

**Secretariat of the Commission for Environmental Cooperation  
Determination in accordance with Articles 14(1) and (2) of the North American  
Agreement on Environmental Cooperation**

**Submitters:** Academia Mexicana de Derecho Ambiental, A.C.  
La Voz de Polanco, A.C.  
**Party:** United Mexican States  
**Date of receipt:** 2 February 2018  
**Date of the determination:** 1 May 2018  
**Submission no.:** SEM-18-002 (*Mexico City Metrobús*)

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## I. INTRODUCTION

1. Articles 14 and 15 of the North American Agreement on Environmental Cooperation (“NAAEC” or “the Agreement”) provide for a process allowing any person or nongovernmental organization residing or established in the territory of Canada, the United States, or Mexico to file a submission asserting that a Party to the NAAEC is failing to effectively enforce its environmental law (the “submissions on enforcement matters” or “SEM” process). The Secretariat of the Commission for Environmental Cooperation (the “Secretariat” of the “CEC”)<sup>1</sup> initially considers submissions to determine whether they meet the requirements of NAAEC Article 14(1). Where the Secretariat finds that a submission meets these requirements, it then determines, pursuant to NAAEC Article 14(2), whether the submission merits a response from the concerned Party. In light of any response from the concerned Party, and in accordance with the NAAEC, the Secretariat may notify the Council that the matter warrants the development of a factual record, providing its reasons for such recommendation in accordance with Article 15(1). Where the Secretariat decides to the contrary, it then proceeds no further with the submission.<sup>2</sup>
2. On 2 February 2018, Academia Mexicana de Derecho Ambiental and La Voz de Polanco (the “Submitters”) filed an NAAEC Article 14(1) submission with the Secretariat. The Submitters assert that the approvals, permits, and concessions for Line 7 of the Metrobús Reforma Mass Transit Corridor (hereinafter, the “Metrobús Reforma project”) were granted in the context of an “opaque and illegal” procedure (see Figure 1).
3. Submission SEM-18-002 (*Mexico City Metrobús*) asserts that Mexico is failing to effectively enforce the Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*); the Mexico City Constitution (*Constitución Política de la Ciudad de Mexico*); the Mexican Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*); the Federal District Land Protection

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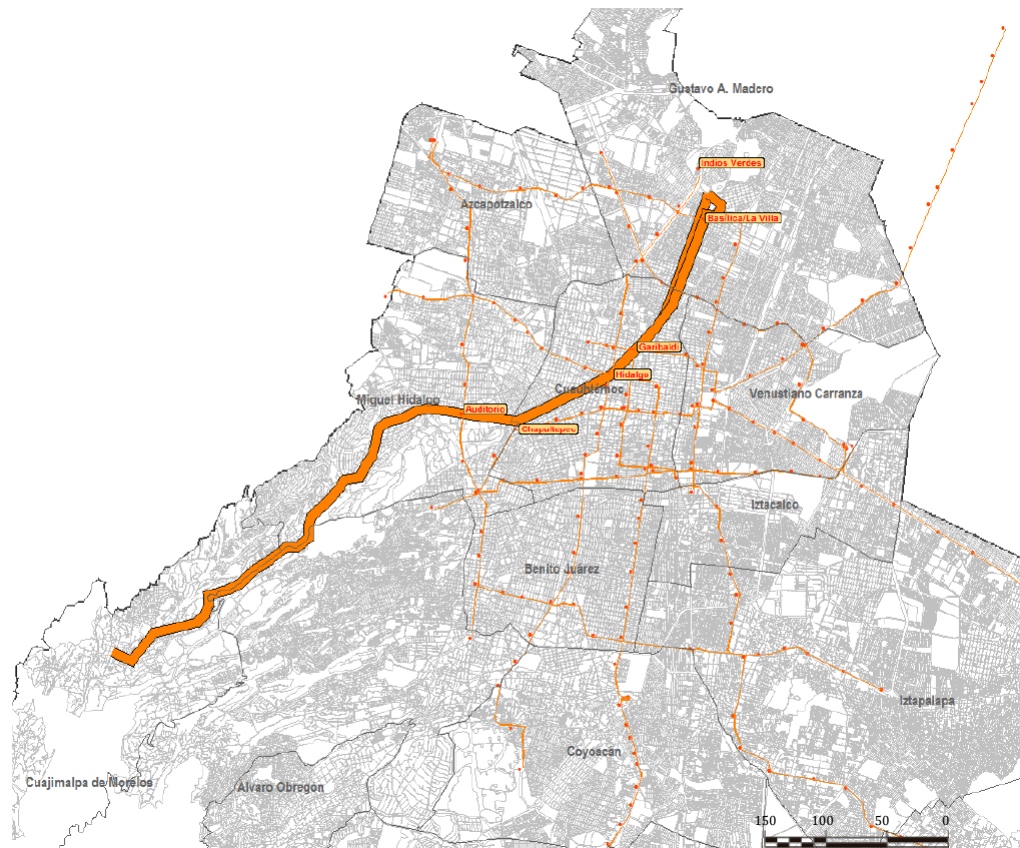
<sup>1</sup> The Commission for Environmental Cooperation (CEC) was established in 1994 under the North American Agreement on Environmental Cooperation (NAAEC), signed by Canada, Mexico, and the United States (the “Parties”). The constituent bodies of the CEC are the Council, the Secretariat, and the Joint Public Advisory Committee.

<sup>2</sup> For detailed information on the various stages of the submission process, as well as on the Secretariat’s determinations and factual records, visit the submissions on enforcement matters page of the CEC website at <[www.cec.org/submissions](http://www.cec.org/submissions)>.

Act (*Ley Ambiental de Protección a la Tierra en el Distrito Federal—LAPT*); international treaties signed by Mexico; federal laws in the areas of forest development, integrated waste management, and climate change, among others, and the regulations to these acts; Mexico City legislation in the areas of mobility, urban development, and solid waste, among others; Mexican official standards, Mexico City environmental standards, and administrative provisions.

4. Having reviewed the submission with reference to Article 14 of the Agreement and the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation* (the “Guidelines”), the Secretariat finds that submission SEM-18-002 (*Mexico City Metrobús*) meets all the eligibility requirements of NAAEC Article 14(1), and merits a response from the government of Mexico in accordance with the criteria of NAAEC Article 14(2), for the reasons set out below.

**Figure 1. Route of Line 7 of the Metrobús Reforma project**



Source: *Metrobús-Cetran, Estudio de transporte público del Corredor Reforma (undated)*.

## II. ANALYSIS

5. NAAEC Article 14 authorizes the Secretariat to consider submissions from any person or nongovernmental organization asserting that a NAAEC Party is failing to effectively enforce its environmental law. As the Secretariat has stated in previous Article 14(1) determinations, this article is not intended to be an insurmountable screening device,<sup>3</sup> and must be given a broad interpretation in keeping with the goals of the NAAEC.<sup>4</sup> The Secretariat reviewed the submission with the latter perspective in mind.

### A Opening paragraph of NAAEC Article 14(1)

6. The opening sentence of Article 14(1) allows the Secretariat to consider submissions “from any nongovernmental organization or person asserting that a Party is failing to effectively enforce its environmental law.” The submission includes the Submitters’ names and sufficient information to establish contact with them, and this information indicates that they reside in Mexico City. There is no information in the submission to suggest that any of the Submitters is a part of the government or under its direction.

### B Environmental law in question

7. The Secretariat has found that the term “environmental law” as it appears in NAAEC Article 45(2)(a) must be given a broad construction; a restrictive interpretation of what constitutes a law or regulation whose primary purpose is the protection of the environment or human health would be inconsistent with the NAAEC.<sup>5</sup> Having reviewed the provisions and instruments cited in the submission, the Secretariat finds that not all the provisions cited in the submission qualify for review within the SEM process, for the reasons set out below.
8. The Submitters cite numerous provisions of the Mexican Constitution, international treaties, federal and state law, and administrative law (see Table 1). The Spanish text of the majority of the instruments cited in the submission is presented in Appendix 1 of this determination.

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<sup>3</sup> See SEM-97-005 (*Biodiversity*), Article 14(1) Determination (26 May 1998), and SEM-98-003 (*Great Lakes*), Article 14(1) and (2) Determination (8 September 1999).

<sup>4</sup> See SEM-01-002 (*AAA Packaging*) Article 14(1) Determination (24 April 2001), at 2: “Article 14(1) should be given a large and liberal interpretation, consistent with the objectives of the NAAEC.”

<sup>5</sup> See SEM-97-005 (*Biodiversity*) Article 14(1) Determination, at 4: “Consistent with Article 14(1), the Secretariat is of the view that the term ‘environmental law’ should be interpreted expansively.”

