) and LGEEPA Article 176 ... resolved applications 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 Act (*Ley Federal de Procedimiento Administrativo*—LFFPA) ... by upholding the administrative decision under review.”⁵

As to the assertions in the submission concerning the investigation and prosecution of environmental offenses, Mexico 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 Article 418 of the CPF). Regarding heading H, Mexico asserts that “it refers to a complaint of probable offenses filed with MPF [*Ministerio Público Federal*—Federal Prosecutor General] by the Community of *ejido* San Diego de Alcalá on 21 September 1999. In that regard, Mexico, based on NAAEC Article 14(3)(a), requests that the Secretariat give no further consideration to the matter because, it asserts, the complaint is the subject of a pending administrative proceeding before MPF, which shall determine whether or not to turn the file over to the competent judge.”⁶

Concerning headings I, K, M and O, which refer to the failure to notify MPF of the probable occurrence of environmental offenses 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 perpetrators. According to the response, the environmental authorities did not notify MPF because the acts and omissions observed by the authorities did not qualify as environmental offenses.⁷ 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.

4. Response at 2–3.

5. *Ibid.* at 8–9.

6. *Ibid.* at 10–12. The complaint for which the Party invoked Article 14(3)(a) is also mentioned in heading M of the submission.

7. *Ibid.* at 11–12.

Mexico's response states further that "beginning in the year 2000, a series of meetings was held between its responsible authorities [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 in relation thereto, using those meetings as fora for discussing environmental situations arising in that geographical area..." Finally, Mexico's response indicates that Mexico intends to set up "participatory surveillance committees for natural resource conservation" in the region.⁸

4. Scope of the Factual Record

On 29 August 2002, the Secretariat notified the CEC Council that, in accordance with Article 15(1) of the NAAEC and in light of Mexico's response, it considered the assertions in the submission for which it had requested a response from Mexico to warrant the development of a factual record, except in regard to the allegations in the submission relating to the applications for review filed in connection with citizen complaints. In its Notification to the Council, the Secretariat explained:

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 (NAAEC Preamble, sixth paragraph, and Articles 1(a) and (g) and 5(1)). The submission also states that the alleged failures to enforce fall within the context of NAAEC Articles 6 and 7, 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.

8. *Ibid.* at 16–17.

[...]

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.

On 22 April 2003, by means of Council Resolution 03–04 (set out in its entirety in Appendix 1), the Council “[instructed] the Secretariat to prepare a factual record with respect to the submission.”

Consequently, this factual record presents information relevant to the facts concerning:

- i) the cases mentioned in headings A, F, G, H, I, K, M, N, O, P, R, S and T of the submission.
- ii) the application of the citizen complaint procedure (LGEEPA Articles 189, 190–193 and 199) by Mexico in the cases mentioned in headings A, F, R, S and T of the submission, and the application of the provisions concerning investigation and prosecution of probable environmental offenses (CPF Articles 416, 418 and 419 and LGEEPA Articles 169 and 202) by Mexico in the cases mentioned in headings G, H, I, K, M, N, O and P of the submission.
- iii) the effectiveness of Mexico’s enforcement of those provisions in those cases.

5. Relevant Environmental Law

This factual record focuses on an assertion that Mexico is failing to effectively enforce the LGEEPA and the CPF as regards the processing of citizen complaints and the prosecution of probable environmental offenses relating to cases of alleged illegal logging and other activities in communities of the Sierra Tarahumara, State of Chihuahua, in the period 1998–2000. The legislative provisions cited by the Submitter are reproduced in full in this section.

LGEEPA

Article 169.- The corresponding administrative decision shall state or, as applicable, add the measures that must be taken in order to correct the

deficiencies or irregularities observed, the time period allowed to the violator to implement them, and the sanctions to which he may be liable under the applicable provisions.

Within the five working days following the expiration of the time period granted to the violator to cure the deficiencies and irregularities observed, the latter shall give detailed written notice to the ordering authority of its compliance with the measures ordered under the terms of the corresponding requirement.

In the case of a second or subsequent inspection to verify compliance with a previous order or orders, where it is evident from the corresponding report that the measures previously ordered have not been complied with, the competent authority may impose, in addition to the applicable sanction or sanctions under Article 171 of this law, an additional fine not exceeding the maximum limits specified therein.

In those cases where the violator applies the corrective measures or emergency measures or corrects the irregularities detected within the terms ordered by the Ministry, provided that the violator is not a repeat violator, and the provisions of Article 170 of this law do not apply, the Ministry may rescind or modify the sanction or sanctions imposed.

As applicable, the federal authority shall inform the agency responsible for prosecuting criminal offenses of acts or omissions noted in the course of its duties that may constitute one or more offenses.

Article 189.- Any individual, social group, nongovernmental organization, association or partnership may complain to the Office of the Federal Attorney for Environmental Protection or other authorities of any fact, act or omission that causes or may cause ecological imbalance or harm to the environment or natural resources or that violates the provisions of this law and other legal provisions governing matters related to the protection of the environment and the preservation and restoration of ecological balance.

Where there is no representative of the Office of the Federal Attorney for Environmental Protection in the locality, the complaint may be filed with the municipal authority or, at the option of the complainant, with the closest branch of said Office.

Where a complaint filed with a municipal authority falls under federal jurisdiction, it shall be referred to the Office of the Federal Attorney for Environmental Protection.

Article 190.- A citizen complaint may be filed by any individual. It must be filed in writing and include:

I.- The name or trade name, domicile, telephone number, if any, of the complainant and, as applicable, his legal representative;

II.- The act or omissions complained of;

III.- The information necessary to identify the alleged violator or locate the pollution source, and

IV.- Any evidence that the complainant may offer.

In like manner, a complaint may be filed by telephone, in which case the public servant who receives it shall prepare a detailed report and the complainant shall ratify it in writing, fulfilling the requirements of this article, within the three days following the filing of the complaint, without prejudice to any investigation that the Office of the Federal Attorney for Environmental Protection may undertake as a matter of course.

Complaints that are clearly inadmissible or lacking grounds as well as those evidencing bad faith, lack of justification or nonexistence of petition shall not be allowed to proceed and notice thereof shall be given to the complainant.

Where the complainant requests the Office of the Federal Attorney for Environmental Protection to keep his identity secret for reasons of safety or private interest, said Office shall pursue the complaint in accordance with the powers with which it is invested by this law and other applicable legal provisions.

Article 191.- Upon receipt of a complaint, the Office of the Federal Attorney for Environmental Protection shall acknowledge receipt thereof, assign a file number thereto and register the number.

Where two or more complaints involving the same facts, acts or omissions, are received, the joinder thereof in a single complaint file shall apply and the complainants shall be notified of this decision.

The Office of the Federal Attorney for Environmental Protection, within the 10 days following the filing of a complaint, shall notify the complainant of the decision on the admissibility thereof and describe the manner in which the complaint was processed.

Where a complaint falls within the jurisdiction of another authority, the Office of the Federal Attorney for Environmental Protection shall acknowledge receipt to the complainant but shall not allow the complaint

to proceed, instead referring it to the competent authority for processing and resolution, and shall so notify the complainant in a fully articulated and reasoned decision.

Article 192.- Once a complaint is allowed to proceed, the Office of the Federal Attorney for Environmental Protection shall identify the complainant and shall notify the person, persons, or authorities to whom the facts complained of are attributed, or anyone who may be affected by the outcome of the action undertaken, so that they may produce any documents and evidence that may be appropriate within a maximum period of 15 working days counted from the corresponding notice.

The Office of the Federal Attorney for Environmental Protection shall carry out the necessary procedures with a view to determining the existence of acts, facts, or omissions evidencing the complaint.

In like manner, in the cases provided by this law, it may institute the appropriate inspection and surveillance procedures, in which case the applicable provisions of this title shall be observed.

Article 193.- The complainant may assist the Office of the Federal Attorney for Environmental Protection by submitting any evidence, documents, or information he considers relevant. The Office shall, when issuing a decision on the complaint, state the considerations adopted in regard to the information provided by the complainant.

Article 199.- Citizen complaint files may be closed due to the following causes:

- I.- Where the Office of the Federal Attorney for Environmental Protection lacks jurisdiction over the complaint;
- II.- Where the corresponding recommendation has been issued;
- III.- Where there is no contravention of environmental law;
- IV.- Where the complainant lacks interest under the terms of this chapter;
- V.- Where a decision for joinder of files has been issued;
- VI.- Where the citizen complaint has been resolved through conciliation between the parties;
- VII.- Where a decision ensuing from the inspection procedure has been issued, or
- VIII.- Where the complainant withdraws the complaint.

Article 202.- The Office of the Federal Attorney for Environmental Protection, within the scope of its powers, may undertake the applicable actions before the competent judicial authorities where it learns of acts, facts or omissions that constitute violations of administrative or criminal laws.

CPF⁹

Article 416.- Anyone who, without such authorization as may be required, or in violation of the legal and regulatory provisions or Mexican Official Standards, commits any of the following acts is liable to a penalty of three to six months imprisonment and a fine of one thousand to twenty thousand times the statutory daily minimum wage:

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

Where the waters in question are waters for delivery as bulk water to population centers, the maximum penalty is three additional years imprisonment; or

II. Destroying, draining or filling wetlands, mangrove forests, lagoons, estuaries or marshes.

Article 418.- Anyone who, without the authorization required under the Forestry Act, fells or destroys natural vegetation, cuts, uproots, fells or logs trees, carries out forest operations or effects land use changes is liable to a penalty of three months to six years imprisonment and a fine of one hundred to twenty thousand times the statutory daily minimum wage.

The same penalty shall apply to anyone who maliciously causes fires in woodlands, forests or natural vegetation, causing harm to natural resources, wild flora or fauna, or ecosystems.

Article 419.- Anyone who transports, deals in, stores, or processes timber resources in quantities greater than four cubic meters roundwood timber or the equivalent without authorization under the Forestry Act is liable to a penalty of three months to six years imprisonment and a fine equivalent

9. Arts. 416, 418 and 419 of the CPF were amended on 6 February 2002, *inter alia*, to lower fines, lengthen prison terms, and stipulate that committing any of the listed offenses in a natural protected area will be treated as an aggravating factor. The text reproduced above is the text that was in force at the time of the events referred to in the citizen complaints covered by the submission.

to one hundred to twenty thousand times the statutory daily minimum wage, except in cases of forest operations for domestic use pursuant to the Forestry Act.

6. Information Gathering Process

In May 2003, the Secretariat began the process of preparing a factual record. The Secretariat sought to obtain information on Mexico's initiatives and actions to enforce its environmental law with respect to the citizen complaints covered by the factual record.

On 15 May 2003, the Secretariat made public an Overall Plan to Develop a Factual Record (Appendix 2). It retained the services of Ana Córdova Vásquez to organize the information gathered by the Secretariat, identify gaps in the information, and compile governmental and other information concerning Mexican government policies and initiatives relevant to the factual record. A native of Chihuahua State, Ms. Vasquez holds a Bachelor's degree in biology from Harvard University as well as a Master's degree and a Ph.D. in natural resources policy and management from Cornell University. Her Master's thesis focused on opportunities, incentives and challenges in connection with collaborative natural resource and land use planning in the Sierra Tarahumara.

In accordance with NAAEC Articles 15(4) and 21(1)(a), on 10 September 2003, the Secretariat requested from Mexico relevant information in its possession for preparation of the factual record (Appendix 3) (the "Request for Information"). Likewise, the Secretariat invited the other two NAAEC Parties and the Joint Public Advisory Committee to provide relevant information. The Secretariat identified persons and nongovernmental organizations who may possess relevant information, including the Submitter, and invited them to provide information before 30 November 2003.

Based on the information provided by Mexico on 2 December 2003 in response to the Request for Information, on 20 January 2004 the Secretariat sent Mexico a request for additional information (Appendix 4) (the "Request for Additional Information"), asking that Mexico respond before 13 February 2004. Mexico responded on 19 February 2004. On 10 June 2004, the Secretariat sent Mexico a follow-up information request (Appendix 5) (the "Follow-Up Information Request"). Mexico responded on 8 July 2004.

Appendix 6 of this factual record presents a table containing a list of all the cases covered by the factual record, the Secretariat's corre-

sponding questions to Mexico, and Mexico's responses to those questions. Appendix 7 contains a list of documents received or gathered by the Secretariat for the development of the factual record.

In October 2003, a legal officer from the CEC Secretariat traveled to Chihuahua to gather information for the factual record. She and her consultant, Ana Córdova Vásquez, visited the communities of Ciénega de Guacayvo and Cuiteco, and met with members of the communities of Rochéachi and Pino Gordo at the Cosyddhac offices in Chihuahua City. They also met with federal and state representatives of Profepa, Semarnat, CNA (*Comisión Nacional del Agua*—National Water Commission) and the PGR (*Procuraduría General de la República*—Federal Attorney General's Office) at the Profepa offices in Chihuahua City. Information gathered during these meetings is summarized below, in sections 8 and 9.

NAAEC Article 15(5) stipulates that “the Secretariat shall submit a draft factual record to the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter,” and Article 15(6) stipulates that “the Secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.” The Secretariat submitted the draft factual record to the Council on 6 April 2005 and received comments from Mexico and the United States on 24 May 2005. Canada did not comment on the draft factual record.

7. Legal Context

Submission SEM-00-006 (Tarahumara) focuses on the processing, by Mexico's federal environmental authorities, of citizen complaints (*denuncias populares*) and complaints of criminal offenses filed by indigenous communities of the Sierra Tarahumara in the state of Chihuahua in 1998–2000, regarding alleged violations of federal law in connection with natural resources management, particularly illegal logging. This section of the factual record contains background information relevant to an understanding of the information presented below, in sections 8 and 9, and to a consideration of whether or not, in the cases covered by the factual record, Mexico is failing to effectively enforce the LGEEPA and CPF provisions cited in the submission. The information is presented under two headings: rights of indigenous peoples and communities in Mexico, and the citizen complaints process.

7.1 *Rights of Indigenous Peoples and Communities in Mexico*

This subsection presents background information concerning indigenous rights in the Sierra Tarahumara under Mexican law at the federal and state level (Chihuahua), in particular as regards access to environmental justice and natural resources management. Because the citizen complaints covered by the factual record were filed by or on behalf of indigenous communities, and because the complaints concerned natural resources issues (mainly illegal logging), information regarding the constitutional and statutory framework for indigenous rights—in particular in connection with natural resources management—in Mexico is relevant to understanding the factual context for law enforcement in regard to the complaints covered by the factual record. Reference to constitutional and statutory provisions other than the provisions cited by the Submitter in the submission is for background information purposes only. This factual record is not intended to present information regarding whether Mexico is failing to effectively enforce constitutional or statutory provisions not cited in the submission.

7.1.1 *Federal Level*

This section provides a summary overview of federal constitutional and legislative provisions related to indigenous rights as regards access to justice, territory, and natural resources management.

7.1.1.1 Constitutional Provisions

In January 1996, in a set of agreements known as the “San Andrés Accords,”¹⁰ the Mexican federal government made a series of commitments to Mexico’s indigenous peoples intended to redefine the relationship between indigenous peoples and the federal government.¹¹ Commitments include recognizing indigenous peoples in the Constitution, expanding political participation and representation, and guaranteeing full access to justice.¹² The San Andrés Accords stipulate the following:

10. Agreement signed in San Andrés de Larráinzar, Chiapas on 16 February 1996, during the second part of the closing plenary for theme no. 1 “Indigenous Rights and Culture within the framework of the dialogue between the EZLN [*Ejército Zapatista de Liberación Nacional*—Zapatista National Liberation Army] and the federal government to achieve an Agreement for Peace with Justice and Dignity”; online: EZLN www.ezln.org (date viewed: 10 February 2004).
11. These agreements were adopted following an uprising of indigenous peoples in the State of Chiapas on 1 January 1994.
12. San Andrés Accords, *supra*, note 10, Document 1: “Pronunciamiento Conjunto que el Gobierno Federal y el EZLN enviarán a las Instancias de Debate y Decisión

It is proposed to the Congress of the Union and the Legislatures of the states of the Republic that they recognize and establish the characteristics of self-determination and the levels and modes of autonomy, taking note that this entails:

- a) *Territory.* Every indigenous people is settled on a territory that covers the entire habitat occupied or used by the indigenous people in one form or another. The territory is the material basis of their reproduction as a people and it expresses the indivisible unity of people, land, and nature.
- b) *Scope of application.* Jurisdiction is the spatial, material and personal normative field of validity in which the indigenous people apply their rights. The Mexican State will recognize the existence of said rights.
- c) *Responsibilities.* There must be a coherent distribution of powers among the various federal, state and municipal authorities, as well as a distribution of political, administrative, economic, social, cultural, educational, judicial, and natural resource management and protection competencies among these Mexican governmental authorities, that make it possible to respond to the demands of indigenous peoples in a timely manner. Furthermore, it will be necessary to specify the powers, duties, and resources that are transferable to the indigenous communities and peoples under the criteria set out in section 5.2 of the document entitled "Joint Statement",¹³ as well as the various forms of participation by the communities and peoples vis-à-vis the government authorities, so that they may interact and coordinate their actions with them, particularly at the municipal level [...]¹⁴

Nacional" (Joint Statement that the Federal Government and the EZLN will table with the National Deliberative and Decision-making Bodies).

13. *Ibid.* "5. The establishment of a new relationship between the indigenous peoples and the State takes as its necessary point of departure the building of a new legal framework for the nation and the federated entities. The Federal Government hereby undertakes to further the following actions: ... 2. The recognition of the communities in national law as entities of public law, the right of free association in municipalities with majority indigenous populations, and the right of various municipalities to form associations in order to coordinate their actions as indigenous peoples. The competent authorities shall carry out the orderly and gradual transfer of resources such that they themselves may administer the public funds allocated to them and in order to strengthen indigenous participation in the governance, management, and administration of their various spheres and levels. It is the responsibility of the state legislatures to determine, as applicable, the duties and powers transferable to them."
14. *Ibid.* Document 2: "Propuestas Conjuntas que el Gobierno Federal y el EZLN se Comprometen a Enviar a las Instancias de Debate and Decisión Nacional, Correspondientes al Punto 1.4 de las Reglas de Procedimiento" (Joint Proposals that the Federal Government and the EZLN Undertake to Table with the National Deliberative and Decision-making Bodies, Corresponding to Point 1.4 of the Rules of Procedure) (18 January 1996).

Based on the San Andrés Accords, on 20 November 1996, the Peace Commission (*Comisión de Concordia and Pacificación—Cocopa*) of the Congress of the Union proposed a series of constitutional reforms on indigenous matters. In August 2001, President Vicente Fox decreed a set of constitutional reforms on indigenous matters.¹⁵

Article 2 of the Mexican Constitution now defines who are the indigenous peoples of Mexico. It specifies that they are people descended from populations living on what was the territory of the country when colonization began who have preserved their social, economic, cultural, and political institutions in whole or in part. The Constitution provides that personal awareness of indigenous identity is a fundamental criterion in identifying indigenous people. It specifies that the constituent communities of an indigenous people are those that form a social, economic, and cultural unit; are located on a territory; and recognize their own authorities in accordance with their customs. Article 2 reads in part as follows:

The right of indigenous peoples to self-determination shall be exercised within a constitutional framework of autonomy that preserves national unity. Recognition of indigenous peoples and communities shall be enshrined in the constitutions and laws of the federated entities, which

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15. Constitutional reform decree of 14 August 2001; online: EZLN http://www.ezln.org/san_andres/index.html (date viewed: 10 February 2004). See also “Cuadro comparativo de la Iniciativa de la Cocopa, las observaciones del gobierno de Zedillo, y el Dictamen de Ley Indígena aprobado por voto unánime en el Senado el 25 de abril del 2001” (Chart comparing the Cocopa proposal, the comments of the Zedillo government, and the Indigenous law approved by a unanimous vote of the Senate on 25 April 2001); online: EZLN <http://www.ezln.org/san_andres/cuadro010430.html> (date viewed: 10 February 2004). There was opposition by indigenous peoples and communities to the constitutional reforms of 2001, on procedural grounds (citing, *inter alia*, the alleged failure to consult with indigenous peoples during the drafting of the reforms in violation of Mexico’s commitments under ILO Convention 169) and substantive grounds. See “Los Pueblos Indígenas de Nuevo Ante la Suprema Corte,” online: Asociación Social de los Jesuitas en México <http://www.sjsocial.org/PRODH/especiales/cronologia_indigena/Pronunciamiento%20segundo%20encuentro%20autoridades_27.pdf> (date viewed: 12 February 2004). On these grounds, indigenous communities and peoples filed more than 300 constitutional challenges concerning the 2001 reforms with the Supreme Court of the Nation, but the Court dismissed them on 16 September 2002, ruling that it lacked the jurisdiction to hear them. Online: Suprema Corte de Justicia de la Nación, “Acelera SCJN Análisis de Controversias por Reformas Constitucionales Indígenas” (Communique no. 451, 18 September 2001), “Resuelve SCJN Controversias Constitucionales en Materia Indígena” (Communique no. 555, 6 September 2002) <http://www.e-mexico.gob.mx/wb2/eMex/eMex_Suprema_Corte_de_Justicia_de_la_Nacion2> (date viewed: 12 February 2004).

shall, in addition to general principles established in the preceding paragraphs of this article, take account of ethnolinguistic criteria and physical existence on the territory.

Article 2 further provides, in paragraph A, that

[t]his Constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination and, consequently, autonomy for the purposes of:

[...]

II. Applying their own normative systems to the regulation and resolution of their internal conflicts, subject to the general principles of this Constitution and with respect for individual guarantees, human rights and, significantly, the dignity and integrity of women. The law shall establish the cases and procedures for validation by the appropriate judges or tribunals.

[...]

V. Conserving and improving the habitat and preserving the integrity of their land, subject to the terms of this Constitution.

VI. Subject to the forms and modes of property ownership and land-holding established in this Constitution and the applicable laws as well as any rights acquired by third parties or community members, having preferential use and enjoyment of the natural resources of the places inhabited and occupied by the communities, except those corresponding to strategic areas as defined by this Constitution. For such purposes, communities may form associations as prescribed by law.¹⁶

VII. Electing municipal representatives in municipalities with indigenous populations.

VIII. Having full access to the jurisdiction of the State. To guarantee this right, in all trials or proceedings to which they are party, whether individually or collectively, their customs and cultural specificities shall be taken into account, subject to the precepts of this Constitution. At all times, indigenous people are entitled to be assisted by interpreters and defenders who have knowledge of their language and culture.

16. On 14 August 2001, Article 115 of the Constitution was also amended, with the addition of the following as its last paragraph: "The indigenous communities, within the municipal sphere, may coordinate and form associations among themselves under the terms and for the purposes provided by law."

The constitutions and laws of the federated entities shall establish the characteristics of self-determination and autonomy that best express the situations and aspirations of the indigenous peoples in each entity as well as the criteria for recognition of indigenous communities as entities of public interest.

[...]

Article 2, paragraph B of the Constitution requires the federal, state, and municipal governments to create the institutions and adopt the policies necessary to guarantee the effectiveness of indigenous peoples' rights and the full development of their peoples and communities. Specific obligations include:

[...]

VII. Supporting the productive activities and sustainable development of indigenous communities by means of actions enabling them to achieve sufficient revenues, incentives to public and private investment promoting employment creation, incorporation of technologies to increase their productive capacity, and assurance of fair access to supply and marketing systems.

[...]

Pursuant to Article 27 of the Constitution, the rights of indigenous peoples and communities in Mexico in connection with landholding, management of forest resources and forms of governance are agrarian rights, not indigenous rights *per se*. Article 27 of the Constitution is reproduced in Appendix 8 of this factual record. The following paragraphs are of note:

[...]

VII. The legal personhood of *ejido* and *comunidad* settlements is hereby recognized and their ownership of the land is protected, for purposes of both human habitation and productive activities.

The law shall protect the integrity of the lands of indigenous groups.

The law, considering respect for and strengthening of the community life of *ejidos* and communities, shall protect the land for human habitation, shall regulate the use of shared lands, forests, and waters, and shall take the necessary development measures to raise the standard of living of their inhabitants.

The law, with respect for the will of *ejido* and *comunidad* residents to adopt the conditions most suited to them in making use of their productive resources, shall regulate the exercise of the rights of *comunidad* residents to the land and the right of each *ejido* resident to his lot of land. Furthermore, it shall establish the procedures whereby *ejido* and *comunidad* residents may form associations among themselves, with the state, or with third parties and grant the use of their lands; and, concerning *ejido* residents, assign their land rights among members of a settlement. In like manner it shall establish the requirements and procedures whereby the *ejido* assembly may grant to an *ejido* resident dominion over his lot. In the case of alienation of lots, the right of preference provided by law shall be respected.

[...]

The general assembly is the sovereign authority of the *ejido* or *comunidad*, with its organization and duties as provided by law. The *ejido* council, democratically elected as prescribed by law, is the representative body of the settlement and is responsible for carrying out the decisions of the assembly.

The return of lands, woodlands, and waters to the settlements shall take place in accordance with the regulatory law; [...]

[...]

XX. The State shall foster the conditions of comprehensive rural development with the purpose of generating employment and guaranteeing the well-being of the peasant population and its participation and incorporation into national development, and shall, with works of infrastructure, supplies, credit, training services and technical assistance, promote agriculture, livestock production, and forestry activities for the optimal use of the land. In addition, it shall enact the implementing legislation necessary to plan and organize agriculture and livestock production activities, their industrialization, and their commercialization, considering them to be activities of public interest.

7.1.1.2 Relevant Federal Statutory Provisions Regarding Indigenous Peoples

The Agrarian Act¹⁷ [*Ley Agraria*], the Forestry Act [*Ley Forestal*]¹⁸ and the LGDFS¹⁹ [*Ley General de Desarrollo Forestal Sustentable—General Sustainable Forest Development Act*], and the LGEEPA contain specific

17. Published in the DOF (*Diario Oficial de la Federación—Official Gazette of the Federation*) on 26 February 1992.

18. Published in the DOF on 20 May 1997.

19. Published in the DOF on 25 February 2003.

provisions, relevant to this factual record, relating to the rights of indigenous peoples and communities.

The Agrarian Act provides for the protection of lands of indigenous groups and for consideration by the courts of the customs of indigenous groups in proceedings involving their land.²⁰

Until 2003, forest management in Mexico was governed by the federal Forestry Act. As implementing legislation for Article 27 of the Constitution, the purpose of the Forestry Act was to regulate the conservation, protection, restoration, exploitation, management, cultivation, and production of the country's forest resources with a view to furthering sustainable development.²¹ Within this purview, the Forestry Act was intended to contribute to the socioeconomic development of indigenous communities by fostering modernization of forestry activities; employment opportunities for indigenous communities; participation of indigenous peoples and communities in the protection, conservation, and sustainable use of the forest resources existing on the territories belonging to them; and consideration of the traditional knowledge of indigenous peoples in forest activities.²² The Forestry Act further provided that third parties seeking forestry authorizations on land owned by an *ejido* or an indigenous community had to provide proof that the landowner consented to the proposal.²³ Further, the Act called for the involvement of *ejidos*, indigenous communities, and other legitimate forest owners and operators in silviculture and the processes of forestry production, processing, and marketing,²⁴ and it promoted the dissemination, use, and recognition of traditional cultural methods and practices of sustainable forestry by indigenous communities.²⁵

20. Art. 106.- The lands of indigenous groups shall be protected by the authorities as prescribed by the Law that regulates Article 4 and the second subparagraph of paragraph VII of Article 27 of the Constitution.

Art. 107.- All the provisions of this Law applicable to *ejidos* also apply to communities, where such application does not contravene the provisions of this chapter.

Art. 164.- In resolving disputes put before them, the courts shall always follow the procedure provided by this Law, and a written record of the proceeding shall be produced. [...] In proceedings involving the land of indigenous groups, the courts shall consider the customs of each group provided that they do not contravene the provisions of this Law nor affect the rights of third parties. Furthermore, where necessary, the court shall ensure that indigenous people are provided with translators. [...] The courts shall make up for deficiencies in statements of claim where *ejidos* or communities or their members are involved.

21. Art. 1 of the Forestry Act.

22. *Ibid.* art. 1 III, IV, and VIII.

23. *Ibid.* art. 19, bis 4.

24. *Ibid.* art. 33 I.

25. *Ibid.* art. 41 III.

The main purpose of the LGDFS, enacted in 2003, is to regulate and promote the conservation, protection, restoration, exploitation, management, cultivation, and production of the country's forest resources as well as to distribute authority over forest matters among the federal, state, and municipal governments, with a view to furthering sustainable development and ensuring compliance with Article 2 of the Constitution regarding indigenous rights.²⁶

Under the LGDFS, Conafor [*Comisión Nacional Forestal*—National Forest Commission] is responsible for working with state and local governments to provide assistance and training to indigenous communities to carry out forest management on their lands,²⁷ and to help with the development of forest management plans when an indigenous community does not have the financial means to do so.²⁸ The LGDFS provides that Mexican forest policy must respect the traditional knowledge, culture and traditions of indigenous peoples and communities, as well as provide for their participation in the development and implementation of forest programs in the areas where they live, in accordance with applicable laws.²⁹ Conserving the biodiversity of forest ecosystems, along with preventing and fighting theft and illegal harvesting of forest ecosystems, especially in indigenous communities, is a mandatory environmental criterion of forest policy.³⁰ Third parties wishing to carry out forest management activities on indigenous lands must obtain the agreement of the local assembly, as provided in the Agrarian Act.³¹ The content of forest management authorizations issued to indigenous communities must be translated into local languages or explained to indigenous communities.³² Semarnat must monitor forest management activities to verify compliance with indigenous rights recognized by law.³³ Semarnat must suspend forest management authorizations in cases where there is a pending dispute regarding the ownership or possession of forest lands before a competent authority or body.³⁴ The LGDFS provides that the provisions of the LGEEPA are suppletive to those of LGDFS for all matters not directly addressed by the LGDFS.³⁵

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26. Art. 1 of the LGDFS.
27. *Ibid.* art. 22 XVIII, XXI.
28. *Ibid.* art. 109.
29. *Ibid.* art. 31 I.
30. *Ibid.* art. 33 X.
31. *Ibid.* art. 63.
32. *Ibid.* art. 72.
33. *Ibid.*
34. *Ibid.* art. 65 II.
35. *Ibid.* art. 6.

The LGEEPA³⁶ provides that “areas of importance for the recreation, culture, and national identity of the indigenous peoples” may be designated as natural protected areas³⁷ and calls for the participation of indigenous peoples in the establishment, administration and management of those areas.³⁸ This includes the opportunity for indigenous peoples to apply to the government “to establish natural protected areas on their own land or under contracts with third parties, where the areas in question are intended for the preservation, protection, and restoration of biodiversity.”³⁹ The LGEEPA also requires all levels of government to give indigenous peoples preference to carry out works or activities in natural protected areas in accordance with the LGEEPA and related declaration management programs.⁴⁰ The federal government may also entrust administration of management programs for certain natural protected areas to indigenous peoples, in accordance with the LGEEPA and under federal supervision.⁴¹

The LGEEPA requires consideration of traditional biological knowledge and participation of indigenous peoples in the development of biodiversity programs for the preservation and sustainable exploitation of wild flora and fauna in areas where indigenous peoples live.⁴² Finally, it requires the involvement of indigenous peoples in the planning, execution, evaluation and monitoring of all aspects of environmental and natural resources policy.⁴³

7.1.2 *State Level*

This section provides information regarding recognition of indigenous rights at the State level, in the state of Chihuahua.

Article 2 of the federal Constitution provides in part:

The constitutions and laws of the federated entities shall establish the characteristics of self-determination and autonomy best expressing the status and aspirations of the indigenous peoples in each entity as well as the criteria for recognition of indigenous communities as entities of public interest.

36. Published in the DOF on 13 December 1996.

37. Art. 45 VII of LGEEPA.

38. *Ibid.* art. 47.

39. *Ibid.* art. 59.

40. *Ibid.* art. 64 bis 1.

41. *Ibid.* art. 67.

42. *Ibid.* art. 79 X.

43. *Ibid.* arts. 157-58.

Since 1994,⁴⁴ Chapter II (“Indigenous Peoples”) of Title II (“Rights of the Governed”) of the Political Constitution of the Free and Sovereign State of Chihuahua (“Constitution of Chihuahua”) reads as follows:

[...]

Article 8.- In any civil or criminal proceeding, where any of the parties is indigenous, the authorities shall take account of his customs and legal practices.

In the punishment of offenses committed in indigenous communities between members of the same people, the methods and institutions used traditionally by the people in question shall be respected. The law shall make all jurisdictional and other provisions necessary to give force and effect to this precept.

Article 9.- Pursuant to law, lands belonging to indigenous peoples are inalienable without temporal limitation. Any alienation of or encumbrance upon lands or waters belonging to the indigenous peoples shall adhere to the provisions of the law and, in particular, shall obey the customs and legal practices of said peoples, which shall be compiled, recognized, guaranteed, and regulated by the applicable civil laws of the State of Chihuahua.

Article 64 of Chapter II (“Investiture and Operation of Congress”) of Title VII (“The Legislative Branch”) of the Constitution of Chihuahua provides as follows:

Article 64.-The following are powers of Congress: [...] The enactment of laws for the full development of the indigenous peoples, subject to consultation with them. In addition, said peoples may appoint a representative to Congress when such laws are debated, under the terms of Article 53 of this Constitution [...]

In 1995 and 1998, the Indigenous Affairs Commission of the Congress of the State of Chihuahua embarked on a series of public consultations around two proposed drafts of a law to regulate the rights of indigenous peoples and communities in the State of Chihuahua. Neither of these proposals has yet been formally enacted by the state legislature.⁴⁵

44. See Decree no. 403–94 published in the Official Gazette of the State of Chihuahua, no. 79, on 1 October 1994.

45. “Legislación sobre Derechos Indígenas,” in *Culturas Indígenas de la Sierra Tarahumara*. F.d.E.C. Programa Interinstitucional de Atención al Indígena (PIAI), A.C. Chihuahua, México, Electronic Publishing, S.A. de C.V. (CD-ROM, 1999).

7.1.3 *United Nations Report on the Situation of Indigenous Peoples in Mexico*

In June 2003, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, undertook an official mission to Mexico. In December 2003, his report on the situation of indigenous peoples in Mexico was submitted to the UN Commission on Human Rights. The report noted that “the Government of Mexico, the Special Rapporteur’s country of origin, was the first to invite the Rapporteur to visit.”⁴⁶

The report states:

The 70 years of political control exercised by the Institutional Revolutionary Party (PRI) up to the election of President Vicente Fox Quezada in 2000, brought the institution of strong oligarchies, often accused of municipal and State nepotism and corruption. Agribusiness interests, together with the growing concentration of land in the hands of big business, put pressure on the communities which were increasingly unable to survive on the produce of their land. In 1992 the Constitution was reformed,⁴⁷ opening the way to the privatization of indigenous communal lands as part of a globalization-encapsulating economic development process, including the North American Free Trade Agreement, which has brought great changes to the rural world in which most indigenous people live.

46. United Nations Economic and Social Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, UN Doc. E/CN.4/2004/80/Add.2 (1 December 2003) (“Report of the UN Special Rapporteur”). “This report on the situation of indigenous peoples in Mexico is based on information received from various sources and on interviews with federal, state and municipal leaders and representatives of indigenous communities, human rights associations and nongovernmental organizations. [...] The Special Rapporteur visited Chihuahua, Sonora, Jalisco, Oaxaca, Chiapas, Guerrero and the Federal District where he held consultations with government authorities at the federal, state and municipal levels. In Mexico City he met Mr. Vicente Fox Quezada, President of the Republic; Mr. Santiago Creel, Minister of the Interior; Mr. Víctor Lichtinger, Minister of the Environment; Mr. Florencio Salazar, Minister of Agrarian Reform; Dr. Isaías River, Agrarian Procurator; Ms. Xóchitl Gálvez Ruiz, Director of the National Commission for the Development of Indigenous Peoples; Mr. Luis H. Álvarez, Coordinator for Dialogue and Peace in Chiapas; Ms. Mariclaire Acosta, Under-Secretary for Human Rights and Democracy of the Ministry of Foreign Affairs; Mr. Herbert Taylor, General Coordinator of the Puebla Panama Plan; and deputies and senators on the Commission on Indigenous Affairs and the Peace and Concord Commission (COCOPA) of the Mexican Congress. [...] In his visit to the various states, the Special Rapporteur held meetings, *inter alia*, with Tarahumara authorities in Chihuahua [...]”

