

[UNOFFICIAL TRANSLATION FOR REFERENCE PURPOSES]

Mexico City, 1 February 2018

Subject: Submission on the effective enforcement of environmental law with respect to the “Metrobús Reforma” mass transit corridor

To: Secretariat of the Commission for Environmental Cooperation

In accordance with Articles 14 and 15 of the North American Agreement on Environmental Cooperation (NAAEC), we hereby request opening a submission on enforcement matters (SEM) file regarding the effective enforcement of environmental law. Our goal is to promote understanding of environmental law and its enforcement in North America in relation to the “Metrobús Reforma” mass transit corridor (Metrobús Line 7), based on the information presented herein.

The construction of Metrobús Line 7 has been presented by the government as an option for addressing Mexico City’s transportation problems. However, the administrative processes underpinning the granting of the relevant approvals, permits and concessions were opaque and unlawful. This involved not only the government of Mexico City (CDMX) and the boroughs along the route of that Metrobús line, but also the federal authorities that have been remiss in relation to environmental issues.

What makes this case relevant is that CDMX is itself the project developer who should have been the first to exhibit leadership in the observance of environmental law, ensuring that the project development process provided for proper planning, outreach, civic participation, and legal compliance. This, unfortunately, has not been the case.

It is important to note that the violation of environmental law by the Metrobús Line 7 construction project dates back to 2015 with the promulgation of an irregular administrative procedure, which modified the local protected natural area (PNA) known as the Bosque de Chapultepec Area of Environmental Value (AVA). It is Mexico City’s principal PNA, not only because of the environmental services it provides, but also because of its scenic beauty and rich history.

In addition, the declarations and notices that were published before the environmental impact approval was granted and other environmental requirements were met are unlawful. Moreover, those instruments concerned only the granting of public transit concessions. As such, it is clear that the government’s priority was not to enhance living conditions for the public or to protect the environment.

This is a serious matter, as one of the objectives of the North American Free Trade Agreement (NAFTA) is to promote investment projects. In fact, this submission concerns an example of a public works investment that would generate positive environmental effects if it were carried out in accordance with the law. However, since the government itself proceeded in an unlawful manner, the project instead affords an example of what should not be done.

Consequently, it is incumbent upon the CEC to develop a factual record of this case. In so doing, it will contribute to a culture of legality and serve as an example of how a government should act when proceeding with a high-impact public works project—by complying with environmental law.

I. Submitters

1.- *Academia Mexicana de Derecho Ambiental, A.C. (AMDA)*

Founded in 1974 as *Academia Mexicana de Derecho Ecológico* and known for the better part of two decades as *Academia Mexicana de Derecho Ambiental*, AMDA is a leading civil society association active in non-profit work to protect the environment and promote sustainable development.

AMDA has participated in forums, studies, and education on a wide range of topics and issues in environmental law, such as biodiversity, water, waste, sustainable consumption, green tourism, renewable energy, climate change, environmental justice and mediation, federalism as it relates to environmental matters, and so forth.

We have also collaborated with various institutions of research and higher education, such as the *Universidad Nacional Autónoma de México* (UNAM), various state universities, the *Colegio de México*, the *Universidad Autónoma Metropolitana* (UAM), the *Instituto Tecnológico Autónomo de México* (ITAM), the *Instituto Politécnico Nacional* (IPN), UNAM's ecology and economics research institutes, among others.

At the international level, we have worked with organizations from Argentina, Bolivia, Brazil, Canada, Costa Rica, Ecuador, Greece, Luxemburg, Russia, Spain, the UK, the United States, and Uruguay.

Our founder and ex-president, Ramón Ojeda Mestre, maintains close ties with the International Court of Environmental Arbitration and Conciliation and was recently appointed to the top regional position of the International Council for Environmental Law (ICEL). In addition, Mr. Ojeda Mestre received the Brussels International Environmental Law Award in 2005, as well as international recognition from the International Union for the Conservation of Nature (IUCN) in 2008.

We are currently preparing legal studies on issues in the areas of biocultural heritage, biodiversity, and exotic invasive species. We also support socio-environmental litigation.

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II. Party in question

The Mexican federal government, the Government of Mexico City (CDMX), and the authorities of the boroughs of Gustavo A. Madero, Cuauhtémoc, and Miguel Hidalgo, and more specifically:

- a. Mexico City Department of Public Works and Services (*Secretaría de Obras y Servicios—Sobse*), as executing agency.
- b. Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales—Semarnat*), as authorizing agency.
- c. Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente—Profepa*), as authorizing agency.
- d. Mexico City Department of Transportation (*Secretaría de Movilidad de la CDMX—Semovi*), as authorizing agency.
- e. Mexico City Department of the Environment (*Secretaría del Medio Ambiente—Sedema*), as authorizing agency.
- f. Mexico City Attorney for Environmental Protection and Zoning (*Procuraduría Ambiental y del Ordenamiento Territorial—PAOT*), as authorizing agency.
- g. Ministry of Urban Development and Housing (*Secretaría de Desarrollo Urbano y Vivienda—Seduvi*), as authorizing agency.
- h. Mayoralty of Mexico City, as authorizing agency.
- i. Gustavo A. Madero Borough (*Delegación Gustavo A. Madero—GAM*), as authorizing agency.
- j. Cuauhtémoc Borough (*Delegación Cuauhtémoc*), as authorizing agency.
- k. Miguel Hidalgo Borough (*Delegación Miguel Hidalgo*), as authorizing agency.