**Table 1. Legal instruments cited in the submission**

<b>Title</b>	<b>Acronym or abbreviation</b>	<b>Provisions cited</b>
Mexican Constitution ( <i>Constitución Política de los Estados Unidos Mexicanos</i> ) <sup>a</sup>	Mexican Constitution	Articles 1; 4, fourth and fifth paragraphs; 25, seventh paragraph; 14, and 16.
<b>International treaties</b>		
International Covenant on Economic, Social and Cultural Rights <sup>b</sup>	ICESCR	Articles 11 and 12.
Rio Declaration on Environment and Development <sup>c</sup>	Rio Declaration	Principles 17 and 22.
North American Free Trade Agreement <sup>d</sup>	NAFTA	Articles 102(1)(c) and 1114.
North American Agreement on Environmental Cooperation <sup>e</sup>	NAAEC	
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights <sup>f</sup>	Protocol of San Salvador	Articles 10 and 11.
Convention on Biological Diversity	CBD	Articles 2, 8, and 14.
Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169) <sup>h</sup>	Convention 169	Articles 6, 7, and 8.
Convention on the Rights of the Child <sup>i</sup>		Article 24.
<b>Mexican federal laws</b>		
Mexican Environmental Protection Act ( <i>Ley General del Equilibrio Ecológico y la Protección al Ambiente</i> ) <sup>j</sup>	LGEEPA	Articles 5 paragraphs IV and VI; 7 paragraphs IV and V; 8 paragraph III; 11 paragraph II; 45; 46 paragraph IX and third paragraph; 109 <i>bis</i> ; 110; 134 paragraph II; 135; 150, and 151 <i>bis</i> .
Mexican Sustainable Forestry Act ( <i>Ley General de Desarrollo Forestal Sustentable</i> ) <sup>k</sup>	LGDFS	Articles 58 paragraph I and 117.
Mexican Waste Prevention and Management Act ( <i>Ley General para la Prevención y Gestión Integral de los Residuos</i> ) <sup>l</sup>	LGPGIR	Articles 1; 5 paragraphs X, XVII, XXI, XXIX, XXX, XXXI, XXXII, XXXIII; 6; 7; 9; 31, and 42.
Mexican Climate Change Act ( <i>Ley General de Cambio Climático</i> ) <sup>m</sup>	LGCC	Article 87.
Mexican National Property Act ( <i>Ley General de Bienes Nacionales</i> ) <sup>n</sup>	LGBN	Articles 6 paragraph II; 7 paragraph XIII, and 9.
<b>Regulations to federal laws</b>		
Regulation to the Mexican Sustainable Forestry Act <sup>o</sup>	Regulation to the LGDFS	Article 122.
Regulation to the Mexican Waste Prevention and Management Act <sup>p</sup>	Regulation to the LGPGIR	Articles 2, 16, 17, 20, 21, 24, 26, and 29.
National Emissions Registry Regulation to the Mexican Climate Change Act <sup>q</sup>	National Emissions Registry Regulation to the LGCC	Articles 8 paragraph III, 26, 27, 109 <i>bis</i> and 110.

Mexico City Constitution ( <i>Constitución Política de la Ciudad de México</i> ) <sup>f</sup>	Mexico City Constitution	Articles 2; 9 sections B and D; 13 section A; 15 section A (number 4); 16 sections A (numbers 4, 5, 8, and 9) and C (number 6); 25 section A (number 6) and F; 26 section A; 53 section B (number 3(b)(XXII) and (XXIV)), and 59 section B (numbers 1, 2, and 8 paragraph II).
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### Mexico City laws

Federal District Land Protection Act ( <i>Ley Ambiental de Protección a la Tierra en el Distrito Federal</i> ) <sup>s</sup>	LAPT	Articles 5; 9 paragraph XXIX; 13; 19; 44 a 52; 52 <i>bis</i> ; 53; 85 paragraph VI; 86 <i>bis</i> 2; 88 <i>bis</i> 1; 89 <i>bis</i> ; 89 <i>bis</i> 1; 93 <i>bis</i> 1; 105; 107; 111, and 112 paragraph VIII.
Mobility Act ( <i>Ley de Movilidad</i> ) <sup>t</sup>		Articles 3; 7 paragraph V, and 99.
Federal District Urban Development Act ( <i>Ley de Desarrollo Urbano del Distrito Federal</i> ) <sup>u</sup>	LDU	Articles 3 paragraph XIV; 7 paragraph XVII; 63; 64; 87 paragraph V, and 93.
Federal District Solid Waste Act ( <i>Ley de Residuos Sólidos del Distrito Federal</i> ) <sup>v</sup>	LRS	Articles 3 paragraphs XXV, XXXIV, XXXVII and XXXVIII; 6; 9; 10, and 59.
Federal District Interculturalism, Migrant Services and Human Mobility Act ( <i>Ley de Interculturalidad, Atención a Migrantes y Movilidad Humana en el Distrito Federal</i> ) <sup>w</sup>	Interculturalism Act	Article 33.
Civic Participation Act ( <i>Ley de Participación Ciudadana</i> ) <sup>x</sup>	LPC	Article 50 <i>bis</i> .

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### Mexico City regulations

Regulation to the Federal District Environment Act <sup>y</sup>		
Impact Environmental and Risk Regulation ( <i>Reglamento de Impacto Ambiental y Riesgo</i> ) <sup>z</sup>	RIAR	Articles 3 paragraphs VI, XIII, XV, XVII, XXIX and XXXI, 4, 6: sections C and D, 14, 41, 44, 45, 46, 50, 52, 53, paragraph III, 54, 57, 58, 60, 62, 63, 64, and 131.
Regulation to the Federal District Urban Development Act <sup>aa</sup>	Regulation to the LDU	Articles 76, 77, 82, and 83.
Regulation to the Federal District Solid Waste Act <sup>ab</sup>	Regulation to the LRS	Articles 2 paragraphs VII and XXIV, 3 and 12 to 24.

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### Mexican Official Standards and Mexico City Environmental Standards

Mexican Official Standard NOM-161-Semarnat-2011, Establishing the criteria for classifying waste as requiring special management and determining which shall be subject to a management plan; the list thereof, the procedure for inclusion or exclusion from said list, and the elements and procedures for the drafting of management plans (NOM-161).<sup>ac</sup>

Federal District Environmental Standard NADF-001-RNAT-2015, Establishing the requirements and technical specifications to be met by physical persons, public or private legal persons, authorities, and, in general, all those who engage in the pruning, felling, transplanting, and restoration of trees in the Federal District (NADF-001).<sup>ad</sup>

Federal District Environmental Standard NADF-007-RNAT-2013, Establishing the classification and management specifications for construction and demolition waste in the Federal District (NADF-007).<sup>ae</sup>

## Other legal instruments

Declaration of Bosque de Chapultepec as a Place of Natural Beauty based on its artistic history and on the photographs and map submitted by the Monuments Division<sup>af</sup> (“Chapultepec Place of Natural Beauty Declaration”).<sup>6</sup>

Executive order declaring Bosque de Chapultepec an Area of Environmental Value in the Federal District (“Chapultepec AVA Declaration”).<sup>ag</sup>

Executive order of 11 July 2014 amending the Executive order declaring Bosque de Chapultepec an Area of Environmental Value in the Federal District, with regard to the indicated area (“Amendment to Chapultepec AVA Declaration”).<sup>ah</sup>

Notice approving the “Metrobús Reforma” Mass Transit Corridor and establishing the general conditions for its operation (“Notice of Approval”).<sup>ai</sup>

Notice of supply/demand balance in regard to mass transit in the “Metrobús Reforma” Corridor (“Notice of Supply/Demand Balance”).<sup>aj</sup>

Declaration of Need for Mass Transit Service in the “Metrobús Reforma” Corridor (“Declaration of Need”).<sup>ak</sup>

Environmental Impact Decision no. SEDEMA/DGRA/DEIA/014363/2016 (“RIA” or “Environmental Impact Decision”).<sup>al</sup>

Administrative decision SEDEMA/DGRA/DEIA/004234/2017 (“Sedema Commencement Decision”).<sup>am</sup>

### Notes:

<sup>a</sup> Official Gazette of the Federation (*Diario Oficial de la Federación*—DOF), 5 February 1917.

<sup>b</sup> DOF, 12 May 1981.

<sup>c</sup> Online at <https://goo.gl/VxAWkU>.

<sup>d</sup> 20 December 1993.

<sup>e</sup> 21 December 1993.

<sup>f</sup> DOF, 27 December 1995

<sup>g</sup> DOF, 7 May 1993.

<sup>h</sup> DOF, 24 January 1991

<sup>i</sup> DOF, 25 January 1991.

<sup>j</sup> DOF, 28 January 1988.

<sup>k</sup> DOF, 25 February 2003.

<sup>l</sup> DOF, 8 October of 2003.

<sup>m</sup> DOF, 6 June 2012.

<sup>n</sup> DOF, 20 May 2004.

<sup>o</sup> DOF, 21 February 2005.

<sup>p</sup> DOF, 30 November of 2006.

<sup>q</sup> DOF, 28 October of 2014.

<sup>r</sup> Official Gazette of the Federal District (*Gaceta Oficial del Distrito Federal* — GODF), 5 February 2017.