47. See Art. 27 of the Constitution, Appendix 8 of this factual record.

Regarding priority concerns for indigenous peoples in Mexico, the Special Rapporteur wrote:

18. Peasant struggles for land and resources have been made more acute by the ambiguities of agricultural rights and title deeds, disagreements as to the limits between *ejidos*, communities and private properties, conflicts over the use of collective resources such as forests and water, illegal encroachment on and occupation of communal land by loggers, stock-breeders and private farmers, accumulations of property in the hands of local *caciques* (bosses), etc. The defense of the land, initially by institutional, judicial and political means, may lead to clashes with other peasants or with private owners, public authorities and the forces of order (police, military).

19. [...] The National Human Rights Commission [of Mexico] concludes that agrarian affairs suffer from a systematic failure to enforce and dispense justice, delays in procedures for resolving conflicts, slow court procedures and rulings with inherent defects, seriously affecting the right of communities to land and increasing the risk of a socially explosive situation.⁴⁸

He added:

[...] the forest resources of many communities (Tepehuanes in Durango, Tarahumaras in Chihuahua, Huicholes in Jalisco, etc.) are frequently exploited by private economic interests with the connivance of agricultural and political authorities. The protection of the environment and natural resources has in recent years mobilized numerous indigenous organizations and communities throughout Mexico to confront local *caciques* (the official or *de facto* authorities who arbitrarily wield economic and/or physical power). Some indigenous defenders of resources and the environment have been persecuted and harassed for their activities [...]⁴⁹

He concluded:

Present state policy towards indigenous peoples is designed to produce negotiated solutions to conflict "hot spots", to promote and support productive activities and to provide various social services to the communities. It does not depart significantly from the trend that has characterized indigenous policy for more than half a century, but it is very much restricted by the limitations and cuts in the public budget and the clear fact that the problem of the indigenous peoples is not one of high priority for the Mexican State.⁵⁰

48. Report of the UN Special Rapporteur at 7-8.

49. *Ibid.* at 10.

50. *Ibid.* at 21.

7.2 *The Citizen Complaints Process*

The citizen complaint procedure set out in LGEEPA Articles 191–199 can be summarized as follows:

- Upon receiving a citizen complaint, the authority must issue a decision allowing or dismissing the complaint or joining it to other complaints and must notify the complainant of this decision within the 10 days following the filing of the complaint.
- Where the facts complained of are not within the jurisdiction of the authority which received the complaint, that authority must refer the complaint to the competent authority. This entails the following: acknowledging receipt of the complaint (without acknowledging jurisdiction over it); referring the complaint to the competent authority for the latter to decide upon and resolve it; and notifying the complainant that the complaint was referred to the authority in question in a fully articulated and reasoned decision.
- Where the authority acknowledges jurisdiction over the complaint, it must notify the complainant that the complainant may submit documents and evidence within 15 working days.
- The authority must investigate the facts, acts, or omissions, conducting the necessary procedures and initiating any relevant inspection and surveillance procedures as well as any applicable administrative proceedings ensuing therefrom.
- The complainant may assist the authority, who must, in resolving the complaint, indicate how it took into account information provided by the complainant.
- The authority must notify the complainant if it concludes that the facts, acts, or omissions complained of do not cause or potentially cause ecological imbalance or harm to the environment or natural resources or contravene the law, and the complainant may then submit comments in response.

The LGEEPA makes Semarnat responsible for the implementation and enforcement of the citizen complaint process. Semarnat has delegated that function to Profepa. Profepa's enforcement powers under the LGEEPA are limited to imposing administrative sanctions.

In its Request for Additional Information (see above, section 6), the Secretariat made a detailed request for information regarding follow-up to matters covered by citizen complaints referenced in the submission

(see Appendix 4, s. 5). In response, on 19 February 2004, Mexico sent the Secretariat a copy of a December 2002 report prepared by a consulting firm for Profepa assessing the social impact of the LGEEPA citizen complaint procedure (the "*Media Comunicación Report*").⁵¹

The *Media Comunicación Report* was commissioned by Profepa pursuant to its 2001–2006 Program for Achieving Environmental Justice and in recognition of growing public demands for accountability in the citizen complaints process, not only as regards the processing of complaints, but also as regards resolution of the underlying environmental problem.⁵² The objective, in commissioning the report, was to establish indicators to allow for ongoing monitoring of Profepa's performance in the future.⁵³

The *Media Comunicación Report* explains that the government's strategy in regard to promoting and enforcing compliance with environmental law is part of a larger effort to consolidate and expand the rule of law across the country.⁵⁴ The report notes that despite progress achieved, compliance with environmental laws remains limited, and it recommends three strategic directions: 1) expand coverage of inspections and surveillance operations, particularly in the area of natural resources; 2) tie enforcement action to the achievement of defined environmental objectives; and 3) create fora for public participation to complement government enforcement action.⁵⁵

In regard to the first strategic direction, the report states:

Regarding the objective of expanding coverage of inspection and investigation activities, this is particularly urgent in regard to natural resources. While the spectrum of industrial activities is reasonably well covered, when it comes to enforcing the law in connection with fisheries, forestry and wildlife activities, there are significant shortcomings.⁵⁶

The report notes that public involvement is a key element in promoting compliance with the law and achieving decentralization of enforcement functions, and it underscores the importance of access to information rights in enabling public participation.⁵⁷ It states that since

51. *Media Comunicación, S.A. de C.V., "Evaluación del Impacto Social de la Denuncia Popular"* (27 December 2002).

52. *Ibid.* at 1.

53. *Ibid.* at 2.

54. *Ibid.* at 5.

55. *Ibid.* at 5-6.

56. *Ibid.* at 6.

57. *Ibid.* at 7, 10.

1996, Profepa has taken measures to expedite the processing of citizen complaints, making it possible to: a) provide an effective, efficient, and timely response to complainants, regardless of whether Profepa has jurisdiction over the matter complained of; b) bolster compliance with environmental laws through timely action by authorities from all three levels of government; c) become aware of environmental problems as identified by Mexican society; and d) identify policies and strategies to address the most recurrent and serious problems.⁵⁸ This information, taken together with information contained in sections 8 and 9, below, is relevant to a consideration of whether Mexico is failing to effectively enforce its environmental law in the cases covered by the submission which are included in this factual record.

In evaluating the effectiveness of the citizen complaint process, the authors of the *Media Comunicación* Report consulted Profepa's online inventory of citizen complaints, which contained 44,216 files covering the period 1992–2001.⁵⁹ They narrowed the scope of investigation to the period 1999–2001, and to the six states having received the highest number of complaints.⁶⁰ They then retained only those files that were closed.⁶¹ From those files, they determined sample sizes using a pre-set formula, resulting in a survey sample of 368 citizen complaints.⁶² A 13-question survey was administered with the object of evaluating respondents' perceptions of Profepa's handling of their complaints.⁶³ Questions sought to determine respondents' familiarity with the process, their satisfaction regarding the handling of their file, and their suggestions for improving the process.⁶⁴ Responses showed that timeliness was an issue (61 % of files were opened after the 10-day statutory period, and 41 % of respondents stated that the timing of the processing of their complaint was "deficient"⁶⁵). Approximately a third of respondents stated that the matter complained of was not resolved as a result of their complaint having been filed.⁶⁶ The report does not indicate whether there was any correlation between satisfaction levels and the subject matter of the complaint (ie. industrial activities vs natural resources management). 89 % of respondents indicated that should the occasion arise, they would again file a citizen complaint.⁶⁷

58. *Ibid.* at 23.

59. *Ibid.* at 36.

60. *Ibid.* Nuevo León; Colima; Jalisco; Federal District; Veracruz; Quintana Roo.

61. *Ibid.* at 37.

62. *Ibid.* at 37-8.

63. *Ibid.* at 39.

64. *Ibid.* at 41-51.

65. *Ibid.* at 43-4.

66. *Ibid.* at 45-6.

67. *Ibid.* at 51.

The *Media Comunicación* Report provides more detailed information about “special cases” covered by the survey, cases which, according to the authors, required recourse to complicated enforcement measures involving concerted action.⁶⁸ Of the eight highlighted cases, six involved natural resources management. Of those, five involved illegal logging and one involved sawmills.⁶⁹ The authors of the *Media Comunicación* Report provided comments on three of those cases. In the first, Profepa responded to a complaint by a citizens group by stopping the illegal logging and levying fines against several sawmills in the area.⁷⁰ In another, involving a complaint filed by the Audubon Society of Illinois with president Vicente Fox regarding illegal logging in the Monarch Butterfly Reserve, no sanctions were imposed. The authors of the *Media Comunicación* Report commented on the complexity of the problem, noting that institutional measures adopted recently have helped to stem illegal logging and pointing to the role of international environmental organizations in helping to monitor development activities.⁷¹ In the third case, a journalist called into question permitting practices in connection with a number of sawmills located in the foothills of the Izta-Popo volcanos.⁷² The authors of the *Media Comunicación* Report observed that Izta-Popo is one of the most representative examples of a conflict area, a “hot point” facing Semarnat, Profepa and Conafor. The complaint led to a reassessment of sawmills in three states, as well as forest management and related authorizations, and resulted in concerted actions along with administrative and penal proceedings. The authors comment that “[t]he citizen complaint served to reinforce action by Profepa because Profepa was not seen as acting on its own initiative, which could have led to claims of abuse of power. Action by the institution responded to a citizen complaint and to a demand from society.”

The *Media Comunicación* Report contains an analysis of Profepa’s citizen complaints database, with a view to determining whether variables entered into the database allow for ongoing performance monitoring.⁷³ The authors note that the database sorts complaints as follows: those that have been received, those being processed, and those for which the file has been closed.⁷⁴ They conclude that the database does not contain proper indicators for measuring Profepa’s performance, in part because the database qualifies as “closed” files which, upon receipt,

68. *Ibid.* at 52.

69. *Ibid.* at 52-7.

70. *Ibid.* at 52-3. Cofre de Perote, Veracruz, File no. 001/019/30 057 (019610).

71. *Ibid.* at 54-5. Mariposa Monarca, File no. E369-2002; OAI-515-02.

72. *Ibid.* at 55. Izta-Popo, File no. 907/092/15, registered 30 July 1999.

73. *Ibid.* at 63-4.

74. *Ibid.* at 75.

were turned over to another agency for processing.⁷⁵ They recommend reclassifying complaints as follows: those that were resolved, meaning sanctions or corrective measures were imposed; and those that were referred to another agency with jurisdiction over the subject matter of the complaint.⁷⁶

The authors of the *Media Comunicación* Report conclude that the citizen complaints process is difficult for ordinary citizens to use, especially when the complaint is valid and requires immediate attention.⁷⁷ They note that the legal framework is both incomplete and too complicated.⁷⁸ According to the authors, acknowledging receipt within the 10-day statutory period is an unnecessary expense, since this acknowledgment does not force the agency to resolve the substance of the complaint within a set period of time.⁷⁹ Processing times can be so long that the reason for filing the complaint can cease to exist by the time the complaint is processed.⁸⁰ Regarding inspections, the report notes:

There is a deficiency in the processing of complaints as regards inspections, either because of lack of consistency in field visits, or because inspectors claim that no irregularities were observed. This affects the morale of complainants, who feel defrauded, not so much because of the failure to address their complaint, but rather because of the failure to solve their problem. This becomes a vicious cycle, because the complainant stops filing complaints when they do not lead to a solution, while the inspectors stop inspecting because there are no complaints, with the attendant environmental costs.

The report notes that inspection activities involve the exercise of discretion, which must be done with caution, since complainants who see the environmental problem persist will presume that there has been corruption.⁸¹ The authors observe that Profepa has successfully addressed this issue by requiring two inspectors to attend inspections, or by having complainants or local authorities accompany inspectors during inspections.⁸²

The report states that in the course of the process, the flow of information to the complainant is slow, bad or nonexistent, because when a complaint leads to an administrative proceeding, the complainant is

75. *Ibid.*

76. *Ibid.*

77. *Ibid.* at 70.

78. *Ibid.* at 71.

79. *Ibid.* at 72.

80. *Ibid.* at 70.

81. *Ibid.* at 71.

82. *Ibid.* at 73.

completely excluded from the process until a final resolution is issued. A final resolution can take years to reach, with the possibility that even then, the complainant may not be notified of the resolution because authorities claim that they are unable to locate the complainant.⁸³ The report also concludes that the private sector is failing to honour its environmental responsibilities, for three reasons: ignorance of the law, lack of resources to comply with the law, and sometimes for monetary gain.⁸⁴ It states that at the local level, there are organizational and operational problems, vested interests, and a lack of ecological, urban and land use planning, necessary infrastructure, equipment and services.⁸⁵

The report observes that there is increasing awareness, throughout society, of the need to progress toward sustainable development, associated with a growing willingness by citizens and local governments to participate.⁸⁶ It recommends implementing a large-scale training program at all levels within Profepa, focusing on the legal framework underlying Profepa's mandate, sensitization to the social situation of complainants, and ways to capture and process information gathered during inspections and surveillance operations.⁸⁷ It also recommends increasing public awareness of the right to appeal to the Auditor General or the National Human Rights Commission for review in cases where the agency commits irregularities.⁸⁸

8. Mexico's Enforcement of its Environmental Law in the Cases Covered by the Factual Record

This section of the factual record presents general information on all of the citizen complaints covered by the submission for which the Secretariat recommended a factual record, as well as, for illustrative purposes, more detailed information regarding the complaints filed by the indigenous communities of Ciénega de Guacayvo, Rochéachi, and Pino Gordo.

8.1 Geographical Information

The State of Chihuahua is located in northwestern Mexico. It is Mexico's largest state. The Sierra Tarahumara mountain range is located in the western part of the state. The communities living there are small

83. *Ibid.* at 72.

84. *Ibid.* at 70.

85. *Ibid.* at 71.

86. *Ibid.* at 72.

87. *Ibid.* at 74.

88. *Ibid.*

and often remote. The submission involves 19 communities distributed among 8 municipalities. Figure 1 is a map of Mexico showing the location of the state of Chihuahua. Figure 2 shows the location of the communities that filed the complaints which are covered in the factual record.

Figure 1. Map of Mexico Locating the State of Chihuahua



Figure 2. Map of the State of Chihuahua Showing Municipal Boundaries



List of Municipalities and Communities Identified in the Submission

Municipality	Communities
1. Aldama	San Diego de Alcalá
2. Uruachi	Rocroyvo
3. Bocoyna	San Ignacio de Arasco, Ciénega de Guacayvo
4. Carichi	El Consuelo
5. Guazapares	Monteró, Basonaivo, Ocoviachi
6. Urique	Cuileco, Baragomachi, Mesa de Arturo, Churo, Refugio, Areponapuchi, San Alonso
7. Guachochi	Choguita, Rochiachi
8. Guadalupe y Calvo	Llano Grande, Pino Gordo

8.2 *Enforcement of the Citizen Complaints Process*⁸⁹

In regard to the cases referenced in the submission, the Submitter asserts that Mexico is failing to effectively enforce its environmental law by failing to issue decisions on the admissibility of citizen complaints, failing to process complaints within the time period prescribed by law, failing to follow up on cases to ensure that the penalties imposed on the violators were complied with, and/or failing to notify MPF of probable environmental offenses.

Appendix 6 contains information regarding the processing of each case for which the Secretariat recommended to Council the development of a factual record. The cases are grouped according to the assertions contained in the submission.⁹⁰ For each case, the following are identified: the complainant, the facts or incidents complained of, the status of the complaint as of February 2002, any delays or other problems in processing the complaint, the Secretariat's questions to Mexico in September 2003, Mexico's response, and the Secretariat's comments on Mexico's response. In general, Mexico responded to the Secretariat's questions by inserting its response directly into the "Response of Mexico" column of the table without sending the Secretariat any supporting information. As for the CNA responses, Mexico sent the Secretariat a set of documents from which the Secretariat extracted information for inclusion in the table. On 20 January 2004, based on the information received in response to the Request for Information (Appendix 3), the Secretariat sent a Request for Additional Information to Mexico (Appendix 4). Information received from Mexico in response to these information requests is listed in Appendix 7.

The following is a synopsis of information gathered by the Secretariat regarding the citizen complaints covered by this factual record.

Of the 32 citizen complaints (or 28, if those subject to joinder are counted as single cases), 20 were decided upon as to their admissibility within a period exceeding 10 days, five cases were referred to another authority in whole or in part, and seven were dismissed by Profepa. Seventeen resulted in the opening of administrative files. Of the 17 complaints for which an administrative procedure was undertaken, 16 resulted in orders of fines and/or corrective measures. In nine of the 17 cases in which corrective measures were ordered, some or all of the measures were implemented. Reforestation was ordered in nine cases,

89. With respect to submission headings A, F, R, S and T.

90. Each letter (e.g. K, L, M) corresponds to an assertion contained in the submission.

but only carried out in three, though by the *ejido* and not the person found to have engaged in illegal activities. Where fines were imposed, information about fine collection was not provided to the Secretariat.⁹¹

One of the assertions of the Submitter is that processing times for citizen complaints do not comply with the requirements of the LGEEPA. From beginning to end, the citizen complaints process established by the LGEEPA is intended to take 40 working days. In addition, the LFPA, whose provisions are suppletive to those of the LGEEPA, states that all administrative procedures must be resolved within three months, unless a law of general application provides otherwise.⁹² The complaints included in this factual record were processed within time frames ranging from four months to 28 months, with the majority of files closed within five to twelve months after the complaint was filed.

8.3 *Enforcement of the Provisions on Investigation and Prosecution of Probable Environmental Offenses*

Article 202 of LGEEPA—found in the section of the LGEEPA establishing the citizen complaints process—states: “Profepa, within the scope of its powers, may undertake the applicable actions before the competent judicial authorities where it learns of acts, facts or omissions that constitute violations of administrative or criminal laws.” In addition, the last paragraph of LGEEPA art. 169—found in the section of the LGEEPA on inspections and surveillance operations—provides that “as applicable, the federal authority shall notify the ministry responsible for the investigation and prosecution of criminal offenses of the occurrence of acts or omissions noted in the exercise of its duties that may represent one or more offenses.” The Submitter asserts that matters about which indigenous communities complained to Profepa in the cases covered by the submission were not only punishable as administrative violations under the LGEEPA, but were also offenses under CFP arts. 416, 418 and 419. The Submitter asserts that Profepa should therefore have notified MPF of the facts underlying the complaints—pursuant to LGEEPA art. 202 or 169, and that MPF should have prosecuted the perpetrators.

When asked why Profepa did not refer to MPF the matters raised in the complaints covered by the factual record, Mexico generally responded that “the facts did not establish the existence of a criminal offense” (see Appendix 6). There were five cases in which, according to

91. Additional information showing that the fines levied were in fact paid by the violators was requested but not provided. See Appendix 6. See also Appendix 4, s. 5.2.1.

92. See arts. 17 and 60 of the LFPA.

Mexico, environmental authorities did not notify MPF because they involved irregularities considered as minor. There was one case in which MPF did not become involved because Profepa did not conduct an inspection and therefore never became aware of an environmental offense. There was also one case in which MPF did not become involved because Profepa's administrative order was quashed on appeal. According to Mexico, there were 13 cases in which environmental authorities filed a report of probable offenses with MPF. Finally, according to Mexico, there were two cases in which environmental authorities assisted with complaints of criminal offenses filed by other parties. Despite detailed requests for information from the Secretariat, Mexico did not provide the Secretariat with any supporting information regarding the involvement of MPF in any of the cases covered by the factual record.⁹³

8.4 Detailed Information on the Ciénega de Guacayvo, Rochéachi and Pino Gordo Cases

Detailed information is presented below on the processing of citizen complaints filed by three communities included in the submission. A legal officer from the CEC Secretariat and her consultant, Dr. Ana Córdova Vásquez, visited the communities of Ciénega de Guacayvo and Cuiteco, and met with members of the communities of Rochéachi and Pino Gordo at the Cosyddhac offices in Chihuahua City, in the week of 13 October 2003. In the community of Ciénega de Guacayvo, the Secretariat was shown areas where alleged illegal logging occurred (see photos in Appendix 9).

8.4.1 Ciénega de Guacayvo

Ciénega de Guacayvo is an *ejido* in the Municipality of Bocoyna, located in the Sierra Tarahumara approximately seven hours' drive by secondary roads from the city of Chihuahua and one to two hours from San Juanito, where a large number of the region's sawmills are located. The submission asserts that various cases of alleged irregularities occurred during 1998 and 1999 in Ciénega de Guacayvo involving illegal logging; forest fires; and illegal transport, storage, and exploitation of forest resources. Information is provided below regarding Mexico's processing of citizen complaints related to this *ejido* that are covered by the factual record. Information is presented chronologically.

1. In February 1998, the *ejido* filed a citizen complaint with the Profepa office in Chihuahua City alleging the unauthorized exploitation

93. Appendix 4, s. 5.3.

of forest resources (including along waterways) on a lot adjacent to the *ejido*.⁹⁴ This complaint was admitted by Profepa in March of that year and an administrative decision was issued more than two years later (June 2000). The decision ordered corrective measures and a fine of \$24,160.00. However, the person subject to the order filed an application for review of the decision and as a result, Profepa's order was quashed by the Tax Court of the Federation (*Tribunal Fiscal de la Federación*) in August 2002. In the submission, Mexico is accused of failing to effectively enforce the law in that MPF was not notified of the probable existence of an environmental offense in this case.⁹⁵ In its response to the submission, Mexico stated that corrective measures and sanctions had been ordered and that MPF had not been notified because the facts did not indicate that a criminal offense had been committed.

2. On 19 July 1999, the *ejido* filed a citizen complaint with Profepa alleging repeated illegal logging on a lot known as *Rincón de Gervacio* located within the *ejido*.⁹⁶ The citizen complaint was admitted by Profepa the following month and Profepa issued a resolution ten months later (May 2000), requiring payment of a fine. After another six months (December 2000), an order to pay the fine was issued. In August 1999, the *ejido* filed another citizen complaint with Profepa alleging illegal logging in the *ejido*.⁹⁷ That same month, Profepa acknowledged its jurisdiction in the matter and joined the complaint to the one filed in July. In the submission, Mexico is accused of a failure to effectively enforce the law in that MPF was not notified of the probable existence of an environmental offense in this case.⁹⁸ Mexico responded that corrective measures and sanctions had been ordered and that MPF had not been notified because the facts did not indicate that a criminal offense had been committed.

3. Further to the complaints described in point 2, above, Profepa organized forest inspection visits to various lots in the *ejido* in August and October 1999.⁹⁹ During the second inspection visit, Profepa reported the discovery of 11,644 pine logs yielding approximately 4,928 m³ roundwood equivalent, and the presence of felled trees (507 m³) transferred by the *ejido* residents to a lot in the center of the village by order of the Office of the Attorney General of the State of Chihuahua.

94. Appendix 6: F.7, I.7, O.3, and P.4.

95. Art. 418 of CPF and arts. 169 and 202 of LGEEPA. Appendix 6: I.7, O.3 and P.4.

96. Appendix 6: F.8, I.8, and O.4.

97. Appendix 6: F.9, I.9, O.5.

98. Appendix 6: I.8, I.9, and consolidated processes O.4 and O.5.

99. Appendix 6: P.4.

The Submitter accuses Mexico of a failure to effectively enforce the law in that MPF was not notified of the probable existence of an environmental offense in this case.¹⁰⁰ In its response to the submission, Mexico stated that corrective measures and sanctions had been ordered, but did not present evidence that it had notified MPF nor the reasons why it had not done so. The Secretariat requested that Mexico identify the criteria it used in determining that the facts complained of did not qualify as offenses and that it indicate whether a fully articulated and reasoned decision was issued explaining why the facts did not qualify as offenses. It also requested that Mexico indicate how the Office of the Attorney General of the State of Chihuahua, which already had knowledge of the facts, had processed this case. In its response to this request, Mexico stated that Profepa did file reports of probable criminal offenses with MPF (410/DD/99 and 63/DD/00), but it did not indicate how the Office of the Attorney General of the State of Chihuahua processed the case.¹⁰¹

The *ejido* residents interviewed by the legal officer from the CEC Secretariat during her field trip of October 2003 stated that they themselves had moved 8,000 logs from the lots where Profepa had found them to a lot owned by the *ejido* by order of the “*Procuraduría*.”¹⁰² They commented that it had been impossible to sell or make use of this wood because they had been unable to reach an agreement with the *Procuraduría*. According to the *ejido* residents, the *Procuraduría* suggested selling the wood and depositing the money in the bank, while the *ejido* wanted to share the money among its residents.¹⁰³

100. Art. 419 of CPF. Appendix 6: M.1.

101. Concerning M.1, Mexico stated that reports of probable offenses were filed and cited the same two reports that it cited for all the Ciénega de Guacayvo cases, but in cases P.4’ and P.4’’ referring to this same case, the party indicated that Profepa did not file criminal charges.

102. Common term used by members of the *ejido* referring to the Office of the State Attorney General of Chihuahua.

103. During a press conference on 7 December 2004 in which representatives of Semarnat, Profepa and Conafor reported on actions taken in 2004 to combat illegal logging in Mexico, the head of Profepa mentioned: “Seizure of timber is a problem. Often we designate the violator himself as the depositary. Often movement and transportation of cut logs, on the lots where illegal logging is occurring and we manage to seize them, pose a problem. Thirdly, we must follow standard administrative and, very often, criminal procedures, and only when the process is finalized can we dispose of the timber. All timber at the conclusion of these procedures is donated through the municipal DIF [National System for Comprehensive Family Development] office. That is what we are doing.” Press conference by Alberto Cárdenas Jiménez, Minister of the Environment and Natural Resources, on the final results of the Program to Combat Illegal Logging for 2004 and the plan for 2005, with the participation of José Luis Luege Tamargo, Federal Attorney for Environmental Protection; Francisco García, Director, Forestry and Soils, Semarnat; and Manuel Reed Segovia, Director, Conafor (Mexico, Federal District, 7 December 2004).

4. On 26 July 1999, the *ejido* filed with Profepa a citizen complaint alleging illegal logging on the *Rincón de Gervacio* lot.¹⁰⁴ In the submission, Mexico is accused of not issuing a decision on the admissibility of the complaint and ceasing to pursue the required procedures.¹⁰⁵ The supporting documentation received by the Secretariat from both the Submitter and Mexico does not refer to this complaint. However, there are other cases in which inspections and actions regarding irregularities on this lot are reported (see point 2 above). In response to the Secretariat's Request for Information, Mexico indicated that for this case, Profepa filed a report of probable criminal offenses.¹⁰⁶

5. In October 1999, the *ejido* filed a citizen complaint with the state office of Semarnat alleging illegal operation and storage of forest resources by San Juanito sawmills.¹⁰⁷ That month, Semarnat referred the complaint to Profepa, which responded in December that the necessary inspections had been carried out and that administrative proceedings had been brought against the persons responsible for the irregularities noted. Despite these actions by the authority, no decision on the admissibility of the complaint was issued by Profepa and, therefore, the complaint was not processed as a citizen complaint, nor was there any formal response by the authorities (neither Semarnat nor Profepa) to the complainants. The Secretariat requested information from Mexico regarding the outcome of the administrative proceedings launched by Profepa against the perpetrators. Mexico responded that administrative proceedings had been instituted but did not provide information about their outcome.¹⁰⁸

In the submission, Mexico is accused of failing to effectively enforce its environmental law in that MPF was not notified of the probable existence of an environmental offense in this case.¹⁰⁹ Mexico responded that corrective measures and sanctions had been ordered by Profepa and that MPF had not been notified because the facts did not

104. Appendix 6: R.1, O.6.

105. Arts. 191 and 192 of LGEEPA.

106. Although in 2, above, no explanation is given as to why no report of criminal offense was filed for the *Rincón de Gervacio* case.

107. Appendix 6: R.2, I.10 and O.7.

108. On 4 February 2004, in response to the Secretariat's Request for Additional Information (Appendix 4), the Semarnat Federal Officer (Delegado Federal) in Chihuahua sent the Secretariat a letter which states: "Oficios no. SRN.08-99/11709 and SRN.08-99/11710 were sent by regular mail to the President of the Ejido Council of Ejido de Ciénega de Guacayvo, Mpio. De Bocoyna Chih., so that he would have knowledge of who would be resolving his complaint, regardless of the fact that Profepa was also sending the corresponding notice." No copies of the referenced letters were attached to the letter addressed to the Secretariat.

109. Art. 418 of CPF. Appendix 6: I.10, O.7.

qualify as a criminal offense. The Secretariat requested that Mexico identify the criteria it used in determining that the facts complained of did not qualify as offenses and that it indicate whether a fully articulated and reasoned decision was issued explaining why the facts did not qualify as offenses. In its response to this request, Mexico stated that although Profepa did not file a report of probable criminal offenses in this case, it did assist MPF with the presentation of expert testimony in preliminary investigations 410/DD/99 and 63/DD/00 relating to complaints of criminal offenses filed by the same complainants.¹¹⁰

6. In December 1999, the *ejido* filed a complaint with the Director of Semarnat, with copies to the Federal Attorney General, the Governor of the State of Chihuahua, and the State Attorney General of Chihuahua, alleging failures to address the majority of the citizen complaints and complaints of criminal offenses filed in connection with alleged illegal logging suffered by the *ejido*, as well as particularly serious failures to prosecute environmental offenses.¹¹¹ That same month, Profepa responded that in each citizen complaint, the complainants mentioned that *ejido* authorities had themselves filed complaints of probable criminal offenses with MPF and that, consequently, it was not necessary for Profepa to do so as well. The Secretariat requested a response from Mexico as to whether MPF had resolved the complaints of criminal offenses mentioned in the submission. In its response, Mexico did not provide information in this regard.

7. In June, August and October 1999, respectively, Profepa conducted forestry inspection visits during which, according to the Submitters, evidence of forest arson was found, and in respect of which Profepa did not notify MPF of the probable existence of environmental offenses.¹¹² Mexico responded that corrective measures and sanctions had been ordered and that MPF had not been notified because the facts

110. The submission does not mention complaints of criminal offenses in connection with the citizen complaint concerning sawmills, although complaints may have been filed. The submission mentions other complaints of criminal offenses—of illegal logging in *Rincón de Gervacio* (p. 26), and of fires set in *Rincón de Gervacio* and *Arroyo de las Cuevas* (p. 25). It is unclear whether the preliminary investigations in which Profepa assisted referred to this particular case, and the Party did not provide the Secretariat with copies of the documentation related to its files numbered 410/DD/99 and 63/DD/00. For all these assertions (I.10=O.7, K.2, K.3, K.4, O.6, M.1) Profepa cites reports of criminal offenses 410/DD/99 and 63/DD/00, although the “K” assertions involve fires, I.10 concerns illegal operation and storage at San Juanito sawmills, M.1 concerns storage and transportation of tree trunks that are still found stacked in Ciénega de Guacayvo, and O.6 relates to illegal logging.

111. Appendix 6: I.11.

112. Art. 418 of CPF. Appendix 6: K.2 consolidated with P.4, K.3 and K.4.

did not qualify as criminal offenses. The Secretariat requested that Mexico identify the criteria it used in determining that the facts complained of did not qualify as offenses, and that it indicate whether a fully articulated and reasoned decision was issued determining that the facts did not qualify as offenses. In its response to this request, Mexico stated that in all three cases reports of probable criminal offenses were filed, and it referred to preliminary investigations 410/DD/99 and 63/DD/00.¹¹³ In October 2003, *ejido* residents told the legal officer from the CEC Secretariat that the perpetrators had not carried out reforestation and that the *ejido* itself had reforested in the burnt areas. For assertion K.3, the Secretariat requested information on the outcome of MPF's consideration of the complaint of probable offenses filed by the *ejido*. In its response, Mexico did not provide information on this matter.

The legal officer from the CEC Secretariat met with several representatives of the central and regional offices of Semarnat, Profepa, CNA and PGR at the Profepa offices in Chihuahua City on 17 October 2003. At the meeting, government authorities stated that they considered the seriousness of a violation in deciding whether or not to notify MPF, because it is impossible to notify MPF regarding every citizen complaint. In addition, they affirmed that it is appropriate to address certain complaints through administrative proceedings instead of criminal proceedings. They commented that it is necessary to use the principle of minimum intervention. They stated: "In every legal system there is a role for both judicial action and prevention. We don't want to become a strictly punitive institution at the expense of prevention and sustainable development." They stated that in any event, complainants are entitled to go directly to the PGR if they learn of an offense, and that Profepa does not notify the PGR until it conducts an independent verification of the reported facts.

Profepa officials also explained that until the year 2000, there was a backlog in the processing of citizen complaints in the state of Chihuahua and that this was due to the fact that in 1996, when Profepa's responsibilities were expanded to include those of the former Ministry of Agriculture and Water Resources, Profepa received 900 pending citizen complaint files. There was no structure within the agency to provide adequate legal follow-up to all the complaints. In addition, they stated that it was only in 2001 (after the period covered by the submission) that Profepa began to put an emphasis on the criminal aspects of matters complained of. This, they stated, occurred in part because of the creation

113. For case P.4', which is the same as K.2, the Party responded that no report of probable criminal offenses was filed and did not provide reasons.

of the Office of the Deputy Attorney for Legal Affairs within Profepa, and in part because of changes to the CPF defining environmental offenses.

They stated:

Handling citizen complaints is a big challenge. For us, the NGOs [nongovernmental organizations] are our main allies because they become our eyes and ears. Capacity building for society is important. The challenge is that they do not know how to file citizen complaints properly so that they can be given due process. For example: a) some are from scattered sources, one here, some further away, from separate families; b) there are complaints arising from agrarian conflicts; c) other complaints relate to conflicts within the *ejido*. At times there are many citizen complaints filed simultaneously and it is difficult to process them simultaneously. The panorama is very broad.

Concerning the problem of illegal logging, they stated:

The main reason for the attack on the forests is that on 22 December 1992, the Forestry Act took away all the government's powers to control the situation. It left it up to the lot owner to decide how much to cut. Everybody was cutting down forests. The only way to verify legality was log marking.¹¹⁴ So the loggers only marked the logs if they saw Profepa coming. This happened throughout the nineties.

In 1997 the Law was amended and a document was required with background and all the [logging] information. These documents were known as manifests.¹¹⁵ The characteristics of the manifests did not appear in the regulation to the Law. The year 1999 saw the issuance of the Mexican Official Standard [*Norma Oficial Mexicana*] or NOM for the manifests, which are still lax. Here in Chihuahua, we designed some manifests that show the annual balance. All that's missing is to have them indicate the time of issuance.

Both the authorities and the *ejido* residents interviewed by the legal officer concurred that the logging control system based on manifests is much better than the "log marking" system, although they did state that manifests can be forged or reused multiple times. Authorities pointed out that although the Forestry Act was amended in 1997 to reintroduce the system of manifests, no regulations for the amendments were issued

114. Timber marking was done by hammer and was meant to ensure that the allowable cut was not exceeded.

115. A transport manifest is a document signed by the sender and the receiver that contains a description of the goods being transported. In the forestry context, it is meant to certify that timber being delivered to a sawmill was logged legally.

or implemented until late 1999—at the end of the events described in this section. They stated that it is the responsibility of state government enforcement officials to check manifests and inspect timber on the highways.

The authorities also commented as follows:

The operating budget for Profepa in the state of Chihuahua is 3.6 million pesos (1.2 million of which are the operating budget for natural resources) less 12 % budget cuts in 2003.

In Chihuahua, there are 7.5 million hectares [of forest], so each inspector is responsible for surveillance of 81 million square meters. Forest enforcement work is like customs. Restrictions are placed on harvesting. A customs office is easy to administer at a border crossing but in a forest it's just a mess.

One mission can cover 5000 kilometers in 15 days. Remember that the inspector also has the responsibility of issuing the appropriate notices.

8.4.2 *Rochéachi*

Rochéachi is an *ejido* in the municipality of Guachochi whose population is nearly 50 % indigenous. The *ejido* is located in the Sierra Tarahumara, approximately 7 hours by secondary roads from the city of Chihuahua.