- III. Environmental law¹
- a. Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*)²
 - Articles 1, 4 paragraphs 4 and 5, and 25 paragraph 7.
 - b. International treaties
 - NAAEC.
 - *Convention on the Rights of the Child (CRC)*.³
 - *Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention C169)*.⁴
 - *Convention on Biological Diversity (CBD)*.⁵
 - *American Declaration of the Rights and Duties of Man and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)*.⁶
 - *Rio Declaration on Environment and Development (Rio Declaration)*.⁷
 - *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.⁸
 - *North American Free Trade Agreement (NAFTA)*.⁹
 - c. Mexican federal laws
 - General Sustainable Forestry Act (*Ley General de Desarrollo Forestal Sustentable—LGDFS*).¹⁰
 - General Ecological Balance and Environmental Protection Act (*Ley General del Equilibrio Ecológico y la Protección al Ambiente—LGEEPA*).¹¹
 - General Waste Prevention and Management Act (*Ley General para la Prevención y Gestión Integral de los Residuos—LGPGIR*).¹²
 - General Climate Change Act (*Ley General de Cambio Climático—LGCC*).¹³
 - General National Assets Act (*Ley General de Bienes Nacionales—LGBN*).¹⁴
 - d. Regulations to federal laws
 - Regulation to the LGDFS (RLGDFS).¹⁵
 - Regulation to the LGPGIR (RLGPGIR).¹⁶
 - National Emissions Registry of the Regulation to the LGCC (RLGCCRNE).¹⁷
 - e. Mexico City Constitution (*Constitución Política de la Ciudad de México*).¹⁸
 - Articles 9 paragraph D, 13 paragraph A, 16 paragraphs A (numbers 4, 5, 8, and 9) and C (number 6), 53 paragraph B (number 3(b) sections XXII and XXIV), and 59 paragraph B (numbers 1, 2, and 8 section II).

¹ The original names of local laws have been left unchanged, it being understood that all references to the Federal District now apply to Mexico City.

² Official Gazette of the Federation (*Diario Oficial de la Federación—DOF*), 5 February 1917.

³ DOF, 25 January 1991.

⁴ DOF, 3 August 1990.

⁵ DOF, 7 May 1993.

⁶ DOF, 7 May 1981.

⁷ See: <http://www.un.org/spanish/esa/sustdev/documents/declaracionrio.htm> (viewed 21 January 2018).

⁸ DOF, 12 May 1981.

⁹ DOF, 20 December 1993.

¹⁰ DOF, 25 February 2003.

¹¹ DOF, 28 January 1988.

¹² DOF, 8 October 2003.

¹³ DOF, 6 June 2012.

¹⁴ DOF, 20 May 2004.

¹⁵ DOF, 21 February 2005.

¹⁶ DOF, 30 November 2006.

¹⁷ DOF, 28 October 2014.

¹⁸ Official Gazette of the Federal District (*Gaceta Oficial del Distrito Federal—GODF*), 31 January 2017; see http://infodf.org.mx/documentospdf/constitucion_cdmx/Constitucion_%20Politica_CDMX.pdf (viewed 23 January 2018).

f. Mexico City laws

- Environmental Act for Land Protection in the Federal District (*Ley Ambiental de Protección a la Tierra en el Distrito Federal—LAPT*).¹⁹
- Transportation Act (*Ley de Movilidad—LM*).²⁰
- Federal District Urban Development Act (*Ley de Desarrollo Urbano del Distrito Federal—LDU*).²¹
- Federal District Solid Waste Act (*Ley de Residuos Sólidos del Distrito Federal—LRS*).²²
- Federal District Interculturalism, Migrant Services, and Human Mobility Act (*Ley de Interculturalidad, Atención a Migrantes y Movilidad Humana en el Distrito Federal—LIAMMH*).²³
- Civic Participation Act (*Ley de Participación Ciudadana—LPC*).²⁴

g. Mexico City regulations

- Regulation to the Federal District Environment Act (RLA).²⁵
- Environmental Impact and Risk Regulation (*Reglamento de Impacto Ambiental y Riesgo—RIAR*).²⁶
- Regulation to the Federal District Urban Development Act (RDU).²⁷
- Regulation to the Federal District Solid Waste Act (RLRS).²⁸

h. Mexican Official Standards (NOMs)

- 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-SEMARNAT-2011).²⁹

i. Mexico City environmental standards

- Federal District Environmental Standard NADF-001-RNAT-2015, Establishing the technical requirements and specifications to be met by physical persons, public or private legal persons, authorities and, in general, anyone who prunes, fells, transplants, or restores trees in the Federal District (NADF-001-RNAT-2015).³⁰
- 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-RNAT-2013).³¹

j. Administrative instruments

- Declaration of Bosque de Chapultepec as a place of natural beauty based on its artistic history and the photographs and map submitted by the Department of Monuments (“Chapultepec Place of Natural Beauty Declaration”).³²
- Executive order declaring Bosque de Chapultepec an Area of Environmental Value in the Federal District (“Chapultepec AVA Declaration”).³³

¹⁹ GODF, 26 March 2004.