<sup>s</sup> GODF, 31 January 2000.

<sup>t</sup> GODF, 14 July 2014.

<sup>u</sup> GODF, 15 July 2010.

<sup>v</sup> GODF, 22 April 2003.

<sup>w</sup> GODF, 7 April 2011.

<sup>x</sup> GODF, 17 May 2004.

<sup>y</sup> Not available.

<sup>z</sup> GODF, 26 March 2004.

<sup>aa</sup> GODF, 29 January 2004.

<sup>ab</sup> GODF, 7 October of 2008.

<sup>ac</sup> DOF, 1 February 2013.

<sup>ad</sup> GODF, 1 April 2016.

<sup>ae</sup> GODF, 26 February 2015.

<sup>af</sup> DOF, 22 September 1952.

<sup>ag</sup> GODF, 2 December 2003.

<sup>ah</sup> GODF, 12 July 2014.

<sup>ai</sup> GODF, 29 June 2015.

<sup>aj</sup> GODF, 21 June 2016.

<sup>ak</sup> GODF, 21 June 2016.

<sup>al</sup> Document dated 30 November 2018.

<sup>am</sup> Document dated 25 April 2017.

### a. Provisions establishing definitions or generally applicable concepts

9. The Secretariat excludes those provisions cited by the Submitters that establish definitions from the effective enforcement analysis.<sup>7</sup> While it is true that these may be taken into consideration for the purposes of understanding the assertions made in the submission, the Secretariat does not find that the following articles merit an effective enforcement analysis: CBD Article 2;<sup>8</sup> LGEEPA Article 3 paragraphs II and XXXIII;<sup>9</sup> LGPGIR Article 5 paragraphs X, XVII, XXI, XXIX, XXX, XXXI, XXXII, and XXXIII;<sup>10</sup> Article 2 paragraphs I to XX of the Regulation to the LGPGIR;<sup>11</sup> LDU Article

<sup>6</sup> This is the executive order declaring as a national park the land known as Molino de Belén, located in the Panteón de Dolores and the Fábrica de Pólvora de Santa Fe, in the Federal District, published in the DOF on 22 September 1952.

<sup>7</sup> A similar approach in this analysis has been taken with respect to other submissions. See for example: SEM-03-003 (*Lake Chapala II*), Article 14(1) Determination (19 December 2013), p. 6.

<sup>8</sup> Terminology used in the CBD.

<sup>9</sup> Definitions of protected natural areas and hazardous waste.

<sup>10</sup> Definitions of integrated waste management, integrated management, management plan, waste, waste subject to special management, incompatible waste, hazardous waste, and urban solid waste, respectively.

3 paragraph XIV;<sup>12</sup> LRS Article 3 paragraphs XXV, XXXIV, XXXVII, and XXXVIII;<sup>13</sup> RIAR Article 3 paragraphs VI, XIII, XV, XVII, XXIX, XXXI,<sup>14</sup> and Article 2 paragraphs VII and XXIV of the Regulation to the LRS.<sup>15</sup> Similarly, LAPT Article 5 is excluded from the analysis because it refers to definitions set out in other legal instruments, as are the definitions listed in that article. As regards RIAR Article 3, which lists the complementary instruments to this law, it is not retained for the analysis of the effective enforcement of environmental law.

10. Concerning the LGEEPA provisions establishing the public good protected by law, the Submitters cite provisions determining the purpose of protected natural areas (**Article 45**) as well as those areas that are considered PNAs under state jurisdiction and the power of the state governments to establish them (**Article 46 paragraph IX and second paragraph**). These provisions serve to guide the Secretariat but are not amenable to an analysis of their direct application to the Metrobús Reforma project.
11. As to the provisions of the LGBN establishing that the items listed in **Article 7 paragraph XIII** are public goods and the provision establishing the jurisdiction over the goods subject to the federal public domain régime in **Article 9**, these are not considered “environmental law” because their purpose is not environmental protection, although they do serve to determine the category of federal property.

#### b. Provisions that establish principles

12. The Secretariat found that several provisions qualifying as “environmental law” establish principles or guidelines but lack the concreteness necessary for their implementation. In this regard, the Secretariat has found that even when provisions citing general principles qualify as environmental law, in practice they require other concrete provisions to support their implementation.<sup>16</sup> Mexico has maintained<sup>17</sup> that the right to a healthy environment is implemented through secondary legislation;<sup>18</sup> that is, that the realization of a codified principle is reliant on the specificity of the provision.<sup>19</sup>

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<sup>11</sup> Definitions of hazardous waste storage, stockpiling, oil and gas sector activities, agency, chain of custody, annual operating report, hazardous waste stockpiling centre, particular management conditions, controlled containment, containment in geologically stable formations, basic diagnostic analysis for integrated waste management, facilities, national inventory of contaminated sites, tailings, act, hazardous waste release, manifest, office of the public prosecutor, collection, regulation, sanitary landfill, and UTM, respectively.

<sup>12</sup> Definition of urban impact.

<sup>13</sup> Definitions of management plan, urban waste, solid waste, and shared responsibility, respectively.

<sup>14</sup> Definitions of condition, environmental impact study, environmental impact assessment, cumulative environmental impact, developer, and administrative decision on environmental impact or risk, respectively.

<sup>15</sup> Definitions of soil contamination and construction waste, respectively.

<sup>16</sup> Determination, Articles 14(1) and (2), §17.

<sup>17</sup> See SEM-09-009 (*Transgenic Maize in Chihuahua*), Party Response (3 May 2003), at 11-13, online at <<https://goo.gl/qenUiz>> (viewed 23 March 2018).

<sup>18</sup> In this case, the Federal Judicial Branch (*Poder Judicial de la Federación*) held that “the necessity of protecting natural resources and of preserving and restoring ecological equilibrium are fundamental

13. Lack of concreteness is not in itself grounds for disqualifying a provision under NAAEC Article 45(2)(a), since any legal system comprises principles imbued with high moral and legal value.<sup>20</sup> Thus, when a principle is invoked in a specific case,<sup>21</sup> while it may be difficult to apply it to a particular situation, it can give general guidance on decision-making.<sup>22</sup> The Secretariat includes them in its analysis where they are supported by secondary legislation. The Secretariat's analysis of this issue follows.

#### The right to a healthy environment

14. The Submitters cite provisions of the Constitution (Articles 1; 4, fourth and fifth paragraphs, and 25, seventh paragraph), the ICESCR (Articles 11 and 12), the Rio Declaration (principles 17 and 22) and the Protocol of San Salvador (Articles 10 and 11). The Mexican Supreme Court (*Suprema Corte de Justicia de la Nación*) has reiterated that “the obligation of all authorities of the state to guarantee the existence of a healthy environment conducive to human development and well-being may be inferred from the content of this human right.”<sup>23</sup>
15. **Constitution.** Concerning **Article 1, the fourth and fifth paragraphs of Article 4, and the seventh paragraph of Article 25** of the Constitution, the Secretariat has previously determined that where a submission cites those constitutional provisions aimed at recognizing the human right to a healthy environment, these can guide its analysis.<sup>24</sup>
16. **Article 1** of the Constitution the human rights enjoyed by every person on the territory of the United Mexican States;<sup>25</sup> it enshrines the *pro homine* principle for the enforcement of

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principles that the drafters of the Constitution sought to protect.” See “Medio ambiente adecuado para el desarrollo y bienestar: concepto, regulación y concreción de esa garantía,” tesis I.4º.A.44788A, *Gaceta del Semanario Judicial de la Federación*, novena época, vol. XXI, January 2005, at 1799, online at <<https://goo.gl/Qgtp99>> (viewed 23 March 2018).

<sup>19</sup> This coincides with the view of R. Alexy, for whom principles are ideals that can never be fully realized: R. Alexy, “Zum Begriff des Rechtsprinzips,” in Werner Krawietz (comp.), *Argumentation und Hermeneutik in der Jurisprudenz*, Rechtslehre, Beiheft 1, Berlín, Duncker & Humblot, 1979, at 59-87, cited in J. Verschuuren, “Sustainable Development and the Nature of Environmental Legal Principles,” *Potchefstroom Electronic Law Journal*, no. 1, vol. 9, 2006, online at <<https://ssrn.com/abstract=899537>> (viewed 23 March 2018) [Verschuuren 2006].

<sup>20</sup> “Principles go beyond concrete rules or policy goals; instead, they say something about a group of rules or policies, they denote what a collection of rules has in common, or what the common goal is of a collection of rules (for instance a statute). Principles usually contain a high moral and/or legal value.” Verschuuren 2006, at 6.

<sup>21</sup> “For now, I would like to take the position that principles are part of written, statutory law and that they can be invoked in court.” *Ibid.*, at 17.

<sup>22</sup> “Principles differ from rules in the sense that rules can be more easily directly applied in individual cases, while principles give a general direction for a decision, with a much lesser required outcome, than would be the case with legal rules.” *Ibid.*, at 34.