In December 1998, the Rarámuri Indigenous People of the *ejido* de Rochéachi, along with Agustín Bravo Gaxiola, their legal counsel, filed a citizen complaint with the Profepa office in the city of Chihuahua.¹¹⁶ They alleged that extraction of sand, earth, and other materials from the beds and banks of three rivers (Rochéachi, Guaguichi and El Frijolar) running through the *ejido* altered the natural structure of the riverbeds and adversely affected the interactions of flora and fauna. Moreover, the *ejido* claimed this mining constituted an illegal conversion of forest land. They asserted that the perpetrators were C. Evaneo Holguín and ASAG, S.A. de C.V.

Profepa issued a decision on the complaint the next month (January 1999), stating that the matter was not within its jurisdiction, and referring the file to CNA. In February 1999, the community and Agustín Bravo Gaxiola filed an application for review of Profepa's action. In May of 1999, Profepa ruled on the application, reaffirming that the mining of

116. Appendix 6: A.4.

sand, earth, and other materials from the beds of the three rivers did not fall within its jurisdiction but rather that of CNA, such that the referral to CNA had been warranted. The Submitter asserts that by June of 2000 there had still been no ruling on the application for review, but Mexico asserts that Profepa gave public notice of the decision in its records of cases resolved in May of 1999.

The Secretariat asked Mexico whether, in this case, it would have been appropriate for Profepa to admit the portion of the complaint relating to alteration of flora and fauna and conversion of forest land, and whether it would have been appropriate to notify MPF of the probable existence of an environmental offense. Mexico did not respond to the first question and indicated that Profepa did not verify the facts complained of and that, therefore, it did not take cognizance of any fact or omission qualifying as an environmental offense.

Regarding the processing of this complaint by CNA, the Secretariat has obtained the following information. CNA carried out inspections in Rochéachi in September and December 1998 (before and after the filing of the complaint mentioned above) and in February, September, and October 1999. CNA told the Secretariat that on each occasion, mining was taking place in compliance with the law and mining concessions issued by CNA. Nevertheless, the *ejido* residents who had filed the complaint and the NGOs supporting them continued to argue that serious impacts on the ecosystem had occurred. They filed several more complaints (not covered by the submission) and commissioned an environmental impact assessment with a view to documenting their assertion of negative impacts on the ecosystem (February 1999). In the reports of its 1999 inspections, CNA states that it did not find any irregularities or environmental harm caused by the mining. In September 1999, *Coalición Rural, A.C.* petitioned the Director of Semarnap (now Semarnat) to resolve the citizen complaints in the Rochéachi case, suspend the mining concessions, and establish a restoration program for the Rochéachi river. In October 1999, the National Human Rights Commission opened a file on the case and issued a memorandum requesting information from the Director of Semarnap.

That month, October 1999, CNA and the *ejido* agreed on a total suspension for an indefinite time of concessions to mine materials from the riverbed within the *ejido*. Subsequently, state delegations of Profepa, Semarnat and CNA held two interagency meetings to decide how they would address future cases of potential mining impacts on river ecosystems. At these meetings, it was pointed out that although watercourses are under the jurisdiction of CNA, Profepa receives citizen complaints

and Semarnap (was) responsible for reviewing environmental impact assessments. Among other things, the agencies agreed that for the Rochéachi case, Semarnap would support the development of a soil restoration project in the *ejido* and the directors of the three agencies would be asked to consider the possibility, in the future, of a) making all mining concessions conditional upon the completion of an environmental impact assessment, and b) requiring, for future mining permits, a photographic record of the area to be mined before and after the mining work. The Secretariat did not receive any information pursuant to its Request for Additional Information regarding whether the directors of the three agencies agreed to the above proposals, and whether interagency cooperation continued after 1999.¹¹⁷

In March 2000 (after the signing of the agreement between CNA and the *ejido*) Agustín Bravo Gaxiola and the Rochéachi *ejido* residents filed a citizen complaint with Profepa alleging forest clearing, destruction of natural vegetation with forest conversion, and alteration of the natural hydrological structure of a river (El Frijolar stream) for the purpose of mining various materials.¹¹⁸ The persons named as the perpetrators of these acts were Evané Holguín Bustillos and Adán Chaparro (according to documents submitted to the Secretariat by CNA). This time, Profepa allowed the portion of the complaint relating to clearing, destruction of vegetation, and forest conversion. It referred the portion relating to mining of materials to CNA and the State of Chihuahua Department of the Environment (*Dirección de Ecología*). CNA notified the complainants that it had conducted an inspection without finding any mining activities or machinery but that, in view of the information contained in the citizen complaint and submitted by residents, it would act against the perpetrators. In addition, that same month (March 2000), CNA informed Profepa that the mining was indeed taking place without a concession and that sanctions would be applied as provided by the National Waters Act (*Ley de Aguas Nacionales*). Mexico did not provide the Secretariat with information concerning follow-up to the complaint by CNA or the Chihuahua Department of the Environment. The submission states that the Chihuahua Department of the Environment referred the matter to the state delegation office of CNA.

Profepa closed the citizen complaint file in September 2000, issuing an order of (unspecified) corrective measures and imposing a fine (the Secretariat did not obtain a copy of the order). According to Mexico, the corrective measures were not carried out. There exists an *oficio* (official memorandum) for collection of the fine (August 2001, one year later),

117. Appendix 4, s. 5.4.4.

118. Appendix 6: G.4.

but the Secretariat does not know whether the fine was collected. Although Mexico agreed that it was appropriate to notify MPF of the facts in this case, in its response to the Secretariat's Request for Information, Mexico did not indicate whether this was done.¹¹⁹

In an interview with the legal officer from the CEC Secretariat on 16 October 2003, Rochéachi *ejido* residents asserted that sand is still being mined on a small scale by mestizo residents of the *ejido* and sold off the *ejido*, but mining is no longer done with heavy machinery. They mentioned the existence of eight surveillance committees appointed by the *ejido* assembly, two of which are active. There are two committee members responsible for keeping watch and notifying other members if there are any problems. When committee members come across possibly illegal activity, sometimes the perpetrators stop what they are doing and sometimes they don't. According to the *ejidatarios* who attended the meeting with the legal officer from the CEC Secretariat, the new *ejido* council was ignoring the problem despite the fact that the internal regulation of the *ejido* prohibits the sale of sand within the *ejido* and its mining for sale elsewhere.¹²⁰ They asserted that within the *ejido* assembly there had been violence against members of the Committee for the Defense of the River but that committee members had stood firm.

The *ejido* residents present at the meeting with the legal officer from the CEC Secretariat stated: "There has been no legal resolution of our complaint, no fine, no sanction. Instead they showed up with little trees and trenches [as part of a government river rehabilitation program]. The issue was taken out of the judicial arena and went into negotiation and the agreement signed is an informal one." *Ejido* residents stated:

We explained this to the Director of Forestry Surveillance and Inspection, Profepa, Federal District, who used to come to Chihuahua to analyze the lack of follow-up to citizen complaints, since there had been no resolution and there had been side negotiations.

To have the law enforced, in 2002 we appealed to the army to post guards. This did not happen because it was of no interest to them.

The state office (in Guachochi) responsible for prosecuting crimes said that the matter was outside its jurisdiction. However, it said it was respon-

119. *Ibid.*

120. They asserted that Semarnat required the adoption of an internal regulation in order to allow forest management to take place. They stated that in the regulation, the penalty for illegal sand mining is three years of suspension of the right to work, but that the new general manager is a *cacique* and is not enforcing this provision.

sible for taking note of the complaint and referring it to MPF because it is within its mandate to assist MPF.

At the Parral MPF office they said that they were unaware of the problem, and that they had not been informed. They later found the file in the archives and said they would see what was being done, but they did nothing.

In an interview with the legal officer from the CEC Secretariat on 17 October 2003, representatives of the state delegation office of CNA stated:

The (former) *ejido* council [*Comisariado Ejidal*] filed a complaint about mining. There were two concessions. The complaint was thoroughly investigated, with inspections, meetings, etc. The mining was being done legally. There was nothing to prosecute. The commitment was made not to grant any more concessions and we have upheld it.

CNA representatives noted that CNA does not have offices in the Sierra Tarahumara and that it costs the authority 1000 pesos in travel costs to check a mining permit when the permit itself only costs 200 pesos. CNA representatives commented: "they complain but they don't say who's doing it." They noted further:

The CNA does not have a presence in the Sierra because there are no serious problems. The water-related citizen complaints from the Sierra really aren't serious problems. The problem we have in the Sierra has to do with potable water supply. Sand mining cannot affect the availability of drinking water. There are more inspectors in Delicias than in the Sierra because there are more problems for the CNA there. The CNA prioritizes.

Our biggest problem is short staffing.

The second biggest problem is a practical one. For example, keeping watch at night, and the mining doesn't take place every day, so it's hard to be there right when the mining is taking place.

We cannot launch administrative proceedings for only one complaint, even a very well documented one. If we don't catch anyone in the act, we cannot investigate the past. A video would be clear and conclusive evidence. A photo is not clear evidence. Often the complaint is more of a personal impression, and what was observed isn't technically an example of harm.

We address the complaints referred to us under Article 8 of the Constitution. Inspection visit: you have to generate the order (for which a fact-finding field trip is necessary), inspection rounds, etc., to order the

visit. Then, either a) we conclude with the field report describing what happened if we didn't find anybody, or b) if we find something, we generate an inspection order and an inspector goes and communicates with the person complained of. The visit takes place, the report is written. The person visited can challenge what is said in the report. That is, you have to notify, go, leave a citation. You have to go to the person's domicile at least four times, etc. We have to issue an administrative report... notify them of the beginning of the administrative proceeding... 15 more days... notify them of the closing of the file. Then issue the decision... the respondent can then file an *amparo* action [action for emergency relief from violation of fundamental rights].

CNA has a budget of 10 billion pesos nationally. Of these, 9.7 billion are for waterworks. These are capital expenses, not operating expenses. For inspection and surveillance we have 600,000 pesos for the whole year and the whole State of Chihuahua. Each inspection visit costs an average of 7,500 pesos. Our strategy is to prioritize: 100 visits to agricultural users, 49 visits to businesses, industrial establishments, and service establishments, 20 visits in response to complaints, and 20 transfers of concessions.

8.4.3 *Pino Gordo*

Pino Gordo is an *ejido* in the municipality of Guadalupe y Calvo located in an extremely remote region of the southern Tarahumara mountains.

The submission refers to two citizen complaints about illegal logging in the *ejido* of Pino Gordo (filed with Profepa in Chihuahua City by Agustin Bravo Gaxiola on behalf of community residents on 4 August 1998 and 30 March 1999, respectively) and the follow-up to and processing of these complaints.¹²¹ In the submission, Mexico is accused of failing to effectively enforce the law by a) resolving a citizen complaint without informing the complainant regarding how it took into account evidence and information provided by the complainant;¹²² b) failing to file a report of probable criminal offenses after learning of environmental offenses during inspection visits;¹²³ and c) failing to notify MPF of the probable existence of environmental offenses relating to i) unauthorized forest clearing, destruction of vegetation, and land use change;¹²⁴ ii) unauthorized cutting, knocking down, or logging of trees;¹²⁵ and iii) intentionally setting fires in woodlands and forest vegetation.¹²⁶

121. Appendix 6: G.6, I.12, I.13, K.1, P.5 and T.1.

122. Appendix 6: T.1.

123. Appendix 6: P.5.

124. Appendix 6: G.6.

125. Appendix 6: I.12, I.13.

126. Appendix 6: K.1.

8.4.3.1 Resolution of citizen complaint without explaining to the complainant how authorities took into into account evidence and information provided by the complainant

In the citizen complaint of 4 August 1998, Prudencio Ramos Ramos asserted that illegal logging was being carried on in the *ejido* of Pino Gordo. He stated that in the *ejido*, there was overmature virgin oak-pine forest, “[o]ne of the few remnants of this type of ecosystem of great ecological importance, since it is the habitat for thirty species of flora and fauna considered [in] NOM-059-ECOL-1994 as species that are endangered, threatened, rare, or subject to special protection.” As evidence of the presence of such species in the area, he attached to the complaint documentation referring to “field studies carried out by CASMAC [*Consejo Asesor Sierra Madre, A.C.*] since 1996 (records of which may be verified at the *Universidad Autónoma de Chihuahua* and the *Instituto de Biología* of the *Universidad Nacional Autónoma de México*) which scientifically demonstrate the presence of [various animal and plant species protected under Mexico’s endangered species legislation].” The complainant alleged that removal of forest materials was taking place without authorization from the owners, who are *ejido* residents, and that no prevention or mitigation measures for environmental impacts on endangered species were in place.

Profepa allowed only the portion of this complaint relating to illegal tree felling and removal. It closed the complaint file having concluded that the forestry operation was authorized under a permit issued to the Community of Colorada de los Chávez, located adjacent to the Pino Gordo *ejido*. Colorado de los Chávez has a boundary dispute with Pino Gordo under the Agrarian Act. The Submitter asserts that Mexico failed to determine whether Colorado de los Chávez’ forest management program contained “[...] measures to preserve and protect the habitat of threatened or endangered species of flora and fauna” as required by Article 12 of the Forestry Act.

In its Request for Information, the Secretariat asked Mexico whether the forest management program for the area covered by the complaint (which includes the localities of Mesa de Chuvilla, Faldeo del Cerro del Puerto y Cerro Alto de Huazachique) contained measures for the protection and conservation of the species mentioned in the citizen complaint, or environmental impact prevention and mitigation measures, and if so, whether such measures had been implemented.¹²⁷ Mexico responded that the *ejido* of Pino Gordo does not have an autho-

127. Appendix 6: T.1.

rized forest management program, hence Mexico could not respond to the question. The Secretariat, in its Request for Additional Information, asked Mexico to respond to the questions contained in the original Request for Information by reference to the forest management program of the Community of Colorada de los Chávez, the program to which the complainants referred.¹²⁸ Mexico did not respond to this request.¹²⁹

During the 17 October 2003 meeting with government authorities at the Profepa offices in Chihuahua City, the legal officer from the CEC Secretariat inquired about this case. The authorities stated that the Colorada de los Chávez forest management program did not indicate that there were status (endangered) species in the area of operations. They stated that the environmental impact study which applicants must conduct in order to obtain a forestry operation permit must include a review of information held by the National Commission on the Use and Enjoyment of Biodiversity (*Comisión Nacional para el Uso y Aprovechamiento de la Biodiversidad*) to determine whether there are status species in the area covered by the application. The authorities stated that there is no inventory of status species for the area of interest (Pino Gordo/Colorada de los Chávez), that there is no status species inventory program, and that inventories are only taken as part of environmental land use planning studies.¹³⁰

The legal officer asked what type of information would warrant Semarnat's requiring protection measures for status species in an area of

128. Appendix 4: s. 5.4.3.

129. On 4 February 2004, in response to the Request for Additional Information (Appendix 4), Mexico provided the Secretariat with a copy of a letter from the Semarnat Federal Officer (Delegado Federal) in Chihuahua. That letter stated: "Attached please find a copy of oficio no. DJ-08-99/005/10031 of 26 August 1999 sent to Teresa Guerrero. Pursuant to Article 21 of the Regulation to the previous Forestry Act, for est management programs must contain, among other things environmental impact prevention and mitigation measures for each phase of management; and Profepa is responsible for verifying compliance with the forest management programs authorized by Semarnat." The letter to which the Federal Officer's letter refers states: "This is in response to your memorandum of 8 July 1999 in which you ask to review the documents supporting the forestry operation permit issued to P.P. Mala Noche, Municipality of Guadalupe y Calvo, Chihuahua. In this regard, note that this Federal Office authorized an ongoing forest management program for timber production in P.P. Mala Noche, Municipality of Guadalupe y Calvo, Chihuahua to C. Crisoforo Hernández Atienzo in his capacity as legal agent of 13 co-owners of the lot in question, who, to prove their ownership of the lot in question, submitted the following documents..." [The rest of the text is illegible.] Mexico did not indicate whether this information was provided in response to the Secretariat's questions in s. 5.4.3 of Appendix 4.

130. If an applicant for a forestry permit does not indicate the presence of status species, the authority presumes there are none in the area of operation and has no means of corroborating this assumption.

forestry operations. The authorities responded that reports of sightings by individuals would be insufficient, and that it would be necessary to establish the presence of status species by means of a proper scientific study in order for Semarnat to cancel a management program that did not contain mitigation measures. Authorities did not comment on the existence or validity of the CASMAC studies referenced in the submission.

8.4.3.2 Criminal Prosecution

For none of the above points did Mexico notify MPF of the facts nor explain to the complainants why it did not do so. Mexico told the Secretariat that it did not notify MPF because the facts complained of did not qualify as environmental offenses.¹³¹ The Secretariat requested that Mexico indicate the criteria used by authorities in deciding that the facts complained of did not qualify as an offense, and asked whether the authority had issued a fully articulated and reasoned decision explaining why the facts did not constitute an offense. In its response, Mexico did not explain the criteria it used in deciding not to notify MPF. In regard to a 1999 forest audit undertaken by Profepa in response to citizen complaints, an audit which led to the cancellation of the Colorada de los Chávez management plan and Profepa ordering the adoption of emergency measures, the Secretariat asked Mexico whether it would have been relevant to notify MPF of the facts encountered by Profepa during its audit.¹³² Mexico indicated that it was relevant to notify MPF but did not indicate whether or not it had done so.

8.4.3.3 Agrarian Issues

On 16 October 2003, indigenous residents of the Pino Gordo *ejido* told the legal officer from the CEC Secretariat that Raúl Aguirre Ramos, who claims to be an *ejido* representative, wants to engage in logging, but that they do not recognize him as an *ejido* representative because in his appointment the wishes of 110 *ejido* residents – who have never wanted logging to take place – were not taken into account. They indicated that according to the new forestry act, forestry operations may not take place while there are border conflicts between *ejidos*.¹³³ They stated:

The year 1998 was the first time they logged the forest. First we talked to NGOs and then to Profepa. Six or seven of us speak Spanish. It's hard to

131. Appendix 6: I.12, I.13, K.1, P.5.

132. Appendix 6: G.6.

133. Art. 65 II of the LGDFS; see s. 7.1.1, above.

know whether they treated us well or badly at Profepa; there wasn't anyone who spoke Rarámuri.

The solution is for them to give us birth certificates so that we can go to the Office of the Attorney General for Agrarian Affairs [*Procuraduría Agraria*] and demand our rights. With our papers we can defend ourselves better with the authorities. We hope that that will be enough to obtain the authorities' support. One hundred forty of us have voter identification papers (and 35 of those are registered) but something like 800 more people in Pino Gordo do not have them.

We make our living from agriculture. The forest gives us water. We don't want to sell timber. Tell Sagarpa to make Procampo [a governmental farm support program] not give it only to Raúl Aguirre but to everyone who's entitled to it.

They also mentioned that in response to the citizen complaint they filed on 30 March 1999, Profepa conducted a forestry audit. They mentioned that there was a temporary total suspension of logging while the restoration measures ordered pursuant to the audit were implemented, followed by a temporary suspension arising from an agrarian proceeding and an ensuing *amparo* action. They maintain that as of October 2003 there was no official suspension in place but that for political reasons logging is not taking place.

The legal advisor of the indigenous people who attended the meeting with the legal officer from the CEC Secretariat on 16 October 2003 stated that in principle, Semarnat considers information relating to the agrarian conflict in Pino Gordo to be classified, which he understood to be because President Vicente Fox declared water and forests to be priority national security issues. He stated that there is an unofficial commission (which includes Semarnat and MPF representatives) on agrarian and forestry matters focusing on the "hot spots" and that this commission keeps classified all documents concerning the Pino Gordo case. He asserted that appeals for review of this classification had been filed with the Federal Access to Information Institute and that these proceedings were still ongoing in October 2003.

During the legal officer from the CEC Secretariat's meeting with government authorities on 17 October 2003, authorities stated that the Pino Gordo problem is essentially one of disputed boundaries. They commented that there are 160 indigenous people who have no agrarian rights: they are not automatically full-fledged *ejido* residents under the law simply by virtue of their domicile in Pino Gordo. These 160 people

do not want timber to be logged, but there are 50 full-fledged *ejido* residents who do want this, as do the residents of Colorada de los Chávez. One comment was:

There is a prevailing notion in the Sierra Tarahumara that logging is bad. If you take advantage of the forest, the structure of the forest will change. With a good management plan, the composition will change but the forest can be stewarded.

In Chihuahua there are management programs. Often people see such programs in action and say it's illegal logging.

We have had training programs in the Sierra with forums, presentations on management programs, forestry technicians, LGEEPA, Profepa's role. The people don't understand laws. We want to be preventive and invest in education. Semarnat/Profepa attends every meeting in the villages, with the INI [*Instituto Nacional Indigenista*—National Institute for Indigenous Affairs]. It's not our duty to have translators. INI has to facilitate relations between the indigenous people and the agencies.

The indigenous situation is a challenge for the whole country. If we do have a problem it's with Spanish speakers—NGOs—more than with the indigenous population. What's going on in the *ejidos* are cultural problems, they don't apply their own internal regulations. It's discretionary who gets punished.

They commented that an interagency group on agrarian and forestry issues has existed since December 2002 and that its meetings are attended by the Ministry of National Defense (*Secretaría de Defensa Nacional*—Sedena), the PGR, the Ministry of Agriculture, the Ministry of the Interior (*Secretaría de Gobernación*), Profepa and Semarnat. They observed: "We analyze the problems that exist. Many are agrarian or social problems, federal offenses, not forestry violations."

9. Challenges to Enforcement in the Cases Covered by the Factual Record

This section presents information relating to challenges in connection with the effective enforcement of the federal legal framework for citizen complaints and complaints of criminal offenses with respect to the cases covered by the factual record. These challenges involve relations between indigenous communities and government authorities, as well as interagency and intergovernmental cooperation.

9.1 Relations between Indigenous Communities and Government Authorities

Relations between indigenous communities and government authorities in the Sierra Tarahumara are conditioned by geographical, cultural, economic and legal factors.

The Submitter and government authorities from whom the Secretariat received information agreed that there are no Profepa or CNA offices in the Sierra Tarahumara. Profepa staff indicated that the need to travel long distances to verify the facts relating to a complaint hinders their ability to act within the time frame prescribed by the LGEEPA, limits the role of citizen complaints as an instrument of environmental protection (since the authorities arrive after the illegal logging or extraction activities have occurred) and limits Profepa's ability to collect the information necessary to support laying criminal charges.

In the Secretariat's Request for Additional Information, Mexico was asked the following:

The PPJA [Profepa's Environmental Law Enforcement Program for 2001–2006] states that "Profepa, it should be noted, is the only federal agency responsible for carrying out acts of inspection and surveillance in the forestry sector, with a view to curtailing the destruction of natural resources and reversing processes of environmental deterioration as well as to restoring the rule of law in this sector throughout the nation" (PPJA, p. 20). A chart in the PPJA shows the distribution of the 5,488 environmental complaints (January–November 2001) in Mexico (PPJA, p. 104). The Sierra Tarahumara stands out because it appears that no environmental complaints were filed with Profepa in this region (one assumes that they were filed with the Profepa offices in the city of Chihuahua). Why, since this is a critical forested area according to the PPJA (see 3 above), does Profepa have no offices or staff in the Sierra Tarahumara?¹³⁴

134. Appendix 4: s. 4.2.

Figure 3.

**DISTRIBUTION OF ENVIRONMENTAL CITIZEN COMPLAINTS
(January - November 2001)**



Source: PPJA, p. 104

The Secretariat did not receive any response or additional information on this point.

During the meeting held by the legal officer from the CEC Secretariat with government authorities, PGR authorities mentioned: “We aren’t sitting in an office anymore. We go to the Sierra to meet with civil and military authorities to receive complaints. We have MPF in Guachochi, Parral, Delicias, Cuahtémoc (AFI [*Agencia Federal de Investigación*—Federal Investigation Agency]) and one rotating MPF.” It was announced at the meeting that as a result of the filing of the submission, an instruction had been given to detach an MPF to the city of Chihuahua as of 1 October 2003 with a mandate to concentrate on investigating environmental offenses. Profepa commented: “Complainants are entitled to go directly to the PGR if they learn of a crime. We don’t notify the PGR until we verify a complaint. It is more difficult to go to the PGR than to go with Profepa. The NGOs need professionalization.” Profepa also mentioned that the PGR required more assistance from Profepa on technical issues.

Questions remain regarding how, in cases of illegal logging, citizens can produce complaints of criminal offenses that will be accepted by the PGR, given that in nearly all the cases referenced in the submission, Profepa asserted that the facts in the complaints did not amount to criminal offenses.¹³⁵

From a cultural perspective, members of indigenous communities with whom the Secretariat legal officer met in Chihuahua in October of 2003 stated that linguistic differences hamper communication between indigenous communities and government authorities and affect their ability to access the citizen complaint procedure and to participate in government natural resource conservation programs.¹³⁶ There are also different—though not necessarily contradictory – appreciations of the value of forests and rivers. Government authorities often view forest resources as an opportunity for social and economic development in indigenous communities, while members of indigenous communities often describe the forest as part of a cultural context they wish to preserve.¹³⁷ These cultural differences can make it difficult for authorities and indigenous groups to reach consensus on what constitutes effective law enforcement.

Another factor influencing relations between indigenous communities and government authorities is concern expressed by communities regarding the independence of Profepa's enforcement staff. The LGDFS (see above, s. 7.1.1.2), adopted in 2003, is meant to address such concerns.¹³⁸ Regarding law enforcement, the legislative summary for the LGDFS states:

For its [the LGDFS'] drafters, it is vital that the Federation, in coordination with the state governments and with the cooperation of the organized woodlot owners, the municipal governments, and other public institutions, implement comprehensive programs to prevent and combat illegal logging, especially in previously identified critical zones, in order to address it through various actions as well as to prevent improper land

135. Appendix 6.

136. See above, s. 8.4.3.3.

137. At a meeting with members of indigenous communities on 16 October 2003, the following comment was made: "We make our living from agriculture. The forest gives us water. We don't want to sell timber." At a meeting with government authorities on 17 October 2003, authorities commented: "There is a prevailing notion in the Sierra Tarahumara that logging is bad. If you take advantage of the forest, the structure of the forest will change. With a good management plan, the composition will change but the forest can be stewarded."

138. Report on the Reform Initiatives for the Forestry Act, the General Sustainable Forestry Act and the Forestry Act, published in the Parliamentary Gazette of the Senate of the Republic on 12 November 2002, No. 76, 3er Año de Ejercicio, Primer Periodo Ordinario. Online: <http://www.senado.gob.mx/gaceta.php?&lk=128/dictamen_iniciativas_forestales.html>.

conversion, traffic in forest species and resources, mining of forest soil, and illegal shipping, storage, processing, or possession of forest raw materials.

[...]

The short staffing and lack of effective action on the part of Profepa in the forestry sector exposed it to severe criticism at forestry-related forums and meetings held this year. However, it was necessary to reconsider that instead of creating more prevention and surveillance agencies, this report serves to exhort the Executive to reinforce Profepa and the coordination mechanisms so that this matter is not left unattended. The forestry promotion and development programs contained in the laws will be of no use if the State does not strive to make this area more integrated with the other public agencies with responsibility for forestry, to make it more intelligent, less naïve, and less corrupt.¹³⁹

In its Request for Additional Information, the Secretariat asked the following:

In 2001, then Minister of the Environment Victor Lichtinger stated as follows: "We are concerned to give higher salaries to Profepa inspectors" (Mario A. Arteaga, "*Ya se toma en cuenta la Semarnat: Lichtinger*," at Río Grande/Río Bravo Basin Coalition, RioWeb: www.rioweb.org (6 March 2001)). Were the salaries of the Profepa inspectors in Chihuahua increased? If so, please provide detailed information and/or the names of persons to contact in this regard.¹⁴⁰

Mexico did not respond to this request.

In a December 2004 press conference regarding a federal program to combat illegal logging, a journalist asked whether the salaries of Profepa's inspectors had been brought into line with the rest of the federal civil service, and whether the number of inspectors had been increased. The head of Profepa answered:

On the question of inspectors, neither the requested salary increase nor new hires were authorized. In cooperation with Semarnat, we are trying to bring inspectors' salaries into line. For me, this is a very important goal.¹⁴¹

139. *Ibid.*

140. Appendix 4: s. 4.1.

141. Press conference by Alberto Cárdenas Jiménez, Minister of the Environment and Natural Resources, on the final results of the Program to Combat Illegal Logging for 2004 and the plan for 2005, with the participation of José Luis Luege Tamargo, Federal Attorney for Environmental Protection; Francisco García, Director, Forestry and Soils, Semarnat; and Manuel Reed Segovia, Director, Conafor (Mexico, Federal District, 7 December 2004).

Poverty and lack of education also factor into relations between government authorities and aboriginal communities and influence the role of citizen complaints as tools for environmental justice.¹⁴² A 2002 study of the causes of deforestation in Mexico included a review of the forest management framework and offered the following observation:

The primary production process and the secondary purchase theoretically guarantee the sustainable use of resources because of backing by the authorities and the *ejido* assemblies and monitoring by *ejido* residents. Unfortunately, the reality is that this exercise possesses structural weaknesses that sap the peasants' capacity to earn revenues and protect their forests.¹⁴³

The report provides the following example:

[In] the Sierra Tarahumara, [...] the powers of accounting for and administering forest resources have been expropriated from the *ejido* residents and placed under outside governance such as the National Institute for Indigenous Affairs, the Ministry of Agrarian Reform, and the State Coordinating Body for the Tarahumara (*Coordinación Estatal de la Tarahumara*). Because the average level of education in the *ejidos* is third grade, these institutions have arrogated to themselves these rights based on the premise that the *ejido* residents cannot learn to manage their own resources and that they require the support of outside administrators. This solution, although necessary in theory, has given rise to worse problems without raising rural educational levels. Now, the peasants are at the mercy of corruption and a complex network of power relations known as caciquism, in which a few people (generally the best educated) pursue their private interests at the expense of the rest.

Thus, [...] outside administrators have engaged in embezzlement and unilateral decision-making, often influenced by factors of a political nature. Likewise, timber contracts are managed by a group of people in charge of financial information, who take advantage of their position to steal profits, embezzle funds, and block the assembly's participation in decision-making. As a result, the peasants in the Sierra Madre [Sierra Tarahumara] receive average annual profits for timber sales of one thousand pesos in the best case [...]¹⁴⁴

-
142. A report commissioned by Profepa in 2002, on the social impact of the citizen complaints process, recommends large scale capacity building within Profepa, centered on, among other things, "sensitization aspects and ways of approaching the social problem of the complainant, [...]" See *Media Comunicación Report*, section 7.2, above, at p. 74.
143. Centro Mexicano de Derecho Ambiental and Centro de Estudios del Sector Privado para el Desarrollo Sustentable. *Deforestación en México—Causas Económicas—Incidencia del Comercio Internacional* (México, D.F.: CEMDA, 2002) at 75.
144. *Ibid.* at 75–6.

Legal factors also condition relations between indigenous communities and government authorities. One of these is the agrarian regime, which channels relations between government environmental authorities and indigenous groups through the *ejido* system.¹⁴⁵ Particularities in the operation of the *ejido* system are at the root of many citizen complaints to Profepa (and at times to Semarnat and CNA), but these authorities lack jurisdiction to resolve the underlying problems.¹⁴⁶ These problems include lack of legal recognition for all residents in *ejidos* and boundary disputes (Pino Gordo case); lack of enforcement of an *ejido*'s internal regulations by the *ejido* assembly or council (*comisariado ejidal*) (Rochéachi case); and cases in which Profepa imposes sanctions against the *ejido* for illegal logging engaged in by an individual, either because the perpetrator could not be found or identified or because the *ejido*, as the owner of the forest, failed to effectively enforce its own internal regulation or forest management plan to prevent the illegal logging (Ciénega de Guacayvo case). The head of Profepa has stated: "The issue of agrarian conflicts [...] is in the background across the country when it comes to illegal logging."¹⁴⁷ In addition, government authorities have not had resources to train indigenous communities regarding implementation and enforcement of their internal regulations and forest management plans.¹⁴⁸

Another legal factor regarding relations between indigenous communities and government authorities is follow-up by authorities regarding matters raised in citizen complaints. While the citizen complaints procedure provided by the LGEEPA does not require Profepa to notify complainants as to whether the sanctions imposed on the violators were complied with, complainants expect that the procedure will lead to the resolution of the matter complained of.¹⁴⁹ In several cases ref-

145. See s. 7.1.1, above, and Appendix 8.

146. In response to the Follow-Up Information Request (Appendix 5), on 11 July 2004 Mexico sent the Secretariat a document containing a section entitled "Significant progress on delivery of environmental justice" describing multi-agency actions taken since 2002 to resolve a land use conflict in *Coloradas de la Virgen*, in the Municipality of Guadalupe y Calvo, Chihuahua. Throughout the document, Profepa representatives are quoted as reminding community members that agrarian matters, and matters related to use and title to land, are not within its jurisdiction.

147. Press conference by Alberto Cárdenas Jiménez, Minister of the Environment and Natural Resources, on the final results of the Program to Combat Illegal Logging for 2004 and the plan for 2005, with the participation of José Luis Luege Tamargo, Federal Attorney for Environmental Protection; Francisco García, Director, Forestry and Soils, Semarnat; and Manuel Reed Segovia, Director, National Forest Commission (Mexico, Federal District, 7 December 2004).

148. This is meant to be addressed by the LGDFS, which provides that indigenous groups can apply to Conafor for technical and financial assistance to develop, implement, and evaluate forest management plans. See art. 109 of the LGDFS.

149. See *Media Comunicación* Report, above, s. 7.2 at 74.

erenced in the submission, the Secretariat did not obtain any information on corrective measures ordered.¹⁵⁰ In others, the Secretariat received information indicating non-compliance with one or more orders requiring corrective measures—normally reforestation.¹⁵¹ Mexico did not respond to requests for additional information regarding orders for corrective measures and their implementation.¹⁵²

Concerning the collection of fines that were levied in the cases covered by the submission, government authorities with whom the legal officer from the CEC Secretariat met in October 2003 stated that, “there is no legal requirement to inform Profepa of collection.” Government authorities explained: “Before 2003, orders requiring the payment of a fine were sent to the state government ministry of finance which sent them to local municipalities for collection. The corresponding notice would indicate the name of the person liable for the fine and specify their domicile. The payment of fines was not reported to Profepa.” It was also mentioned that there are federal directives setting minimum fine levels to ensure cost recovery but that in some cases it is impossible to levy or collect such high fines due to the inability of the perpetrator to pay. The Secretariat received no information from Mexico in response to the Request for Additional Information concerning the collection of fines.¹⁵³

In addition to administrative sanctions under LGEEPA, harm to the environment can, under certain circumstances, be punishable as a criminal offense under the CPF.¹⁵⁴ In gathering information for the factual record, the Secretariat did not obtain an explanation from Mexico regarding why, in most cases covered by the submission, authorities concluded that the facts alleged by complainants did not establish an environmental offense.¹⁵⁵ In those cases for which Mexico stated that criminal charges were filed, no additional information was provided to the Secretariat apart from file numbers.¹⁵⁶

9.2 *Intergovernmental and Interagency Cooperation*

Another challenge in connection with the effective enforcement of the federal legal framework for citizen complaints and complaints of criminal offenses with respect to the matters raised by the submission is

150. See Appendix 6.

151. *Ibid.*

152. Appendix 4: s. 5.1.

153. *Ibid.* s. 5.2.

154. See above, s. 5.

155. See Appendix 6.

156. See above, s. 8.4.1.

cooperation between entities and agencies with jurisdiction over the environment, natural resources, and indigenous peoples at the federal, regional, state, and local levels. In response to its requests for information, the Secretariat obtained general information about cooperation initiatives but did not obtain any details about cooperation in connection with enforcement in the cases referenced in the submission, except as regards the interagency agreements signed to help address the Rochéachi case.¹⁵⁷

9.2.1 Federal—State Cooperation

As regards federal-state cooperation, an existing state decentralization program agreed to by the Government of the State of Chihuahua and Semarnat¹⁵⁸ begins by recalling the following passage from the 2001-2006 National Development Plan:

[...] the Federal Executive Branch is committed to expediting the process of federalism, the fair redistribution of the budget, the capacity to generate greater revenues, and the power to make decisions on and execute works and provide public services, to the local governments.¹⁵⁹

According to the Program:

[W]ithin this framework, Semarnat seeks to promote effective and efficient decentralized environmental management that is conducive to making decisions in the place where problems and opportunities arise, and assists in strengthening governability in the country's federated entities and municipalities.¹⁶⁰

[...]