²⁰ GODF, 14 July 2014.

²¹ GODF, 15 July 2010.

²² GODF, 22 April 2003.

²³ GODF, 7 April 2011.

²⁴ GODF, 17 May 2004.

²⁵ GODF, 3 December 1997.

²⁶ GODF, 26 March 2004.

²⁷ GODF, 29 January 2004.

²⁸ GODF, 7 October 2008.

²⁹ DOF, 1 February 2013.

³⁰ GODF, 1 April 2016.

³¹ GODF, 26 February 2015.

³² DOF, 29 September 1932.

³³ GODF, 2 November 2003.

- 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 the Chapultepec AVA Declaration”).³⁴
 - Notice of Approval for the “Metrobús Reforma” Mass Transit Corridor, establishing the general conditions governing its operation (“Notice of Approval”).³⁵
 - Notice of Mass Transit Supply and Demand Balance in the “Metrobús Reforma” corridor (“Notice of Supply and Demand Balance”).³⁶
 - Declaration of Need for Mass Transit Service in the “Metrobús Reforma” Corridor (“Declaration of Need”).³⁷
- k. Other legal instruments
- Environmental impact decision no. SEDEMA/DGRA/DEIA/014363/2016 (the “Environmental Impact Decision” or RIA).³⁸
 - Administrative decision no. SEDEMA/DGRA/DEIA/004234/2017³⁹ (“Sedema Commencement Decision”).

IV. Record of events

The following section is a chronological record of events pertaining to the construction of Metrobús Line 7. What is important to understand is that the authorities’ actions in relation to this project have been opaque and unlawful, as explained below. Nonetheless, AMDA’s efforts following the declaration of the project’s permanent injunction have not been without positive results, notably the decision of the government of Mexico City to upload some project-related documents, many of which were unknown to AMDA and the general public, to a website.⁴⁰

On 29 June 2015, a Notice of Approval was published in the Official Gazette of the Federal District (GODF), wherein Semovi approved the construction of the “Reforma Corridor” from the “Indios Verdes” Modal Transfer Center to the intersection of Paseo de la Reforma with the Boulevard Manuel Ávila Camacho ring road.⁴¹ In addition, this notice specified that services would operate in reserved bus lanes and that certain transportation services would be modified.⁴² It also specified the location of 31 stations.⁴³

On 21 June 2016, Semovi published a Notice of Supply and Demand Balance in the GODF. Its general objective was “to assess, quantitatively and qualitatively, the efficiency and quality of the supply of mass transit services provided by the principal transit operators on the roadways along the corridor’s route, and the degree to which they satisfy the demand for these services, particularly among passengers whose mobility needs require transit on said roadways.”⁴⁴

On the same date (21 June 2016), a Declaration of Need (*Declaratoria de Necesidad*) was published in GODF, in which Semovi declared: “A mass transit service in the ‘Metrobús Reforma’ corridor is a public necessity.”⁴⁵ In addition, the declaration indicated that “as Metrobús Line 7 comes into service, a fleet of 90 double-decker buses will be required to satisfy demand.”⁴⁶ Also specified were

³⁴ GODF, 11 July 2014.

³⁵ GODF, 29 June 2005; see: http://data.metrobus.cdmx.gob.mx/docs/L7/AA_MBL7.pdf (viewed 23 January 2018).

³⁶ GODF, 21 June 2016; see: http://data.metrobus.cdmx.gob.mx/docs/L7/Av_BOD_MBL7.pdf (viewed 23 January 2018).

³⁷ GODF, 21 June 2016; see: http://data.metrobus.cdmx.gob.mx/docs/L7/DN_MBL7.pdf (viewed 23 January 2018).

³⁸ Metrobús CDMX, RIA. http://data.metrobus.cdmx.gob.mx/docs/L7/RIA_MBL7.pdf (viewed 23 January 2018).

³⁹ Metrobús CDMX, Administrative Decision No. SEDEMA/DGRA/DEIA/004234/2017.

<http://data.metrobus.cdmx.gob.mx/docs/L7/AADM.pdf> (viewed 23 January 2018).

⁴⁰ See: <http://www.metrobus.cdmx.gob.mx/portal-ciudadano/informacion-linea-7> (viewed 24 January 2018).

⁴¹ GODF, 29 June 2005, *Aviso de aprobación* (Notice of Approval), Legal and factual basis 1.

⁴² GODF, 29 June 2005, Notice of Approval, Legal and factual basis 1.

⁴³ GODF, 29 June 2005, Notice of Approval, Legal and factual basis 3.

⁴⁴ GODF, 21 June 2016, *Aviso de balance entre oferta y demanda* (Notice of Supply and Demand Balance), section 1.1.

⁴⁵ GODF, 21 June 2016, *Declaratoria de necesidad* (Declaration of Need), Legal and factual basis 1.

⁴⁶ GODF, 21 June 2016, Declaration of Need, Legal and factual basis 4.

the standards to be met by the buses⁴⁷ and the fact that Line 7 would consist of 32 stations distributed along the length of the corridor⁴⁸ (i.e., one more than indicated in the Notice of Approval).