<sup>23</sup> “Derecho a un ambiente sano: su contenido,” tesis 1a. CCXLVIII/2017 (10a.), *Gaceta del Semanario Judicial de la Federación*, décima época, book 49, vol. I, December 2017, at 411, online at <<https://goo.gl/5BxXpH>> (viewed 13 March 2018).

<sup>24</sup> See SEM-15-002 (*Management of Analog TV Waste*), Article 14(1) Determination (22 September 2015), §14.

<sup>25</sup> Federal Constitution, Article 1, first paragraph.



- human rights-related provisions,<sup>26</sup> and it establishes the obligation of the Mexican state to promote human rights;<sup>27</sup> this provision serves as a guide to Secretariat's analysis. The provisions relating to the abolition of slavery and to non-discrimination fall outside the purview of the CEC and are not considered for the purposes of the analysis.<sup>28</sup>
17. Concerning **Article 4** of the Constitution, the Secretariat notes that the fifth paragraph can be considered, provided that it is coupled with an analysis of the environmental law in question<sup>29</sup> and that the analysis focuses on the fifth paragraph of this article, in which the human right to a healthy environment is enshrined.<sup>30</sup> The Secretariat finds, however, that the fourth paragraph does not correspond to the definition of "environmental law," since it sets out the "basis and modalities for access to health services," which does not coincide with the NAAEC Article 45(2)(a) concept of "prevention of a danger to human life or health."
18. The seventh paragraph of **Article 25** of the Constitution adopts the sustainability criterion for the development of social-sector enterprises, making them subordinate to the public good and the protection of the environment. The Secretariat has previously found that the primary purpose of this provision is economic guidance of the state; while it is not retained for analysis, the concept of the "sustainability of state enterprises" guides the enforcement of environmental law.<sup>31</sup>
19. **ICESCR**. The Submitters cite **Articles 11 and 12**, which recognize, *inter alia*, the right to an adequate standard living, including adequate food, clothing, and housing,<sup>32</sup> and the right to the improvement of all aspects of the environment.<sup>33</sup> The Secretariat has previously found that **ICESCR Article 11** does not qualify as environmental law in the sense of the NAAEC because environmental protection or the prevention of a danger to human life or health is not its primary purpose.<sup>34</sup> Concerning **Article 12**, it is aimed at improving the environment and can guide the Secretariat's analysis, but does not specifically prescribe how it is to be implemented.

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<sup>26</sup> Federal Constitution, Article 1, second paragraph: "Provisions relating to human rights shall be interpreted in accordance with this Constitution and with the applicable international treaties, at all times affording persons the broadest protection."

<sup>27</sup> Federal Constitution, Article 1, third paragraph.

<sup>28</sup> Federal Constitution, Article 1, fourth and fifth paragraphs.

<sup>29</sup> See SEM-06-006 (*Los Remedios National Park*), Article 14(1) Determination (19 January 2007), at 4-5, and SEM-15-002 (*Management of Analog TV Waste*), Article 14(1) Determination (22 September 2015), §14.

<sup>30</sup> Federal Constitution, Article 4, fourth and fifth paragraphs: "Everyone has the right to a healthy environment for his development and well-being. The State shall guarantee the respect of this right. Environmental harm or deterioration shall generate responsibility on the part of anyone who causes it, as prescribed by law."

<sup>31</sup> See SEM-15-002 (*Management of Analog TV Waste*), Article 14(1) Determination (22 September 2015), §21.

<sup>32</sup> ICESCR Article 11.

<sup>33</sup> ICESCR Article 12.

<sup>34</sup> See SEM-06-006 (*Los Remedios National Park II*), Article 14(1) and (2) Determination (SEM-09-003) (11 November 2010), at 19.

20. **Rio Declaration on Environment and Development.** Adopted in 1992 at the UN Conference on Environment and Development, held in Río de Janeiro, Brazil, the principles of the Rio Declaration lack binding force; rather, they contemplate measures that can be adopted in the social, economic, cultural, scientific, institutional, and political spheres. Therefore, **principles 17 and 22**, cited by the Submitters, which include the commitment of the states parties to conduct environmental impact assessments and to acknowledge the role of indigenous populations and their communities in environmental governance,<sup>35</sup> are not environmental law and can only be addressed to the extent that they are enacted by Mexico within its domestic legal system.
21. **Protocol of San Salvador.** The Submitters cite **Articles 10 and 11**, which recognize the right to health and a healthy environment, respectively. These articles are considered in this determination to the extent that they have been incorporated into Mexican law.

**c. Provisions that establish powers**

22. These are the provisions setting forth the powers of the environmental authorities that serve to determine which governmental body is responsible for enforcement of the law. Generally speaking, these provisions help to determine which is the competent authority and what is the scope of its powers, and they serve only to guide the Secretariat's analysis.
23. The Submitters cite provisions of the LGEEPA that establish federal powers to address matters arising on the nation's territory that affect the territory of another state (**Article 5 paragraph IV**), to regulate and control high-risk activities and waste management (**Article 5 paragraph VI**), and to sign agreements for hazardous waste control (**Article 11 paragraph II**); the powers of the states to regulate activities that are not high-risk (**Article 7 paragraph IV**) and to establish and regulate protected natural areas under their jurisdiction (**Article 7 paragraph V**); and the powers of the municipalities to control mobile pollution sources not under federal jurisdiction (**Article 8 paragraph III**). The Secretariat finds that the provisions establishing powers serve to determine jurisdiction over the matter raised in SEM-18-002.
24. The Submitters cite provisions establishing the power of the federal Ministry of the Environment and Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*—Semarnat) to approve forested land use conversion (**LGDFS Article 58 paragraph I**), which are taken into consideration in determining Semarnat's jurisdiction over the matter raised by the Submitters.
25. The Submitters cite **LGPGIR Article 7**, which lists powers of the federal authorities, of which only **paragraph IX** (verifying compliance with hazardous waste-related provisions) is retained for the Secretariat's analysis. They also cite **Article 9**, of which the state powers related to the following aspects are included in the Secretariat's analysis: approval of integrated management for waste subject to special management (**paragraph**

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<sup>35</sup> See United Nations, Department for Policy Coordination and Sustainable Development, "Rio Declaration on Environment and Development" editorial note (available in Spanish) online at <<https://goo.gl/qWvtO>> (viewed 13 March 2018).

- III**); verification of compliance with the applicable legal provisions (**paragraph IV**); approval and control of hazardous waste by microgenerators (**paragraph V**), and registration of waste management plans (**paragraph VI**).
26. At the local level, the submission cites **LATP Article 9 paragraph XXIX**, which establishes that the Environment Department (*Secretaría de Medio Ambiente—Sedema*) has the power to order inspection visits to verify compliance with this act, its regulation, and the environmental standards as well as any environmental impact-related conditions that may be imposed. Also cited is **RIAR Article 4**, specifying the environmental impact assessment-related powers of Sedema. The provisions in question are “environmental law” and qualify for analysis in relation to the environmental impact of the Metrobús Reforma project.
27. The Submitters cite **LDU Article 7 paragraph XVII**, which establishes the powers of the Ministry of Urban Development and Housing (*Secretaría de Desarrollo Urbano y Vivienda*) in relation to accreditation of urban development experts. The provision is not considered for analysis because it does not fit the NAAEC’s definition of “environmental law.”
28. Also cited is **LRS Article 6**, which establishes the solid waste management-related powers of Sedema in Mexico City. In this regard, the Secretariat only considers for further analysis **paragraphs XIV and XV**, having to do with the inspection and surveillance measures taken for the purposes of enforcing the act, and only to the extent that they relate to the Metrobús Reforma project. The same situation occurs with **Article 9**, concerning the powers of the Federal District Environmental Attorney (*Procuraduría Ambiental y del Ordenamiento Territorial del Distrito Federal—PAOT*) to address complaints, and **Article 10 paragraphs XIII and XIV**, concerning the law enforcement powers of the boroughs of Mexico City.

#### d. International treaties

29. In addition to the instruments mentioned, the submission cites the NAAEC, the Convention on the Rights of the Child, the Convention on Biological Diversity, and the North American Free Trade Agreement.<sup>36</sup>
30. The Secretariat has found that where the obligations contained in international instruments have been incorporated into the domestic legal system of the Party in question, they may qualify for review within an NAAEC Article 14–15 process.<sup>37</sup> Although Mexico concurs with the Secretariat that certain instruments have been incorporated into the domestic legal order,<sup>38</sup> it has also contended that it would not be

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<sup>36</sup> DOF, 20 December 1993.

<sup>37</sup> See SEM-01-002 (*AAA Packaging*), Article 14(1) Determination (24 April 2001), at 3.