Within this framework, primary jurisdiction over any matter must obey the principle of subsidiarity whereby each order of government should be responsible for that which it can best accomplish.¹⁶¹

The Program explains:

The process of decentralization of Semarnat is operating under a general agreement on federalism signed by the state government on 18 January 2002, which expresses the will of the parties to carry out decentralization,

157. See above, s. 8.4.2.

158. Government of the State of Chihuahua and Semarnat, "State Decentralization Program" (undated) (the "Program").

159. 2001–2006 National Development Plan (Mexico, 2001) at 45.

160. The Program, *supra*, note 158 at 3.

161. *Ibid.* at 4.

their commitments, their support for training and technical assistance, the grounds for reversion, and general safeguards. This agreement contains the specific commitment to devise a state decentralization program with possible contributions from the parties, including any subsidies that the federal government is willing to provide to the state. *Once the State of Chihuahua is in a position to take on the powers and provide the services currently operated by the federal government, specific agreements will be signed in which this transfer is enshrined* [emphasis added].¹⁶²

In the Request for Additional Information, the Secretariat asked Mexico the following question:

3. Forestry Inspection and Surveillance

Profepa's 2001–2006 Environmental Law Enforcement Program [*Programa de Procuración de Justicia Ambiental* (PPJA)] identifies the Sierra Tarahumara as a critical forested area (where, according to Profepa, frequent illegal logging causes significant alterations, endangering ecological stability and affecting society in general, since it suffers the effects of deforestation) (PPJA, p. 20). In addition, of the country's 100 critical forested areas, the Sierra Tarahumara is identified as one of 9 "ungovernables" (where, according to Profepa, there are interrelated problems such as organized crime, vehicle theft, bearing of prohibited weapons, kidnapping, bribery, cultivation of narcotics, and collusion of the authorities with criminals, in addition to various forestry-related offenses) (PPJA, p. 20).

3.1 Please identify any intensive systematic surveillance operations carried out in the Sierra Tarahumara with the participation of the Division of Federalization and Decentralization of Forest and Soil Services (*Dirección General de Federalización y Descentralización de los Servicios Forestales y de Suelo*) and local governments, and provide detailed information and/or the names of persons to contact in this regard (PPJA, p. 21).

3.2 Please provide copies of cooperation agreements with federated entities for assistance and optimization of resources devoted to forestry inspection and surveillance in the Sierra Tarahumara (PPJA, p. 22).

3.3 Please provide copies of documentation evidencing the creation of inspection and surveillance committees in the Sierra Tarahumara communities identified in submission SEM-00-006 (Tarahumara) (PPJA, p. 23).

162. *Ibid.* at 5.

In response to question 3.1, Mexico stated: "In relation to the PPJA, Profepa carried out 453 operations in 2000, 408 in 2001, 362 in 2002 and 514 in 2003," but it did not mention if any of these operations took place in the Sierra Tarahumara.¹⁶³

In response to question 3.2, Mexico stated that Profepa has not signed any cooperation agreements with federated entities for assistance and optimization of resources devoted to forestry inspection and surveillance in the Sierra Tarahumara.¹⁶⁴ However, it provided the Secretariat with copies of various agreements signed between Semarnat and the State of Chihuahua between October 1996 and March 2000 as well as a draft "Coordination agreement to carry out actions to protect and preserve forested natural resources entered into by [the Federal Executive Branch acting through Profepa], party of the first part, and [the Government of the State of Chihuahua, acting through the Governor], party of the second part." This draft agreement stipulates that it falls under the aegis of the 2001-2006 National Development Plan and mentions that the object of the agreement is to establish guidelines whereby Profepa and the state will coordinate their actions to protect and preserve existing forest resources in the state. The draft agreement stipulates that the parties shall assign "the material, human, and financial resources necessary for the performance of the Agreement *within the limits of their respective resources* [emphasis added]." At the meeting held by the legal officer from the CEC Secretariat with government authorities in Chihuahua City on 17 October 2003, authorities stated:

Profepa is responsible for surveillance of the sawmills. The roads: state government. We will soon have an agreement to strengthen cooperation.

Profepa's work is affected by international treaties, federal responsibility, etc. The state government wants to get involved in regulation of border areas but does not have the money, staff, capacity, etc., so if federal responsibility is transferred, environmental quality will suffer. This would affect our bilateral responsibilities (such as the Ciudad Juárez-El Paso airshed).

According to the LGEEPA, the federal-state transfer will happen when the level of resources at the state level is similar to those available at the federal level.¹⁶⁵

163. Oficio No. UCAI/0556/04 of 11 February 2004, from the Director of International Cooperation of the International Affairs Coordinating Unit of Semarnat, Ma. Teresa Bandala Medina, to the Legal Officer, Submissions on Enforcement Matters Unit, CEC, Katia Opalka, with attached information provided by Profepa in response to the Request for Additional Information.

164. *Ibid.*

165. LGEEPA Article 11.- The Federation, acting by the Ministry, may enter into coordination agreements or covenants in order for the governments of the Federal District

In response to question 3.3, above, Mexico sent the Secretariat copies of three sets of minutes of regular general meetings of participatory surveillance committees, one involving *Asociación Municipal de Propietarios Rurales de Guachochi, A.C.*, another involving *Silvicultores Unidos de Guachochi, S.C.*, and a third involving *ejido Guajalotes*, Municipality of Balleza, Chihuahua. However, these are not communities included in the submission. At the 17 October 2003 meeting, government authorities mentioned that many different participatory surveillance agreements are needed in order for Profepa to coordinate activities with municipalities.

9.2.2 *Interagency Cooperation*

Regarding interagency cooperation, although Profepa, Conafor and CNA are all agencies within the same Ministry (Semarnat), written agreements are often required in order to coordinate their actions, as in the case of Rochéachi, and even to coordinate actions between Profepa and Semarnat. At the October 2003 meeting with the legal officer from the CEC Secretariat, Profepa representatives commented:

There is verticality in the agencies of the federation but the problems are not separate, they are intertwined. Horizontal, multidisciplinary action is difficult. For example, Profepa does not have an education budget nor the infrastructure to conduct seizures.

In compiling information for the preparation of the factual record, the Secretariat attempted to obtain information relevant to the cases addressed by the submission on cooperation between environmental agencies and agencies responsible for indigenous affairs. In the Request for Additional Information, the Secretariat asked:

or the States, with the participation of the municipalities as applicable, to assume the following responsibilities within their territorial jurisdiction:

[...]

IX. Inspection and enforcement of this law and other provisions ensuing from it.

[...]

Article 12.- For the purposes of the preceding article, coordination agreements or covenants that the Federation, acting by the Ministry enters into with the Federal District and the States, with the participation of the municipalities as applicable, shall abide by the following principles:

They shall be entered into at the request of a federated entity when it possesses the necessary means, trained personnel, material and financial resources, and specific institutional structure for the development of the responsibilities it would assume and which, for such purposes, the federal authority requires. These requirements shall depend on the type of covenant or agreement to be signed, and the capacities shall be assessed in conjunction with the Ministry.

[...]

The website of the National Campaign for Forests and Water [*Cruzada Nacional por los Bosques y el Agua*] identifies the Sierra Tarahumara as a region of poverty and natural resources degradation. It mentions that Semarnat, the Ministry of Social Development [*Secretaría de Desarrollo Social—Sedesol*] and the National Institute for Indigenous Affairs are the leaders in confronting this problem and states that within 12 months (before March 2002), a new program was to be presented whose purpose would be to break the vicious cycle of poverty and environmental degradation, in which the means for fighting poverty would include incentives for protection of natural resources and the environment, particularly forests and watersheds.

1.2 Please identify the actions taken since 2001 in the Sierra Tarahumara within the above-mentioned program and/or within the Semarnat Special Program for Indigenous Peoples (April 2002) to fight poverty and protect forests, and provide detailed information and/or the names of persons to contact in this regard.

Mexico did not respond to this request.

In response to the Secretariat's Follow-Up Information Request, in July 2004, Mexico provided the Secretariat with summary information regarding a new program to combat illegal logging in Mexico, including specific information regarding the Sierra Tarahumara.¹⁶⁶

One objective of the 2004 Program to Combat Illegal Logging was to identify and address the causes of illegal logging, including: lack of rural employment; disputes regarding title to land; lack of organization in *ejidos* and communities; expensive and bureaucratic procedures; increasing demand for timber; and a breakdown in communication between *ejidos* and communities and federal and state programs.¹⁶⁷ Demand for illegally harvested timber was identified as coming from four areas: the construction industry; the agricultural sector (crates for produce); small carpentry operations; and the automotive, beer, and refreshment industries (demand for crates and pallets).¹⁶⁸ Fifteen government agencies, entities and programs took part in a cross sector, interinstitutional program for addressing illegal logging.¹⁶⁹ As part of

166. Appendix 7: s. 1.3.

167. Profepa, "Program to Combat Illegal Logging 2004" (Power Point Presentation) (May 2004).

168. *Ibid.*

169. *Ibid.* Sagarpa (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación*), Sectur (*Secretaría de Turismo*), Sedesol (*Secretaría de Desarrollo Social*); Fonaes (*Fondo Nacional de Apoyo para las Empresas de Solidaridad*); Focir (*Fondo de Capitalización e Inversión del Sector Rural*), Semarnat, SRA (*Secretaría de la Reforma Agraria*), CFE (*Comisión Federal de Electricidad*), Pemex (*Petróleos Mexicanos*), SE (*Secretaría de*

an initiative aimed at coordinating federal and state security forces, the 2004 Program to Combat Illegal Logging aimed to provide a response to citizen complaints of illegal logging within a maximum of two hours.¹⁷⁰ Profepa was given the task of preparing – for each municipality – a plan for responding immediately to citizen complaints of illegal logging (response in under two hours).¹⁷¹

According to the information provided to the Secretariat by Mexico in July 2004, the Sierra Tarahumara was identified as one of fifteen priority critical forested areas¹⁷² requiring coordinated action and results within 100 days beginning 1 April 2004.¹⁷³ The Sierra Tarahumara was also designated as one of nine “ungovernable” areas where, in addition to acute environmental degradation, environmental law enforcement was impeded by the presence of criminal gangs associated with other types of illegal activities.¹⁷⁴

Information provided by Mexico included a breakdown of expenditures by various agencies in the Sierra Tarahumara under the 2004 Program to Combat Illegal Logging for the period 1 May – 8 August 2004.¹⁷⁵ A table provides the following accounting: Profepa spent \$345,000.00 (pesos) on 29 June 2004 to establish six participatory environmental surveillance committees; on 31 June 2004 [*sic*] Profepa and the Government of the State of Chihuahua signed an agreement on forest inspections;¹⁷⁶ Profepa and Sagarpa held three meetings with fruit growers from Chihuahua State to encourage them to use only

Energía), CDI (*Comisión Nacional para el Desarrollo de los Pueblos Indígenas*), Fonart (*Fondo Nacional para el Desarrollo de las Artesanías*), Conanp (*Comisión Nacional de Áreas Nacionales Protegidas*), Conafor, Coplades (*Comités de Planeación de Desarrollo*) (with participating state governments).

170. *Ibid.* This initiative involves the Mexican Army, the Federal Prevention Police, PGR, *Armada de México*, the State Attorney General Offices, CISEN (*Centro de Investigación y Seguridad Nacional*), and the Municipal Police.

171. *Ibid.*

172. Based on level of deforestation.

173. Appendix 7: s. 1.3: Profepa, “Establishment of fifteen areas considered critical due to their level of deforestation and statement by the Office of the Federal Attorney for Environmental Protection to the effect that six of these areas, including Sierra Tarahumara, have been brought under control,” in *Factual Record, Tarahumara Submission, SEM-00-006* (n.d.).

174. *Ibid.*

175. Appendix 7: s. 1.3: Profepa, “Establishment of fifteen areas considered critical due to their level of deforestation and statement by the Office of the Federal Attorney for Environmental Protection to the effect that six of these areas, including Sierra Tarahumara, have been brought under control,” in *Factual Record, Tarahumara Submission, SEM-00-006* (n.d.). “Updated Forestry Inventory and Related Investments—Activities over 100-day Period (1 May to 8 August 2004)—Priority Critical Forested Area of Sierra Tarahumara, Chihuahua.”

176. The CEC Secretariat did not obtain a copy of this agreement.

crates made of legally harvested lumber (\$2,500.00); Conafor spent \$12,670,000.00 on forest management; Sedesol spent \$8,269,138.00 on developing temporary employment opportunities in the municipalities of Guadalupe y Calvo, Balleza and Bocoyna, and identifying production options and promoting local development in the municipalities of Guadalupe y Calvo, Balleza, Guerrero and Bocoyna; Profepa, Semarnat and three other agencies spent \$120,000.00 developing a work plan to address agrarian conflicts “that are erroneously being treated as environmental conflicts in San Carlos-Hierbabuena, Las Coloradas-Coloradas de la Virgen and Coloradas de los Chávez-Pino Gordo,” and \$60,000.00 was spent on 24 June 2004 by Fonart under the National Program for the Promotion of Handicrafts.

In addition, Profepa carried out two inspections of forest operations (\$55,000.00); closed two roads used for the transport of illegally harvested lumber (\$137,550.00); inspected 11 forest areas in the municipalities of Guadalupe y Calvo, Balleza, Guerrero and Bocoyna (\$92,750.00); conducted eight forest audits in Guerrero and Bocoyna (\$96,200.00); and strengthened the inspection system through checkpoints and information networks (\$1,310,000.00). The State Attorney General mounted two enforcement operations in sawmills (\$30,000.00) and two inspection operations in state checkpoints (\$28,800.00). The Ministry of Defense set up camps (\$60,000.00). The PGR held a meeting to establish a procedure for turning over suspects to MPF. The grand total of expenditures: \$23,276,138.00. Mexico reported that as a result of these actions, in July 2004, the Sierra Tarahumara was no longer considered to be an “ungovernable” area, but that it was still considered to be a critical area.¹⁷⁷

In December 2004, Mexico held a press conference to report on the results of the 2004 Program to Combat Illegal Logging, acknowledging that between a quarter and a third of the lumber sold in Mexico is harvested illegally.¹⁷⁸ Mexico reported that the armed forces were now lending assistance to forest authorities in the country’s 15 priority

177. Appendix 7: s. 1.3: Profepa, “Establecimiento de quince zonas críticas por su nivel de deforestación y la declaración por parte de la Procuraduría Federal de Protección al Ambiente de Haber Recuperado Seis de estas Zonas, entre las Cuales Figura la Sierra Tarahumara,” en *Expediente de hecho sobre la petición SEM-00-006 Tarahumara* (sin fecha).

178. Press conference by Alberto Cárdenas Jiménez, Minister of the Environment and Natural Resources, on the final results of the Program to Combat Illegal Logging for 2004 and the plan for 2005, with the participation of José Luis Luege Tamargo, Federal Attorney for Environmental Protection; Francisco García, Director, Forestry and Soils, Semarnat; and Manuel Reed Segovia, Director, National Forest Commission (Mexico, Federal District, 7 December 2004).

forested areas, including through joint inspection and surveillance actions.¹⁷⁹ In addition, on 28 September 2004, Semarnat, Profepa and PGR signed an agreement providing for joint action (within the limits of their respective budgets) in preventing, responding to, investigating and prosecuting environmental offences, and strengthening federal action to put an end to impunity in environmental matters, particularly as regards illegal logging.¹⁸⁰ Under the agreement, the parties will develop a Federal Environmental Enforcement and Management Program containing a list of objectives, actions, and performance indicators.¹⁸¹ The agreement will be implemented by a joint Working Group, to include representatives of PGR and Profepa, and other organizations, as required,¹⁸² that will meet monthly¹⁸³ and provide weekly reports to the heads of the agencies involved.¹⁸⁴ The agreement provides details regarding Profepa's responsibilities in providing timely assistance to PGR in enforcing the CPF provisions on environmental offences.¹⁸⁵

Mexico's report on the results in 2004 of the Program to Combat Illegal Logging includes a reference to cooperation between Profepa and the agrarian sector regarding the agrarian problem in Colorada de los Chávez.¹⁸⁶ It mentions as an achievement of Semarnat, the establishment, in the Sierra Tarahumara, of an information system covering roads, harvest and sawmill operations based on harvest data and transport manifests.¹⁸⁷ Strategic objectives for 2005 include concerted action

179. Semarnat, Conafor and Profepa, "Resultados Finales del Programa de Combate a la Tala Clandestina 2004 y Programación 2005 – Resultados: 1 de mayo al 25 de noviembre" (Power Point Presentation) (December 2004).

180. *Ibid.* See *Cooperation Agreement to Address and Prosecute Environmental Offenses and for Environmental Management, between the Office of the Attorney General of the Republic, the Ministry of the Environment and Natural Resources and the Office of the Federal Attorney for Environmental Protection* (28 September 2004), published in the DOF on 13 of October 2004. S. 4.4 of the agreement provides: "The Parties shall, in accordance with the applicable standards and budget provisions, have at their disposal the technical and material resources necessary to support the fulfillment of the objectives of this Agreement."

181. *Ibid.* Clause Two.

182. *Ibid.* Annex, Clause Three.

183. *Ibid.*

184. *Ibid.* Annex, Clause Twenty.

185. *Ibid.* Annex: Operational Framework for Addressing, Investigating, and Prosecuting Offenses against the Environment and for Environmental Management, to be Observed under the Terms of the Cooperation Agreement between the Office of the Attorney General of the Republic, the Ministry of the Environment and Natural Resources, and the Office of the Federal Attorney for Environmental Protection.

186. Semarnat, Conafor and Profepa, "Resultados Finales del Programa de Combate a la Tala Clandestina 2004 y Programación 2005 – Resultados: 1 de mayo al 25 de noviembre" (PowerPoint Presentation) (December 2004). No details are provided. See above, s. 8.4.3.3.

187. *Ibid.*

to strengthen institutional presence in critical areas; actions to prevent the reuse and forgery of transport manifests; intelligence operations to attack organized crime in the area of illegal logging; coordination with security forces at the state level; assisting the Federal Prevention Police in enforcing road closures and preventing possible attacks against Profepa staff; seeking assistance from MPF; airplane and helicopter surveillance; and remote (satellite) surveillance.¹⁸⁸ Intelligence operations will focus on eliminating market distortions caused by the introduction of illegally harvested timber (disguised as legal timber) as well as addressing impunity in business and political circles.¹⁸⁹ Field operations will collect information in order to identify key persons involved in environmental offences; monitor transport routes (to identify weak spots); and mount case files to be taken up by PGR or the related MPF.¹⁹⁰ In the critical forested priority zones identified for 2005, there are three ratings (AAA, AA, and A). "Critical forested zones in Chihuahua" is rated AA.¹⁹¹

10. Closing Note

Factual records provide information regarding asserted failures to effectively enforce environmental law in North America that may assist submitters, the NAAEC Parties and other interested members of the public in taking any action they deem appropriate in regard to the matters addressed. Pursuant to Council Resolution 03-04, this factual record provides information relevant to a consideration of whether Mexico is failing to effectively enforce its environmental law as regards the processing of 28 citizen complaints filed with federal authorities by indigenous communities from the Sierra Tarahumara mountains in western Chihuahua state between 1998 and 2000 alleging illegal logging and other natural resource extraction activities, and the alleged failure by federal authorities to pursue criminal sanctions in regard to those activities.

In processing the citizen complaints covered by this factual record, authorities did not issue decisions on the admissibility of the complaints within the time period prescribed by law, and files were closed after the time period prescribed by law. For the 16 cases in which the citizen complaint led to authorities ordering the adoption of corrective measures and/or payment of fines, Mexico did not provide the Secretariat with

188. *Ibid.*

189. *Ibid.*

190. *Ibid.*

191. *Ibid.*

requested information regarding whether fines were paid and whether enforcement action was taken when corrective measures were not carried out. For cases in which authorities determined that facts giving rise to the complaint merited pursuing criminal sanctions, Mexico did not provide the Secretariat with requested information regarding the existence or outcome of such proceedings. Regarding those cases where authorities decided that the facts did not establish the existence of an environmental crime, neither complainants nor the Secretariat obtained an explanation from Mexico of the basis for the authorities' decision.

Relations between indigenous communities and government authorities, as well as federal-state cooperation and interagency cooperation, were identified by government authorities and complainants as challenges to the effective enforcement of environmental law in the cases covered by the factual record.

The remoteness of indigenous communities in the Sierra Tarahumara and significant travel time required for authorities to investigate complaints are factors that impact relations between indigenous communities and government authorities. Linguistic differences pose barriers to communication and access to services, and differing perceptions of the value of forests come into play in reaching consensus on what constitutes effective law enforcement. Indigenous communities are concerned about the independence of federal environmental enforcement staff, and federal authorities acknowledge that the number of inspectors is too low and their salaries are not in line with those in the rest of the federal civil service. Education and economic resources play a role in allowing indigenous communities to take charge of and enforce forest management systems. Lack of government follow-up to matters raised in citizen complaints affects perceptions regarding the efficacy of the complaints process.

As regards federal-state cooperation, lack of resources at the state level has impeded efforts to delegate to the state of Chihuahua administration and enforcement functions for federal environmental law.

As regards interagency cooperation, according to Mexico, a cross-sectoral initiative launched in 2004 aims to combat illegal logging throughout Mexico through concerted action by many government agencies. This has resulted in a commitment by federal authorities to develop plans with all municipalities to respond to citizen complaints of illegal logging in under two hours. In addition, an interagency agreement was signed to facilitate cooperative action (agency budgets

permitting) in bringing criminal cases in response to citizen complaints. Federal, state, and local security forces are involved in on-the-ground and aerial surveillance and intelligence gathering operations. The federal government is upgrading the system for tracking the legal origin of lumber. Industry outreach initiatives aim to address demand for illegally harvested lumber at source, and the federal government has stated that actions are being taken to redress impunity in business and political circles.

APPENDIX 1

**Council Resolution No. 03-04,
dated 22 April 2003**



22 April 2003

COUNCIL RESOLUTION: 03-04

Instruction to the Secretariat of the Commission for Environmental Cooperation Regarding the assertion that Mexico is failing to effectively enforce its environmental law in the Sierra Tarahumara in the State of Chihuahua (SEM-00-006).

THE COUNCIL:

SUPPORTIVE of the process provided for in Articles 14 and 15 of the *North American Agreement on Environmental Cooperation (NAAEC)* regarding submissions on enforcement matters and the preparation of factual records;

CONSIDERING the submission filed on 9 June 2000, by *Comisión de Solidaridad y Defensa de los Derechos Humanos A.C.*, representing various Indigenous communities in the Sierra Tarahumara in this submission process;

NOTING that the Secretariat modified the submission contrary to the NAAEC and the *Guidelines for Submission on Enforcement Matters under Articles 14 and 15 of the NAAEC (Guidelines)* and that it determined on 6 November 2001 that the submission warranted a response from the Party;

FURTHER NOTING that the government of Mexico, on 15 February 2002, submitted its response to the Secretariat in accordance with Article 14(3) of the NAAEC;

HAVING BEEN INFORMED by Mexico that the administrative proceedings related to the citizen complaints referenced under headings H and M of the submission are no longer pending; and

HAVING REVIEWED the notification by the Secretariat of 29 August 2002, indicating that the development of a factual record is warranted;

HEREBY UNANIMOUSLY DECIDES TO:

INSTRUCT the Secretariat to prepare a factual record with respect to the submission;

REMIND the Secretariat that any assistance it provides to submitters must be in accordance with the NAAEC and the Guidelines;

DIRECT the Secretariat to provide the Parties with its overall work plan for gathering the relevant facts and to provide the Parties with the opportunity to comment on that plan; and

DIRECT the Secretariat to inform the Submitter of this resolution.

APPROVED BY THE COUNCIL.

APPENDIX 2

**Overall Plan to Develop a Factual Record,
dated 15 May 2003**



Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

Submission I.D.: SEM-00-006 (Tarahumara)
Submitter: Comisión de Solidaridad y Defensa de los Derechos Humanos A.C.
Party: United Mexican States
Date of this plan: 15 May 2003

Background

On 9 June 2000, the Comisión de Solidaridad y Defensa de los Derechos Humanos A.C. (hereinafter “the Submitter”), acting on behalf of various indigenous communities of the Sierra Tarahumara, made a submission to the Secretariat of the Commission for Environmental Cooperation (CEC) under Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The Submitter asserts that Mexico has failed to effectively enforce its environmental law by denying access to environmental justice to indigenous peoples of the Sierra Tarahumara. In particular, it asserts a persistent pattern of failing to effectively enforce environmental law with respect to the citizen complaint process, alleged environmental crimes and other alleged violations with respect to forest resources and the environment in the Sierra Tarahumara.

The Secretariat recommended the development of a factual record to the Council on 29 August 2002, with regard to the Submitter’s assertions on the alleged failure to effectively enforce the environmental law with respect to citizen complaints and the prosecution of probable environmental crimes, in cases presented by the indigenous peoples and communities of the Sierra Tarahumara referenced in the submission.

On 22 April 2003, the Council decided unanimously in Council Resolution 03-04 to instruct the Secretariat to prepare a factual record on the submission.

Under Article 15(4) of the NAAEC, in developing a factual record, “the Secretariat shall consider any information furnished by a Party and

may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested nongovernmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts.”

Overall Scope of the Fact Finding

The submission asserts the alleged failure to effectively enforce Articles 169, 189, 190 through 193, 199 and 202 of the General Law of Ecological Balance and Environmental Protection (*Ley General de Equilibrio Ecológico y de Protección al Ambiente*–LGEEPA), as well as Articles 416, 418 and 419 of the Federal Criminal Code (*Código Penal Federal*–CPF), with respect to citizen complaints and the prosecution of probable environmental crimes in the cases presented by indigenous peoples and communities of the Sierra Tarahumara referenced in the submission.

To prepare the factual record, the Secretariat will gather and develop information relevant to the facts concerning:

- i) the cases submitted by the indigenous peoples and communities of the Sierra Tarahumara referenced in the submission;
- ii) Mexico’s enforcement of LGEEPA Articles 169, 189, 190 through 193, 199 and 202 and CPF Articles 416, 418 and 419, with respect to those cases; and
- iii) the effectiveness of Mexico’s enforcement of those provisions in those cases.

Overall Plan

Consistent with Council Resolution 03-04, execution of the overall work plan will begin on 2 June 2003. All other stated dates are based on best estimates. The overall plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitter; JPAC; representatives of indigenous peoples and communities of the Sierra Tarahumara; the local, state and federal authorities; and the general public, to submit information relevant to the scope of fact-finding outlined above. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested nongovernmental organizations or per-

sons or the JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*). **[Mid-June 2003]**

- The Secretariat will request information from Mexican federal, state and local authorities, as appropriate, and will consider any information provided by a Party (Articles 15(4) and 21(1)(a) of the NAAEC). **[Late June 2003]** Information will be requested relevant to the facts regarding:
 - i) the cases submitted by the indigenous peoples and communities of the Sierra Tarahumara referenced in the submission;
 - ii) Mexico's enforcement of LGEEPA Articles 169, 189, 190 through 193, 199 and 202 and CPF Articles 416, 418 and 419, with respect to those cases; and
 - iii) the effectiveness of Mexico's enforcement of those provisions in those cases.
- The Secretariat will gather relevant technical, scientific or other information that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[July to October 2003]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. **[July to October 2003]**
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information for the preparation of the factual record, from interested nongovernmental organizations or persons, the JPAC or independent experts. **[July to October 2003]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. **[November 2003 to January 2004]**
- The Secretariat will submit a draft factual record to Council, and any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5). **[February 2004]**
- As provided in Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council. **[March 2004]**

- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, according to Article 15(7).

Additional information

The submission, Mexico's response, the Secretariat determinations, the Council Resolution, and a summary of these are available on the Citizen Submissions on Enforcement Matters section of the CEC web site <<http://www.cec.org>>, or upon request to the Secretariat at the following address:

Secretariat of the CEC Submissions on Enforcement Matters Unit (SEM Unit)
393 St-Jacques St. West
Suite 200
Montreal, QC H2Y 1N9
Canada

CEC / Mexico Liaison Office:
Atención: Unidad sobre Peticiones Ciudadanas (UPC)
Progreso núm. 3,
Viveros de Coyoacán
México, D.F. 04110
México

APPENDIX 3

**Request for Information,
dated 10 September 2003**



Secretariat of the Commission for Environmental Cooperation

REQUEST FOR INFORMATION for Preparation of a Factual Record Submission SEM-00-006 (Tarahumara) September 2003

I. The factual record process

The Commission for Environmental Cooperation (CEC) of North America is an international organization created under the North American Agreement on Environmental Cooperation (NAAEC) by Canada, Mexico and the United States. The CEC operates through three organs: a Council, made up of the highest-level environmental official in each member country; a Joint Public Advisory Committee (JPAC), composed of five citizens from each country; and a Secretariat located in Montreal.

Article 14 of the NAAEC allows residents in North America to inform the Secretariat, in a submission, that any member country (hereinafter, a Party) is failing to effectively enforce its environmental law. This initiates a process of review of the submission, after which the Council may instruct the Secretariat to prepare a factual record in connection with the submission. A factual record seeks to provide detailed information to allow interested persons to assess whether a Party has effectively enforced its environmental law with respect to the matter raised in the submission.

Under Articles 15(4) and 21(1)(a) of the NAAEC, in developing a factual record, the Secretariat shall consider any information furnished by a Party and may ask a Party to provide additional information. The Secretariat also may consider any information that is publicly available; provided by the JPAC, the Submitters or other interested persons or nongovernmental organizations; or developed by the Secretariat or independent experts.

On 22 April 2003, the Council decided unanimously to instruct the Secretariat to develop a factual record regarding submission SEM-00-006 (Tarahumara). By means of this document, the Secretariat seeks information relevant to matters to be addressed in the factual record for submission SEM-00-006 (Tarahumara). The following sections provide background on the submission and describe the type of information sought.

II. The Tarahumara submission

On 9 June 2000, the Comisión de Solidaridad y Defensa de los Derechos Humanos A.C. (“the Submitter”) filed a submission with the Secretariat asserting that Mexico is failing to effectively enforce its environmental law by denying access to environmental justice to indigenous communities of the Sierra Tarahumara in the state of Chihuahua, Mexico. In particular, it asserts a failure to effectively enforce environmental law with respect to the citizen complaint process, the prosecution of alleged environmental crimes and other alleged violations with respect to forest resources and the environment in the Sierra Tarahumara.

III. Assertions with respect to which the Secretariat recommended the preparation of a factual record

On 6 November 2001, the Secretariat determined that some of submission’s assertions warranted requesting a response from the Party. After reviewing the Party’s response, on 29 August 2002 the Secretariat notified the Council that it recommended the preparation of a factual record with respect to some of the assertions that it had considered warranted a response from the Party. To simplify the analysis of the submission in light of the Party’s response, the assertions were grouped into three headings.¹ These headings are reproduced below, along with the Secretariat’s respective recommendations in light of the Party’s response.

1. *Alleged failure to effectively enforce the citizen complaint procedure (Articles 189, 190 to 193 and 199 of the General Law of Ecological Balance and Environmental Protection (Ley General de Equilibrio Ecológico y de Protección al Ambiente–LGEEPA)*

The Submitter asserts in headings A, F, R, S y T of the submission that Mexico is failing to effectively enforce its environmental law by failing to duly process 30 citizen complaints on illegal harvesting in and destruction of the Sierra Tarahumara forest. These citizen complaints were filed between February 1998 and March 2000 by different groups: the Community of San Ignacio de Arareco; the Communal Farm (*Ejido*) Communities of Ciénega de Guacayvo, San Diego de Alcalá and El Consuelo; the Rarámuri and Tepehuán indigenous communities; and

1. A complaint may fall under more than one section (*i.e.*, that of 12 October 1998 submitted by Tepehuán de las Fresas community, which the Submitter indicated as an instance of noncompliance in points A.2, F.3, I.3 and O.1). The same applies to inspections.

the *Coalición Rural* / Rural Coalition. Most of the citizen complaints refer to activities or facts that the complainants regard as a threat to the Sierra Tarahumara ecosystem and the subsistence and patrimony of the local cultures. [...]

In summary, although Mexico's response is highly detailed, the appendices to the response do not allow for the conclusion that the relevant authority has taken the enforcement steps set forth in the LGEEPA with respect to most of the specific cases raised in the submission. In the resolutions and rulings attached to the response, we find that the authority enforced the environmental law properly in regard to only two of the 33 complaints under the notification.² In all the other cases, the authority omitted one or more concrete actions involved in the procedure or carried them out outside the period set forth in the law (by a few days in approximately half the cases, and by around one month in the others). The fact that these citizen complaints were not processed within the required period is especially relevant, given the other alleged failures to effectively enforce the citizen complaint process in the cases mentioned in the submission.

The Mexican legal system allows only those persons with a recognized legal interest to undertake a judicial proceeding against persons who, in contravention of the applicable rules, causes damage to the environment or natural resources. The citizen complaint procedure is the only means that any interested party has to put the State's environmental protection machinery into motion. Therefore, the effective enforcement of the citizen complaint procedure is fundamental to further and promote citizen participation in environmental protection. In addition, the Mexican legal system stresses the importance of ensuring the right of indigenous communities to protect their environment and natural resources.³ The matters raised in the submission with respect to the

2. See Annex 15 of the submission and Annex I of the Party's response. Complaints filed by Ricardo Chaparro Julián (Tepehuán de las Fresas indigenous community) on 12 October 1998 and by the Rocoroyvo communal farm on 18 February 2000.

3. Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*), Article 2. [...] A. This Constitution recognizes and guarantees the right of indigenous peoples and communities to free determination, and consequently the autonomy to:

[...] V. Conserve and improve the habitat and preserve the integrity of their lands, pursuant to this Constitution.

[...] VIII. Fully accede to the jurisdiction of the State. To guarantee this right, in all suits and proceedings to which they are party individually or collectively, their customs and cultural specifics must be taken into account, respecting the precepts of this Constitution [...]

LGEEPA, Article 15. For the formulation and furtherance of environmental policy and the issuance of Mexican official standards and all other instruments set forth in

effective enforcement of the citizen complaint procedure as a mechanism enabling indigenous communities and other communities in the Sierra Tarahumara to participate in the environmental protection of the area warrant development and documentation in a factual record. The Secretariat considers that the preparation of a factual record on the effective enforcement of Articles 189, 190 to 193 and 199 of the LGEEPA, with respect to the citizen complaints in question, is warranted.

2. *Alleged failure to effectively enforce the provisions on the investigation and prosecution of probable environmental crimes (Articles 416, 418 and 419 of the Federal Penal Code (Código Penal Federal-CPF) and Articles 169 and 202 of the LGEEPA)*

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

The submission states that the environmental authority was notified, through citizen complaints, of facts that possibly constituted environmental crimes. It asserts that the authority also performed at least 15 inspections in which it identified probable environmental crimes. The submission asserts that Mexico is failing to effectively enforce its environmental law in two ways: by failing to exercise the powers it possesses to undertake investigations or notify the Federal Public Prosecutor (*Ministerio Público Federal*) of facts consistent with such crimes pursuant to Articles 169 and 202 of the LGEEPA, and by not applying Articles 416, 418 and 419 of the CPF, which define and penalize criminal conduct that harms the environment, to the alleged criminal actions.⁴ [...]

this Law regarding the preservation and restoration of the ecological balance and environmental protection, the Federal Executive shall observe the following principles:

[...] XIII. To guarantee the right of communities, including indigenous peoples, to protect, preserve, use and sustainably exploit natural resources and to safeguard and use biodiversity, as determined in this Law and other applicable provisions; [...]

4. CPF Article 416. A penalty of from three months to six years of imprisonment and from one thousand to twenty thousand days' fine shall be imposed upon anyone who, without any required authorization or in contravention of the provisions of law, regulation or Mexican official standards:
 - I.- Discharges, deposits or spills, or so authorizes or orders, wastewater, chemical or biochemical liquids, waste or pollutants into the soil, seawater, rivers, basins, waterways and all other water deposits or currents under federal jurisdiction, that cause or may cause harm to public health, natural resources, flora, fauna, basin water quality, or the ecosystems.
 In the case of water to be delivered en bloc to population centers, the penalty may increase by up to three more years [...]