On 1 July 2016, Semovi granted concessions for the provision of mass transit services in the Metrobús Reforma corridor to two companies: (i) Operadora Línea 7, S.A. de C. V.⁴⁹ and (ii) Sky Bus Reforma, S.A. de C. V.⁵⁰ It deserves mention that both concessions cover the provision of transit services along the routes, and to the destinations, specified in the Notice of Approval.⁵¹

On 24 August 2016, the Director of Road Construction of the Special Projects Branch of Sobse (the “Developer”) submitted an environmental impact assessment (EIA) application in folio no. 17593/2016, which included a specific modality environmental impact statement (EIS), in order to execute a project known as the “Construction of the Metrobús Line 7 Corridor, to run on Avenida Paseo de la Reforma between Indios Verdes and Fuente de Petróleos, with influence on the boroughs of Gustavo A. Madero, Cuauhtémoc, and Miguel Hidalgo.”

On 30 November 2016, Sedema issued environmental impact decision no. SEDEMA/DGRA/DEIA/014363/2016 (RIA), ruling in favor of the Developer and granting it conditional environmental impact approval.⁵²

On 25 April 2017, Sedema issued administrative decision no. SEDEMA/DGRA/DEIA/004234/2017, approving: (i) the commencement of resurfacing along the segment between Indios Verdes and Eje 2; (ii) the construction of station platforms, except at the Campo Marte, Auditorio, Museo de Antropología, and Gandhi stations, where authorization from Bosque de Chapultepec is required for tree removal, due to their location within the Bosque de Chapultepec Area of Environmental Value (AVA);⁵³ (iii) the destruction of 56 trees and 302 forest specimens, the pruning of 12 forest specimens, the removal of 23 stumps, and the transplanting of 5 saplings; and (iv) an impact on 2,439.43 m² of permanent green space along with the restoration of an equivalent area, as close as possible to the project’s area of influence.⁵⁴

On 17 May 2017, a meeting was held with the borough mayor of Miguel Hidalgo, the Metrobús authority, and the Mexico City Ministry of Government, during which various civil society organizations, including La Voz de Polanco, A.C., expressed their concerns regarding the construction of Metrobús Line 7.⁵⁵

On 24 May 2017, AMDA filed an indirect amparo motion, based on legitimate collective interest, against Sobse, Semarnat, Semovi, Sedema, the mayoralty, and various other authorities charged with the conservation of cultural heritage. This motion cited the authorities’ violation of the human rights of Mexicans, and especially of Mexico City’s inhabitants, to a healthy environment, health, and the enjoyment of their historical, cultural, archeological, and urban heritage.⁵⁶

On 1 June 2017, the amparo motion was admitted because “the impact that it could cause in relation to the complainant’s sphere of rights would be of an ongoing nature. Consequently, in keeping with the complainant’s right to an effective legal remedy, one must consider the amparo motion admissible, at this procedural stage.”⁵⁷

⁴⁷ GODF, 21 June 2016, Declaration of Need, Legal and factual basis 2.

⁴⁸ GODF, 21 June 2016, Declaration of Need, Legal and factual basis 3.

⁴⁹ Metrobús CDMX, Concession title for the provision of Mass Transit Service in the Metrobús Reforma Corridor. Concession holder: Operadora Línea 7, S.A. de C. V. <http://data.metrobus.cdmx.gob.mx/docs/L7/CL7OL7SA.PDF> (viewed 23 January 2018).

⁵⁰ Metrobús CDMX, Concession title for the provision of Mass Transit Service in the Metrobús Reforma Corridor. Concession holder: Sky Bus Reforma, S.A. de C. V. <http://data.metrobus.cdmx.gob.mx/docs/L7/CL7Sky.PDF>.

⁵¹ Legal and factual basis 3 of both concession titles.

⁵² RIA, Operative paragraph 1.

⁵³ *Acuerdo de inicio Sedema* (Sedema Commencement Decision), Decision 2.

⁵⁴ Sedema Commencement Decision, Decision 3.

⁵⁵ See summary letter.

⁵⁶ Amparo no. 841/2017, Eighth District Judge of the Administrative Tribunal of Mexico City.

⁵⁷ *Acuerdo de admisión* (Decision of Admissibility) at 3.

On 9 June 2017, the Eighth District Judge of the Administrative Court (“Eighth District Judge”) ruled on amparo proceeding no. 841/2017, ordering a permanent injunction, including:

1. Total cessation of construction on the “Metrobús Reforma” Line 7 Mass Transit Corridor.
2. Particularly, to ensure that the following shall not be affected:
 - the natural green space in Bosque de Chapultepec and areas peripheral thereto;
 - the urban structure of Paseo de la Reforma and its green space;
 - the trees at risk of being felled due to construction activities;
 - the other monuments and remnants located in said areas, which are of historic, cultural, or artistic value;...

On 29 June 2017, the Eighth District Judge ruled on the motion for an amendment to the permanent injunction. The injunction was amended to “strike down the reference to the possible impact on the essential urban structure of Paseo de la Reforma and its green space.” However:

the permanent injunction persists as regards its guarantee that the other three protections granted shall not be affected, namely those concerning:

- the natural areas located in Bosque de Chapultepec;
- the trees at risk of being felled due to construction activities; and
- the monuments and remnants located in said areas and which are of historic, cultural, or artistic value.

On 17 July 2017, AMDA filed a motion citing non-compliance with the permanent injunction of 29 June 2017.