<sup>38</sup> See SEM-09-002 (*Wetlands in Manzanillo*), Party Response (12 October 2010), at 30. See also SEM-09-001 (*Transgenic Maíz in Chihuahua*), Party Response (3 May 2010), at 14-15 (“the Government of Mexico acknowledges that the Cartagena Protocol, as an international instrument arising under the Convention on Biological Diversity, was incorporated into the domestic legal framework by being signed and ratified in accordance with the Constitution”).

appropriate to address an assertion concerning the effective enforcement of a treaty because this would be an “unacceptable international practice.”<sup>39</sup> In addition, Mexico has contended that instruments of international public law are not “laws” or “regulations” in the sense of the NAAEC, since the Mexican Supreme Court ruled in 1999<sup>40</sup> that international treaties are hierarchically superior to federal laws.<sup>41</sup> However, both the Secretariat and the Party hold that international treaties adopted in accordance with the constitutionally prescribed mechanism constitute law in Mexico.<sup>42</sup> Nevertheless, the Secretariat observes caution in addressing Mexico’s international commitments and takes note of the Party’s position as to the domestic enforceability thereof.

31. **NAFTA. Article 102(1)(c)** establishes the treaty’s objectives as regards national treatment, most favored nation treatment, and transparency. **Article 1114** stipulates that the measures adopted by the Parties to encourage investment must remain sensitive to environmental concerns and that it is inappropriate to encourage investment by waiving or otherwise derogating from environmental measures. The NAFTA provisions cited by the Submitters are not “environmental law” and do not bear upon the matter raised in the submission; thus, they are not considered for analysis.
32. **NAAEC.** The submission, filed in accordance with Article 14 of the Agreement, asserts that Mexico is failing to effectively enforce the NAAEC but does not identify the articles that are the subject of this assertion. It should be noted that the Secretariat considers that NAAEC the effective enforcement is not subject to the process under Articles 14 and 15 and that, in any event, the Parties may trigger a mechanism under Part Five of the Agreement. Therefore, the Secretariat is not devoting further study to the effective enforcement of the NAAEC.<sup>43</sup>
33. **CBD.** The Submitters cite **Article 8**, which provides for the establishment of a system of protected natural areas and for the planning, management, promotion, rehabilitation, and control thereof, and **Article 14**, which provides for the introduction of environmental impact assessment procedures. The provisions in question qualify as environmental law, but the Secretariat refrains from further consideration. The submission asserts the existence of environmental impact assessment and natural protected areas mechanisms, which are already established in multiple federal and local laws, a notion already consistent with the CBD provisions cited in the submission.
34. **Convention 169.** The Secretariat has found that **Convention 169** is enforceable domestic law in Mexico and noted that it can be considered “environmental law” if the cited

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<sup>39</sup> See SEM-13-001 (*Tourism Development in the Gulf of California*), Party Response (25 February 2014), at 104.

<sup>40</sup> “Tratados internacionales. Se ubican jerárquicamente por encima de las leyes federales y en un segundo plano respecto de la Constitución Federal,” tesis aislada 192867, at LXXVII/99, Pleno, novena época, *Semanario Judicial de la Federación y su Gaceta*, vol. X, November 1999, at 46.

<sup>41</sup> See SEM-15-002 (*Management of Analog TV Waste*), Party Response (30 May 2016), at 22.

<sup>42</sup> See SEM-13-001 (*Tourism Development in the Gulf of California*), Article 15(1) Notification (5 September 2014), at 11; SEM-09-002 (*Wetlands in Manzanillo*), Party Response (12 October 2010), at 30; SEM-09-001 (*Transgénic Maíz in Chihuahua*), Party Response (3 May 2010), at 14-15.

<sup>43</sup> See SEM-09-001 (*Transgénic Maíz in Chihuahua*), Article 14(1) Determination (6 January 2010), §12.

- provisions fall within the meaning of NAAEC Article 45(2)(a).<sup>44</sup> The cited provisions establish the obligation to consult interested indigenous peoples and to adopt measures to ensure their participation (**Article 6**); they recognize the right of these peoples to decide on their priorities for the development process and participate in environmental impact assessment processes (**Article 7**), and they provide that national law enforcement must have due regard to customs or customary laws (**Article 8**).
35. The Secretariat retains for further study **Articles 6, 7, and 8**, which relate to environmental protection by means of one or more of the measures listed in NAAEC Article 45(2)(a), but only insofar as the purpose of their enforcement is not the administration of the collection, extraction, or use of natural resources by indigenous populations,<sup>45</sup> and insofar as Mexico's response discusses the manner in which the opinions of users – in particular, those appearing in the *Catálogo de colonias y pueblos originarios del Distrito Federal, 2010* – were solicited in the context of the Metrobús Reforma project.
36. **Convention on the Rights of the Child.** The Submitters allege failures to enforce **Article 24**, which establishes commitments to: 1) ensure that no child is deprived of his or her right of access to health care services; 2) take measures to diminish infant and child mortality, ensure the provision of medical assistance, combat disease and malnutrition within the framework of primary health, ensure pre-natal and post-natal health care, ensure that parents and children are supported in the use of basic knowledge of child health and nutrition, and develop preventive health care; 3) take measures with a view to abolishing traditional practices prejudicial to the health of children, and 4) promote international co-operation with a view to achieving progressively the full realization of the right enshrined in Article 24 of the Convention.
37. The Secretariat finds that while the provision in question is aimed at protecting human health — in particular, the health of the child population — it does not fall into any of the categories listed in NAAEC Article 45(2)(a), since a reading of Article 24 of the *Convention on the Rights of the Child* does not indicate that this article is aimed at the prevention, abatement, or control of the release, discharge, or emission of pollutants; the control of hazardous or toxic chemicals, substances, materials, or wastes, or the protection of wild flora or fauna. The Secretariat does not consider Article 24 of the Convention as environmental law.

**e. Federal laws and their regulations**

38. The Submitters assert that Mexico is failing to effectively enforce provisions included in federal laws and their regulations. The corresponding analysis is presented below.
39. **LGEEPA.** The Submitters cite articles providing for the establishment of a pollutant release and transfer registry and establishing the obligation of the persons responsible for

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<sup>44</sup> See SEM-00-006 (*Tarahumara*), Article 14(1) and (2) Determination (6 November 2001), at 10. The review of the submission found that Article 15(2) of Convention 169 is applicable to the administration of natural resource use and is therefore not covered by the term “environmental law” in the sense of the NAAEC.

<sup>45</sup> NAAEC Article 45(2)(b).

pollution sources to provide the information necessary for the establishment and use of the registry (**Article 109 bis**). While these provisions are environmental law, the Secretariat is only considering the second paragraph of the article in question, in connection with the obligation to present information on the emissions generated during the construction and operation of the Metrobús.<sup>46</sup> The Submitters also cite **Article 151 bis**, which requires prior Semarnat approval for the provision of hazardous waste management services (**paragraph I**); the installation of waste treatment or final disposal systems (**paragraph II**), and the installation and operation of hazardous waste storage systems by the generators thereof (**paragraph III**). In this regard, the provisions qualify as environmental law, but the Secretariat is only considering **paragraph III**, this being the one relating to the matter raised in the submission.

40. The Submitters also cite provisions containing air pollution prevention criteria (**Article 110**) and for prevention and control of soil contamination (**Article 134 paragraph II**), as well as setting out the manner in which these must be applied (**Article 135**). Furthermore, they cite the obligation to provide suitable management for hazardous materials and wastes in accordance with the applicable legal provisions (**Article 150**). The Secretariat finds that these provisions fit the definition of “environmental law” given in NAAEC Article 45(2)(a)(ii) and (iii) and retains them for further study.
41. **LGDFS and its regulation.** The Submitters assert that Mexico is failing to enforce **LGDFS Article 117**. The Secretariat has previously found that this article qualifies as environmental law<sup>47</sup> and its review in this case covers the article’s first, second, third, and fourth paragraphs. In addition, the Submitters cite **Article 122 of the Regulation to the LGDFS**, which establishes the procedure for processing an application for conversion of forested land to a different use. In this regard, the Secretariat retains only **paragraph V**, which establishes the amount of environmental compensation where any of the conditions to which the first paragraph of LGDFS Article 117 refers is realized. Mexico may present information about its applicability to the Metrobús Reforma project.
42. **LGPGIR and its regulation.** The submission cites **Article 1**, which establishes the character and object of the law; it enshrines the right to a healthy environment, which is to be achieved through the reuse and integrated management of hazardous waste, and it enumerates the fundamental elements of its enforcement in paragraphs **I to XIII**. Environmental protection is the primary purpose of **LGPGIR Article 1**, but it also has the purpose of defining the scope, character, and object of the act; as such, it cannot in and of itself be subjected to an effective enforcement review. The Submitters also cite **Article 31**, which lists the hazardous waste subject to a management plan; this is “environmental law,” but only **paragraphs I to VII** are included in the review, since they focus on hazardous waste management.<sup>48</sup> The remainder of its paragraphs are excluded from consideration because they do not, at first sight, bear upon the matter raised in the submission. **Article 42**, cited in the submission, provides that hazardous waste generators must contract for management services and establishes the principle that responsibility in

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<sup>46</sup> Submission, at 14.