To summarize, Mexico's response does not show that the environmental authority and Federal Public Prosecutor have effectively enforced the environmental law regarding the investigation and prosecution of probable environmental crimes. This submission warrants the development of a factual record that will document the process by which the environmental authority determined whether the facts in question of which it learned were likely to constitute environmental crimes, as well as the rulings by which it determined whether it would inform the Federal Public Prosecutor of such facts, in accordance with Articles 169 and 202 of the LGEEPA. The preparation of a factual record is also warranted to generate information as to whether Mexico is effectively enforcing Articles 416, 418 and 419 of the CPF with respect to these facts, which according to the submission likely constitute a crime.

3. *Alleged failure to effectively enforce the provisions on judicial review (Article 176 of the LGEEPA)*

Headings C and D of the submission contain assertions regarding the due processing of applications for judicial review (*recursos de revisión*) filed with respect to the citizen complaints in question. [...]

With respect to the Party's alleged failure to effectively enforce its environmental law in regard to the admission or nonadmission of applications for judicial review, raised under heading C of the submission, Mexico's response indicates that the applications were granted and shows the corresponding rulings. Furthermore, regarding the Party's

CPF Article 418.- A person who, without having the authorization required pursuant to the Forestry Law (*Ley Forestal*), upsets or destroys the natural vegetation, cuts, pulls or fells trees, uses forestry resources or changes land use, shall be subject to a penalty of from three months to six years of imprisonment and a fine in the equivalent of one hundred to twenty thousand days' fine. [...] The same penalty shall apply to anyone who intentionally causes forest or natural vegetation fires that damage natural resources, flora, fauna or the ecosystems.

CPF Article 419.- Anyone who transports, deals in, collects or transforms timber resources in amounts greater than four cubic meters or the equivalent thereof, for which the use has not been authorized pursuant to the Forestry Law, shall be subject to a penalty of from three months to six years of imprisonment and from one hundred to twenty thousand days' fine, except in cases of the use of forestry resources for household use pursuant to the provisions of the Forestry Law.

The relevant paragraph of Article 169 of the LGEEPA provides: "In the applicable cases, the federal authority shall notify the Public Prosecutor of the undertaking of acts or omissions learned in the exercise of its powers, that may constitute one or more crimes."

LGEEPA Article 202.- The Office of the Federal Attorney General for Environmental Protection (*Procuraduría Federal de Protección al Ambiente-Profepa*), in the scope of its attributions, is empowered to undertake the applicable actions before the competent judicial authorities, when it learns of acts, facts or omissions that constitute violations of the administrative or criminal laws.

alleged failure to issue a definitive ruling with respect to the application for judicial review referenced in heading D of the submission, Mexico's response shows that the aforesaid applications were resolved, attaching the corresponding rulings.⁵ Therefore, the Secretariat considers that the submission's allegations regarding the applications for judicial review filed in connection with the citizen complaints do not warrant the development of a factual record.

IV. Request for information

The Secretariat of the CEC requests information relevant to the facts concerning:

- i) the cases mentioned in headings A, F, G, H, I, K, M, N, O, P, R, S and T of the submission.
- ii) Mexico's enforcement of the citizen complaint procedure (Articles 189, 190 to 193 and 199 of the LGEEPA) in the cases mentioned in headings A, F, R, S and T of the submission, and Mexico's enforcement of the provisions on the investigation and prosecution of probable environmental crimes (Articles 416, 418 and 419 of the CPF and Articles 169 and 202 of the LGEEPA) in the cases mentioned in headings G, H, I, K, M, N, O and P of the submission.
- iii) the effectiveness of Mexico's enforcement of these provisions in the above-mentioned cases.

V. Examples of relevant information

1. Information on the processing of the cases mentioned in the submission with respect to which the Secretariat recommended a factual record;
2. General background information regarding the forest industry in the Sierra Tarahumara, including for example:
 - a) Statistics on annual revenues of the forestry sector in the Sierra Tarahumara since 1998;
 - b) Information on the geographic range of forestry activities in the Sierra Tarahumara since 1998;

5. See pages 8 and 9 of the Party's response, as well as Annexes VI and VII thereof.

-
- c) Information with respect to the composition of the forest industry in the Sierra Tarahumara since 1998, including the principal businesses, percentage of small businesses, and number and size of indigenous businesses;
 3. Detailed information with respect to the financial and human resources allotted to enforcement of the LGEEPA in the Sierra Tarahumara since 1998;
 4. Information on the inspection and audit program for forestry activities in the Sierra Tarahumara since 1998, to verify compliance with the environmental laws, including statistics on the number of inspections and audits per year per region, rates of compliance, and actions cases of noncompliance;
 5. Information on the financial and human resources allotted to handle citizen complaints in the Sierra Tarahumara since 1998;
 6. Information on any Profepa plan or program to better handle citizen complaints filed by the indigenous communities of the Sierra Tarahumara, financial and human resources allotted to undertake such plan or program, and the results thereof since 1998;
 7. Information on Profepa procedures to forward citizen complaints to the competent authorities (when it is not the competent authority) and to ensure that such authorities follow through on the matters under complaint;
 8. Information with respect to Profepa's procedures to notify the Federal Public Prosecutor of facts constituting environmental crimes in the Sierra Tarahumara, and information on any program of assistance or cooperation between the Public Prosecutor and Profepa with respect to alleged crimes in the context of forestry in the Sierra Tarahumara.

VI. Additional background information

The submission, Mexico's response, the Secretariat's determinations, the Council Resolution, the overall plan to develop the factual record and other information are available in the Registry and Public Files in the Citizen Submissions on Enforcement Matters section of the CEC web site at <<http://www.cec.org>>. These documents may also be requested from the Secretariat.

VII. Where to send information

Relevant information for the development of the factual record may be sent to the Secretariat until **30 November 2003**, to either of the following addresses:

Secretariat of the CEC
Submissions on Enforcement
Matters Unit (SEM Unit)
393, rue St-Jacques Ouest,
bureau 200
Montréal QC H2Y 1N9
Canada
Tel. (514) 350-4300

CCA / Mexico Liaison Office
Atención: Unidad sobre Peticiones
Ciudadanas (UPC)
Progreso núm. 3
Viveros de Coyoacán
México, D.F. 04110
México
Tel. (52-55) 5659-5021

For any questions, please send an e-mail to the attention of Katia Opalka, at info@ccemtl.org.

APPENDIX 4

**Request for Additional Information,
dated 20 January 2004**



**Letter to the Party Requesting Additional
Information for Development of the Factual
Record for SEM-00-006 (Tarahumara)**

20 January 2004

**Re: Request for Additional Information/
Development of draft factual record on submission
SEM-00-006/ Tarahumara**

This is further to our letter of 5 December 2003. The Secretariat has completed its review of Mexico's response (filed with the Secretariat on 2 December 2003 as an appendix to its memo UCAI/6115/03) to the request for information made by the Secretariat on 10 September 2003 in relation to the development of a factual record for submission SEM-00-006/Tarahumara.

Having completed its review of the response, the Secretariat requires additional information for the preparation of the factual record and would be grateful for your prompt attention by distributing our request for additional information (see appendix) to the appropriate federal, state, and municipal bodies. With the aim of finalizing the draft factual record within one year from Council Resolution 03-04, we request that you send Mexico's response no later than 13 February 2004. Please do not hesitate to contact me (kopalka@ccemtl.org/(514) 350-4337) should you have any questions about the request.

Yours sincerely,

Legal Officer
Submissions on Enforcement Matters Unit

cc: Assistant Director General of International Cooperation, UCAI
Director, Department of Legal Affairs, UCAI
CEC Executive Director

Secretariat of the Commission for Environmental Cooperation

REQUEST FOR ADDITIONAL INFORMATION for Development of a Factual Record for Submission SEM-00-006 (Tarahumara) January 2004

1. National Forests and Water Campaign

A strategic objective of the National Forests and Water Campaign (Cruzada Nacional por los Bosques y el Agua—CNBA) (http://148.233.168.204/bosque-agua/ejes_tematicos.shtml) – initiated by President Vicente Fox in March 2001 for an initial term of 18 months – is “to build a great national alliance for the cleanup and recovery of the country’s bodies of water and forested areas, whose severe degradation threatens national security and the well-being of the population.” The CNBA website lists thematic emphases and critical regions for the actions of the Campaign. It mentions that the Sierra Tarahumara is one of the most critical forested areas of Mexico for the problem of deforestation. Furthermore, it mentions that the lead institutions on deforestation within the Campaign would be the Ministry of the Environment and Natural Resources (Secretaría de Medio Ambiente y Recursos Naturales—Semarnat), the National [Forest] Commission and the Office of the Federal Attorney for Environmental Protection (Procuraduría Federal de Protección al Ambiente—Profepa) which, within 12 months, were to announce nationwide institutional programs and actions to counteract deforestation, and that the National Forest Commission was to announce its programs and main priorities and strategic actions.

- 1.1 Please identify the institutional programs and actions carried out in the Sierra Tarahumara since 2001 under the CNBA to counteract the deforestation caused by illegal harvesting, and provide detailed information and/or the names of persons to contact in this regard.

The CNBA website identifies the Sierra Tarahumara as a region of poverty and natural resource degradation. It mentions that Semarnat, the Ministry of Social Development (*Secretaría de Desarrollo Social—Sedesol*) and the National Institute of Indigenous Affairs (*Instituto Nacional Indigenista*) would be the leaders in

confronting this problem, and states that within 12 months (prior to March 2002) a new program would be presented with the purpose of breaking the vicious cycle of poverty and environmental degradation, in which the instruments for fighting poverty would include incentives for protecting natural resources and the environment, particularly forests and watersheds.

1.2 Please identify the actions carried out since 2001 in the Sierra Tarahumara within the aforementioned program and/or within the Semarnat Special Program for Indigenous Peoples (April 2002) to fight poverty and protect the forests, and provide detailed information and/or the names of persons to contact in this regard.

2. Cooperation Agreements between Profepa and the Government of the State of Chihuahua

2.1 Please provide a copy of the Agreement on Decentralization of Forest Monitoring between Profepa and the Government of the State of Chihuahua of 19 April 1997.

2.2 Please provide a copy of the agreement between Profepa and the Government of the State of Chihuahua to strengthen cooperation on inspection of timber on roads and at sawmills which, according to what was said at the meeting of 17 October 2003 (see 5.2.2 below), was to be signed in 2003.

3. Forest Inspection and Monitoring

Profepa's Environmental Law Enforcement Program 2001-2006 (*Programa de Procuración de Justicia Ambiental—PPJA*) identifies the Sierra Tarahumara as a critical forested area (where, according to Profepa, forest-related offenses frequently occur, causing significant alterations, jeopardizing ecological balance, and affecting society in general due to the effects of deforestation) (PPJA, p. 20). Furthermore, of the country's 100 critical forested areas, the Sierra Tarahumara is identified as one of the 9 "ungovernable" areas (where, according to Profepa, there are interrelated problems such as organized crime, vehicle theft, carrying of prohibited weapons, kidnapping, bribery, growing of narcotics, and collusion of the authorities with criminals, in addition to various forestry-related offences) (PPJA, p. 20).

- 3.1 Please identify the intensive operational actions of systematic enforcement carried out in the Sierra Tarahumara with the participation of the Federalization and Decentralization of Forest and Soil Services Branch (*Dirección General de Federalización y Descentralización de los Servicios Forestales y de Suelo*) and local governments and provide detailed information and/or the names of persons to contact in this regard (PPJA, p. 21).
- 3.2 Please provide copies of cooperation agreements entered into by the federated entities for assistance and optimization of resources allocated to forestry inspection and enforcement in the Sierra Tarahumara (PPJA, p. 22).
- 3.3 Please provide copies of documentation attesting to the creation of inspection and monitoring committees in the communities of the Sierra Tarahumara identified in submission SEM-00-006/Tarahumara (PPJA, p. 23).

4. Profepa's Institutional Capacity

The PPJA (see above) states as follows: "In sum, if the status of the Mexican environment, particularly in regard to natural resources, verges on the apocalyptic, it is because that was allowed to happen or was in fact desired and intended. The challenge, therefore, resides in matching intention to action" (PPJA, p. 8). It also states as follows: "In fact, the operational and management capacity of Profepa may be evaluated and considered as a function of the resources and levels of action achieved or implemented by its state offices" (PPJA, p. 115).

- 4.1 In 2001, then Minister of the Environment Victor Lichtinger stated as follows: "We are concerned to give higher salaries to Profepa inspectors" (Mario A. Arteaga, "Ya se toma en cuenta la Semarnat: Lichtinger," at Río Grande/Río Bravo Basin Coalition, RioWeb: www.rioweb.org (6 March 2001)). Were the salaries of the Profepa inspectors in Chihuahua increased? If so, please provide detailed information and/or the names of persons to contact in this regard.
- 4.2 The PPJA notes that "Profepa is the only federal body in charge of carrying out acts of forestry inspection and enforcement, whose purpose is to contain the destruction of natural resources and reverse processes of environmental degrada-

tion as well as to restore the rule of law to the entire country in this domain" (PPJA, p. 20). A chart in the PPJA shows the distribution of the 5,488 environmental complaints (January-November 2001) in Mexico (PPJA, p. 104). The Sierra Tarahumara area stands out because it appears that no environmental complaints were filed with Profepa in this area (it is to be assumed that they would have been filed with the Profepa offices in the city of Chihuahua). Given that this is a critical forested area according to the PPJA (see 3 above), why does Profepa not have offices or staff in the Sierra Tarahumara?

5. Follow-up to Citizen Complaints

In regard to proceedings instituted by federal agencies based on the citizen complaints mentioned in submission SEM-00-006/Tarahumara (see table included with Secretariat's Request for Information of 10 September 2003), important issues remain outstanding:

- 5.1 Corrective Measures: What did Profepa do in the cases (A.2, A.8, A.13, F.2, F.3, F.5, G.5) in which one or more of the corrective measures ordered was not carried out?
- 5.2 Fines: In those cases where Profepa issued a collection notice, were the fines collected?
 - 5.2.1 On 8 October 2003, the Director of the Forestry Development Branch of the Ministry of Rural Development of the State of Chihuahua (oficio no. 588-*073/03) informed María Teresa Guerrero that his office would be requesting information from the mayoralty offices (Presidencias Municipales) on the collection of the fines in question. Please provide copies of the information gathered as well as the names of persons to contact in this regard.
 - 5.2.2 At the meeting held in Chihuahua on 17 October 2003 attended by representatives of the Secretariat, Semarnat, Profepa, the National Water Commission (Comisión Nacional del Agua—CNA) and the Office of the Attorney General of the Republic (Procuraduría General de la República—PGR), it was mentioned that there exists a bill which, if passed, would allocate fines

arising from Profepa sanctions to the funding of Profepa's enforcement activities. If so, please provide detailed information and/or the names of persons to contact in this regard.

5.2.3 Please provide information on the operation of the Revenue Administration System (Sistema de Administración Tributaria) with respect to the fines imposed in the Sierra Tarahumara since January 2003.

5.2.4 Please provide written information on the criteria applied in determining the amount of fines, from whom they are to be collected, and the cost of collecting fines in the Sierra Tarahumara.

5.3 Criminal Complaints:

5.3.1 What was the outcome in those cases (G.2, G.3, H.1, I.10/R.2) in which the Public Prosecutor petitioned the Judge to institute criminal proceedings?

5.3.2 What was the outcome in those cases (I.1/A.1, I.18/A.9, K.2, K.3, K.4, I.14/A.5, M.1, O.6/R.1, O.7/I.10, P.9) in which it is mentioned that "criminal proceedings were instituted"?

5.3.3 Please provide detailed information indicating why Profepa did not institute criminal proceedings in each of the following cases: G.1, G.4, G.6, I.2/F.1, I.3/A.2, I.4/A.3, I.5/S.1, I.6/S.2, I.7/F.7, I.8/F.8, I.12/T.1, I.13, I.15/A.6, I.17/A.8, I.23/A.14, I.24/A.15, K.1, O.1/A.2, O.2/A.3, O.3/F.7, O.4/F.8, O.5/F.9, O.6/R.1, P.1, P.2, P.3, P.4, P.5, P.6, P.7, P.8, P.10, P.11, P.14.

5.3.4 Detailed responses are requested from the PGR for the questions addressed to the PGR in the following cases: I.11, K.3 – point 3, K.4 – point 3, N.1- point 2.

5.3.5 During the meeting of 17 October 2003 (see 5.2.2 above), it was mentioned that the creation of special environmental tribunals is under consideration. Please provide detailed information and/or the names of persons to contact in this regard.

5.4 Specific Cases:

- 5.4.1 In case R.2, please respond directly to the four questions and provide the Secretariat with detailed information in this regard. (Semarnat did not respond to question 1. Profepa did not respond to questions 2, 3 and 4 about compliance with administrative processes.)
- 5.4.2 In case I.6/S.2, a copy of the explanatory letter sent by Semarnat to the complainants is requested.
- 5.4.3 In case T.1, the questions refer to the authorized Forest Management Program for Colorada de los Chávez. Responses to the corresponding questions are requested.
- 5.4.4 Case G.5: In the minutes of interinstitutional meetings for review and study of the problems of the Rochéachi River, Municipality of Guachochi, Chihuahua of 22 October 1999 and 3 November 1999 which the CNA included in its response to the Secretariat's Request for Information of 10 September 2003, a series of agreements between CNA, Semarnat and Profepa is listed, including:

22 October 1999

1. In the future, complaints of this type, and particularly those that are highly sensitive in terms of the potential public reaction, will be assessed and addressed jointly by the three entities.
2. An *oficio* will be addressed to [Semarnat] requesting that it carry out environmental impact assessments on the mining of materials from riverbeds and federal zones of rivers and streams.
3. The CNA will provide Semarnat with copies of the documentation produced further to visits to the Rochéachi River area for its information and will complement the information necessary to assess environmental impact.

4. The CNA will file a status report on complaints referred to it and appearing in a list provided by Profepa at the meeting.

3 November 1999

1. The heads of the three entities will be asked to consider the possibility of making the issuance of concessions for any mining of materials conditional on an environmental impact assessment, in accordance with the General Law on Ecological Balance and Environment Protection and its environmental impact regulation.
2. That for future mining permits, the interested parties be requested to submit a photographic record for identification of the area to be exploited before and after the mining work.

Please provide detailed information and/or the names of persons to contact regarding the implementation of these agreements to date and explain whether there has been any initiative by the entities to heighten their enforcement of the prohibition on mining of materials for commercial purposes without prior authorization.

APPENDIX 5

**Follow-up Information Request,
dated 10 June 2004**



Follow-up Information Request

10 June 2004

**Re: Preparation of factual record for submission
SEM-00-006 (Tarahumara)**

As you know, on 22 April 2003, the Council of the North American Commission for Environmental Cooperation (the "CEC") unanimously decided to instruct the CEC Secretariat to prepare a factual record in regard to citizen submission SEM-00-006 (Tarahumara), in accordance with Article 15 of the North American Agreement on Environmental Cooperation (the "NAAEC") and the *Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the "Guidelines").

Currently, the Secretariat is in the process of concluding the information gathering and preparation for the factual record. In this regard, in recent weeks various media have published information that the Secretariat considers important to consider for inclusion in the factual record. The information in question concerns statements apparently made by the Mexican Ministry of Environment and Natural Resources in relation to: (i) combating illegal logging in Mexico; (ii) significant progress on environmental law enforcement; (iii) current year's statistics on number of detentions for illegal logging and corresponding sanctions applied; (iv) possible participation of the Ministry of National Defense, acting through the Mexican Army, in forest monitoring activities; (v) updating of the forest inventory and related investments, and (vi) establishment of 15 critical zones characterized by their level of deforestation, and statement by the Office of the Attorney General for Environmental Protection asserting that six of the zones, including Sierra Tarahumara, have been brought under control.

Given that Mexico could provide additional information in regard to the matters raised above; with the intention of ensuring that the final draft factual record contains the most complete and up-to-date information possible; and in anticipation of the possibility that the Party could provide additional information to that previously provided to the Secretariat in accordance with NAAEC Articles 15(4) and 21(1)(a), the Secretariat hereby requests, on the basis of those articles, that the Party provide this additional information.

With the intention of pursuing and completing the preparation of the factual record expediently, we hope that you can provide any of this additional information by 8 July 2004.

Thank you in advance for your kind attention to this request.

Sincerely,

Legal Officer
Submissions on Enforcement Matters Unit

cc: Executive Director, CEC

APPENDIX 6

**Citizen Complaints Covered by the Factual
Record, Corresponding Questions from the
Secretariat to Mexico, and Responses of Mexico**

I. Alleged failures to effectively enforce the provisions relating to the citizen complaint procedure

A. Party's failure to guarantee the indigenous peoples access to environmental justice through the citizen complaint procedure

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
A.1	14/10/98	Raramuri Indigenous People of Choguita (J.M. Fuentes Rodríguez et al.)	Removal of green wood.	Document received 26/10/98. 27/11/98 Profepa considered the citizen complaint (CC) as a request for permit suspension and referred to Semarnap. 8/1/99 Profepa allowed appeal for review. 14/4/99 Profepa resolved appeal by confirming that the matter is a request only, not a CC.	Notice of status took more than 10 days. Review concluded in 3 months. (< 4)
A.2	10/12/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Clandestine felling and removal of forest resources.	CC filed 15/10/98. Profepa allowed 6/11/98. Administrative proceeding concluded on 30/3/00. Fine: 41,340.00. Corrective actions: 1) refrain from forestry operations without authorization; 2) reforest 5 ha in Loma San Miguel area w/ at least 2 native species of Pinus, density of 1200 plants/ha and ensure that individuals establish and thrive (8 months); 3) chip and disperse debris (perpendicular to slope) in Los Tarros area (1 month).	CC admissibility decision took more than 10 days. Conclusion of administrative proceeding in 1 year 5 months after filing of CC. There was no concluding decision on the CC, nor any notice to the complainants.
A.3	12/04/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Illegal timber removal.	CC filed 4/12/98. 27/1/99 Profepa gave notice that a similar complaint of 15/10/98 was being processed.	Profepa response took more than 10 days and no joinder of CC with previous.
A.4	12/07/1998	Raramuri Indigenous People of Rochéachi Ejido (Agustín Bravo Gaxiola et al.)	Mining of sand, earth and other materials from riverbed.	CC admissibility decision 26/1/99 (more than 10 days) and Profepa stated that it lacked jurisdiction, referring to CNA. 15/2/99 appeal for review filed. Profepa concluded appeal 12/5/99.	Profepa admissibility decision on CC took more than 10 days. Review concluded in 3 months (<4). Although the review ordered notice to be given to the appellant, no notice was given, since the "Submission" indicates that as of 6/00 there was no conclusion.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
"Notification" (by CEC) accepted Response of the Party in regard to proper execution of review procedure.	How did Semarnap process the request referred by Profepa?	Semarnat does not possess Profepa decision ordering suspension.		Profepa did not consider the document as a CC, but as a request only, which falls within Semarnat's jurisdiction. Semarnat states that it did not receive the Profepa decision (and apparently it did not process the request in any way). The result is that no agency considered itself competent and there was no resolution of the request in question.
Proper admissibility decision as per pp. 11-12 "Notification". No concluding decision.	1.- Was concluding decision issued? 2.- Were the complainants notified? 3.- Were the corrective measures carried out? 4.- Within the applicable time period? 5.- Was the fine paid?	1.- Yes, concluding decision issued on 30/05/00. 2.- Received by Teresa Guerrero on 06/06/00. 3.- Two of three measures were complied with. No reforestation. 4.- Yes. 5.- Collection order (oficio de cobro) no. 004954 05/Dec/2000.	F-134/99	Concluding decision 1 year 7 months after filing of complaint. Collection order exists (6 months after concluding decision), but there is no indication of whether collection took place. Reforestation did not occur (1 of 3 corrective measures) and there is no indication of what the authority does in such cases. Remaining questions resolved.
		No questions.		No questions.
Error in Submission, footnote 191; reference to Appendix 57 to CC but there is no such appendix. (It is found in the Response of the Party).	1.- Did CNA process the complaint? 2.- What was the result? 3.- Did Profepa notify the appellants of the conclusion of the appeal?	1.- CNA made inspection visits to Rochéachi 18/9/98, 9/12/98, 2/2/99 y 9/9/99, indicating on each occasion that the mining was taking place legally. The Ejido and Egos continued to indicate that there were serious impacts on the ecosystems. They filed complaints with Environmental Impact Assessment and requests through Rural Coalition and the National Human Rights Commission. 2.- Finally, on 13/10/99, CNA and the Ejido agreed to a total indefinite suspension of mining concessions in the Ejido. On 10/3/00 Agustín Bravo and Rochéachi Ejido members filed a CC for mining without a concession. 16/3/00 Profepa referred the CC to CNA. 24/3/00 CNA informed Profepa that mining was taking place without a concession and that sanctions would be applied as prescribed by the National Waters Act. 3.- Profepa gave notice of conclusion of appeal for review through registry of decisions, published 13/05/99.		Questions resolved.

A. Party's failure to guarantee the indigenous peoples access to environmental justice through the citizen complaint procedure (continued)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
A.5	15/3/00	Raramuri Indigenous People of Cuiteco Ejido (Agustín Bravo Gaxiola et al.)	Illegal use of forest timber resources.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 31/8/00 with restoration measures (unspecified) and fine: 18,950.00.	CC admissibility decision took more than 10 days. Conclusion in 5 months (>4).
A.6	15/3/00	Raramuri Indigenous People of Baragomachi Ejido (Agustín Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 31/8/00 with corrective measure (unspecified) and fine: 5,167.50.	CC admissibility decision took more than 10 days. Conclusion in 5 months (>4).
A.7	15/3/00	Raramuri Indigenous People of Monterde Ejido (Agustín Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 19/9/00 with corrective measures (unspecified) and fine: 3,790.00.	CC admissibility decision took more than 10 days. Conclusion in 6 months (>4).
A.8	15/3/00	Raramuri Indigenous People of Basonaivo Ejido (Agustín Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 27/11/00 with corrective measures (unspecified) and fine: 22,740.00.	CC admissibility decision took more than 10 days. Conclusion in 8 months (>4).
A.9	15/3/00	Raramuri Indigenous People of Mesa de Arturo Ejido (Agustín Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 19/9/00 with corrective measures (unspecified) and fine: 45,480.00.	CC admissibility decision took more than 10 days. Conclusion in 6 months (>4).

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
	<p>1.- What were the corrective measures and compliance deadlines ordered?</p> <p>2.- Were the measures carried out?</p> <p>3.- Within the applicable time period?</p> <p>4.- Was the fine paid?</p>	<p>1.- a) Rodal 150 conduct operations in accordance with management program (compliance deadline 12 months) or state reasons why not done. b) Carry out reforestation as per plan (compliance deadline 14 months). c) MARIO GONZALEZ CHAPARRO, carry out chipping and spreading (compliance deadline 6 months).</p> <p>2.- Yes. Verified 26/08/2003 file no. CIO413RN2000VR001.</p> <p>3.- Yes, archive 22/09/2003.</p> <p>4.- Collection order no. 003312 31/08/01).</p>	F-1249/00	No indication of whether fine was paid. Remaining questions resolved.
	<p>1.- What were the corrective measures and compliance deadlines ordered?</p> <p>2.- Were the measures carried out?</p> <p>3.- Within the applicable time period?</p> <p>4.- Was the fine paid?</p>	<p>1.- Chipping and spreading of debris from forestry operation (6 months).</p> <p>2.- Compliance with corrective measure.</p> <p>3.- Yes.</p> <p>4.- Collection order no. 004349 31/10/01.</p>	F-1320/00	Collection order exists (more than 1 year after the concluding decision), but there is no indication of whether collection took place. Remaining questions resolved.
	<p>1.- What were the corrective measures and compliance deadlines ordered?</p> <p>2.- Were the measures carried out?</p> <p>3.- Within the applicable time period?</p> <p>4.- Was the fine paid?</p>	<p>1.- a) Chipping and spreading of debris from forestry operation. b) Soil treatment (immediate).</p> <p>2.- Yes, the corrective measures were implemented.</p> <p>3.- Yes.</p> <p>4.- Collection order no. 004954 05/12/2000.</p>	F-1322/00	Collection order exists, but there is no indication of whether collection took place. Remaining questions resolved.
	<p>1.- What were the corrective measures and compliance deadlines ordered?</p> <p>2.- Were the measures carried out?</p> <p>3.- Within the applicable time period?</p> <p>4.- Was the fine paid?</p>	<p>1.- a) Chipping and spreading of debris from forestry operations (compliance deadline one month). b) Soil conservation work (compliance deadline one month). c) Reforestation (compliance deadline 15 months).</p> <p>2.- Two of three measures complied with. No reforestation.</p> <p>3.- Yes, except the third.</p> <p>4.- Collection order no. 11723 19/04/01).</p>	F-1324/00	Collection order exists (5 months after the concluding decision), but there is no indication of whether collection took place. No reforestation (1 of 3 corrective measures) and there is no indication of what the authority does in such cases. Remaining questions resolved.
	<p>1.- What were the corrective measures and compliance deadlines ordered?</p> <p>2.- Were the measures carried out?</p> <p>3.- Within the applicable time period?</p> <p>4.- Was the fine paid?</p>	<p>1.- a) Chipping and spreading. b) Soil treatment (immediate).</p> <p>2.- Yes, verified 26/08/03 file no. CIO414RN2000VR001.</p> <p>3.- Yes. Archive 22/09/03.</p> <p>4.- Collection order no. 003312 31/08/01.</p>	F-1312/00	Collection order exists (11 months after concluding decision), but there is no indication of whether collection took place. Remaining questions resolved.

A. Party's failure to guarantee the indigenous peoples access to environmental justice through the citizen complaint procedure (continued)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
A.10	02/07/2000	Raramuri Indigenous People of Churo Ejido (Domingo Carrillo via Cosyddhac).	Illegal logging.	CC received 7/2/00. Profepa issued admissibility decision 6/3/00. Profepa issued concluding decision 17/1/02 with warning for subsequent presentation of authorization for operation; fine (Juan Frías Mancino): 3,790.00. corrective measures: planting with native spp.; chipping and spreading of debris; soil treatment actions. Individual fines to 6 persons, total amount 2,017.50.	CC admissibility decision took more than 10 days. Conclusion in almost 2 years (>4 months).
A.11	15/3/00	Raramuri Indigenous People of Churo Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. 7/4/00 Profepa gave notice of joinder with file in A.10. 17/1/02 Profepa issued concluding decision described in A.10.	CC admissibility decision took more than 10 days. Conclusion in nearly 2 years (>4 months).
A.12	15/3/00	Raramuri Indigenous People of Refugio Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 19/9/00 with corrective measures (unspecified) and fine: 1,895.00 to perpetrators.	CC admissibility decision took more than 10 days. Conclusion in 6 months (>4).
A.13	15/3/00	Raramuri Indigenous People of Ocoviachi Ejido (Agustin Bravo Gaxiola)	Illegal logging.	Received 15/3/00. 7/4/00 Profepa requested information confirming identity of violators in order to proceed (without allowing CC). 31/8/00 administrative proceeding (result of forestry inspection visit), no evidence of illegal logging found but evidence of fire found. Therefore, fine of 3,790.00 and natural regeneration work ordered for 10 ha affected as well as fencing the area to avoid grazing. No notice given to complainants.	CC admissibility decision took more than 10 days. CC not allowed.
A.14	18/2/00	Raramuri Indigenous People of Rocoroyvo Ejido (President of Ejido Council)	Illegal logging.	Received 18/2/00. Allowed 25/2/00. Concluding decision 31/7/00 with corrective measures unspecified, fine of 6,064.00 and seizure of 5.776 M3R.	Response within prescribed period. Concluding decision in 5 months (>4).
A.15	15/3/00	Raramuri Indigenous People of Rocoroyvo Ejido (Agustin Bravo Gaxiola)	Illegal logging.	Received 15/3/00. 7/4/00 Profepa joined complaint with A.14. 31/7/00 concluding decision described in A.14.	CC admissibility decision took more than 10 days. Concluding decision in 5 months (>4).

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
	1.- Were the corrective measures carried out? 2.- Within the applicable time period? 3.- Were the fines paid?	1.- No corrective measures. 2.- No corrective measures. 3.- Persons accused found not responsible.	F-1243/00	The corrective measures order was rescinded and the fines CNACelled because the persons accused were found not responsible (explained in I.19).
The persons warned and sanctioned in the decision do not exactly coincide with those accused in the CC.	1.- Were the corrective measures carried out? 2.- Within the applicable time period? 3.- Were the fines paid?	The document dated 15/03/00 was joined with the complaint registered under no. 00/03/027/65 by means of decision of 07/04/00. See A.10.	F-1243/00	CC joined with previous one (A.10). Previous comment applies.
	1.- What were the corrective measures and compliance deadlines ordered? 2.- Were the measures carried out? 3.- By the deadline? 4.- Were the fines paid?	1.- a) Chipping and spreading of debris from forestry operation (immediate) b) Fire breaks (immediate). 2.- Yes. Verified 26/08/03 file no. CI0415RN2000VR001. 3.- Yes Archive 22/09/03. 4.- Collection order no. 004954 05/12/00.	F-1314/00	Collection order exists, but there is no indication of whether collection took place. Remaining questions resolved.
	1.- Why was the CC not allowed if, under Art. 190-III, the site of the fire was identified? 2.- Why were the complainants not informed of the results of the inspection visit? 3.- Was the fine paid? 4.- Were the corrective measures carried out?	1.- Further information was requested from the complainants pursuant to Article 190 Paragraph III of the General Ecological Balance and Environmental Protection Act (Ley General del Equilibrio Ecológico y la Protección al Ambiente – LGEEPA). When this was not provided, the agency opted to conduct the inspection visit in order to determine whether there were any environmental violations. On this visit it verified the existence of a forest fire. 2.- The complainant was not notified because no response was given to the Office's request for more information pursuant to LGEEPA Article 190. 3.- Collection order no. 004954 05/12/00. 4.- No compliance with any of the three corrective measures.	F-1318/00	Collection order exists, but there is no indication of whether collection took place. No corrective measures implemented; no indication of what the authority does in this case. Remaining questions resolved.
Proper admissibility decision as per pp. 11-12 "Notification" (CEC).	1.- Were the corrective measures carried out? 2.- Was the fine paid? 3.- Did the seizure take place?	1.- Yes. 2.- Collection order no. 003312 31/08/01. 3.- Under appeal for review.	F-1239/00	Collection order exists (13 months after concluding decision), but there is no indication of whether collection took place. Seizure did not take place due to filing of appeal for review. Remaining questions resolved.
	1.- Were the corrective measures carried out? 2.- Was the fine paid? 3.- Did the seizure take place?	Document dated 15/03/00 was joined with complaint no. 00/03/024/66 by means of decision of 07/04/00.; see A.14.	F-1239/00	CC joined with previous (A.14). Previous comment applies.

A. Party's failure to guarantee the indigenous peoples access to environmental justice through the citizen complaint procedure (continued)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
A.16	15/3/00	Raramuri Indigenous People of Areponapuchi Ejido (Agustin Bravo Gaxiola)	Rock mining in riverbed.	Received 15/3/00. 31/3/00 Profepa declined jurisdiction and referred document to state office of CNA.	CC admissibility decision took more than 10 days.
A.17	15/3/00	Raramuri Indigenous People of San Alonso Ejido (Agustin Bravo Gaxiola)	Removal of materials including green firewood from riverbed.	Received 15/3/00. 31/3/00 Profepa declined jurisdiction and referred document to state office of CNA.	CC admissibility decision took more than 10 days.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
	1.- Did the CNA process the complaint? 2.- What was the result? 3.- Was the decision complied with? 4.- Were the complainants notified?	1.- By decision of 31/03/00 Profepa referred complaint to CNA and it was received 07/04/00. CNA authorized a visit to the site but could not gather reliable information from the allegedly responsible company, which would have been indispensable in carrying out the administrative procedure. In a visit to the riverbed, no obstruction or rock mining was found. 2.- No conclusion. 3.- Does not apply. 4.- CNA does not specify.		There is no evidence that CNA notified the complainants.
The complaint indicated removal of green firewood, which would in fact be within Profepa's jurisdiction. The Profepa response does not mention green firewood.	1.- Why, in its response, did Profepa not include the aspects of the complaint relating to forest resources (green firewood)? 2.- Did the CNA follow up on the matters within its jurisdiction? 3.- Within the prescribed period? 4.- What was the result? 5.- Was the decision complied with? 6.- Were the complainants notified?	1.- Complaint referred to CNA, with decision on 31/03/00 and notice 07/04/00. 2.- CNA authorized site visit; visited the creek but did not find alterations to the riverbed. The officer remained on the site for five hours but no one arrived to carry out mining activities. 3.- Visit took place 29/5/00. 4.- No conclusion since no irregularities found. 5.- Does not apply. 6.- No evidence of this in the file.		Profepa did not respond to question 1. No evidence that CNA notified the complainants of the inspection visit.