During the months of July and August, with the support of neighborhood informants, cases of non-compliance with the permanent injunction were documented, as the Mexico City government unlawfully carried on with the construction of the project. This documentation produced five statements of facts⁵⁸ that underpinned the legal action brought on 17 July.

On 22 December 2017, the Eighth District Judge held that the motion was admissible but unfounded on the basis of formal arguments.

Although a definitive ruling on the amparo motion remains pending and three of the permanent injunction’s four operative paragraphs remain in force, the Mexico City government is pursuing the unlawful construction of the project and its violation of Mexicans’ rights to a healthy environment and health, as may be seen in the statements of facts and photographs attached to this submission (see Appendix 1). In light of the risk that the project may be completed and cause irreparable damage to Mexico City’s environment, we are turning to the Secretariat of the CEC, particularly since the government has attempted a de facto regularization of unlawful acts, rather than initiate a proper institutional process with proper studies, in compliance with environmental law. If the latter approach were observed, the resulting public transit corridor project could effectively generate the environmental and health benefits that one might expect following the completion of an EIA process in accordance with the law and the terms and deadlines specified therein.

V. Promotion of the effective enforcement of environmental law

Should the CEC accept this submission and determine that the preparation of a factual record is warranted, this submission would be an emblematic case in terms of effective enforcement of environmental law, as the following issues are raised herein: violation of the human rights to a healthy environment and health; damage to forests and protected natural areas; air emissions and greenhouse gases; waste management; environmental management; environmental impact; consultation of Indigenous communities; and law enforcement.

⁵⁸ The statements of facts were submitted on the following dates: 17, 21, and 28 July and 11 and 25 August 2017; see <https://goo.gl/sEj5pU>.

VI. Communication in writing to the relevant authorities of the Party and the latter's response, if any

As mentioned in the record of events, there has been verbal and written communication with the Mexico City and Metrobús authorities, thanks to the residents belonging to La Voz de Polanco. However, no agreements have been reached.

In addition, since 2015, various public information requests have been made regarding construction permits and approvals for Metrobús Line 7, as well as the relevant supporting information.

Furthermore, an amparo motion has been filed and admitted, leading to a permanent injunction of the project and, a month later, to an amendment thereto. The replies from the authority are given in Appendix 2.

As for the response of the Mexico City government, the following statement made by the mayor in June 2017 shows that the government has decided to go ahead with the project, despite its unlawful status:

I respect institutions, but there's a limit to everything. So, we'll go to court, but if I have to move something, or if I have to remove something for the people's benefit, I don't care if they threaten us or denounce us, if they accuse us of violating injunctions: I have to act for the public good.⁵⁹

VII. Damage to the environment and human health

A. Violation of the human right of all Mexicans to a healthy environment and the right of Mexico City's inhabitants to health⁶⁰

The construction of Metrobús Line 7 violates the human rights to a healthy environment and to health enshrined in both the Mexican Constitution and the Mexico City Constitution, as well as in various international instruments ratified by Mexico.

The human right of all Mexicans to a healthy environment is violated since the government is failing to effectively enforce the law with respect to forest vegetation under federal jurisdiction (i.e., in Bosque de Chapultepec), air emissions, and hazardous waste management (see paragraphs B, H, and I).

Likewise, the rights of Mexico City's inhabitants to a healthy environment and to health are violated by the failure to enforce the environmental law in the context of the local environmental impact assessment (EIA) process, as discussed in greater detail in paragraph D. In particular, Sedema did not request sufficient information to allow for a proper assessment of the project's environmental impact, notably in terms of technical studies (e.g., emissions generated by the confinement of a lane on one of the most highly traveled roadways with walkways; wildlife impact studies; environmental characteristics of the Metrobús vehicles; impact on the Chapultepec PNA, etc.). Moreover, project information which should have been requested from the Developer was instead rectified and requested as a condition in the RIA. In this way, the RIA was issued in an irregular and expedited manner, from the perspective of the Mexico City government, rather than with adherence to due process.

⁵⁹ <https://www.unotv.com/noticias/estados/distrito-federal/detalle/no-importan-amenazas-metrobus-de-reforma-va-mancera-364624/>.

⁶⁰ **Legal basis:** Articles 1, 4 paragraphs IV and V, and 25 paragraph VII of the Constitution. CDMX Constitution Articles 9 paragraph D, 13 paragraph A, 16 paragraph A (numbers 4, 5, 8, and 9) and C (number 6), 53 paragraph B (number 3(b) sections XXII and XXIV) and 59 paragraph B (numbers 1, 2, and 8 section II). CDN Article 24. CDB Articles 2, 8 and 14. Protocol of San Salvador, Articles 10 and 11. Rio Declaration, principles 17 and 22. PIDESC Articles 11 and 12. NAFTA Articles 102(1)(c) and 1114. LAPT Article 13.

Authorities failing to effectively enforce environmental law: the authorities mentioned in section "II. Party in question."

Furthermore, the Mexico City authorities failed to enforce LAPT Article 13, which imposes the following obligations on the authorities: “I. Promote public participation in environmental management; II. Promote protection of the environment and human health; III. Develop and make efficient use of natural resources; and IV. Repair the harm caused, should any complementary activities impact the environment and the future availability of natural resources.”

