

Greenpeace México, A.C. - SEM-09-001 (Maíz transgénico en Chihuahua)

Questions:

| | Yes | No | I don't know |
|--|-----|----------------------|--------------|
| Did the Citizen Submission procedure seem to be useful? | X | | |
| Were you satisfied with the CEC's handling of your petition? | | X | |
| Did the CEC's resolution of your petition seem technically and legally appropriate? | | X | |
| Did the CEC's resolution seem just? | | X | |
| Did the CEC's response time seem appropriate? | | X | |
| How much time did the procedure take (in months)? | | 23 months | |
| How much money did you or your organization invest in preparing and following up your petition (in C\$, Mx pesos, US\$)? | | Indeterminate | |

1. When and how did you learn about the citizen submission process?

We learned of it when the first complaint was submitted against the Mexican government concerning the construction of a pier in Cozumel, Quintana Roo.

2. How difficult was it to gather information on how to use the SEM process? What institutions, organizations, resources, or establishments did you consult, if any, to learn about the SEM process and how to use it?

It wasn't difficult in principle as the CEC has guidelines on how to make a submission. However, a year after the complaint was submitted the CEC Secretariat informed the Submitters that the submission (SEM-09-001 - Transgenic Maize in Chihuahua) did not comply with all the requirements for its acceptance and that modifications had to be made and more information provided.

The modifications were extensive and complex, and more intended for lawyers and scientists than the general public. The CEC requested information from the Submitters on several points, including the following:

More information on whether the Cartagena Protocol should be considered as environmental legislation, even though it is the principal international treaty on regulating cross-border transport of living modified organisms (LMOs) and Mexico is a signatory to it.

Data on the strains of maize and species of *teocintle* in Chihuahua. Possible consequences on human health and biodiversity from releasing genetically modified organisms (GMOs).

Legal basis for the Federal Attorney General's obligation to inform the complainant on the progress or status of an ongoing criminal investigation.

3. Did you know about the "Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the [NAAEC]" (the "Guidelines") published in the CEC booklet "Bringing the Facts to Light"? If so, did you consult them? How helpful was it? Was there any information not included in the Guidelines that might have helped you in preparing your submission?

Yes, I knew about them.

Yes, I consulted them.

Yes, they were useful but should be more descriptive, especially when more information is required of the Submitter because the CEC deems that the submission does not comply with all requirements for its acceptance and that modifications must be made and more information provided.

Yes, the Secretariat's criteria for determining what is and what is not enforceable environmental legislation. In effect, in our case, the Secretariat determined that some laws were not subject to review under the procedure established in Articles 14 and 15 of the NAAEC, as they did not satisfy the definition set forth in Article 45(2)(a).

It seems incredible that the CEC Secretariat questions whether the Cartagena Protocol on cross-border transport of LMOs should be considered environmental legislation under the NAAEC. This issue obliged us to state our arguments on why said international instrument does indeed constitute environmental legislation and should be accepted as such.

4. Did you contact the CEC Secretariat prior to preparing a submission, and if so, for what reason (i.e. information gathering, questions about procedure, etc)? Was the response of the Secretariat, if any, helpful? Why or why not?

There was no prior contact with the Secretariat.

5. Why did you choose the SEM process for addressing the matters you raised in your submission?

Because Greenpeace bore in mind the Report and recommendations elaborated by the CEC Secretariat, pursuant to Article 13 of the NAAEC, in November 2004 (*Maize and Biodiversity: the Effects of Transgenic Maize in Mexico*), which remained without effect as they were not applied by the Mexican government.

Recourse was made to this mechanism because of the lack of effective enforcement and proper environmental management on the part of the Mexican authorities under the General Law of Ecological Balance and Environmental Protection (*Ley General del*

Equilibrio Ecológico y la Protección al Ambiente—LGEEPA), the Biosafety of Genetically Modified Organisms Act (*Ley de Bioseguridad de Organismos Genéticamente Modificados—LBOGM*), the Federal Penal Code (*Código Penal Federal—CPF*), and the Cartagena Protocol on Biosafety, with respect to a case of genetic flow from transgenic maize towards conventional varieties of maize (native and hybrid), detected in different regions of the state of Chihuahua, in the northern part of Mexico. Due to the absence of biosafety measures, this genetic flow imperils the environment, biodiversity, plant health and human health, and has potential socio-economic consequences, all of which highlights the lack of effective enforcement of environmental legislation and proper environmental management by national authorities.

Because of a desire to reveal the acts and omissions of the Mexican government in the face of its tendency to hide information from citizens and to over apply the criteria governing the confidentiality of public government information.

To put pressure on the Mexican authorities to take adequate measures in pursuit of access to environmental justice which does not exist in Mexico.

To demonstrate the absence of coordination between environmental, agricultural and health authorities as regards biosafety matters and to show that citizen complainants – or even the environmental authorities themselves – have no access to the investigations arising from criminal complaints lodged with the PGR on biosafety issues.

6. What outcome did you expect from the SEM process at the time of your submission? Sanctions? Recommendations? Conclusions?

First, that the Mexican government be ordered to elaborate a factual record; second that recommendations to the government would result from the analysis of said factual record.

7. Did the processing of your submission in any way affect or impact the situation you were addressing, and if so, how? Was this impact consistent with your hopes and expectations?