F. Party's failure of enforcement in connection with resolution or conclusion of citizen complaints

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
F.1	20/8/98	El Consuelo Community (complainants requested that their identity be kept secret)	Illegal logging and shipping of forest resources.	Received 20/8/98. Allowed 03/9/98. 20/11/98 attempted inspection unsuccessful for reasons unrelated to the parties complained of. 3/99 Profepa internal memo reported on inspection visit. 30/6/00 concluding decision with corrective measures (unspecified) and fine: 15,502.50.	Admissibility decision within prescribed period. First inspection visit within prescribed period, but concluding decision almost 2 years after receipt of CC.
F.2	18/8/99	San Ignacio de Arareco Community (Agustín Bravo Gaxiola)	Excavation and alteration of natural structure of creek bed and bank; removal and felling of vegetation and trees, and change of land use in forested areas; all without authorization.	Received 18/8/99. Profepa issued admissibility decision 6/9/99 and referred water-related aspects to CNA. 6/7/00 concluding decision with corrective measures (unspecified) and fine: 15,502.50. 8/5/00 CNA responded that it had located 1 dam (CC mentioned 3), there was no removal of materials at the time of the inspection, and no information was obtained from the residents as to the identity of the perpetrators; therefore, it was impossible to determine their identity.	CC admissibility decision took more than 10 days. Concluding decision in 11 months (>4). CNA responded almost 9 months from filing of CC and did not take administrative action.
F.3	10/12/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Clandestine felling and removal of forest resources.	CC filed 15/10/98. Allowed by Profepa 6/11/98. 30/3/00 Conclusion of administrative proceeding. Fine: 41,340.00. Corrective actions: 1) refrain from unauthorized forestry operations; 2) reforest 5 ha in Loma San Miguel sector w/ at least 2 native spp. of Pinus, density 1200 plants/ha and guarantee establishment of plants (8 months); 3) chip and spread debris (perpendicular to slope) in Los Tarros sector (1 month).	CC admissibility decision took more than 10 days. Administrative proceeding issued 1 year 5 months after filing of complaint. No concluding decision nor notification to complainants.
F.4	12/04/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Illegal timber removal.	CC filed 4/12/98. 27/1/99 Profepa gave notice that a similar complaint of 15/10/98 was being processed.	Profepa response took more than 10 days and did not issue joinder decision.
F.5	16/6/99	Community of San Diego de Alcalá Ejido (Oscar Romero Viezcas)	Clearing, land use change, total removal of various vegetation.	Received 16/6/99. Allowed by Profepa 5/7/99. Conclusion of administrative proceeding 29/9/00. Corrective measures: reforestation of 110,903 M2 with 500 mezquite plants, 2500 Opuntia rastrera plantas, 1800 ocotillo (<i>Fouquieria splendens</i>) plants (26 months); fence plantations for 10 years (26 months); soil conservation work (e.g. filling and tamping of gullies, seeding with native forrages, bordering of counterslope and preparation of rootstocks (8 months). Fine: 11,370.00.	CC admissibility decision took more than 10 days. No concluding decision nor notice to complainants.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
	<p>1.- Were the corrective measures carried out? 2.- Within the prescribed time period? 3.- Was the fine paid?</p>	<p>Appeal for review filed 24/08/00 and by decision of 17/04/2001, administrative decision was voided because the fine was not duly reasoned and justified; therefore, implementation of the corrective measures and collection of the fine were suspended.</p>	F-314/99	<p>Appeal for review voided administrative decision of year 2000. Therefore, corrective measures and collection of fine were suspended.</p>
	<p>Matters within Profepa's jurisdiction: 1.- Were the corrective measures carried out? 2.- Within the prescribed time period? 3.- Was the fine paid? CNA: 4.- Why did it not conduct a more exhaustive investigation?</p>	<p>Profepa 1.- Refrain from conducting forestry operations and reforestation over an area of 108 m2. 2.- Corrective measure not implemented. 3.- Collection order no. 003392 07/09/01. 4.- CNA indicates that field inspector visited the site on 26-27 October 1999 from 8:00 a.m. to 2:00 p.m. and that during those periods the inspector did not observe water removal or mining in the creek.</p>	F-3417/99	<p>Collection order exists (14 months after concluding decision), but there is no indication of whether collection took place. The reforestation was not carried out. CNA did not respond as to why it did not conduct a more exhaustive investigation of the alleged perpetrator, since the CC referred to the CNA included, as evidence, photographs of the vehicle labeled as the property of the party complained of (among other evidentiary photographs).</p>
<p>As of 15/02/02, date of the Response of the Party, and 3.5 years from filing of the CC, there is no concluding decision nor order to notify the complainants.</p>	<p>1.- Was there a concluding decision for the CC? 2.- Were the complainants notified? 3.- Were the corrective measures carried out? 4.- Within the prescribed time period? 5.- Was the fine paid?</p>	<p>1.- Concluding decision 30/05/00. 2.- The complainants were notified through C. Teresa Guerrero 06/06/2000. 3.- Measure no. 2, reforestation, was not complied with. 4.- Measures 1 and 3 were implemented by the respective compliance deadline. 5.- Collection order 004954 05/12/00.</p>	F-134/99	<p>A collection order exists (11 months after the concluding decision), but there is no indication whether fine was collected. The reforestation was not carried out (1 of 3 corrective measures) and there is no indication of what the authority does in such cases.</p>
<p>No admissibility or joinder decision.</p>		<p>No questions.</p>	F-134/99	<p>No questions.</p>
	<p>1.- Was a concluding decision issued with notice to the complainants? 2.- Were the corrective measures carried out? 3.- Within the applicable time period? 4.- Was the fine paid?</p>	<p>1.- Concluding decision 07/12/2000. Complainants notified through C. José Ramón Lara on 14/12/00. 2.- Two of three measures complied with. No reforestation. 3.- Yes, for two only. 4.- Collection order no. 003312 31/08/01.</p>	F-1229/00	<p>Collection order exists (8 months after the concluding decision), but there is no indication whether fine was collected. The reforestation was not carried out (1 of 3 corrective measures) and there is no indication of what the authority does in such cases. Remaining questions resolved.</p>

F. Party's failure of enforcement in connection with resolution or conclusion of citizen complaints (continued)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
F.6	09/01/1999	Community of San Diego de Alcalá Ejido (Oscar Romero Viezcas and Juan Nieto Rodríguez)	Clearing, removal of vegetation and untreated wastewater discharge.	Received 1/9/99. Joinder to F.5 by Profepa on 13/9/99.	CC admissibility decision and joinder within prescribed period. No evidence that CNA was notified in connection with wastewater discharges.
F.7	18/2/98	Community of Ciénega de Guacayvo Ejido (Manuel Pérez Rascón et al.)	Unauthorized forestry operations, in riverbeds and elsewhere, on adjacent property.	18/2/98 filing of CC. 4/3/98 Profepa allowed CC. 30/6/00 concluding decision with corrective measures (unspecified) and fine: 24,160.00	CC admissibility decision took more than 10 days. Conclusion in 2 years, 4 months (>4 months)
F.8	19/7/99	Community of Ciénega de Guacayvo Ejido (Isaias Rivera Pérez et al.)	Repeat incident of illegal logging on Rincón de Gervacio lot.	Received 19/7/99. Allowed 9/8/99. 30/5/00 concluding decision with fine (unspecified).	CC admissibility decision took more than 10 days. Conclusion in 10 months (>4).
F.9	08/03/1999	Community of Ciénega de Guacayvo Ejido (Isaias Rivera Pérez et al.)	Illegal logging.	Received 3/8/99. Joinder with F.8 on 24/8/99. Therefore, the concluding decision for F.8 applies.	Joinder decision took more than 10 days. Conclusion in 9 months (>4).
F.10	17/11/99	Coalición Rural/ Rural Coalition	Excessive logging in Sierra Tarahumara and request for effective processing of CCs filed.	CC dated 8/11/99 and filed 17/11/99. Admissibility decision by Profepa Complaints Branch (DGDQ) 25/11/99. 7/12/99 Semarnap State Office referred CC to state office of Profepa due to two points under the latter's jurisdiction. No documents indicating that the Semarnap office processed the two points under its jurisdiction. 2/2/00 DGDQ responded to three of the four points in the CC. DGDQ did not conclude the CC nor indicate the considerations of the oficio as a conclusion.	CC admissibility decision within prescribed period. No concluding decision. Semarnap state office did not process the complaint.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
	1.- Was the CNA notified concerning the wastewater discharges? 2.- If so, did the CNA take any action?	1.- Complaint referred to CNA 15/10/1999 by means of oficio dated 08/10/99, no. B22PROFEPA.07/C/003901. 2.- The CNA did not find the file relating to this complaint in the archives of the state office. However, it presents a site visit report of 13/10/99, "...for the purpose of addressing the complaint, [of] untreated wastewater discharge...". In the inspection of springs, CNAals, and outlets, no changes in the characteristics of the water reaching the ejido were observed, nor were any wastewater discharges.		Questions resolved.
	1.- Were the corrective measures carried out? 2.- Within the prescribed period? 3.- Was the fine paid?	Filing for nullification (juicio de nulidad) against the sanction decision. In a ruling of 01/08/2002, the lower federal court (Tribunal Fiscal de la Federación) declared the nullity of the administrative decision in order for the complaint to be made known to C. MATILDE NUNEZ QUEZADA. Therefore, verification of measures and collection of the fine do not apply.	F-1869/98	Sanction decision nullified, therefore corrective measures and collection of fine do not apply.
	1.- Was the fine paid?	1.- Collection order no. 004954 05/12/2000.	F-1478/99. F-2474/99. F-3960/99	Collection order exists (6 months after the concluding decision), but there is no indication of whether collection took place.
		No questions.		No questions.
	1.- Did Semarnap allow, process, and conclude the complaint? 2.- Did Semarnap Office respond to complainants? 3.- Why was the internal accounts office not notified with respect to point 2 of the complaint?	1.- Semarnat as such is not responsible for the admissibility decision or for concluding complaints, as that is the responsibility of Profepa, and so it did process by referring to Profepa. 2.- Yes, since it responded with a copy of oficio no. DCH.01.08.118/99 121311 of 7 December 1999 stating that the Headquarters would issue the notice. 3.- Unknown, but both the offices of Profepa and Semarnat in the state of Chihuahua have been audited by their internal auditing bodies and no observations of that nature were made. Note: The document was sent to the Minister, the authority responsible for responding to the Submission.		

R. Party's failure of enforcement in failing to issue admissibility decision on Citizen Complaint and failing to carry out the necessary procedures

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
R.1	26/7/99	Community of Ciénega de Guacayvo Ejido (Isaias Pérez Rivera et al.)	Felling of trees without marks on Rincón de Gervacio lot	26/7/99 filing with Profepa. Profepa did not issue admissibility or joinder decision.	Profepa did not issue admissibility or joinder decision.
R.2	10/04/1999	Community of Ciénega de Guacayvo Ejido (ejido authorities)	Illegal forestry operations and storage of forest resources by San Juanito sawmills.	4/10/99 CC filed with state office of Semarnap. 18/10/99 Semarnap referred it to Profepa. 10/12/99 Profepa responded to Semarnap that the relevant inspections had been carried out previously and that administrative proceedings had been brought against the parties complained of.	Semarnap referred complaint to Profepa promptly but did not notify the complainants that it had done so. No admissibility or joinder decision by Profepa.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
<p>Profepa has no copy of CC in appendices. Response of the Party argues that CC was processed properly, referring to Appendix III. However, no documentation on this CC in that appendix (nor in Appendices I,II,IV,VI,VII).</p>	<p>1.- Was the CC allowed or subject to joinder? 2.- Was the CC processed?</p>	<p>1.- There is no document with that date on file, but the complaints filed by the complainants were processed since inspection visits were made to Ciénega de Guacayvo Ejido, finding evidence of unauthorized operations, leading to the administrative proceedings mentioned in the following response. 2.- The following administrative proceedings were initiated: a) F-2474/99 (Concluded 15/05/00). b) F-3960/99 (Concluded 15/05/00). c) F-1781/00 (Concluded 31/07/01).</p>	<p>F-2474/99 F-3960/99. F-1781/00.</p>	<p>Neither the submitters nor the authorities have any documentation on this CC, but there are files in which inspections on the premises of this ejido are reported.</p>
<p>Submission appendices do not contain copy of complaint. Response of the Party argues that CC was processed properly, referring to Appendix III. However, there is no documentation on this complaint in that appendix (nor in Appendices I,II,IV,VI,VII).</p>	<p>1.- Did Semarnap Office notify complainants that CC referred to Profepa? 2.- Did Profepa issue admissibility or joinder decision? 3.- Did it process CC? 4.- Were the administrative proceedings that Profepa brought against the violators (according to memo to Semarnap) concluded?</p>	<p>1.- Semarnat response. 2.- Semarnat oficio received 12 November 1999 containing the letter from the ejido authorities of Ciénega de Guacayvo Ejido requesting forestry inspections on the ejido. This was replied to in the sense that this office, within the annual storage center inspection program, visited 26 centers in the San Juanito area, including those of ROBERTO RODRIGUEZ, MIGUEL RODRIGUEZ and LEOPOLDO PAREDES. 3.- No, as explained in previous response. 4.- The following administrative proceeding files were opened: a) F-2474/99 (Concluded 15/05/00). b) F-3960/99 (Concluded 15/05/00). c) F-1781/00 (Concluded 31/07/01).</p>		<p>No response from Semarnat to question #1. Neither Semarnat nor Profepa notified or responded to the complainants. Profepa did not respond to question #4 on enforcement of administrative processes.</p>

S. *Party's failure of enforcement by failing to issue admissibility decision consisting of referral to the competent body*

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
S.1	13/10/99	Tepehuan Indigenous People, Llano Grande Ejido (Félix Baiza Duarte et al.)	Failure of company conducting forestry operations to cut up pine branches and crowns in Ejido cutting areas as well as logging by company in a reserved area.	13/10/99 CC delivered to state office of Semarnap. 23/11/99 state office of Semarnap did not allow the matter as a CC but rather as a request to which it responded point by point, indicating that the point about cutting up of branches and crowns should be reported to Profepa.	Response of state office of Semarnap in 41 calendar days (not considered as a CC)
S.2	07/09/1999	Tepehuan de Malanoche Indigenous People (Andrés Loera Sandoval et al.), via Cosyddhac	Removal of marked timber corresponding to previous year and illegal marking thereof with previous year's mark.	9/7/99 received by state office of Semarnap. No response from the authority accepting or declining jurisdiction.	

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party admits that the Party has no information on this case.	Why did the Semarnap state office not refer the matter to Profepa as a CC?	Semarnat: Profepa was notified in order for the latter to issue an admissibility decision according to its procedures.		Semarnat does not indicate a date or file number for this communication.
Response of the Party admits that it has no information on this case.	Did Semarnap allow the CC? Did it refer to Profepa? Did Profepa process?	1.- Semarnat response: no, since Semarnat is not empowered to issue admissibility decisions on complaints. However, a response was given in oficio no. DJ-08-99/005/10031, explaining outstanding issues about the operation. 2.- No, since it was considered as a purely explanatory document of Semarnat's responsibilities; moreover, the group is advised by an entity familiar with MexiCNA law, and they could have gone directly to Profepa or request clarification on the complaint from the state office of Semarnat. 3.- Not referred to Profepa.		Semarnat gave an explanation of the facts, without indication of date, and did not deem it necessary to refer to Profepa.

T. Party's failure of enforcement by concluding a Citizen Complaint without notifying the Complainant of the considerations adopted with regard to the evidence and information provided

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
T.1	08/07/1999	Prudencio Ramos Ramos (del Raramuri Indigenous People of Pino Gordo Ejido)	Illegal use of timber resources comprising the habitat of flora and fauna species considered endangered, threatened, rare, or subject to special protection, without implementing prevention and mitigation measures.	7/8/98 CC filed with Profepa. 27/8/98 Profepa allowed only those aspects of the CC relating to illegal tree felling and removal. 15/12/98 Profepa concluded the CC by determining that the operation was taking place with authorization. However, Profepa did not analyze whether the management program contemplates protection of status species habitat and, if so, if the protection measures are being implemented.	CC admissibility decision took more than 10 days. 4 months for conclusion (=4).

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
<p>Response of the Party refers to oficio of 15/12/98 arguing that the case was properly concluded. The response does not refer to Profepa's failure to analyze the information submitted by the Complainant concerning harm to status species habitat nor the specific failure to which this heading "T" refers.</p>	<p>1.- Does the forest management program for the zone concerned by the complaint (cited by Profepa in the oficio of 15/12/98) contemplate protection and conservation measures for the habitat of the species mentioned, environmental impact prevention and mitigation measures? 2.- If so, were these measures implemented?</p>	<p>1.- Semarnat response: Pino Gordo Ejido of the Municipality of Guadalupe y Clavo, Chih., does not have an authorized Forest Management Program, therefore both questions CNA not be answered. 2.- Semarnat response: There is no management program authorized by Semarnat Chihuahua.</p>	<p>F-5542/98</p>	<p>Pino Gordo Ejido and Colorada de los Chávez Community have boundary disputes. Pino Gordo Ejido submitted evidence of the presence of status fauna in the cutting area (Appendix 57 of Submission) and asked whether habitat protection measures exist. Profepa (oficio B22.07C/006154 of 15/12/98) indicates that the operation was taking place as authorized, by a company providing services to Colorada de los Chávez further to oficio SRN08 98/0680 from state office of Semarnat. It is requested that Semarnat respond to these two questions with reference to the C de los Chávez forestry authorization since that was the one applicable to the site in question.</p>

II. Alleged failures to effectively enforce provisions relating to the investigation and prosecution of probable environmental offenses

G. Party's failure of enforcement in connection with its failure to notify Federal Public Prosecutor (MPF) of the probable occurrence of environmental offenses (CPF Article 418 – Clearing, destruction of vegetation, unauthorized land use change)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
G.1	18/8/99	Comunidad San Ignacio de Arareco (Agustin Bravo Gaxiola)	Excavation and alteration of the natural structure of creek bed and bank; removal and felling of vegetation and trees and change of land use in forested areas, all without authorization.	Received 18/8/99. Profepa allowed the CC on 6/9/99 and referred the water-related aspects to CNA. 1/11/99 Profepa internal memo reported on forestry inspection visit. 6/7/00 Profepa concluding decision described in F.2. 8/5/00 CNA responded that the violator could not be determined (described in F.2).	Profepa referred to CNA but not to MPF.
G.2	16/6/99	Community of San Diego de Alcalá Ejido (Oscar Romero Viezcas)	Clearing, land use change, total removal of various vegetation.	Received 16/6/99. Profepa allowed 5/7/99. 6/4/00 Profepa conducted forestry inspection visit. Profepa drafted administrative proceeding 29/9/00, described in F.5.	Profepa did not notify MPF.
G.3	09/01/1999	Community of San Diego de Alcalá Ejido (Oscar Romero Viezcas and Juan Nieto Rodríguez)	Clearing, removal of vegetation and untreated wastewater discharge	Received 1/9/99. Joined by Profepa to F.5 on 13/9/99. 8/10/99 Profepa referred the water-related aspects of the CC to CNA. No concluding decision by Profepa or CNA.	Profepa did not notify MPF.
G.4	12/07/1998	Raramuri Indigenous People of Rochéachi Ejido (Agustin Bravo Gaxiola et al.)	Removal of various materials from bed and bank of three creeks, altering their natural structure, affecting floral and faunal interactions, and constituting a change of forested land use.	CC received 9/12/98. 26/1/99 Profepa declined jurisdiction and referred to CNA for processing. 15/2/99 appeal for review filed. Profepa concluded review 12/5/99.	Profepa's oficio declining jurisdiction and its review only refer to the water-related aspects of the CC and do not acknowledge the alteration of flora and fauna nor the change of forested land use. Consequently, it did not accept jurisdiction over the CC nor did it notify the MPF.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party did not respond to section G due to a typographical error in the Submission that referred to Article 418 of the CFPP and not the CPF. The Secretariat requested a response with reference to CPF Article 418.	1.- Was MPF notified of the existence of environmental offenses as described in the complaint or as verified by the inspection visit?	No.	F-3417/99	MPF not notified.
Response of the Party did not respond to section G due to a typographical error in the Submission that referred to Article 418 of the CFPP and not the CPF. The Secretariat requested a response with reference to CPF Article 418.	1.- Was MPF notified of the existence of environmental offenses as described in the complaint or as verified by the inspection visit?	1.- Information filed with Second Agency of MPF. Ap.- 87/00 MPF requested judge to proceed with criminal action.	F-1229/00	Question resolved.
Response of the Party did not respond to section G due to a typographical error in the Submission that referred to Article 418 of the CFPP and not the CPF. The Secretariat requested a response with reference to CPF Article 418.	1.- Was MPF notified of the existence of environmental offenses as described in the complaint?	1.- Information filed with Second Agency of MPF. Ap.- 87/00 MPF requested judge to proceed with criminal action.	F-1229/00	Question resolved.
[The original CC was not obtained]. Response of the Party did not respond to section G due to a typographical error in the Submission that referred to Article 418 of the CFPP and not the CPF. The Secretariat requested a response with reference to CPF Article 418.	1.- Should Profepa have accepted jurisdiction over the aspects of the CC relating to alteration of flora and fauna and change of forested land use? 2.- Should the MPF have been notified?	1.- Referred to CNA in a decision of 26 January 1999 and notice given 27 January 1999. 2.- The facts were not verified, therefore Profepa never had knowledge of any fact or omission qualifying as an environmental offense.		Profepa did not respond to #1.

G. Party's failure of enforcement in connection with its failure to notify Federal Public Prosecutor (MPF) of the probable occurrence of environmental offenses (CPF Article 418 – Clearing, destruction of vegetation, unauthorized land use change) (continued)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
G.5	03/10/2000	Residents of Rochéachi Ejido	Clearing, destruction of natural vegetation with change of forested land use and alteration of the natural hydrological structure of a creek for the purpose of mining or removing various materials.	10/3/00 CC filed. 16/3/00 Profepa allowed the aspects concerning clearing, destruction of vegetation and change of forested land use. 13/4/00 Profepa referred to CNA and state Department of Environment the aspects relating to removal and mining of materials. 10/5/00 CNA notified the Complainant that it had conducted an inspection without finding mining activities or machinery but that, in view of the information submitted in the CC and by residents, it would proceed against the perpetrators.	Profepa issued admissibility decision on CC within prescribed period. Did not notify MPF. No conclusion of the CC by any of the agencies.
G.6	Forestry audit 9/99	Colorada de los Chávez Community	Carried out "in response to various complaints filed with [Profepa]"	25-27/5/99 state office of Profepa conducted audit. 28-31/7/99 state office of Profepa and Profepa (central offices) collaborated to expand audit. 10/9/99 Federal Profepa notified resident of Pino Gordo that the results of the audit were the total temporary suspension of operations as well as an order of urgent measures.	The MPF was not notified of cleared forested areas.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
<p>Response of the Party did not respond to section G due to a typographical error in the Submission that referred to Article 418 of the CFPP and not the CPF. The Secretariat requested a response with reference to CPF Article 418.</p>	<p>1.- Did Profepa conclude the CC? 2.- Did CNA conclude the CC? 3.- Did Environment Department process the CC? 4.- Should the MPF have been notified? 5.- Was there an administrative decision by Profepa and/or CNA against the perpetrators? 6.- Were the measures implemented and/or were the fine(s) paid?</p>	<p>1.- Concluded in a decision of 19/09/00. 2.- CNA. 3.- DGEGE. 4.- Yes. 5.- Administrative decision issued 31/08/00. 6.- Corrective measure not implemented and fine sent for collection via oficio no. 003312 (31/08/01).</p>	<p>F-1252/00</p>	<p>CNA conducted inspection but did not formally conclude the CCs, since it did not follow the LGEEPA procedure but rather an administrative procedure under its own regulation, the National Waters Act and the Federal Administrative Procedure Act (information submitted at meeting with CEC legal officer). No information was submitted on processing by state Department of Environment. No notification of MPF. No implementation of (unspecified) corrective measure. Collection order exists (11 months after concluding decision), but there is no indication whether fine was collected.</p>
<p>Response of the Party did not respond to section G due to a typographical error in the Submission that referred to Article 418 of the CFPP and not the CPF. The Secretariat requested a response with reference to CPF Article 418.</p>	<p>1.- Were the measures recommended in the audit applied? 2.- Should the MPF have been notified?</p>	<p>1.- Yes, verifying the MUAs on 14/03/01. 2.- Yes.</p>	<p>F-1300/99-2731/99</p>	<p>Profepa indicates that MPF should have been notified, but does not indicate whether or not it did so.</p>

H. Party's failure to enforce CPF Article 418 (felling/change of land use without authorization under the Forestry Act)

Reference	Date of information	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
H.1	Information 21/9/99	Community of San Diego de Alcalá Ejido (Oscar Romero Viezcas et al.)	Felling and change of forested land use on land adjacent to Ejido.	21/9/99 complaint filed with MPF. As of 9/6/00 (date of Submission), the MPF had not yet taken any action to investigate the facts or initiate a preliminary investigation (averiguación previa).	No action by MPF.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
15/2/02 Response of the Party requested Secretariat to proceed no further with this aspect because the complaint is the subject of a pending administrative proceeding. 29/8/02 Secretariat determined that the party did not demonstrate that this matter is pending in the sense of Article NAAEC 14(3)(a) and again requested a response.	1.- Did the MPF investigate, order measures and, as applicable, proceed with criminal action?	1.- A.P.087/DD/00 attests that MPF requested to proceed with criminal action.		No response from PGR.

I. Party's failure of enforcement in connection with its failure to notify the MPF of the probable occurrence of environmental offenses (CPF Article 418: unauthorized cutting, uprooting, knocking down, or felling of trees)

Reference	Date of citizen complaint or information	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
I.1 (=A.1)	14/10/98	Raramuri Indigenous People of Choguita (J.M. Fuentes Rodríguez et al.)	Removal of green wood	CC received 26/10/98. 27/11/98 Profepa considered the CC as a request for suspension of permits and referred it to Semarnap. 8/1/99 Profepa allowed appeal for review. 14/4/99 Profepa concluded the review by confirming that it was a request, not a CC.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.2 (=F.1)	20/8/98	El Consuelo Community (complainants requested that their identity be kept secret)	Illegal logging and shipping of forest resources.	Received 20/8/98. Allowed 03/9/98. 20/11/98 inspection attempt was not completed for reasons unrelated to the parties complained of. 3/99 Profepa internal memo reported on inspection visit. 30/6/00 concluding decision with corrective measures (unspecified) and fine: 15,502.50.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.3 (=A.2)	10/12/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Clandestine felling and removal of forest resources.	CC filed 15/10/98. Allowed by Profepa 6/11/98. Administrative proceeding concluded on 30/3/00. Fine: 41,340.00. Corrective actions: 1) refrain from forestry operations without authorization; 2) reforest 5 ha in Loma San Miguel area w/ at least 2 native species of Pinus, density of 1200 plants/ha and ensure that individuals establish and thrive (8 months); 3) chip and disperse debris (perpendicular to slope) in Los Tarros area (1 month).	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.4 (=A.3)	12/04/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Illegal timber removal.	CC filed 4/12/98. 27/1/99 Profepa gave notice that similar complaint of 15/10/98 already being processed.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.5 (=S.1)	13/10/99	Tepehuan Indigenous People, Llano Grande Ejido (Félix Baiza Duarte et al.)	Forestry company's failure to cut up pine branches and crowns in ejido cutting areas as well as cutting by said company in reserved area.	CC filed 13/10/99 with state office of Semarnap. 23/11/99 state office of Semarnap did not allow CC as a complaint but merely as a request to which it responded point by point, indicating that the point about cutting up of pine branches and crowns should be filed with Profepa.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- information AP-20/00 filed, Guachochi office	F-179/99	Information filed.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-314/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-314/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/02/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-314/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-314/99	Criteria used in deciding not to notify MPF not explained.

I. Party's failure of enforcement in connection with its failure to notify the MPF of the probable occurrence of environmental offenses (CPF Article 418: unauthorized cutting, uprooting, knocking down, or felling of trees) (continued)

Reference	Date of citizen complaint or information	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
I.6 (=S.2)	07/09/1999	Tepehuan de Malanoche Indigenous People (Andrés Loera Sandoval et al.), via Cosyddhac	Removal of marked timber corresponding to previous year and illegal marking thereof with previous year's mark.	9/7/99 received by state office of Semamap. No response from authority accepting or declining jurisdiction.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.7 (=F.7)	18/2/98	Community of Ciénega de Guacayvo Ejido (Manuel Pérez Rascón et al.)	Unauthorized forestry operations, in riverbeds and elsewhere, on adjacent property.	18/2/98 filing of CC. 4/3/98 Profepa allowed CC. 30/6/00 concluding decision with corrective measures (unspecified) and fine: 24,160.00	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.8 (=F.8)	19/7/99	Community of Ciénega de Guacayvo Ejido (Isaias Rivera Pérez et al.)	Repeat incident of illegal logging on Rincón de Gervacio lot.	Received 19/7/99. Allowed 9/8/99. 30/5/00 concluding decision with fine (unspecified).	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.9 (=F.9)	08/03/1999	Community of Ciénega de Guacayvo Ejido (Isaias Rivera Pérez et al.)	Illegal logging.	Received 3/8/99. Joinder with I.8 (=F.8) 24/8/99. Due to joinder, concluding decision for I.8 (=F.8) applies.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.10 (=R.2)	10/04/1999	Community of Ciénega de Guacayvo Ejido (ejido authorities)	Illegal forestry operations and storage of forest resources by San Juanito sawmills.	4/10/99 CC filed with state office of Semamap. 18/10/99 Semamap referred to Profepa. 10/12/99 Profepa responded to Semamap that the relevant inspections had been conducted previously and that administrative proceedings had been instituted against the parties complained of.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Complaint not referred to Profepa.		Semarnat did not consider the matter to qualify as an offense since it sent an explanatory letter to the complainants. That letter is not in the file.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1869/98	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1478/99. F-2474/99. F-3960/99.	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- Joinder with 99/07/087/09 in a decision of 24/08/99.	F-1478/99. F-2474/99. F-3960/99.	Joinder with file I.8. Previous comment applies.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- While it is true that informations were not filed by this office (Procuraduría), assistance was provided to the MPF with the presentation of expert testimony in preliminary investigations A.P.410/DD/99 and 63/DD/00 being conducted by MPF Second Agency since the criminal informations had already been filed by the Complainants, hence the MPF requested to proceed with criminal action.	F-2474/99. F-3960/99. F-1781/00	Profepa assisted MPF with informations filed by the complainants.

I. Party's failure of enforcement in connection with its failure to notify the MPF of the probable occurrence of environmental offenses (CPF Article 418: unauthorized cutting, uprooting, knocking down, or felling of trees) (continued)

Reference	Date of citizen complaint or information	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
I.11	Information 1/12/99	Community of Ciénega de Guacayvo Ejido (Isaias Rivera Pérez et al.)	Notified Federal Semarnap and Attorney General's Office of the State of Chihuahua of the CCs and informations concerning illegal logging and fires, without the MPF having been notified of the CCs.	1/12/99 referred to Minister Carabias. 29/12/99 Profepa responded that each CC mentioned the filing of an information by the Ejido authorities, hence there was no need to file another.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.12 (=T.1)	08/07/1998	Prudencio Ramos Ramos (of Raramuri Indigenous People of Pino Gordo Ejido)	Illegal use of timber resources comprising the habitat of flora and fauna species considered endangered, threatened, rare, or subject to special protection, without implementing prevention and mitigation measures.	7/8/98 CC filed with Profepa. 27/8/98 Profepa allowed only those aspects of the CC relating to illegal tree felling and removal. 15/12/98 Profepa concluded the CC by determining that the operation was taking place with authorization. However, Profepa did not analyze whether the management program contemplates protection of status species habitat and, if so, if the protection measures are being implemented.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.13	30/3/99	Raramuri Indigenous People of Pino Gordo Ejido (José Manuel García Lerma and Héctor S. Olivás González representing 110 Raramuris)	Illegal logging of forest resources in Pino Gordo Ejido.	30/3/99 CC filed. 23/4/99 Profepa allowed CC. 12/1/00 concluding decision by Profepa with total temporary suspension of authorized timbering operation, ordering of three urgent measures (unspecified). 28/1/02 administrative proceeding against Colorada de los Chávez Community resulting from audits conducted 5/99 and 7/99 with total fines of 20,670.00 to the Comunidad and Ingeniería Forestal S.A. de C.V., warning to carry out chipping and spreading of debris, and order to create fire break around audited area (1 day).	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.14 (=A.5)	15/3/00	Raramuri Indigenous People of Cuiteco Ejido (Agustín Bravo Gaxiola et al.)	Illegal use of forest timber resources.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 31/8/00 with restoration measures (unspecified) and fine: 18,950.00.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
	1.- Did the MPF resolve the informations mentioned in the filing?	1.- PGR response: The information was filed directly by the interested parties with the MPF, Profepa only assisted.		Lack of response from PGR. Profepa assisted MPF with informations filed by the complainants.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1300/99-2731/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1300/99-2731/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	information filed with Second Agency of MPF under no. A.P. 087/2000.	F-1249/00	Information filed.

I. Party's failure of enforcement in connection with its failure to notify the MPF of the probable occurrence of environmental offenses (CPF Article 418: unauthorized cutting, uprooting, knocking down, or felling of trees) (continued)

Reference	Date of citizen complaint or information	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
I.15 (=A.6)	15/3/00	Raramuri Indigenous People of Baragomachi Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Profepa allowed CC 31/3/00. Profepa issued concluding decision 31/8/00 with corrective measure (unspecified) and fine: 5,160.50.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.16 (=A.7)	15/3/00	Raramuri Indigenous People of Monterde Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Profepa allowed CC 31/3/00. Profepa issued concluding decision 19/9/00 with corrective measures (unspecified) and fine: 3,790.00.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.17 (=A.8)	15/3/00	Raramuri Indigenous People of Basonaivo Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Allowed by Profepa 31/3/00. Profepa issued concluding decision 27/11/00 with corrective measures (unspecified) and fine: 22,740.00.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.18 (=A.9)	15/3/00	Raramuri Indigenous People of Mesa de Arturo Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Allowed by Profepa el 31/3/00. Profepa issued concluding decision 19/9/00 with corrective measures (unspecified) and fine: 45,480.00.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.19 (=A.10)	02/07/2000	Raramuri Indigenous People of Churo Ejido (Domingo Carrillo via Cosyddhac).	Illegal logging.	CC received 7/2/00. Profepa allowed CC 6/3/00. Profepa issued concluding decision 17/1/02 with warning for subsequent presentation of authorization of operations; fine (Juan Frías Mancino): 3,790.00. corrective measures: planting with native spp.; chipping and spreading of debris; soil treatment actions; individual fines to 6 persons for 2,017.50.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1320/00	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	The irregularity was a 12 ha surface forest fire. Recovery of the area with next water cycle.	F-1322/00	
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.		Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information filed with First Agency of MPF under no. A.P. 433/2000.	F-1312/00	Information filed.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- Parties complained of found not responsible because the forestry operation was taking place under authorization no. SRN.08-98/1764 of 21 September 1998.	F-1243/00	Parties not responsible, therefore notification of MPF did not apply.