B. Harm to the environment and human health from removal of forest vegetation under federal jurisdiction⁶¹

Sobse failed to apply for a forested land use change (*cambio de uso de suelo en terrenos forestales*—CUSTF) approval from Semarnat. As a consequence, Profepa failed to sanction the project for lacking proper CUSTF approval.

CUSTF approval is a statutory requirement for the Metrobús Line 7 construction project because its route follows Paseo de la Reforma, which is, pursuant to the LGBN, a national asset under federal jurisdiction. The absence of this approval contributes to the accelerated loss of forest vegetation in Mexico.

C. Harm to the environment and human health from failure to enforce the environmental law in connection with the Notice of Supply and Demand Balance⁶²

The Notice of Approval, the Notice of Supply and Demand Balance, and the Declaration of Need were developed and published via a process that violated Mexico City’s environmental law because they were issued prior to the RIA, and none of them indicated that it was conditional on obtaining environmental impact approval. Furthermore, these notices and orders are part of the process of granting public transportation concessions, but in no case do they authorize the execution of a construction project, in contrast to the environmental impact assessment process specified in the LAPT and the RIAR. This is important because the process and timelines underlying the publication of said notices did not conform to the provisions of the LM.

Furthermore, by “approving” the planned route and stations in the Notice of Approval, the government of Mexico City, acting by Semovi, indicates that it considers the construction of Metrobús Line 7 to be a *fait accompli*. It should be added that the Notice of Supply and Demand Balance and the Declaration of Need were published post hoc to justify, by means of a “study,” the project’s construction along an already approved route. Interestingly, these two regulatory instruments were published on the same day, when one would logically expect a notice of balance to precede a declaration of need, as per the LM.

It is worth noting that the study⁶³ referenced by both the Notice of Supply and Demand Balance and the Declaration of Need was in fact obtained via an access to information request. The study obtained through this channel offers no justification for the technical characteristics of the Metrobús units, giving no indication of why they are to be double-decker buses or why they are not electric vehicles, or at least hybrids. In addition to being incomplete and biased, this study was not published in the GODF as prescribed by the LM.

D. Harm to the environment due to failure to enforce the environmental law in the local Environmental Impact Assessment (EIA) process

i. The EIA process was violated by the absence of sufficient information to make a proper assessment⁶⁴

⁶¹ **Legal basis:** LGDFS Articles 58 paragraph I and 117. RLGDFS Article 122. LGBN Articles 6 paragraph II, 7 paragraph XIII and 9.

Authorities failing to effectively enforce environmental law: Sobse, Semarnat, Profepa.

⁶² **Legal basis:** LAPT Articles 44, 45, 52, and 52 bis. RIAR Article 62. LM Articles 3, 7 paragraph V, and 99.

Authorities failing to effectively enforce environmental law: Sobse, Sedema, Semovi, Mayor of Mexico City.

⁶³ See <https://goo.gl/VtRDNY>.

⁶⁴ **Legal basis:** LAPT Articles 5, 19, 44–52, 52 bis, 53, 93 bis 1, 107, 111, and 112 paragraph VIII. RIAR Articles 3 paragraphs VI, XIII, XV, XVII, XXIX, and XXXI, 4, 6(C) and (D)(no. 131), 14, 41, 44, 50, 52, 54, and 62–4.

Authorities failing to effectively enforce environmental law: Sobse and Sedema.

Sedema neither possessed nor obtained sufficient information to identify the measures needed to avoid or minimize negative environmental effects, prevent future environmental harm, and promote sustainable natural resource exploitation, as required by the LAPT.

The Developer delivered incoherent, incomplete, piecemeal information lacking clear and unbiased conclusions. In short, the Developer failed to deliver a complete, structured document. The result was an incomplete and biased EIA process and an RIA exhibiting the same defects.

In summary, the following environmental impacts were not considered, in violation of the LAPT and the RIAR:

- air pollution;
- water pollution;
- soil pollution;
- generation of vibrations;
- changes in topographical features throughout the project route;
- changes in the urban landscape due to changes in the architectural design of the “Paseo de la Reforma” roadway;
- changes in the configuration of green space;
- reduction of vegetated areas and/or green space;
- displacement of urban wildlife due to traffic, noise and urban habitat destruction;
- impact on vegetation due to soil compaction;
- urban impact of the project;
- felling of 640 trees.

AMDA included environmental impact and urban development surveys substantiating these assertions in its amparo motion.

ii. Rectification of deficiencies in preliminary documentation, which should have been properly completed by the Mexico City government prior to requesting the EIA⁶⁵

As noted in the RIA, the Developer did not indicate the final project route, yet it can be seen that such instances of missing information were completed in the RIA.⁶⁶

For example, in Legal and factual basis 6(b), Sedema acknowledges that the areas distribution chart was based on its own estimate, which “was calculated in the absence of specific project information, as the information submitted concerns a comprehensive project.”

Likewise, as may be seen in Legal and factual basis 6(f), Sedema expressly acknowledges that it rectified deficiencies in the project information, a practice not provided for in the LAPT nor in the regulations thereto:

f) Within the body of information presented to complete the missing information regarding complementary project works, the following is stated:

‘Since what we have in hand is a draft project, it is not possible to produce a project description with detailed descriptions of the complementary works...’