<sup>47</sup> See SEM-05-001 (*Crushed Gravel in Puerto Peñasco*), Article 14(1) and (2) Determination (16 February 2005), at 2; SEM-15-001 (*Bosque La Primavera*), Article 15(1) Determination (7 August 2015), §15.

<sup>48</sup> Cf. NAAEC Article 45(2)(a)(ii).

relation to such waste rests with the generator. Where management services are retained, the responsibility rests with the companies authorized by Semarnat, irrespective of the generator's responsibility. The provision in question is "environmental law".

43. As regards the Regulation to the LGPGIR, the Submitters cite articles establishing the modalities of waste management plans (**Article 16**); the obligation to formulate and implement a waste management plan (**Article 17**); the implementation of such plans (**Article 20**); the transfer of waste ownership (**Article 21**); the registration procedure for hazardous waste management plans (**Article 24**); the manner in which the incorporation of a management plan can be accredited with Semarnat (**Article 26**), and the effects generated by the establishment of particular conditions dictated by Semarnat in waste management plans (**Article 29**). The provisions in question qualify as environmental law in the sense of NAAEC Article 45(2)(a)(ii) and are retained for further study.
44. **LGCC. Article 87**, cited by the Submitters, establishes the registry of emissions from reportable fixed and mobile sources; it provides that the regulation shall enumerate the specific sources that are reportable and the characteristics of the registry. Although the provision does correspond to the definition of "environmental law," the submission does not assert a failure to enforce or implement the registry.
45. The provisions of the National Emissions Registry Regulation to the LGCC (RNE) provide that Semarnat must establish the global warming potential for the purposes of calculating equivalent emissions (**Article 8 paragraph III**); the implementation of projects whose result is the mitigation, reduction, or absorption of greenhouse gas emissions, including those whose purpose is carbon capture (**Article 26**), and the registration requirements relating to the RNE (**Article 27**). While the provisions may qualify as "environmental law," they do not relate to the matter raised by the Submitters and are not considered environmental law.. Last, articles 109 *bis* and 110 cited in the submission were not identified in the National Emissions Registry Regulation to the LGCC.

#### **f. Mexico City Constitution**

46. The Submitters cite various provisions of the Mexico City Constitution, published in the *Official Gazette of Mexico City* on 31 January 2017. A reading of the first transitory article shows that the Mexico City Constitution does not come into force until 17 September 2018 and that none of the exceptions included in the transitory provisions is applicable to the matter raised by the Submitters.
47. The Secretariat finds that the Mexico City Constitution is ineligible for further study.

#### **g. Mexico City laws and regulations**

48. **LAPT**. The Submitters cite the obligation of the Mexico City authorities to promote civic participation, foster protection of the environment and public health, make efficient use of natural resources, and repair any harm caused where impacts on the environment occur (**Article 13**). In this regard, the provision is considered "environmental law" to the extent that civic participation has an effect on environmental protection, in particular during the environmental impact assessment procedure for the Metrobús Reforma project.

49. As to the instruments guiding the drafting of sustainable development policy (**Article 19**), the Secretariat is excluding them from further study because they are not considered environmental law since this would require analyzing the Party's implementation of its environmental policy. Concerning the preparation and publication of the urban impact study, which accompanies the environmental impact study (EIA) (**Article 45**), it is not considered "environmental law."
50. The Submitters cite provisions establishing the obligation to conduct environmental impact assessment and the corresponding modalities of the EIA (**Article 44**); the cases in which environmental impact approval is required, in particular those relating to works and activities in areas of environmental value (AVA) and protected natural areas (PNA) or contiguous to them, or those relating to the provision of a public service or to roads under Mexico City's jurisdiction (**Article 46 paragraphs III, IV(a), VIII, and IX**); the filing requirements for EIAs (**Article 47**); the obligation to file the specific form of the EIA in the case of an AVA (**Article 48**); the processing of an EIA (**Article 49**); the holding of public consultation in those cases contemplated in the LPC (**Article 50**); the obligation to publish a summary of the project in the case of projects requiring the specific form of the EIA or subject to public consultation (**Article 51**); the duty of the authority, when issuing environmental impact approval, to observe the applicable ecological zoning plans, urban development plans, and AVA and PNA declarations; the performance of technical inspections at the proposed project site (**Article 52 bis**); the cases in which environmental impact approval shall be granted or denied, and the modalities to which it may be subjected (**Article 53**). The cited provisions qualify as "environmental law" and fall within the submissions process analysis.<sup>49</sup>
51. The Submitters cite the criteria applicable to the protection, restoration, and use of natural resources, and in particular the criteria relating to the promotion of public participation (**Article 85 paragraph VI**); the general prohibition on building construction, land use conversion, vegetation removal, or dumping of building-related materials in parks, gardens, and particularly AVAs and PNAs (**Article 88 bis 1**); the rules applicable to the felling, pruning, or transplanting of trees in AVAs and PNAs, which actions are limited to phytosanitary and fire prevention measures (**Article 89 bis**), the performance of activities in PNAs, such as protection, preservation, restoration, and reforestation, and the prohibition of activities such as air pollution emissions (**Article 93 bis 1**). The cited provisions qualify as "environmental law" and are retained for further consideration in the submission's process.<sup>50</sup>
52. The Submitters cite **LAPT Article 105**, which establishes provisions for the sustainable use of water and is "environmental law." However, the Secretariat retains only **paragraph III**, which provides for soil protection, as environmental law. **LAPT Article 107 paragraph V** which provides the availability of water in the EIA, the Secretariat finds no link is established with the assertions made in the submission.
53. Concerning sustainable land use, the Submitters cite **Article 111**, setting forth the criteria for the conservation, protection, and sustainable use of land, and **Article 112 paragraph VIII**, establishing the situations in which the criteria must be considered, notably

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<sup>49</sup> Cf. NAAEC Article 45(2)(a).

<sup>50</sup> Cf. NAAEC Article 45(2)(a)(iii).



- environmental impact assessment. The Secretariat finds that both provisions qualify as “environmental law” under NAAEC Article 45(2)(a).
54. Concerning the acknowledgment in **Article 86 bis 2** of the concept of “living systems,” this provision guides the Secretariat in its consideration of the LAPT but is not subject to consideration under the Submissions process. Finally, the submission cites the following provisions or instruments that the Secretariat was unable to identify: LAPT Article 89 *bis* 1 and the Regulation to the LAPT.
55. **RIAR.** The submission cites provisions specifying those works that require environmental impact and risk approval (including those carried out in AVAs or PNAs or contiguous to them) and the construction and operation of mass transit facilities (**Article 6, sections C and D, paragraphs I and II, no. 131**); the exceptional cases in which no environmental impact statement (EIS) is required (**Article 14**); the information that the specific form of the EIS must contain (**Article 41**); the information that must be annexed by applicants for environmental impact approval (**Article 44**); the obligation to publish a summary of the project in a wide-circulation national newspaper (**Article 45**); the cases in which an EIS exhibits insufficiencies (**Article 50**); the conduct of visits to the proposed project site (**Article 52**); the creation by Sedema of the environmental impact file, which must include any comments or observations made by the interested parties (**Article 53 paragraph III**); the cases in which a project subject to environmental impact assessment is modified (**Article 54**); public consultation on the environmental impact file (**Articles 57, 58, and 60**); the obligation of Sedema to review the EIS and the factors and criteria that must be taken into account before issuing the corresponding decision (**Articles 62 and 63**), and the requirements for assessing and ruling on EISs applicable to self-serve service stations (**Article 64**).
56. The cited provisions of the RIAR qualify as environmental law and, with the exception of **Article 64** (since it does not relate to the matter raised in the submission), will be considered further in the submissions process.
57. **Mobility Act.** The Submitters cite **Article 7 paragraph V**, which establishes that the public administration shall develop and implement mobility policies and measures in accordance with the principles enumerated therein, including that of “producing the least environmental harm.” In this regard, the Secretariat does not address the effectiveness of environmental policy implemented by the Parties; however, the implementation of a specific “measure,” such as the Metrobús Reforma project, can be assessed with reference to the cited provision, which qualifies as environmental law inasmuch as it relates to the criteria of NAAEC Article 45(2)(a). The submission cites **Article 99**, which establishes the conditions for the granting of concessions for the provision of public transportation service; the Secretariat finds that it does not qualify as environmental law because its primary purpose is not the protection of the environment or human health.
58. **LDU and its regulation.** The Submitters cite **LDU Articles 63, 64, 87 paragraph V, and 93**, as well as **Articles 76, 77, 82, and 83** of the Regulation to the LDU, which establish the cases and conditions in which an urban impact report must be produced. These are not environmental law and will not be considered further since it is clear that their primary purpose is not the protection of the environment or the prevention of a danger to human life or health.