I. Party's failure of enforcement in connection with its failure to notify the MPF of the probable occurrence of environmental offenses (CPF Article 418: unauthorized cutting, uprooting, knocking down, or felling of trees) (continued)

Reference	Date of citizen complaint or information	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
I.20 (=A.11)	15/3/00	Raramuri Indigenous People of Churo Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. 7/4/00 Profepa gave notice of joinder with I.19 (=A.10). 17/1/02 Profepa issued concluding decision described in I.19 (=A.10).	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.21 (=A.12)	15/3/00	Raramuri Indigenous People of Refugio Ejido (Agustin Bravo Gaxiola)	Illegal logging.	CC received 15/3/00. Profepa allowed CC 31/3/00. Profepa issued concluding decision 19/9/00 with corrective measures (unspecified) and fine: 1,895.00.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.22 (=A.13)	15/3/00	Raramuri Indigenous People of Ocoviachi Ejido (Agustin Bravo Gaxiola)	Illegal logging.	Received 15/3/00. 7/4/00 Profepa requested information confirming identity of violators in order to proceed (without allowing CC). 31/8/00 administrative proceeding (result of forestry inspection visit), no evidence of illegal logging found but evidence of fire found. Therefore, fine of 3,790.00 and natural regeneration work ordered for 10 ha affected as well as fencing the area to avoid grazing. No notice given to complainants.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.23 (=A.14)	18/2/00	Raramuri Indigenous People of Rocoroyvo Ejido (President of Ejido Council)	Illegal logging.	Received 18/2/00. Allowed 25/2/00. Concluding decision 31/7/00 with corrective measures unspecified, fine of 6,064.00 and seizure of 5.776 M3R.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
I.24 (=A.15)	15/3/00	Raramuri Indigenous People of Rocoroyvo Ejido (Agustin Bravo Gaxiola)	Illegal logging.	Received 15/3/00 by Profepa. 7/4/00 joinder with I.23 (=A.14). 31/7/00 concluding decision described in I.23 (=A.14).	Although the facts complained of possibly qualified as offenses, the MPF was not notified.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- Parties complained of found not responsible because the forestry operation was taking place under authorization no. SRN.08-98/1764 of 21 September 1998.	F-1243/00	Joinder with I.19, parties found not K94responsible.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	The forestry operations were being carried out under an authorized management program and the irregularity evidenced was that of failing to keep debris under control.	F-1314/00	MPF not notified, apparently because it was considered a "minor" irregularity.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Irregularity was fire covering 10 ha. Recovery of soil will have to await next water cycle.	F-1318/00	
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1239/00	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1239/00	Criteria used in deciding not to notify MPF not explained.

K. Party's failure of enforcement in connection with failure to notify MPF of the probable occurrence of environmental offenses (CPF Article 418 maliciously causing fires in forests or forest vegetation)

Reference	Date of forestry inspection or audit	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
K.1	Forestry Audit 9/99	Colorada de los Chávez Community	Forest fire.	28/1/02 Profepa administrative proceeding indicates evidence of an irrelevant 1.5 ha surface fire. Fire break around audited logging area ordered.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
K.2	Forestry inspection 2/6/99	Ciénega de Guacayvo Ejido	Forest fire.	15/5/00 administrative proceeding evidenced 30 ha fire in Arroyo de las Cuevas sector and 50 ha fire in Pachorrogo. Reforestation ordered with at least 3 native spp. of Pinus on 15 and 20 ha respectively (minimum density 1200 plants/ha. and ensuring healthy establishment of plants – 6 months).	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
K.3	Forestry inspection 11/8/99	Ciénega de Guacayvo Ejido	Forest fire.	15/5/00 administrative proceeding indicates that on inspection visit of 11/8/99, presence of 50 ha fire observed in Racoyvo. File also indicates that Ejido stated that these facts had already been reported and that the PGR was aware of them. Corrective measures ordered for tree felling but not for the 50 hectares burned (reforestation on 2 ha).	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
K.4	Forestry inspection 25/10/99	Ciénega de Guacayvo Ejido	Forest fire.	15/5/00 administrative proceeding evidenced 210 ha of multi-level fire. It also noted that the Ejido authorities reported that the perpetrators had been remanded to the San Juanito office of the MPF and that the PGR had been notified of those facts. A total of 687,277.50 in fines had been levied and reforestation, chipping and spreading of debris, and fencing measures had been ordered.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1300/00-2731/00	Criteria used in deciding not to notify MPF not explained.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- Informations A.P.410/DD/99 and 63/DD/00 filed.	F-1781/00	Information filed. (Ejido members indicate that the violators did not reforest the 15 and 20 ha required and that the Ejido reforested approximately 1.5 ha – information obtained on site by legal affairs officer).
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense? 3.- If the Ejido had already reported the facts to the PGR, what action did the latter take?	1.- Informations A.P.410/DD/99 and 63/DD/00 filed with Second Agency of MPF. 3.- PGR response.	F-1781/00	Information filed. (Ejido members indicate that the violators did not reforest and that the Ejido did – information obtained on site by the legal affairs officer). No response by PGR.
Response of the Party (15/2/02) states that corrective measures and sanctions were ordered and that the MPF was not notified because the facts did not qualify as a criminal offense.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense? 3.- If the Ejido had already reported the facts to the PGR, what action did the latter take?	1.- information filed A.P.410/DD/99 and 63/DD/00 Second Agency of MPF.	F-1781/00	Information filed. (Ejido members indicate that the violators did not reforest and that the Ejido did, and also fenced the area, with payment (without specifying from which office) of 50 pesos/day – information obtained on site by legal affairs officer). No response by PGR.

M. Party's failure of enforcement in connection with failure to notify MPF of the probable occurrence of environmental offenses (CPF Article 419 – unauthorized shipping, storage, and processing of forest resources)

Reference	Date of citizen complaint or information	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
M.1	10/04/1999	Community of Ciénega de Guacayvo Ejido	Unauthorized shipping and storage of forest resources	15/5/00 administrative proceeding noted that 507.088 M3R of timber were shipped to Ejido facilities and that this timber had already been legally seized by the Office of the Assistant Attorney General for the Western Zone of the Office of the State Attorney General. Fines of 687,277.50 applied and reforestation, chipping and spreading of debris, and fencing ordered.	Although the facts complained of possibly qualified as offenses, the MPF was not notified.
M.2 (=H.1)	Information 21/9/99	Community of San Diego de Alcalá Ejido	Clearing and change of forested land use on land adjacent to Ejido.	21/9/99 complaint filed with MPF. As of 9/6/00 (date of Submission), the MPF had not yet taken any action to investigate the facts or initiate the preliminary investigation (averiguación previa).	No action by MPF.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party (15/02/02) states that corrective measures and sanctions were ordered. But there is no evidence of the MPF's being notified nor any reasons given for why this was not done. [In this case, the judicial authority had already taken cognizance of the fact and seized the timber].	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense? 3.- How did the Office of the Attorney General in the state handle this case?	1.- Informations A.P.410/DD/99 and 63/DD/00 filed with Second Agency of MPF.	F-1781/00	Information filed. No response by Office of Attorney General of the State of Chihuahua.
15/2/02 Response of the Party requested Secretariat to proceed no further with this aspect because the complaint is the subject of a pending administrative proceeding. 29/8/02 Secretariat determined that the party did not demonstrate that this matter is pending in the sense of Article NAAEC 14(3)(a) and again requested a response.	1.- What actions did the PGR take with regard to this complaint?	1.- A.P.087/DD/00 noted; MPF requested to proceed with legal action.	F-1229/00	Profepa notified MPF. No response by PGR.

N. Party's failure of enforcement in connection with failure to notify MPF of the probable occurrence of environmental offenses (CPF Article 416 – wastewater discharge and dumping into national waters)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
N.1	09/01/1999	Community of San Diego de Alcalá Ejido	Clearing and land use change with total removal of various vegetation as well as untreated wastewater discharge from resort owned by party complained of.	According to the Response of the Party (p.13), concluded by Administrative Proceeding no. 99/06/069/02, and information filed with MPF on 23/5/2000.	CFPP Article 117 states that notice of possible offenses must be given "immediately."

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
	1.- Why was there a delay in notifying the MPF? 2.- What actions did the PGR take regarding this complaint?		F-1229/00	Profepa did not respond to #1. No response by PGR.

O. Party's failure of enforcement in connection with failure to notify MPF of the probable occurrence of environmental offenses (LGEEPA Article 169 – where offenses verified, notify MPF)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
O.1 (=A.2)	10/12/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Clandestine felling and removal of forest resources.	CC filed 15/10/98. Allowed by Profepa 6/11/98. 30/3/00 administrative proceeding described results of forestry inspection visit of 27/1/99 as well as fine and corrective actions (described in A.2).	Facts complained of or verified could have been offenses and the authority did not notify the MPF.
O.2 (=A.3)	12/04/1998	Tepehuan de las Fresas Indigenous People, Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Illegal timber removal.	CC filed 4/12/98. 27/1/99 Profepa gave notice that a similar complaint of 15/10/98 was already being processed (see A.2 and O.1).	Facts complained of or verified could have been offenses and the authority did not notify the MPF.
O.3 (=F.7)	18/2/98	Community of Ciénega de Guacayvo Ejido (Manuel Pérez Rascón et al.)	Unauthorized forestry operations, in riverbeds and elsewhere, on adjacent property.	18/2/98 filing of CC. 4/3/98 Allowed by Profepa. 30/6/00 concluding decision with corrective measures (unspecified) and fine: 24,160.00.	Facts complained of or verified could have been offenses and the authority did not notify the MPF.
O.4 (=F.8)	19/7/99	Community of Ciénega de Guacayvo Ejido (Isaias Rivera Pérez et al.)	Repeat incident of illegal logging on Rincón de Gervacio lot.	Received 19/7/99. Allowed 9/8/99. 30/5/00 concluding decision with fine (unspecified).	Facts complained of or verified could have been offenses and the authority did not notify the MPF.
O.5 (=F.9)	08/03/1999	Community of Ciénega de Guacayvo Ejido (Isaias Rivera Pérez et al.)	Illegal logging.	Received 3/8/99. Joinder with F.8 (O.4) 24/8/99. Therefore, the concluding decision for F.8 applies (O.4).	Facts complained of or verified could have been offenses and the authority did not notify the MPF.

Notes	Questions to the Party	Responses of the Party	Clandestine felling and removal of forest resources	Comments on Party's responses
Response of the Party indicates that the facts complained of did not qualify as an environmental offense and so the MPF was not notified.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-134/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts complained of did not qualify as an environmental offense and so the MPF was not notified.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1869/98	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts complained of did not qualify as an environmental offense and so the MPF was not notified.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1869/98	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts complained of did not qualify as an environmental offense and so the MPF was not notified.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-2474/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts complained of did not qualify as an environmental offense and so the MPF was not notified.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-2474/99	Criteria used in deciding not to notify MPF not explained.

O. Party's failure of enforcement in connection with failure to notify MPF of the probable occurrence of environmental offenses (LGEEPA Article 169 – where offenses verified, notify MPF) (continued)

Reference	Date of citizen complaint	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
O.6 (=R.1)	26/7/99	Community of Ciénega de Guacayvo Ejido (Isaias Pérez Rivera et al.)	Felling of trees without marks on Rincón de Gervacio lot.	26/7/99 filing with Profepa. Profepa did not issue admissibility or joinder decision.	Facts complained of or verified could have been offenses and the authority did not notify the MPF.
O.7 (=L.10)	10/04/1999	Community of Ciénega de Guacayvo Ejido (Ejido authorities)	Illegal forestry operations and storage of forest resources by San Juanito sawmills.	4/10/99 CC filed with state office of Semarnap. 18/10/99 Semarnap referred to Profepa. 10/12/99 Profepa responded to Semarnap that the relevant inspections had been conducted previously and that administrative proceedings had been instituted against the parties complained of.	Facts complained of or verified could have been offenses and the authority did not notify the MPF.

Notes	Questions to the Party	Responses of the Party	Clandestine felling and removal of forest resources	Comments on Party's responses
Response of the Party indicates that the facts complained of did not qualify as an environmental offense and so the MPF was not notified. [Response of the Party does not include documentation on this case in Appendix XII].	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- Informations A.P.410/DD/99 and 63/DD/00 filed with Second Agency of MPF.	F-2474/99. F-3960/99. F-1781/00	Information filed.
Response of the Party indicates that the facts complained of did not qualify as an environmental offense and so the MPF was not notified. [Response of the Party does not include documentation on this case in Appendix XII].	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	1.- Informations A.P.410/DD/99 and 63/DD/00 filed with Second Agency of MPF.	F-2474/99. F-3960/99. F-1781/00. F-178/99	Information filed.

P. Party's failure of enforcement in connection with failure to file an information after taking cognizance of environmental offenses during inspection visits

Reference	Date of forestry inspection or audit	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
P.1	17/2/99 (Profepa inspection order B 22 04/0314)	El Consuelo Ejido (complainants requested that their identity be kept secret)	Illegal felling and use of pine trees.	20/8/98 CC received by Profepa. 3/9/98 CC allowed. 30/6/00 concluding decision with corrective measures and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.2	24/9/99 (Profepa inspection order B 22 04/3417)	San Ignacio Arareco Ejido (through Agustín Bravo Gaxiola)	Excavation and alteration of natural structure of creek bed and bank; removal and clearing of vegetation and trees, and change of land use in forested areas; all without authorization.	(The forestry inspection report included with the Response of the Party is illegible and only includes 4/7 pages) 26/6/00 administrative proceeding, poorly legible, but with corrective reforestation measures (15 months) and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.3	27/1/99 (inspection order no. B 22 Profepa 04/134)	Llano Grande Ejido (Ricardo Chaparro Julián et al.)	Illegal logging in the Los Tarros and Loma San Miguel sectors of the Ejido.	4/3/99 Profepa internal memo reported on the finding of stumps on these lots, representing trees cut without authorization.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.4	16/7/98 oficio re inspection visit	Ciénega de Guacayvo Ejido	Illegal felling of trees in Pachorogo, Racoyvo and Rechagachi sectors	18/2/98 CC received by Profepa. 20/2/98 CC allowed. 30/6/00 concluding decision with corrective measures and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.4'	2/6/99 (Profepa inspection order B 22 04/1478)	Ciénega de Guacayvo Ejido		Report of forestry inspection noted the presence of an 80 ha forest fire. Subsequently, an administrative proceeding was brought against the perpetrator.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-314/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-3417/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-134/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1869/98	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1478/99	Criteria used in deciding not to notify MPF not explained.

P. Party's failure of enforcement in connection with failure to file an information after taking cognizance of environmental offenses during inspection visits (continued)

Reference	Date of forestry inspection or audit	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
P.4"	11/8/99 (Profepa inspection order B 22 04/2474)	Ciénega de Guacayvo Ejido		Forestry inspection report noted the presence of pine stumps on three lots (Racoyvo, Rincon de Gervacio and Pachorogo), cut indiscriminately and without authorization.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.4'''	25/10/99 (Profepa inspection order B 22 04/3960)	Ciénega de Guacayvo Ejido		Forestry inspection report noted the presence of pine stumps on three lots (Mesa de la Casa, Arroyo Rachagachi and Arroyo de las Monas) and the lot where the Office of the Attorney General of the State of Chihuahua ordered felled trees to be stored. Subsequently, an administrative proceeding was brought against the alleged perpetrators.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit. [It is evident that the State Attorney General's Office had knowledge of this case.]
P.5	25-27/5/99 Forestry Audit	Colorada de los Chávez Community (José Manuel García Lerma and Héctor S. Olivas González)	Illegal logging of forest resources on Pino Gordo Ejido.	Audit identified numerous failures of compliance with the Authorized Management Program. Final decision included a total temporary suspension of authorized timbering operations and ordered three urgent measures.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.6	14/4/00 (Profepa inspection order B 22 04/1320)	Baragomachi Ejido (Agustín Bravo Gaxiola et al.)	Illegal logging of pine trees.	15/3/00 CC received by Profepa. 31/3/00 CC allowed. 31/8/00 concluding decision with corrective measure and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.7	24/4/00 (Profepa inspection order B 22 04/1322)	Monterde Ejido (Agustín Bravo Gaxiola et al.)	Illegal cutting and use of pine trees.	15/3/00 CC received by Profepa. 31/3/00 CC allowed. 19/9/00 concluding decision with corrective measures and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-2474/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-3960/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1300-2731/99	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1320/00	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1322/00	Criteria used in deciding not to notify MPF not explained.

P. Party's failure of enforcement in connection with failure to file an information after taking cognizance of environmental offenses during inspection visits (continued)

Reference	Date of forestry inspection or audit	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
P.8	13/4/00 (Profepa inspection order B 22 04/001324)	Basonayvo Ejido (Agustin Bravo Gaxiola et al.)	Illegal logging.	15/3/00 CC received by Profepa. 31/3/00 CC allowed. 29/11/00 concluding decision with corrective measures and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.9	12/4/00 (Profepa inspection order B 22 04/1312)	Mesa de Arturo Ejido (Agustin Bravo Gaxiola et al.)	Illegal logging.	15/3/00 CC received by Profepa. 31/3/00 CC allowed. 19/9/00 concluding decision with corrective measures and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.10	11/10/00 (Profepa inspection order B 22 04/004071)	Churo Ejido (Domingo Carrillo et al.; Agustin Bravo Gaxiola)	Felling of unmarked timber.	6/3/00 CC allowed. 17/1/02 concluding decision with corrective measures, sanctions and warning.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.11	13/4/00 (Profepa inspection order B 22 04/001316)	Cerocahui Ejido		31/7/00 administrative proceeding reporting on forestry inspection visit of 13/4/00, issuing warning to Ejido and ordering corrective measures.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.12	14/4/00 (Profepa inspection order B 22 04/1314)	Refugio Ejido (Agustin Bravo Gaxiola et al.)	Illegal logging.	15/3/00 CC received by Profepa. 31/3/00 CC allowed. 19/9/00 concluding decision with corrective measures and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1324/00	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information filed with First Agency of MPF under no. A.P. 433/2000.	F-1312/00	Information filed.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-4071/00	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1316/00	Criteria used in deciding not to notify MPF not explained.
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	The forestry operations were taking place under an authorized Management Program and the irregularity evidenced is that of not controlling the debris.	F-1314/00	Cutting of timber was legal; the irregularity was "minor" and not considered a criminal offense.

P. Party's failure of enforcement in connection with failure to file an information after taking cognizance of environmental offenses during inspection visits (continued)

Reference	Date of forestry inspection or audit	Complainant	Subject of complaint	Status as of 15/02/02	Allegations of Submitter
P.13	17/4/00 (Profepa inspection order B 22 04/1318)	Ocoviachi Ejido	Illegal logging.	No damage was found at Cerro Prieto. At Los Lobos evidence was found of forestry operations with facsimile mark of service provider and presence of 10 ha surface forest fire.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.14	13/4/00 (Profepa inspection order B 22 04/1239)	Rocoroyvo Ejido (President of Ejido Council)	Unauthorized felling of 16 juniper (<i>Juniperus deppeana</i>) and ash trees	18/2/00 CC received by Profepa. 25/2/00 CC allowed. 15/3/00 joinder of complaint filed by Agustín Bravo Gaxiola et al. 31/7/00 concluding decision with corrective measure and sanction.	The Authority did not file an information upon taking cognizance of environmental offenses during inspection visit.
P.15	25/4/00 inspection report no. 1310/2000	San Alonso Ejido		No administrative proceeding brought against Ejido.	No irregularities detected.

Notes	Questions to the Party	Responses of the Party	Authority's file number	Comments on Party's responses
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	The irregularity was a 10 ha surface forest fire. Recovery with next water cycle.	F-1318/00	
Response of the Party indicates that the facts, acts, or omissions noted during the inspection visits did not qualify as criminal offenses and so the MPF was not notified. Secretariat determined (29/8/02) that there was no reasoned determination by the Authority supporting this decision not to notify the MPF.	1.- What criterion or criteria did the Authority use in determining that the facts complained of did not qualify as an offense? 2.- Was a reasoned decision issued by the Authority determining that the facts did not qualify as an offense?	Information not filed.	F-1239/00	Criteria used in deciding not to notify MPF not explained.
	No questions.	ARCHIVE. 23/MAR/00	F-1310/00	No questions. No irregularities detected.

APPENDIX 7

List of Information Gathered for the Development of the Factual Record



1. Information Provided by Mexico

1.1 *Response to Request for Information of 10 September 2003*

Document no.

1. Citizen complaint filed by Agustín Bravo Gaxiola et al. on illegal activity in San Antonio Creek (19 August 1999)
2. Official memo (*Oficio*) from Jesús Mendiaz Zubiata to Luís Remigio Sáenz Ortiz with attachment of field report of visit in connection with complaint mentioned in document no. 1 (29 October 1999)
3. Information sheet of September 6 by María del Pilar Leal Hernández on citizen complaint concerning Municipality of Bocoyna, Chihuahua (10 June 1999)
4. Information sheet of June 17 by Lic. Luciando Grobet Vallarta on citizen complaint concerning Municipality of Bocoyna, Chihuahua (17 June 1999)
5. *Oficio* no. 08.02.031/99 from Lic. Luciando Grobet Vallarta to Director, CNA Office in the State of Chihuahua, referring complaint filed by Red de Educadores Ambientales de Chihuahua, A.C. (24 May 1999)
6. Citizen complaint filed with Semarnap by Red de Educadores Ambientales de Chihuahua, A.C. (10 May 1999)
7. *Oficio* to Luís Remigio Sáenz Ortiz from Jesús Mendiaz Zubiata, with attachment of field report of visit conducted in connection with citizen complaint mentioned in preceding document (San Diego de Alcalá resort) (15 October 1999)
8. *Oficio* no. B22.Profepa.07.C/001197 from Profepa to Director, CNA Office in the State of Chihuahua, with attachment of complaint (El Frijolar Creek) (16 March 2000)
9. Minutes taken by Profepa at the second inter-institutional meeting to review and study the issues surrounding the Rochéachi River (3 November 1999)

10. *Oficio* with attachment of report of inspection visit of October 28 to Rochéachi River, El Frijolar Creek and Guaguichi Creek by representatives of Profepa, CNA and Semarnat (undated)
11. Minutes of interinstitutional meeting to review and study the issues surrounding the Rochéachi River, Municipality of Guachochi, Chih., held 22 October 1999, at the offices of the Profepa in the State of Chihuahua (22 October 1999)
12. *Oficio* no. BOO.E.22.1.2051 from CNA to Lic. Eduardo Clave Almeida, Director General of Profepa Complaints Branch, reporting on inspection visits to the Rochéachi, Guaguichi and El Frijolar Rivers on 18 September and 9 December 1998, 2 February, 9 September and 13 October 1999 (25 October 1999)
13. *Oficio* no. BOO.E.22.1.2049 from CNA to Lic. Roberto Cruz Izquierdo, Technical Secretary to the Director of Semarnat, reporting on inspection visits to the Rochéachi, Guaguichi and El Frijolar Rivers of 18 September and 9 December 1998, 2 February, 9 September and 13 October 1999 (date illegible)
14. *Oficio* no. 00032294 from National Human Rights Commission to Lic. Martín Díaz y Díaz, Director of Legal Affairs, Semarnat, reporting on condition of Rochéachi River as a result of its alleged indiscriminate exploitation and the alleged failure by Semarnat to process the complaints filed by residents of the Municipality of Guachochi (12 October 1999)
15. *Oficio* no. 112/996919 from Legal Affairs Branch of Semarnat to Víctor Hugo García Peña, Director, CNA Office in the State of Chihuahua, with attachment of copy of *oficio* no. 00032294 of October 12 from National Human Rights Commission mentioned in document no. 14 (19 October 1999)
16. Carlos Coria Rivas, "Depredan la Sierra Tarahumara" (Pillaging of the Sierra Tarahumara or "Copper Canyon" region), *El Universal* (24 September 1999)
17. *Oficio* no. B22.Profepa.07.CA 004023 from Profepa Office in the State of Chihuahua to Víctor Hugo García Peña, Director, CNA Office in the State of Chihuahua, extending an invitation to attend a meeting on 22 October 1999 regarding the citizen complaints

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- filed concerning the impact of rock mining in the El Frijolar, Huahuichi, and Rochéachi creeks (19 October 1999)
18. Agenda of interinstitutional meeting to review and study the issues surrounding the Rochéachi River, Municipality of Guachochi, Chihuahua (22 October 1999)
 19. Letter from Ing. Hector Hugo Garcia Peña to Lic. Alberto Oliver Martínez, Secretary to the Director General of the CNA, with attachment of report ensuing from visit to Rochéachi River (15 October 1999)
 20. *Oficio* no. B00.05.04.040 from Water Treatment and Quality Division, CNA, to Lic. Alberto Oliver Martínez, Secretary to the Director General of the CNA, reporting on certain inspections conducted in the El Frijolar, Huahuichi, and Rochéachi creeks ensuing from the citizen complaints filed concerning the impact of rock mining (8 February 1999)
 21. *Oficio* no. DG.003/RN/1590/99 from Complaints Branch of Profepa to Lic. Guillermo Guerrero Villalobos, Director General of CNA, reporting on the filing of new complaints on pollution of creeks in Rochéachi Ejido and requesting a report on the status of related previous complaints (5 October 1999)
 22. Memorandum from the Secretary of the Head Office of the CNA referring to the CNA Office in the State of Chihuahua a citizen complaint filed by Coalición Rural dated September 27 (attachment to memorandum) concerning pollution of creeks in Rochéachi Ejido (28 September 1999)
 23. Memorandum from Secretary of the Head Office of the CNA referring to the CNA Office in the State of Chihuahua a citizen complaint filed by Coalición Rural dated September 27 (attachment to memorandum) and requesting resolution of the citizen complaints filed with Profepa concerning pollution of creeks in Rochéachi Ejido (4 October 1999)
 24. Memorandum from the Secretary of the Head Office of the CNA referring to the CNA Office in the State of Chihuahua a newspaper article published in *El Universal* on 23 September 1999 titled "Depredan la Sierra Tarahumara" (Pillaging of the Sierra Tarahumara) (attachment to memorandum) (28 September 1999)

25. Citizen complaint filed by Agustín Bravo Gaxiola with CNA Office in the State of Chihuahua concerning pollution of creeks in Rochéachi Ejido (25 August 1999)
26. Modesto y Asociados, “Rochéachi Ejido, Mpio. de Guachochi, Chihuahua: Peritaje técnico en materia de impacto ambiental para el aprovechamiento de materiales pétreos en los arroyos el Frijolar, Guaguichi y Rochéachi” (Rochéachi Ejido, Municipality of Guachochi, Chihuahua: expert report on environmental impact of rock mining operations in El Frijolar, Guaguichi and Rochéachi Creeks) (March 1999)
27. Citizen complaint filed by Agustín Bravo Gaxiola et al. with Profepa concerning El Frijolar Creek (3 October 2000)
28. *Oficio* no. BOO.E.22.1.0535 from CNA to Profepa with attachment of result of an inspection in El Frijolar Creek (24 March 2000)
29. *Oficio* from Jesús Mandíaz Zubiato to Luís Remigio Sáenz Ortiz with attachment of field report of visit conducted in connection with the complaint mentioned in the previous document (San Alonso Creek) (2 June 2000)
30. Unknown author, “Informe de la situación que guarda la explotación de materiales petreos en los arroyos de Rochéachi, Guaguichi y el Frijolar, en el Ejido de Rochéachi, Mpio. De Guachochi, Estado de Chihuahua” (Report on the status of rock mining operations in the Rochéachi, Guaguichi and El Frijolar Creeks in the Rochéachi Ejido, Municipality of Guachochi, State of Chihuahua) (see document mentioned in no. 19) (undated)
31. Information document by CNA titled “Informe para el Expediente de Hechos sobre la petición SEM-00-006 (Tarahumara)” (Report for factual record on submission SEM-00-006 (Tarahumara)) (16 October 2003)
32. *Oficio* no. B22.Profepa.07.CA001414 from Profepa to Director of CNA Office in the State of Chihuahua with attachment of citizen complaint filed by Agustín Bravo Gaxiola concerning San Alonso Creek (31 March 2003)
33. Citizen complaint filed by Agustín Bravo Gaxiola et al. with Profepa concerning illegal activity in San Alonso Creek (15 March 2000)

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34. *Oficio* no. B22.Profepa.07.CA001412 from Profepa to Director of CNA Office in the State of Chihuahua with attachment of citizen complaint filed by Agustín Bravo Gaxiola concerning San Antonio Creek (31 March 2003)
 35. Citizen complaint filed by Agustín Bravo Gaxiola et al. with Profepa concerning illegal activity in San Antonio Creek (15 March 2000)
 36. *Oficio* from Jesus Mandiaz Zubiato to Luís Remigio Sáenz Ortiz with attachment of field report of visit conducted in regard to complaint (document no. 35) (2 June 2000)
 37. *Oficio* no. Profepa08/09/99 from Profepa to Director of CNA Office in the State of Chihuahua with attachment of citizen complaint filed by Agustín Bravo Gaxiola concerning Municipality of Bocoyna (6 September 1999)

1.2 *Response to Request for Additional Information of 20 January 2004*

38. *Oficio* no. UCAI/0556/04 from Semarnat International Affairs Coordinating Unit (UCAI) to the Submissions on Enforcement Matters Unit of the Commission for Environmental Cooperation requesting a response to the Request for Additional Information of 20 January 2004 (11 February 2004)
39. Coordination Agreement between the federal executive branch and the executive branch of the State of Chihuahua with the object of establishing foundations and guidelines for the drafting of specific agreements for the assumption by the state government and its municipal governments of the responsibilities of the Federation, the execution and operation of works, and the provision of public services in the area of environment, natural resources, and fisheries (October 1996)
40. Coordination Agreement with the object of implementing the environmental management capacity building program in the State of Chihuahua and its municipalities, signed by Semarnat, INE, and the Government of the State of Chihuahua (October 1996)

41. Coordination Agreement on forestry matters between Semarnat and the Government of the State of Chihuahua (April 1999)
 42. Coordination Agreement between Profepa and the Government of the State of Chihuahua with the object of laying the foundations for the coordination of their actions to protect and preserve forest resources within the state's territorial jurisdiction (March 2000)
 43. Minutes of the General Assembly of the Participatory Monitoring Committee of the Guajolotes Ejido, Municipality of Balleza, Chihuahua (25 March 2003)
 44. Minutes of the General Assembly of the Participatory Monitoring Committee with Silvicultores Unidos de Guachochi, A.C. (21 May 2003)
 45. Minutes of the General Assembly of the Participatory Monitoring Committee of Asociación Municipal de Propietarios Rurales de Guachochi, A.C. (1 June 2003)
 46. Draft Coordination Agreement between Profepa and the Government of the State of Chihuahua with the object of taking actions to protect and preserve forest resources (2004)
 47. *Oficio* no. UJ.08/2003/006 from the Office of Semarnat in the State of Chihuahua to the UCAI on the status of requests for information and citizen complaints made respectively by Teresa Guerrero and the Ejido President of Ciénega de Guacayvo Ejido, Chihuahua (4 February 2004)
- 1.3 *Response to Follow-up Information Request of 10 June 2004***
48. CONAFOR activity report for the month of May 2004 (May 2004)
 49. Information concerning CONAFOR investment programs (in 2002–2003) in Sierra Tarahumara municipalities (undated)
 50. Profepa report on actions to combat illegal logging in Mexican forests (2004)
 51. Profepa report on clandestine logging enforcement program (May 2004)

2. Information Gathered by the Secretariat

2.1 Governmental Information

2.1.1 Semarnat Documents

52. *1995–2000 Environment Program*
 53. *2001–2006 National Environment and Natural Resources Program*
 54. Environmental Promotion and Law Division (*Subsecretaría de Fomento y Normatividad Ambiental*). *National Forests and Water Campaign – Strategic Program 2002–2006*
 55. *Second Semarnat Activity Report for 1 September 2002 to 31 August 2002*
 56. *State Decentralization Program, agreement with Government of the State of Chihuahua (2002)*
 57. Decision re-categorizing as natural resource protection areas those territories contemplated in the Presidential Decree of 8 June 1949, published in the DOF on 3 August 1949 (7 November 2002)
 58. Natural Resource Use and Restoration Unit (*Unidad de Aprovechamiento y Restauración de Recursos Naturales*). *General Information on the State of Chihuahua (2003)*
 59. *Mexican Forest Fund (PowerPoint presentation in English) (2003)*
 60. Indigenous Peoples Directorate (*Dirección de Atención a Pueblos Indígenas*). *Indigenous Peoples Program (undated)*
- #### 2.1.2 Profepa Documents
61. *1995–1997 Triennial Report*
 62. *2001–2006 Environmental Law Enforcement Program*
 63. *1995–2000 Report*
 64. *2002 Annual Report*

2.1.3 *Other Government Documents*

65. Government of the State of Chihuahua. *State Development Plan 1999–2004*
66. National Indigenous Peoples' Institute (*Instituto Nacional Indigenista*). *General Organization Manual* (2002)
67. Office of the President of the Republic. *Second Annual Report on Implementation of National Development Plan* (2002)
68. *Environmental Tax Bill*
69. *Environmental Tax Act*
70. Political Constitution of the Free and Sovereign State of Chihuahua published in the Official Gazette of the State of Chihuahua, 17 June 1950
71. Coordination of Tax Matters with the Federation Act (*Ley de Coordinación en Materia de Derechos con la Federación*), published in the Official Gazette of the State of Chihuahua on 30 December 1981
72. Ejido Rights Registration and Land Titling Regulation to the Agrarian Act (*Reglamento de la Ley Agraria en materia de certification de derechos ejidales y titulación de solares*), published in the DOF on 6 January 1993
73. Decree revising and adding various provisions to the *Federal Criminal Code* and the *Federal Code of Criminal Procedure*, published in the DOF on 6 February 2002

2.2 *Reports by Nongovernmental Organizations*

74. Environmental Law Institute. *Aspectos Legales del Manejo Forestal en México* (Legal Aspects of Forest Management in Mexico) (research report) (1998)
75. Comisión de Solidaridad y Defensa a los Derechos Humanos, A.C. (Cosyddhac) and Texas Center for Policy Studies. *La industria forestal y los recursos naturales en la Sierra Madre de Chihuahua: impactos sociales, económicos y ecológicos* (1999) (original version of *The Forestry Industry in the State of Chihuahua: Economic, Ecological and Social Impacts Post-NAFTA*, May 2001)

76. Centro Mexicano de Derecho Ambiental. *Estudio sobre la política forestal y su marco jurídico. Repercusiones ambientales* (Environmental repercussions of forest policy and its legal framework) (2000)
77. Centro Mexicano de Derecho Ambiental (Trade and Environment Program) and Centro de Estudios del Sector Privado para el Desarrollo Sustentable (Consejo Coordinador Empresarial). *Deforestación en México: Causas económicas / Incidencias del comercio internacional* (Deforestation in Mexico: economic causes/international trade impacts) (2002)
78. José Luís B. Mota Villanueva. Document prepared for the Inter-American Development Bank. *Anexo Norma Oficial Mexicana de Emergencia NOM-EM-001-RECNAT-2001, que establece las especificaciones, procedimientos, lineamientos técnicos y de control para el aprovechamiento, transporte, almacenamiento y transformación que identifiquen el origen legal de las materias primas forestales* (Appendix: Mexican Official Emergency Standard NOM-EM-001-RECNAT-2001 establishing the specifications, procedures, and technical and control guidelines for use, transportation, storage, and processing identifying the legal origin of forest raw materials) (2002)

2.3 *Meetings and Interviews*

79. Minutes of meeting of CEC Legal Officer with members of Pino Gordo and Rochéachi ejidos, State of Chihuahua (16 October 2003, notes transcribed by Ana Córdova)
80. Minutes of meeting of CEC Legal Officer with governmental authorities in Chihuahua, Chihuahua (17 October 2003, notes transcribed by Ana Córdova)
81. Minutes of meeting of CEC Legal Officer with members of Ciénega de Guacayvo Ejido, State of Chihuahua (14 October 2003, notes transcribed by Ana Córdova)
82. Interview by CEC Legal Officer with Agustín Bravo Gaxiola in Chihuahua, Chihuahua (16 October 2003, notes transcribed by Ana Córdova)
83. Minutes of meeting of CEC Legal Officer with indigenous governmental officials in Cuiteco, Municipality of Urique (15 October 2003, notes transcribed by Ana Córdova)