Regarding emissions, as mentioned in condition 1.0, Sedema took upon itself the obligation of estimating emissions in lieu of having the Developer fulfill this obligation. Furthermore, Sedema is clearly authorizing a project without taking into account the impacts on air pollution and health.

iii. Failure to include urban impact in the EIA⁶⁷

⁶⁵ **Legal basis:** LAPT Articles 5, 19, 44–52, 52 bis, 53, 93 bis 1, 107, 111, and 112 paragraph VIII. RIAR Articles 3 paragraphs VI, XIII, XV, XVII, XXIX and XXXI, 4, 6(C) and (D)(no. 131), 14, 41, 44, 50, 52, 54, and 62–4.

Authorities failing to effectively enforce environmental law: Sobse and Sedema.

⁶⁶ See RIA, bottom of page 4 and page 6, subparagraph f, <https://goo.gl/Qgc8US>.

⁶⁷ **Legal basis:** LAPT Articles 5 and 45. LDU Articles 3 paragraph XIV, 7 paragraph XVII, 63, 64, 87 paragraph V, and 93. RLDU Articles 76, 77, 82, and 83.

Authorities failing to effectively enforce environmental law: Sobse and Seduvi.

Given the project's effects on the urban environment, the Developer should have been asked to provide an expert opinion on the urban impact, as required by the LAPT.

iv. Failure to hold consultations⁶⁸

As part of the EIA process, the LAPT establishes that when a file is processed, said administrative undertaking shall include a public consultation component, to be organized and held as prescribed by the LPC.

In the event, Sedema clearly failed to enforce the law in this regard. Instead, as occurred with several irregularities in the project approval process, the Mexico City government conducted an opinion survey on 20-22 June (six months after the RIA was approved) to regularize, post hoc, this failure to enforce the environmental law.

E. Harm to the environment and the health of Mexico City's inhabitants from failure to require compliance with various RIA requirements⁶⁹

Although, as mentioned above, Sedema requested measures and information in its conditional requirements that should have been requested as part of the EIA process, the Developer had not complied with several of these conditions when construction work commenced on Metrobús Line 7, in particular the following:

i. Non-compliance with RIA condition 1.0

Project work commenced, although Sobse had not provided information requested in RIA condition 1.0., namely:

- project description;
- georeferenced satellite image;
- project profile indicating stations;
- map of non-terminal stations along Line 7;
- map of terminal stations on Line 7;
- detailed description of construction site preparation and of project operation and maintenance;
- description of the project's electrical facilities;
- forest survey;
- expert opinion on forest management;
- description of plants selected for the project, in accordance with NADF-006-RNAT-2012;
- solid waste management plan;
- approval from the Urban Forests and Environmental Education Branch (*Dirección General de Bosques Urbanos y Educación Ambiental*).

ii. Non-compliance with RIA condition 14

Construction work commenced without a forest survey, a requirement of NADF-001-RNAT-2015, and without technical opinions from the boroughs of Gustavo A. Madero, Cuauhtémoc, and Miguel Hidalgo confirming the feasibility of the planned felling of trees.

The PAOT failed in its obligation to monitor compliance with these conditions and sanction non-compliance.

⁶⁸ **Legal basis:** LAPT Articles 49, 50, and 51. RIAR Article 45, 46, 53 paragraph III, 57, 58, and 60.

Authorities failing to effectively enforce environmental law: Sobse and Sedema.

⁶⁹ **Legal basis:** LAPT Articles 9 paragraph XXIX and 53. NADF-001-RNAT-2015. NADF-007-RNAT-2013. NOM-161-SEMARNAT-2011.

Authorities failing to effectively enforce environmental law: Sobse and PAOT.

F. Harm to the environment and the health of Mexico City's inhabitants from the felling of 640 trees⁷⁰

As explained above, the RIA authorized the felling of 640 trees without a study justifying this measure and in the absence of the proper CUSTF approval. Moreover, the RIA is also unlawful in the absence of permits from the boroughs of Gustavo A. Madero, Cuauhtémoc, and Miguel Hidalgo, as required under the LAPT.

G. Harm to the environment from failure to enforce the environmental law in relation to the Bosque de Chapultepec AVA⁷¹

Sedema has approved various construction projects in Winston Churchill Park, including a transfer station and a bus stop. However, since this park is part of the Bosque de Chapultepec Area of Environmental Value (AVA), this constitutes an infringement of Mexicans' rights to life, health, and a healthy environment, which are enshrined in the Constitution.

It is important to remember that Bosque de Chapultepec is the lungs of Mexico City and that the project's impact on it will have negative consequences in terms of the city's serious air quality issues. In recent years, drastic measures have been necessary and, indeed, were implemented to reduce automobile use, such as the Emerging Standard on Vehicle Inspection (*Norma Emergente de Verificación Vehicular*), published in 2016.⁷² According to the World Health Organization (WHO), in 2012, approximately 7 million people died (i.e., one in eight deaths worldwide) as a consequence of exposure to air pollution.⁷³

A recent study by the Boston University School of Medicine revealed that long-term exposure to air pollution can cause physical changes to the structure of the brain and affect cognitive function. This study found that people living in severely polluted areas had brain volumes equivalent to that of persons a year older, in comparison with those living in less-polluted areas. Moreover, their risk of silent stroke is 46% higher than that of people living in rural areas.⁷⁴