59. **LRS and its regulation.** Concerning **LRS Article 59**, which sets out the conditions for the operation of establishments dedicated to solid waste reuse or recycling, it is “environmental law” but the Secretariat excludes it from further study because it does not relate to central aspects of the submission. As to **Article 3** of the Regulation to the LRS, which establishes the purpose of waste-related environmental policy, it is not considered further because the Secretariat finds that the submission process should not dwell on the Parties’ environmental policy. Finally, the provisions of the regulation establishing the cases, conditions, obligations, and application of the act in the area of waste management plans (**Articles 12 to 24**) qualify as “environmental law” since their purpose is the control of waste in Mexico City, in this case the waste generated during the construction and operation of the Metrobús Reforma project.
60. **Interculturalism Act.** The submission cites **Article 33**, which establishes that the hospitality, interculturalism, migrant services, and human mobility policy must be incorporated into development planning. This provision is not considered environmental law since it does not meet the criteria in the NAAEC Article 45(2) definition.
61. **LPC.** With respect to **Article 50 bis**, establishing the public consultation mechanism in Mexico City, it is not considered environmental law but serves only to guide the Secretariat’s review with respect to the *Catálogo de colonias y pueblos originarios del Distrito Federal*, which, according to the Submitters, serves to substantiate the presence of indigenous groups using the transportation system in Mexico City.

#### **h. Mexican Official Standards and Mexico City Environmental Standards**

62. As to NOM-161-Semarnat-2011, the Secretariat has found that it qualifies as “environmental law” and retains it for review in connection with the assertions concerning the absence of a management plan for waste subject to special management.
63. Concerning standard NADF-001-RNAT-2015, the Secretariat finds that its primary purpose is environmental protection in that it establishes the conditions for the pruning, felling, transplanting, and restoration of trees in Mexico City, which coincides with NAAEC Article 45(2)(a)(iii) and relates to the assertions concerning the felling of trees in order to carry out the project.
64. As regards standard NADF-007-RNAT-2013, the Secretariat retains it further study in that it coincides with NAAEC Article 45(2)(a)(ii), since it establishes the specifications for the management of construction and demolition waste in Mexico City.

#### **i. Other legal instruments**

65. The Submitters also cite the following instruments:
- Chapultepec Place of Natural Beauty Declaration;
  - Chapultepec AVA Declaration;
  - Amendment to Chapultepec AVA Declaration;
  - Notice of Approval;
  - Notice of Supply/Demand Balance;
  - Declaration of Need;
  - Sedema Commencement Decision;
  - Environmental Impact Decision.

66. The aforementioned instruments are not laws per se, but instruments related to the environmental law discussed above. These legal instruments result from the implementation of the Metrobús Reforma project and relate to the enforcement of the environmental law in question. These are annexed to the submission in support of the assertion that Mexico is failing to effectively enforce its environmental law.

### **C The six requirements of NAAEC Article 14(1)**

67. The Secretariat reviewed submission SEM-18-002 (*Mexico City Metrobús*) with reference to the six requirements of NAAEC Article 14(1) and found that it meets all of these requirements. The Secretariat's reasoning follows.

*a) [Whether the submission] is in writing in a language designated by that Party in a notification to the Secretariat*

68. The submission is written in Spanish, one of the languages designated by the Parties for the filing of submissions, pursuant to paragraph 3.2 of the Guidelines.<sup>51</sup> Therefore, the Secretariat finds that the submission meets the requirement of NAAEC Article 14(1)(a).

*b) [Whether the submission] clearly identifies the person or organization making the submission*

69. The submission provides names, addresses, and other contact information for the purposes of identifying and communicating with the Submitters; therefore, it satisfies NAAEC Article 14(1)(b).<sup>52</sup>

*c) [Whether the submission] provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based*

70. The submission contains sufficient information to allow for the Secretariat's review, since it includes information supporting the Submitters' assertions in the form of links to the various supporting documents.

71. The information cited in the submission includes the majority of the listed legal instruments promulgated by Mexico City, such as the Notice of Approval for the implementation of the "Metrobús Reforma" corridor that will operate as Line 7, which includes a description of the route followed by the corridor. The purposes of the Notice of Approval are to reserve road lanes for the exclusive use of the corridor; to site stations and terminals, and to provide for the granting of concessions or authorizations for the provision of mass transit service.<sup>53</sup> It also includes a reference to the Notice of Supply/Demand Balance, which takes the Notice of Approval as a reference for assessing the efficiency and quality of public transportation in Mexico City;<sup>54</sup> the Declaration of

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<sup>51</sup> Paragraph 3.2 of the Guidelines: "Submissions may be made in English, French or Spanish, which are the languages currently designated by the Parties for submissions."

<sup>52</sup> Submission, at 1-2.

<sup>53</sup> Submission, note 35: Notice of Approval, online at <<https://goo.gl/8V22DC>> (viewed 22 March 2018).

<sup>54</sup> Submission, note 36: Notice of Supply/Demand Balance, online at <<https://goo.gl/5f5zdC>> (viewed 22 March 2018)

- Need, which determines the need for public transportation service in the Metrobús Reforma Corridor,<sup>55</sup> and the concessions for the provision of public transportation service in the Metrobús Reforma corridor.<sup>56</sup>
72. Also included as an annex is the Environmental Impact Decision granting conditional environmental impact approval for the Metrobús Reforma project,<sup>57</sup> in support of the following issues: the environmental impacts on air, water, and soil; the generation of vibrations; the modification of the topography; the modification of the urban landscape; the modification of green spaces; the reduction of vegetated areas; the displacement of urban fauna, and the felling of 640 trees were not taken into account.<sup>58</sup> Another document annexed is the administrative decision whereby Sedema approved the commencement of work on the project.<sup>59</sup>
73. Moreover, the submission includes annexes relating to certified statements of facts produced in July and August 2017, in an effort to substantiate the allegation of non-compliance with the definitive suspension of work on the Metrobús Reforma project ordered by the jurisdictional authority.<sup>60</sup>
74. The submission includes references to studies showing that long-term exposure to high concentrations of particulate matter smaller than 2.5 microns (PM<sub>2.5</sub>) is associated with a smaller volume of cerebral development,<sup>61</sup> and a report stating that approximately 9,300 deaths per year are associated with air pollution,<sup>62</sup> as well as a presentation by the Mexican Institute for Competitiveness (*Instituto Mexicano para la Competitividad*) which states that between January of 2010 and 2013, poor air quality in Mexico City caused 53,000 hospitalizations and over 3 million visits to doctors' offices.<sup>63</sup> The submission includes a link to the mass transit study for the Metrobús Reforma project.<sup>64</sup>

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<sup>55</sup> Submission, note 37: Declaration of Need, online at <<https://goo.gl/HeazWs>> (viewed 22 March 2018).

<sup>56</sup> Submission, note 49: Concessions for Provision of Mass Transit Service in the "Metrobús Reforma" Corridor to Operadora Línea 7, S.A. de C.V., and Sky Bus Reforma, S.A. de C.V. (both dated 1 July 2016), online at <<https://goo.gl/jeH4uH>> and <<https://goo.gl/drJw5B>>, respectively (viewed 22 March 2018).

<sup>57</sup> Submission, note 38: Environmental Impact Decision, online at <<https://goo.gl/f5yJ2n>> (viewed 22 March 2018).

<sup>58</sup> Submission, at 10.

<sup>59</sup> Submission, note 39: Sedema Commencement Decision, online at <<https://goo.gl/M73huL>> (viewed 22 March 2018).

<sup>60</sup> Certified statements of facts produced on 17, 21, and 28 July and 11 and 25 August, online at <<https://goo.gl/sEj5pU>> (viewed 22 March 2018).

<sup>61</sup> Submission, note 74: Wilker *et al.*, "Long-Term Exposure to Fine Particulate Matter, Residential Proximity to Major Roads and Measures of Brain Structure," *Stroke* (American Heart Association), 2015, online at <<https://goo.gl/SgwSf7>> (viewed 22 March 2018).

<sup>62</sup> Submission, note 75: Centro Mexicano de Derecho Ambiental, *Derechos humanos y la calidad del aire en México*, 2016, online at <<https://goo.gl/PPjJkZ>> (viewed 22 March 2018).

<sup>63</sup> Submission, note 76: Instituto Mexicano para la Competitividad, *La contaminación del aire: un problema que daña la salud y la economía*, ca. 2014, online at <<https://goo.gl/VmUNCL>> (viewed 22 March 2018).

<sup>64</sup> Submission, note 63: Metrobús, Centran, *Estudio de transporte público de pasajeros del Corredor Reforma*, undated, online at <<https://goo.gl/VtRDNY>> (viewed 22 March 2018).

75. The Secretariat finds that the submission contains sufficient information to allow for its review.

*d) [Whether the submission] appears to be aimed at promoting enforcement rather than at harassing industry*

76. The submission satisfies NAAEC Article 14(1)(d), since it appears to be aimed at promoting enforcement rather than at harassing industry. Paragraph 5.4 of the Guidelines guides the Secretariat in making this determination, and the submission clearly focuses on the environmental impact approval process for the Metrobús Reforma project.