2.4 *Miscellaneous Documents*

84. Ana Córdova y Vázquez, *Collaborative Natural Resource and Land-Use Planning in the Copper Canyon Region, Chihuahua, Mexico: Prerequisites, Incentives and Challenges*, master's thesis, Department of Natural Resources, Cornell University (February 1998)
85. *Legislación sobre Derechos Indígenas, Culturas Indígenas de la Sierra Tarahumara* (Legislation on indigenous rights and indigenous cultures of the *Sierra Tarahumara*). F.d.E.C. Programa Interinstitucional de Atención al Indígena, A.C. Chihuahua, México, Electronic Publishing, S.A. de C.V. (CD-ROM) (1999)
86. *Un taller para documentar una tala ilegal* (Workshop to document illegal logging). Colección Aprendiendo Juntos, vol. 11. Consultoría Técnica Comunitaria, A.C. (16–18 March 1999)
87. *Taller para dar seguimiento a las denuncias populares y a los problemas forestales del ejido* (Follow-up workshop on citizen complaints and forestry problems of the ejido). Colección Aprendiendo Juntos, vol. 12. Consultoría Técnica Comunitaria, A.C. (5–6 October 1999)
88. Symposium organized by the United Nations Environment Program and Profepa. *Mexico's declaration on the symposium "Environmental Law and Sustainable Development: Access to Environmental Justice in Latin America"* (28 January 2000)
89. Rodolfo Stavenhagen, United Nations Special rapporteur on the situation of human rights and fundamental freedoms of indigenous people. *Report on the situation of indigenous peoples in Mexico* (1 December 2003)
90. Request for information from Juan Israel Corral Leyva to Semarnat (through the Public Information System, folio 0001600036703) requesting the minutes of meetings between the ejidos of the State of Chihuahua and various authorities (25 August 2003)
91. *Oficio* no. 588*073/03 from Ministry of Rural Development, Forest Development Directorate, to Cosyddhac, stating that the information requested by the latter is not within the purview of the authority from which it was requested (8 October 2003)

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92. *Oficio* no. B22Profepa.05–003056/2003 from Profepa, Chihuahua Office, to Cosyddhac, regarding payment of fines and repair of harm in connection with citizen complaints filed (31 October 2003)
 93. Dr. Ana Esther Ceceña, *El Reconocimiento de los derechos y cultura indígenas y la incompetencia del sistema político mexicano* (Recognition of indigenous peoples' rights and culture and the lack of jurisdiction of the Mexican political system, (undated)
 94. *San Andrés Accords* (16 January 1996)
 95. *Pronunciamiento Conjunto que el Gobierno Federal y el EZLN enviarán a las Instancias de Debate y Decisión Nacional* (Joint statement to be sent by the federal government and the EZLN to the national debate and decision-making bodies) (16 January 1996)
 96. *Propuestas Conjuntas que el Gobierno Federal y el EZLN se comprometen a enviar a las Instancias de Debate y Decisión Nacional, correspondientes al Punto 1.4 de las Reglas de Procedimiento* (Joint proposals which the federal government and the EZLN undertake to refer to the national debate and decision-making bodies, corresponding to Point 1.4 of the Rules of Procedure) (18 January 1996)
 97. Instituto Nacional Indigenista. *Derechos de los Pueblos y Comunidades Indígenas en la Constitución Política de los Estados Unidos Mexicanos* (Rights of indigenous peoples and communities in the Political Constitution of the United Mexican States) (Presidential Decree published in the DOF on 14 August 2001)
 98. Comparative chart of the Cocopa initiative and the draft Indigenous Peoples Law (*Dictamen de Ley Indígena*). Reforms to the Indigenous Rights and Culture Act initiative (undated)
 99. Cosyddhac. *Amenazas a indígenas y defensores de derechos colectivos y ambientales en la Sierra Tarahumara* (Threats to indigenous peoples and community and environmental rights advocates in the Sierra Tarahumara), to Amnesty International (undated)

2.5 Newspaper articles

100. Blanche Petrich, "En la Tarahumara, muerte y silencio" (Death and silence in Tarahumara), *La Jornada* (7 July 1996)

101. Blanche Petrich, "Bosques sobre ruedas en la Tarahumara" (Forests on wheels in Tarahumara), *La Jornada* (8 July 1996)
102. Blanche Petrich, "Racismo soterrado en la justicia chabochi" (Hidden racism in Chabochi justice), *La Jornada* (9 July 1996)
103. Blanche Petrich, "Baborigame: 26 años de crímenes sin castigo" (Baborigame: 26 years of crimes without punishment), *La Jornada* (23 September 1998)
104. Blanche Petrich, "La narcosiembra llena de troje de maíz y frijol, dicen tepehuanes" (Drug cultivation fills maize and bean granaries), *La Jornada* (24 September 1998)
105. Blanche Petrich, "Narcotráfico, secreto a voces en Batopilas" (Drug trafficking, an open secret in Batopilas), *La Jornada* (26 September 1998)
106. Blanche Petrich, "En Chihuahua, primer encuentro entre el rarámuri y el tzetal" (In Chihuahua, first encounter between Rarámuris and Tzetals), *La Jornada* (19 March 1999)
107. José Gil Olmos, "Resultados preliminares de la consulta, la medianoche de hoy" (Preliminary consultation results tonight at midnight), *La Jornada* (21 March 1999)
108. Blanche Petrich, "Raromaris de San José del Pinal apoyan tres puntos de consulta" (Raromaris of San José del Pinal endorse three consultation points), *La Jornada* (21 March 1999)
109. José Gil Olmos y Alma E. Muñoz, "Si el pueblo acepta, el gobierno tiene que aceptar: Alexander" (If the public agrees, then so should the government: Alexander), *La Jornada* (21 March 1999)
110. Various correspondents, "Judiciales de Durango agreden a un enviado del EZLN" (Durango judicial police assault EZLN envoy), *La Jornada* (21 March 1999)
111. Roberto Garduño and Ángeles Cruz, "Siguen promoviendo la consulta en el DF" (Consultation in Federal District still being promoted), *La Jornada* (21 March 1999)

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112. Comandancia General del Ejercito Zapatista de Liberación Nacional, Press release from Clandestine Indigenous Revolutionary Committee, *La Jornada* (March 1999)
 113. Randall Gingrich, "Logging Dispute Sparks Discord on Tarahumara Ejido," *Borderline Updater* (29 April 1999)
 114. Blanche Petrich, "Justicia en Tarahumara" (Justice in Tarahumara), *La Jornada* (9 December 1999)
 115. Kent Paterson, "Residents blame logging for environmental changes / Timber Harvesting in the Sierra Madre: Local and Regional Impacts," *Borderline 64*, vol. 8, no. 2 (February 2000)
 116. Elena Poniatowska, "Una gran venganza: Rodolfo Montiel encarcelado" (Revenge: Rodolfo Montiel jailed), *La Jornada* (7 May 2000)
 117. Blanche Petrich, "El modelo neoliberal, ajeno al interés de los pueblos indios" (The neoliberal model: counter to indigenous peoples' interests), *La Jornada* (4 June 2000)
 118. Blanche Petrich, "Extinguen santuario forestal" (Destruction of forest sanctuary), *La Jornada* (13 June 2000)
 119. Blanche Petrich, "La desertificación amenaza la Tarahumara, denuncia" (Desertification threatens the Tarahumara: complaint), *La Jornada* (13 June 2000)
 120. Blanche Petrich, "Autoridades indígenas buscan fortalecer la política rarámuri" (Indigenous authorities seek to strengthen Rarámuri policy), *La Jornada* (13 June 2000)
 121. Jesús Ramírez Cuevas, "¿Por qué está reprobada la reforma?" (Why is the reform rejected?), *La Jornada* (13 May 2000)
 122. Gustavo Alanís, "Tala clandestina y deforestación" (Clandestine logging and deforestation), *Reforma* (3 August 2003)
 123. Gustavo Alanís, "Tala clandestina y deforestación" (Clandestine logging and deforestation), *Reforma* (17 August 2003)

124. Angélica Enciso, "Impuesto a actividades que dañan el ambiente, propone el Ejecutivo" (Executive proposes tax on environmentally damaging activities), *La Jornada* (4 December 2003)
125. Martha Eva Loera, "Especialista en derecho fiscal del CUCEA afirma que la propuesta de ley para cobrar impuestos ambientales es contradictoria" (CUCEA tax law specialist: environmental tax collection bill is contradictory), *Gaceta Universitaria de la Universidad de Guadalajara* (undated)
126. Ginger Thompson, "Where Butterflies Rest, Damage Runs Rampant," *New York Times* (2 June 2004)
127. "Prometen el equilibrio en bosques" (Forest stability promised), *Reforma* (22 July 2004)

2.6 Videos

128. University of California Extension Center for Media and Independent Learning. *Voices of the Sierra Tarahumara* (undated)
129. *Mis manos por el Rio – Rochéachi*, video documenting community awareness workshop on the importance of the river (undated)
130. Video documenting forest monitoring by residents of Ciénega de Guacayvo Ejido (undated)

APPENDIX 8

Article 27 of the Political Constitution of the United Mexican States



Article 27. Ownership of the lands and waters within the boundaries of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.

Private property shall not be expropriated except for reasons of public utility and subject to payment of an indemnity.

The Nation shall at all times have the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate for the benefit of society the utilization of natural features which are susceptible of appropriation, in order to steward their conservation, ensure a more equitable distribution of public wealth, and achieve the balanced development of the country and the improvement of living conditions for the rural and urban population. Accordingly, the necessary measures shall be taken to order human settlements and establish provisions, uses, reserves and assignments of lands, waters, and forests sufficient to carry out public works and to plan and regulate the foundation, conservation, improvement, and growth of centers of population; to preserve and restore ecological stability; to divide up large landholdings; to provide, under provisions of regulatory law, for the collective organization and operation of *ejidos* and communities; for the development of rural small landholdings; for the promotion of agriculture, stockraising, forestry, and other rural economic activities, and to avoid destruction of natural features and damage that property may incur to the detriment of society.

In the Nation is vested the direct ownership of all natural resources of the continental shelf and the submarine shelf of the islands; of all minerals or substances which in veins, ledges, masses or ore pockets form deposits of a nature distinct from the components of the earth itself, such as the minerals from which industrial metals and metalloids are extracted; deposits of precious stones, rock-salt and the salt deposits formed by sea water; products derived from the decomposition of rocks, when subterranean works are required for their extraction; mineral or organic deposits of materials susceptible of utilization as fertilizers; solid mineral fuels; petroleum and all solid, liquid, and gaseous hydrocarbons; and the space above the national territory to the extent and within the terms fixed by international law.

In the Nation is likewise vested the ownership of the waters of the territorial seas, within the limits and terms fixed by international law; inland marine waters; those of lagoons and estuaries permanently or

intermittently connected with the sea; those of natural, inland lakes which are directly connected with streams having a constant flow; those of rivers and their direct or indirect tributaries from the point in their course where the first permanent, intermittent, or torrential waters begin to their mouth in the sea or a lake, lagoon, or estuary forming a part of the public domain; those of constant or intermittent streams and their direct or indirect tributaries, wherever the course of the stream, throughout the whole or a part of its length, serves as a boundary of the national territory or of two federated entities, or where it flows from one federated entity to another or crosses the boundary line of the Republic; those of lakes, lagoons, or estuaries whose basins, zones, or shores are crossed by the boundary lines of two or more entities or by the boundary line of the Republic and a neighboring country or where the shoreline serves as the boundary between two federated entities or of the Republic and a neighboring country; those of springs that issue from beaches, maritime areas, the beds, basins, or shores of lakes, lagoons, or estuaries in the public domain; and waters extracted from mines and the channels, beds, or shores of inland lakes and streams in an area established by law. Underground waters may be brought to the surface by artificial works and utilized by the surface owner, but if the public interest so requires or use by others is affected, the Federal Executive may regulate their extraction and utilization, and even establish prohibited areas, the same as may be done with other waters in the public domain. Any other waters not included in the foregoing enumeration shall be considered an integral part of the property through which they flow or in which their deposits are found, but if they are located in two or more properties, their utilization shall be deemed a matter of public utility and shall be subject to laws enacted by the States.

In those cases to which the two preceding sub-clauses refer, ownership by the Nation is inalienable and imprescriptible, and the exploitation, use, or appropriation of the resources concerned, by private persons or by companies organized according to Mexican laws, may not be undertaken except through concessions granted by the Federal Executive, in accordance with rules and conditions established by law. The legal rules relating to the working or exploitation of the minerals and substances referred to in the fourth sub-clause shall govern the execution and verification of such operations carried out or to be carried out after they go into effect, regardless of the date of granting of the concessions, and their nonobservance will be grounds for cancellation thereof. The Federal Government has the power to establish national reserves and to abolish them. The declarations pertaining thereto shall be made by the Executive in those cases and conditions prescribed by law. In the case of petroleum and solid, liquid, or gaseous hydrocarbons,

no concessions or contracts will be granted nor may those that have been granted subsist, and the Nation shall carry out the exploitation of these products in accordance with the provisions indicated in the respective regulatory law. It is exclusively a function of the Nation to generate, conduct, transform, distribute, and supply electric power for the purposes of provision of public service. No concessions for this purpose will be granted to private persons and the Nation will make use of the property and natural resources which are required for these ends.

Also vested in the Nation is the right to use nuclear fuels for generation of nuclear power and for regulation of its applications for other purposes. The use of nuclear energy is permitted only for peaceful ends.

Within an exclusive economic zone situated outside the territorial seas and adjacent to them, the Nation exercises sovereignty and the spheres of jurisdiction determined by the laws of Congress. The exclusive economic zone shall extend to two hundred nautical miles as measured from the baseline for measurement of the territorial seas. In those cases where this extent leads to overlap with the exclusive economic zones of other States, the delimitation of the respective zones shall be determined, as necessary, by means of agreements with those States.

The legal capacity to acquire ownership of lands and waters of the Nation shall be governed by the following provisions:

I. Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership of lands, waters, and their appurtenances or to obtain concessions for the exploitation of mines or waters. The State may grant the same right to foreigners, provided they agree before the Ministry of Foreign Relations to consider themselves as nationals in respect of such property, and bind themselves not to invoke the protection of their governments in matters relating thereto, under penalty, in case of noncompliance with such agreement, of forfeiture to the Nation of any property thereby acquired. Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometers along the boundaries and of fifty kilometers along the shores of the country.

The State, in accordance with its internal public interests and the principles of reciprocity, may, at the discretion of the Ministry of Foreign Relations, authorize foreign States to acquire, at the permanent places of residence of the Federal Powers, private ownership of the real property necessary for the direct service of their embassies or legations.

II. Religious associations organized under the provisions of Article 130 and its regulatory law shall have the legal capacity to acquire, hold, or administer, exclusively, the property indispensable to their purpose, with the requirements and limitations established by regulatory law.

III. Public or private charitable institutions for the rendering of assistance to the needy, for scientific research, dissemination of knowledge, mutual aid to members, or for any other lawful purpose, may not acquire more real property than that which is indispensable to their purpose and immediately or directly devoted thereto, subject to the provisions of regulatory law.

IV. Commercial stock companies may be the owners of rural properties, but only in the amount necessary to the fulfillment of their purpose.

In no event may companies of this kind own land devoted to agricultural, stockraising, or forestry activities in amounts greater than the equivalent of twenty-five times the amount set out in sub-clause XV of this article. The regulatory law shall govern the capital structure and minimum number of shareholders of such companies, for the purpose of guaranteeing that such lands owned by the company do not exceed the limits for small landholdings in respect of each shareholder. In such case, any individual shareholding corresponding to rural lands shall be additive for purposes of computation. Furthermore, the law shall set out the conditions for foreign interests in such companies.

The law itself shall establish the means of registration and control necessary for the enforcement of the provisions of this sub-clause.

V. Banks duly authorized to operate in accordance with the laws on credit institutions may hold mortgages on urban and rural property in conformity with the provisions of such laws but they may not own or administer more real property than is absolutely necessary for their direct purpose.

VI. The States and the Federal District, as well as the municipalities of the whole Republic, shall have full legal capacity to acquire and hold all the real property necessary to render public services.

The laws of the Federation and the States, within their respective jurisdictions, shall determine in what cases the occupation of private property shall be considered to be of public utility, and in accordance with such laws, the administrative authorities shall issue the respective declaration. The amount fixed as compensation for the expropriated

property shall be based on the value recorded in the land registry or tax offices, whether this value has been declared by the owner or tacitly accepted by him by virtue of having paid taxes on that basis. The increased or decreased value of such private property due to improvements or depreciation occurred subsequent to such assessment is the only portion of the value that shall be subject to expert opinion and judicial settlement. This same procedure shall be followed in the case of objects whose value is not recorded in the tax offices.

The exercise of actions reserved to the Nation by virtue of the provisions of this article shall be made effective by judicial proceedings, but during such proceedings and by order of the proper courts, which must render a decision within a maximum of one month, the administrative authorities shall proceed without delay to occupy, administer, auction, or sell the lands and waters in question and all their appurtenances, and in no case may the acts of such authorities be set aside until a final decision has been rendered.

VII. The legal personhood of *ejido* and community centers of population is recognized, and their ownership of land is protected for purposes of both human settlement and productive activities.

The law shall protect the integrity of the lands of indigenous groups.

The law, considering respect for and strengthening of the community life of *ejidos* and communities, shall protect the land for human settlement and shall regulate the use of common lands, forests, and waters as well as the taking of development actions necessary to raise the living standards of their inhabitants.

The law, with respect for the will of *ejido* and community members to adopt the conditions most suitable to them in the use of their productive resources, shall regulate the exercise of the rights of community members over the land and of each *ejido* member over his or her own lot. Likewise, it shall establish the procedures whereby *ejido* and community members may form associations with one another, with the State, or with third parties, and grant the use of their lands and, concerning *ejido* members, convey their land rights between the individual members of the center of population; in addition, it shall establish the requirements and procedures whereby the *ejido* assembly may grant ownership of their lots to *ejido* members. In the case of transfer of lots, the right of preference prescribed by law shall be respected.

Within one center of population, no *ejido* member may be the owner of more than 5 % of the total *ejido* lands. In all cases the ownership of lands by one *ejido* member shall adhere to the limits set out in sub-clause XV.

The general assembly is the supreme body of an *ejido* or community center of population, with the organization and functions prescribed by law. The *ejido* or community council, elected democratically under provisions of law, is the representative body of the center of population and is responsible for carrying out the resolutions of the assembly.

The restitution of lands, forests, and waters to centers of population shall take place as prescribed by the regulatory law.

VIII. The following are declared null and void:

- a) all transfers of the lands, waters, and forests of villages, *rancherías*, groups, or communities made by local officials (*jefes políticos*), state governors, or other local authorities in violation of the provisions of the Law of 25 June 1856 or other related laws and rulings;
- b) all concessions, deals or sales of lands, waters, and forests made by the Ministry of Development, the Ministry of Finance, or any other federal authority from 1 December 1876 to date, which have given rise to the encroachment upon or illegal occupation of *ejidos*, lands allotted in common, or lands of any other kind belonging to villages, *rancherías*, groups or communities, and centers of population;
- c) all survey or demarcation-of-boundary proceedings, transactions, transfers, or auction sales effected during the period of time referred to in the preceding sub-clause, by companies, judges, or other federal or state authorities which have given rise to the encroachment upon or illegal occupation of the lands, waters, or forests of *ejidos*, lands allotted in common, or other holdings belonging to centers of population;

The sole exception to the aforesaid nullification shall be lands to which title has been granted in allotments made in conformity with the Law of 25 June 1856 held by persons in their own name for more than ten years and having an area of not more than fifty hectares.

IX. Divisions or allotments of land among the inhabitants of a given center of population which, although apparently legitimate, are not so due to a mistake or defect, may be annulled at the request of three-fourths of the residents holding one-fourth of the land so divided, or one-fourth of such residents holding three-fourths of the lands.

X. (Repealed).

XI. (Repealed).

XII. (Repealed).

XIII. (Repealed).

XIV. (Repealed).

XV. Large landholdings (*latifundios*) are prohibited in the United Mexican States.

Small agricultural landholdings are those which do not exceed one hundred hectares per individual of first-class humid or irrigated land or the equivalent in other classes of land.

For the purposes of this equivalence, one hectare of irrigated land shall be computed as two hectares of seasonal land, as four of good quality pasturage, and as eight of woodland, scrub land (*monte*) or arid pasturage.

Also to be considered as small landholdings are areas not exceeding one hundred fifty hectares per individual where the land is used for growing cotton, if irrigated; or three hundred hectares per individual, where used for growing bananas, sugar cane, coffee, henequen, rubber, coconut palm, wine grapes, olives, quinine, vanilla, cacao, agave, nopal, or fruit trees.

To be considered small landholdings for stockraising are lands not exceeding the area per individual necessary to maintain up to five hundred head of cattle (*ganado mayor*) or their equivalent in smaller animals (*ganado menor*, sheep, goats, pigs) under provisions of law, in accordance with the forage capacity of the lands.

Wherever the quality of the land is improved due to irrigation or drainage works or any other works executed by the owners or occupants of a small landholding, such holding shall continue to be considered a

small landholding even where, by virtue of the improvement achieved, the limits set out in this sub-clause are exceeded, provided that the requirements fixed by law are met.

Where, within one small landholding for stockraising, improvements are made to lands that are dedicated to agricultural uses, the area utilized for such purpose shall not exceed those limits contemplated in the second or third paragraphs of this sub-clause, as applicable, that relate to the quality of such lands before the improvement.

XVI. (Repealed).

XVII. The Congress of the Union and the legislatures of the states, in their respective jurisdictions, shall pass laws establishing the procedures for the division and transfer of property that exceeds the limits set out in sub-clauses IV and XV of this article.

The excess shall be divided and transferred by the owner within a period of one year from the receipt of the corresponding notice. Where the excess has not been transferred by the the end of said period, it shall be sold at public auction. On an equal basis, the right of preference prescribed by the regulatory law shall be respected.

Local laws shall structure the family estate, determining the property of which it is composed, on the basis that it shall be inalienable and not subject to attachment or encumbrance of any kind.

XVIII. All contracts and concessions made by former governments since the year 1876 that have resulted in the monopolization of lands, waters, and natural resources of the Nation by a single person or company are declared subject to review, and the Executive of the Union is empowered to declare them null and void where they entail serious harm to the public interest.

XIX. On the basis of this Constitution, the State shall have at its disposal the means for the expedient and honest delivery of agrarian justice, for the purpose of guaranteeing legal recognition of the tenancy of *ejido* and communal lands and small landholdings, and it shall support the legal advising of peasants (*campesinos*).

All matters relating to the boundaries of *ejido* and communal lands, regardless of origin, that are pending or arise between two or more centers of population, as well as those matters relating to the land tenancy of *ejidos* and communities, are under federal jurisdiction. For such pur-

poses and, in general, for the administration of agrarian justice, the law shall institute tribunals enjoying autonomy and full jurisdiction, made up of judges nominated by the Federal Executive and confirmed by the Chamber of Senators, or, during a recess of the Senate, by the Standing Commission.

The law shall establish an agrarian law enforcement body.

XX. The State shall foster the conditions for comprehensive rural development, with the object of creating employment and guaranteeing the well-being of the peasant population and its participation and inclusion in national development, and shall promote agricultural and forestry activity for the optimal use of land, with works of infrastructure, inputs, credits, and training and technical assistance services. Likewise, it shall enact regulatory legislation for the planning and organization of agricultural production and its industrialization and commercialization, considering these to be of public interest.

APPENDIX 9

Photos







Photo 1: El Divisadero, Municipality of Bocoyna, Chihuahua
(14 October 2003)



Photo 2: Lot adjacent to Ciénega de Guacayvo Ejido that was the subject of a complaint included in the submission (14 October 2003)



Photo 3: Lot adjacent to Ciénega de Guacayvo Ejido that was the subject of a complaint included in the submission (14 October 2003)



Photo 4: Product of illegal logging on a lot in the ejido of Ciénega de Guacayvo since 1999 (14 October 2003)

ATTACHMENT 1

**Council Resolution 05-09,
dated 21 December 2005**



Distribution: General
C/C.01/05/RES/09/Final
ORIGINAL: English

21 December 2005

COUNCIL RESOLUTION 05-09

Instruction to the Secretariat of the Commission for Environmental Cooperation to make public the Factual Record for Submission SEM-00-006 (Tarahumara)

THE COUNCIL:

SUPPORTIVE of the process provided for in Article 14 and 15 of the *North American Agreement on Environmental Cooperation* (NAAEC) regarding submissions on enforcement matters and the preparation of factual records;

HAVING RECEIVED the final factual record for the Submission SEM-00-006;

NOTING that pursuant to Article 15(7) of the NAAEC, the Council is called upon to decide whether to make the factual record publicly available; and

AFFIRMING its commitment to a timely and transparent process;

HEREBY DECIDES:

TO MAKE PUBLIC and post on the registry the final factual record for Submission SEM-00-006 and;

TO ATTACH to the final factual record comments provided by the Parties to the Secretariat on the draft factual record.

APPROVED BY THE COUNCIL:

Judith E. Ayres
Government of the United States of America

José Manuel Bulás Montoro
Government of the United Mexican States

David McGovern
Government of Canada

ATTACHMENT 2

Comments of United States







**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**
WASHINGTON, D.C. 20460

OFFICE OF
INTERNATIONAL AFFAIRS

Mr. William Kennedy
Executive Director
Secretariat of the Commission for Environmental Cooperation
393, rue St-Jacques west, bureau 200
Montreal QC H2T 1N9

Re: Tarahumara Draft Factual Record

Dear Mr. Kennedy,

Thank you for providing the United States with a copy of the draft factual record for Submission SEM-00-006 (Tarahumara). The United States strongly supports the public submissions process provided for under Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC) and welcomes the opportunity to review and comment on the Tarahumara draft factual record.

Although the term "factual record" is not defined in the NAAEC nor the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* ("Guidelines"), both of these sources provide guidance regarding the purpose of the factual record and the type of information it should include. A factual record should provide the public with an impartial presentation of the relevant facts but should not contain conclusions as to whether a Party is, in fact, effectively enforcing its environmental law. A factual record should provide the public with the information they need to draw their own conclusions regarding the effectiveness of the enforcement by a Party of its environmental law. It is with this backdrop that the United States provides its comments to the Secretariat on the Tarahumara draft factual record attached hereto.

The United States recognizes the substantial effort it took to prepare the Tarahumara draft factual record and greatly appreciates the Secretariat's effort in this regard.

Should you have any questions regarding the United States' comments, please do not hesitate to contact Nadtya Ruiz (202-564-1391) or Jocelyn Adkins (202-564-5424).

Sincerely,

Judith E. Ayres
Assistant Administrator

Attachment

UNITED STATES' COMMENTS ON THE TARAHUMARA DRAFT FACTUAL RECORD

Sources of Information

In several places, the draft factual record ("DFR") includes information without identifying the source of the information. To the extent possible, the factual record ("FR") should identify the source of the information it contains. In the event the Secretariat is unable to identify the source of information, the Secretariat should seriously consider whether the information should be included.

Scope of the Factual Record

Section V of the Secretariat's Article 15(1) Notification to Council that Development of a Factual Record is Warranted ("Notification") includes the Secretariat's recommendation that a factual record be prepared on the Tarahumara Submission regarding: (1) assertions in the Submission that previously warranted a response from Mexico, concerning Mexico's alleged failure to effectively enforce LGEEPA [*General Law on Ecological Balance and Environmental Protection*] Articles 169, 189, 190-193, and 202, as well as CPF [*Federal Penal Code*] Articles 416, 418, and 419; and (2) the assertions in the Submission concerning Mexico's alleged failure to effectively enforce its environmental law with respect to the citizen complaint procedure and the prosecution of probable environmental crimes, in the cases presented in the Submission (Notification, p. 20).

When the Council, via Council Resolution 03-04, instructed the Secretariat to prepare a FR on the Tarahumara Submission, it did so with the understanding that the Secretariat would prepare a FR consistent with its recommendation, as detailed in Section V of the Notification.

Though most of the information presented in the DFR is within the parameters of the scope authorized by the Council, the document contains some information which falls outside the scope. To the extent the DFR includes such information, it should be revised so as to remove this information. For example, Section 7 includes a significant amount of information which falls outside the authorized scope of the FR. It indicates that it is intended to provide "background information relevant to an understanding of the information presented . . ." and includes a broad and lengthy discussion of natural resource management and indigenous rights in Mexico. It then proceeds to discuss federal and state matters including a detailed discussion of Mexico's Constitution. Though the discussion provides a great deal of interesting information on the subject

of indigenous rights in Mexico, this information is beyond the authorized scope of the FR in that it relates to matters not addressed in the Submission, Mexico's Response, nor the Secretariat's Notification.

It is important to note that while the Submission included a broad assertion that Mexico's failure to effectively enforce its environmental law amounted to a denial of environmental justice with respect to certain identified indigenous peoples and communities in the Sierra Tarahumara, the Submitters specifically asserted that it was Mexico's alleged failure to effectively enforce a series of specific provisions, identified in the Submission, that gave rise to the broader allegation. This being the case, and to be consistent with the Secretariat's Notification, the FR should contain facts relevant to Mexico's alleged failure to effectively enforce the legal provisions identified in the Submission. Given that a substantial portion of Section 7 presents information outside the identified scope of the FR, the Section should be removed or substantially revised so as to include only that information relevant to the assertions at issue.

Other examples of the DFR including information falling outside the scope of the FR that need to be addressed consistent with the United States' comments include the following:

- Executive summary, page 2, Paragraph 1- discussion of the rights of indigenous peoples under the Mexican federal Constitution, the state of Chihuahua's Constitution and the UN Report on the situation of human rights and fundamental freedoms in 2003.
- Section 7.1.1.1- Federal Constitutional Provisions related to indigenous rights.
- Section 7.1.1.2- Federal Statutory Provisions- information about the Agrarian Act, and the LGDFS.
- Section 7.1.2- Information regarding Chihuahua State Constitution
- Section 7.1.3- United Nations Report on the Situation of Indigenous Peoples in Mexico.

Conclusive/Speculative/Interpretive Statements

Given that a FR is intended to consist of a presentation of the relevant facts related to whether a Party is failing to effectively enforce its environmental law, the United States has concerns with certain text in the DFR that includes overly conclusive, speculative, and/or interpretive

statements without a clear factual foundation. If for example, a thought or conclusion was articulated by the Mexican Government, the Submitter, or some other source, this should be clearly indicated. If this is not the case, statements in this regard should be modified or removed so as to avoid presenting inappropriate conclusions or overly speculative commentary. For example, on page 51 of the DFR, in Section 9.1, the DFR states, “[f]rom a cultural perspective, linguistic differences hamper communication between the indigenous communities and government authorities and affect the ability of indigenous communities to access the citizen complaint procedure and to participate in government natural resource programs.” A source for this statement is not cited nor is any factual information provided to substantiate the statement. If this statement represents the view of the Government of Mexico or some other source, this should be noted. If it does not, the statement should be removed or modified. A FR is not intended to include conclusions (or speculations/interpretations) by the Secretariat regarding whether a Party is failing to effectively enforce its environmental law and, therefore, statements of this kind should be removed or substantially revised.

Another example of an overly conclusive statement in the DFR can be found on page 52 of the DFR, under Section 9.1. The DFR states, “[e]conomic and social factors such as poverty and lack of education also affect relations between government authorities and aboriginal communities and have an impact on the role of citizen complaints as tools for environmental justice.” Again, it is unclear whether this statement represents the view of the Secretariat and to what extent it is supported by the facts. If it constitutes an overly broad conclusion by the Secretariat, the statement should be removed or substantially revised. As previously expressed, a FR is not intended to present conclusions regarding whether a Party is failing to effectively enforce its environmental law, rather it is supposed to provide the relevant facts so that the reader may draw his own conclusions regarding the enforcement matters at issue.

For the reasons cited immediately above, the United States also has concerns regarding the following text:

- Section 9.1, page 49, second paragraph, second sentence: “The need to travel long distances to verify the facts relating to a complaint *hinders* the ability of Profepa staff to act within the time frame prescribed by the LGEEPA, and *affects* the effectiveness of citizen complaints as an instrument of environmental protection (since the authorities arrive after the illegal logging or extraction activities have occurred) and Profepa’s ability to collect the information necessary to support laying criminal charges” (emphasis added).

- Section 9.2, page 54, last paragraph, first sentence: “Another challenge *facing* the effective enforcement of the federal legal framework for citizen complaints and complaints of criminal offenses...” (emphasis added).

Appropriate Time Frame for Relevant Facts

The United States notes that the DFR includes a substantial amount of information related to activities and events occurring after the date on which the submission was filed with the Secretariat (May 2000). Though the U.S. is not commenting on this subject at this time, we note that the issue of what constitutes the appropriate time frame for included information in a FR is one that requires careful consideration and is a subject on which the United States might comment in the future.

Revisions to Draft Factual Record

The United States requests that a redline/strikeout copy of the DFR accompany the copy of the “final” Tarahumara factual record the Secretariat provides to the United States.

ATTACHMENT 3

Comments of Mexico







SECRETARÍA DE MEDIO AMBIENTE
Y RECURSOS NATURALES

**INTERNATIONAL AFFAIRS
COORDINATION UNIT**

UCAI/2010/05

Mexico, D.F., 20 May 2005

**MR. WILLIAM V. KENNEDY
EXECUTIVE DIRECTOR
COMMISSION FOR ENVIRONMENTAL COOPERATION
OF NORTH AMERICA**

In response to your 6 April letter, and pursuant to Article 15(5) of the North American Agreement on Environmental Cooperation (NAAEC), I hereby present the comments of this Secretariat's General Legal Coordination Office regarding the draft factual record on submission SEM-00-006/Tarahumara:

1. The Council determined that the development of a factual record was warranted for submission SEM-00-006/Tarahumara, with respect to the documentation of the process in which the environmental authority determined whether the facts in question of which it had knowledge were probable environmental crimes, and the rulings by which it determined whether to report such facts to the federal public prosecutor (*Ministerio Público Federal*), in accordance with Articles 169 and 202 of the General Law of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*—LGEEPA).

Environmental laws, and not the violation of human rights, are subject to citizen submissions in the context of Articles 14 and 15 of the NAAEC, and therefore we believe that the draft factual record loses sight of and exceeds the objective of the citizen submission by introducing the report of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, as well as points 7, 7.1, 7.1.1, 7.1.1.2, 7.1.2 and 7.1.3 on the rights of indigenous peoples, which are non-environmental topics under Article 45 (2) of the NAAEC.

2. Following from point 1 above, we find that to point out agrarian considerations and matters set forth in Article 2 of the Political Constitution of the United Mexican States exceeds the objectives of the factual record.

3. On the other hand, we find judgments throughout the text of the draft factual record that should not be expressed, as the sole purpose of a factual record is to report facts and not state opinions of any kind. We believe that the Secretariat assumes additional conditions not relating to the enforcement of Mexico's environmental laws. Some examples of this may be found on the following pages:
 - Page 7 of the draft says, "From a geographic perspective, enforcement **is affected** by the absence of Profepa and CNA offices ... Differing conceptions regarding the value of forests ... **affect** the ability to reach consensus on what is effective law enforcement ... Economic and social factors **limit** the ability of indigenous communities to develop, adopt, implement and enforce local rules on forest management ..."
 - Page 52 states, "From a cultural perspective, linguistic differences hamper communication between indigenous communities and government authorities..."
 - Appendix VI includes notes, problems and comments on the Party's response, which are not objective and which contain elements not suitable for a factual record. To cite an example, although the party's response states that administrative penalties were imposed but no criminal complaint was filed with the public prosecutor because the facts did not constitute a criminal offense, we find in section *I.13*, that the Secretariat asserts that the facts may constitute a crime and the reasons for the public prosecutor to not be involved are not explained. While this is a fact of law, it does not have criminal consequences. This applies to all of Appendix VI.
4. Lastly, it is important to note that the time period referenced by the facts stated in the record should not exceed the time period in which the facts referenced in the citizen submission in question occurred.

In accordance with the provisions of Article 15 (6) of the NAAEC, we hereby request that the amended draft factual record be presented, reflecting the comments forwarded by the NAAEC Parties.

Best regards.

Yours truly,
GENERAL DIRECTOR, INTERNATIONAL COOPERATION

MA. TERESA BANDALA MEDINA

Substituting for the Head of the International Affairs
Coordination Unit, under Article 154 of the Internal
Regulations of the Secretariat of the Environment and
Natural Resources.

CC: José Manuel Bulás Montoro. Head of the International Affairs Coordination Unit.

JMMA*lgg.