No.

8. Has the outcome of the SEM process with respect to your submission helped you to understand the relevant environmental law(s) and the government's decisions with respect to enforcing those laws? If so, in what way?

No, on the contrary, it helped me to understand NAAEC's limits with respect to the few international environmental agreements on which it bears (it isn't appropriate to use the term "relevant environmental legislation" since it delegitimizes other agreements and issues). All agreements must be relevant in the eyes of international environmental law.

That the NAAEC has fallen behind the times.

The decisions of the Mexican government are increasingly opaque and rigged, and their aim is to confuse and to hide information.

That the SEM should be improved and its mandate should go beyond offering recommendations.

9. Did you pursue any domestic legal options regarding the matters raised in your submission? If not, why not? If so, why did you also file a submission?

Yes. Criminal charges and administrative proceedings.

Because they are not timely procedures. In effect, the Mexican government hides information, alleging the confidential or reserved character thereof, or cites the protection of personal data, or states that proceedings are ongoing, or that a legal ruling is pending, etc.

10. If the government Party filed a response to your submission, was the response helpful in understanding the Party's positions and decisions with regard to the matters you raised, and if not, why? Did the response provide information that you were seeking?

Yes, but only because the CEC Secretariat erroneously sent two versions of the response: one with information classified by the Government of Mexico as reserved and the other without said information. In Greenpeace's view, said information should not have been classified as it does not contain personal data, does not allude to proprietary industrial information or to ongoing legal proceedings. It was simply the minimal information that we NGOs tried to obtain from the Mexican government.

11. Did you have any contact with the government Party regarding the matters raised in your submission during or after conclusion of the SEM process, and if so, was this contact helpful? If not, would such contact have been helpful?

No. Its "modus operandi" has become opaque and evasive regarding compliance with the law, leaves no place for public information requests and discredits the work done by NGOs.

12. How long did it take for your submission to be processed? Include the time from the point that you submitted the petition to the factual record or other final decision. Do you believe that this is a reasonable amount of time for processing of submissions? If not, what recommendations would you make for improving the timeliness of the process?

It was not a reasonable period: 23 months elapsed between January 2009, when the Submitters presented their complaint, and December 2010, when the CEC Secretariat determined that the preparation of a factual record was not warranted.

It's worth mentioning that the Submitters filed their submission with the CEC in January 2009. One year later, (in January 2010) the CEC Secretariat informed the Submitters that their submission (SEM-09-001 - Transgenic Maize in Chihuahua) did not comply with all the requirements for its acceptance and that modifications had to be made and more information provided. It is unbelievable that an institution like the CEC should be so extremely slow in responding to a case of transgenic contamination of maize crops in our country. In February 2010, the CEC requested that the Mexican government report on the effective enforcement of environmental legislation to protect Mexican maize from transgenic contamination in response to determination A14/SEM/09-001/22/COM. In December 2010, the CEC Secretariat determined that the elaboration of a factual record was not warranted.

I would recommend that the NAAEC be revised, that deadlines for the Secretariat be established and, more generally, that its procedures be better defined to make it into a more effective mechanism. It seems like a large international bureaucracy to me.

13. What action have you undertaken with regard to the matters raised in your submission after the conclusion of the SEM process? Do you expect or wish that the CEC continued to be involved following the conclusion of the process, and if so, how?

None.

Yes, may the CEC Secretariat continue "inviting" the Mexican government to consider providing a public summary of the information cited in the confidential sections of this determination.

14. How costly was it for you to use the citizen submission process? Were the costs in line with the benefits you received from the process?

I am unable to determine the monetary cost. As for the time invested, this was an exhausting endeavor which required dedicating long hours to research and write the submission.

15. What kind of assistance, if any, did you receive in preparing your submission? If you did not receive assistance, what kind of assistance do you wish you had received, if any?

None. However, it would be very difficult for a Submitter without legal expertise to make use of this mechanism.

16. Approximately how much time went into the preparation of your submission?

Several weeks.

17. Overall, was the citizen submission process a useful forum to raise the matters you highlighted in your submission? Why or why not?

No, for the reasons alluded to above.

18. Bearing in mind your experience with the article 14 and 15 process, do you think this mechanism needs to be revised and amended?

Yes, definitely.

19. Do you have any other comment or recommendations regarding the citizen submission process?

The ones already mentioned.

El artículo 45(2)(a) del ACAAN establece:

“2. Para los efectos del Artículo 14(1) y la Quinta Parte:

(a) “legislación ambiental” significa cualquier ley o reglamento de una Parte, o sus disposiciones, cuyo propósito principal sea la protección del medio ambiente, o la prevención de un peligro contra la vida o la salud humana, a través de:

(i) la prevención, el abatimiento o el control de una fuga, descarga, o emisión de contaminantes ambientales,

(ii) el control de químicos, sustancias, materiales o desechos peligrosos o tóxicos, y la diseminación de información relacionada con ello; o

(iii) la protección de la flora y fauna silvestre, incluso especies en peligro de extinción, su hábitat, y las áreas naturales protegidas en territorio de la Parte, pero no incluye cualquier ley o reglamento, ni sus disposiciones, directamente relacionados con la seguridad e higiene del trabajador.”