77. The Secretariat finds that the submission meets the requirement of NAAEC Article 14(1)(d).

*e) [Whether the submission] indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any*

78. The submission contends that a meeting was held on 17 May 2017 at which various civil society organizations, including one of the Submitters, stated their concerns about the construction of the Metrobús Reforma project. The meeting was held with the borough mayor of Miguel Hidalgo and with representatives of the Mexico City Ministry of Government and the Metrobús system.

79. In addition, the Submitters filed an amparo motion against the authorities responsible for the project: Sedema, the Mexico City Ministry of Works and Services (*Secretaría de Obras y Servicios—Sobse*), the Ministry of Mobility (*Secretaría de Movilidad—Semovi*), the Mayor of Mexico City, and Semarnat, among others.

80. The Secretariat finds that the matter has been communicated in writing to the government and the relevant authorities, and therefore meets the requirement of NAAEC Article 14(1)(e).

*f) [Whether the submission] is filed by a person or organization residing or established in the territory of a Party*

81. Since the Submitters are Mexico City residents, the Secretariat finds that the requirement of NAAEC Article 14(1)(f) is met.

#### **D NAAEC Article 14(2)**

82. Having determined that the revised submission satisfies all the requirements of NAAEC Article 14(1), the Secretariat proceeded to review the submission in order to determine whether it warrants requesting a response from the Party under NAAEC Article 14(2).

*a) Whether the submission alleges harm to the person or organization making the submission*

83. The Submitters allege that the failure to effectively enforce the environmental law with respect to the Metrobús Reforma project is causing the following consequences:

a. Infringements of Mexico City residents' human right to a healthy environment and to health as a result of the alleged violation of the law in connection with the

removal and management of forest vegetation in Mexico City, the protection of the Bosque de Chapultepec AVA, air emissions, adequate hazardous waste management, and environmental impact assessment of the project;

- b. Harm to the environment and human health caused by the alleged removal of forest vegetation. The Submitters contend that forested land conversion approval should have been requested because the route runs along the Paseo de la Reforma, which is federal property;
- c. Harm to the environment and human health caused by the Notice of Approval, the Notice of Supply/Demand Balance, and the Declaration of Need because environmental impact approval allegedly should have been obtained before these notices were issued. The Submitters contend that the notices and the declaration are part of the procedure for granting a public transportation concession, not the procedure for approving construction work.
- d. Harm to the environment and human health caused by failure to enforce the environmental law in connection with the environmental impact assessment procedure, since there was allegedly a failure to assess environmental impacts associated with air, water, and soil and the generation of vibrations; modification of the topography; modification of the urban landscape; modification of green spaces; reduction of vegetated areas; displacement of urban fauna, and the felling of 640 trees. In addition, the Submitters allege that there has been no process of prior consultation as per the legislation cited in the submission, thus affecting the right of Mexico City residents to a healthy environment.

84. The Secretariat finds that the harm asserted in the submission is a consequence of the alleged failure to effectively enforce the environmental law and, pursuant to paragraph 7.4 of the Guidelines, finds that the submission satisfies this criterion.

*b) Whether the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement*

85. The Secretariat finds that submission SEM-18-002 (*Mexico City Metrobús*) raises matters whose further study in this process would advance the goals of the NAAEC, specifically Article 1(a), (b), (c), (f), (g), and (h),<sup>65</sup> and finds that it meets the requirements of Article 14(2)(b) of the Agreement.

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<sup>65</sup> NAAEC Article 1:

The objectives of this Agreement are to:

- (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- (b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;
- (c) increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;...
- (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- (g) enhance compliance with, and enforcement of, environmental laws and regulations;
- (h) promote transparency and public participation in the development of environmental laws, regulations and policies;...

*c) Whether private remedies available under the Party's law have been pursued*

86. On 24 May 2017, one of the Submitters filed an indirect amparo motion based on a legitimate collective interest against the Mayor of Mexico City, Sedema, Sobse, Semovi, and Semarnat, among others, for alleged violation of the human rights of Mexico City residents. The amparo motion was allowed on 1 June 2017 and found to be timely. In a ruling of 9 June 2017 on the amparo motion, the Judicial Branch ordered a total suspension of construction on the Metrobús Reforma project.<sup>66</sup>
87. The Submitters maintain that, despite the court order, further construction activities associated with the project have been documented. Consequently, on 29 June 2017 they filed an incident report alleging non-compliance.<sup>67</sup> The Submitters assert that construction work is continuing despite the suspension. Mexico can report on the status of the proceeding and the alleged occurrence of work despite the existence of a suspension order issued by the Judicial Branch.
88. The Secretariat concludes that the submission meets the criterion of NAAEC Article 14(2)(c).

*d) Whether the submission is drawn exclusively from mass media reports*

89. The Secretariat finds that the submission is not based on media reports but on the facts asserted by the Submitters. While links to news items covering the events are included, it is clear that the purpose is to show that the matter is public knowledge, in particular regarding the decision by the Mayor of Mexico City to implement the Metrobús Reforma project despite the legal remedies pursued by the Submitters.<sup>68</sup>
90. Therefore, the Secretariat concludes that the submission meets the criterion of NAAEC Article 14(2)(d).

### III. DETERMINATION

91. For the reasons stated above, the Secretariat finds that submission SEM-18-002 (*Mexico City Metrobús*) meets the eligibility requirements of NAAEC Article 14(1) and, in accordance with NAAEC Article 14(2), that it warrants requesting a response from the Government of Mexico in regard to the effective enforcement of the following environmental laws:
- a. Concerning the environmental impact assessment for the Metrobús Reforma project:
    - i. **LAPT** Articles 44; 46 paragraphs III and IV(a), VIII, and IX; 47; 48; 49; 50; 51; 52 *bis*; 53; 111, and 112 paragraph VIII;

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<sup>66</sup> Submission, at 6.

<sup>67</sup> *Ibid.*

<sup>68</sup> M. Mejía, *No importan amenazas, Metrobús de Reforma va: Mancera*, UNO TV (14 June 2017), online at <<https://goo.gl/wesUfd>> (viewed 22 March 2018).

- ii. **RIAR** Articles 6, sections C and D, paragraphs I and II (no. 131); 14; 41; 44; 50; 52; 54; 62, and 63, and
    - iii. Article 7 paragraph V of the **Mobility Act**.
  - b. Concerning public participation during the environmental impact assessment for the Metrobús Reforma project:
    - i. Articles 6, 7, and 8 of **Convention 169**;
    - ii. **LAPT** Articles 13 and 85 paragraph VI;
    - iii. **RIAR** Articles 45; 48; 53 paragraph III; 57; 58, and 60, and
  - c. Concerning the management of vegetation and trees planned in connection with the construction of the Metrobús Reforma project, soil protection, and performance of activities in the AVAs or PNAs contiguous to the project:
    - i. **LGEEPA** Article 134 paragraph II;
    - ii. **LAPT** Articles 88 *bis* 1, 89 *bis*, 93 *bis* 1, and 105 paragraph III, and
    - iii. **NADF-001**.
  - d. Concerning management plans for hazardous waste, solid waste, and waste subject to special management during the construction and operation of the Metrobús Reforma project:
    - i. **LGEEPA** Articles 150 and 151 *bis* paragraph III;
    - ii. **LGPGIR** Articles , 7 paragraph IX; 9 paragraphs III, IV, V and VI, and 31 paragraphs I to VII and 42;
    - iii. Articles 16, 17, 20, 21, 24, 26, and 29 of the **Regulation to the LGPGIR**;
    - iv. **LRS** Articles 12 to 24, and
    - v. NOM-161 and NADF-007.
  - e. Concerning anticipated air emissions from the Metrobús Reforma project:
    - i. **LGEEPA** Articles 10 *bis*, second paragraph, and 110.
  - f. Concerning the land use conversion of presumably forested land in connection with the Metrobús Reforma project:
    - i. **LGDFS** Article 117, and
    - ii. Article 122 paragraph V of the **Regulation to the LGDFS**.



92. Mexico's response can include an explanation of how the legal instruments codifying the principles and criteria guiding the enforcement of environmental law were applied in the context of environmental law enforcement connected with the Metrobús Reforma project.
93. Pursuant to NAAEC Article 14(3), the Party may provide a response to the determination by **13 June 2018**. Under exceptional circumstances, the Party may notify the Secretariat in writing of an extension of 60 (sixty) working days from the date of this determination, or **25 July 2018**.

**Secretariat of the Commission for Environmental Cooperation**

*(original signed)*

per: Robert Moyer  
Head, SEM Legal Unit

*(original signed)*

per: Paolo Solano  
Legal Officer, SEM Legal Unit

cc: Enrique Lendo, Alternate Representative, Mexico  
Isabelle Bérard, Alternate Representative, Canada  
Jane Nishida, Alternate Representative, United States  
César Rafael Chávez, Executive Director, CEC  
Submitters

Appendix 1. Legal instruments cited in the submission.