In Mexico, nearly 9,300 deaths per year are attributable to air pollution.⁷⁵ According to the Mexican Institute for Competitiveness (*Instituto Mexicano para la Competitividad*—IMCO), from January 2010 to 2013, poor air quality resulted in 19,242 premature deaths, 53,191 hospitalizations, and over 3 million medical consultations. Moreover, these medical issues led to worker absenteeism and concomitant economic losses for families and the country.⁷⁶

The National Statistics and Geography Institute (*Instituto Nacional de Estadística y Geografía*—INEGI) estimates the annual costs of natural resource depletion and environmental degradation. In 2014, these costs totaled 910,906 million pesos, with air pollution accounting for the highest percentage. In fact, the cost of air pollution amounted to 3.2% of GDP.⁷⁷

⁷⁰ **Legal basis:** LAPT Articles 89 bis 1 and 89 bis 1.

Authorities failing to effectively enforce environmental law: Sobse, PAOT, boroughs of GAM, Cuauhtémoc, and Miguel Hidalgo.

⁷¹ **Legal basis:** Article 4 of the Constitution. CDMX Constitution, Article 13 paragraph A. LGEEPA Articles 3 paragraph II, 7 paragraph V, 45, and 46 paragraph IX and third subparagraph. LAPT Articles 5, 88 bis 1, 89 bis, and 105. Chapultepec Place of Natural Beauty Declaration. Chapultepec AVA Declaration.

Authorities failing to effectively enforce environmental law: Sobse, Sedema, PAOT.

⁷² Semarnat, *Norma emergente de verificación vehicular* (Emerging Standard on Vehicle Verification); see http://www.gob.mx/cms/uploads/attachment/file/100918/NOMEM_para_DOF_06_junio_2016.pdf.

⁷³ WHO, "7 million premature deaths annually linked to air pollution."

<http://www.who.int/mediacentre/news/releases/2014/air-pollution/en/>.

⁷⁴ *Stroke*, "Long-Term Exposure to Fine Particulate Matter, Residential Proximity to Major Roads and Measures of Brain Structure." <http://stroke.ahajournals.org/content/early/2015/04/23/STROKEAHA.114.008348.full.pdf?download=true>.

⁷⁵ Centro Mexicano de Derecho Ambiental (CEMDA), *Los derechos humanos y la calidad del aire en México*. <http://www.cemda.org.mx/wp-content/uploads/2016/05/Los-Derechos-Humanos-y-la-calidad-dei-aire-en-Me%CC%81xico.pdf>.

⁷⁶ Instituto Mexicano para la Competitividad, *¿Cuánto nos cuesta la contaminación del aire en México?* <http://imco.org.mx/calculadora-aire/>.

⁷⁷ Instituto Nacional de Estadística y Geografía, Cuentas Económicas y Ecológicas de México; see <http://www.inegi.org.mx/est/contenidos/proyectos/cn/ee/default.aspx>.

Bosque de Chapultepec not only provides Mexico City with oxygen and clean air, it also supplies the following environmental services: (i) temperature and humidity regulation, (ii) noise control, (iii) aquifer replenishment, (iv) air pollution capture, and (v) conservation of scenic landscapes. These services are additional to its function in preserving the area's historical, cultural, tourism, and recreational value.⁷⁸

For these reasons, Bosque de Chapultepec's importance has been recognized since 1932, when it was declared an "Area of Natural Beauty" by the Colonial Monuments Commission of the Republic, which cited the forest's artistic history and included supporting documents such as photographs and a map.

Since 2001, Bosque de Chapultepec has been a candidate for recognition by UNESCO as a World Heritage site in Mexico.⁷⁹

As a reflection of trends in environmental and landscape law, on 2 November 2003, Bosque de Chapultepec was declared an AVA, in recognition of its environmental services. Moreover, because its various sections have particular characteristics and were incorporated in different eras, it was understood that the administration and conservation of the AVA would be inherently complex and require the implementation of policies to facilitate its coherent and comprehensive management.⁸⁰ Finally, the declaration indicated as its principal objective the need to adopt measures to avert the area's deterioration and improve its environmental function.⁸¹ Consequently, the order clearly indicated that only restoration and rehabilitation activities would be permitted in the entire area of the AVA.⁸²

Be that as it may, on 11 July 2014, an amendment to the Chapultepec AVA Declaration was published in the GODF, amending the executive order declaring Bosque de Chapultepec an Area of Environmental Value in the Federal District, with regard to the indicated area. This order is in violation of environmental law because it reduces the size of the AVA and leaves an area of 2,529.66 square meters without protection.

Underlying this order is the argument that the AVA "does not satisfy the ideal characteristics for being considered an area of environmental value, for it already contains asphalt, cement, and concrete roads and a bus stop."⁸³ In fact, the LAPT's own definition of an AVA considers it to be a space "in which the original environments have been modified by anthropogenic activities, the purpose being to restore or preserve the area in question." Therefore, the amendment to the Chapultepec AVA Declaration is null and void because it violates the human rights of Mexico City's inhabitants to a healthy environment and health.

Sedema's principal obligation is in fact to restore Bosque de Chapultepec, not to apply for exemption from protection of a highly impacted area. The works mentioned in the order, such as bus stops, should not have been authorized, as required by the LAPT.

H. Harm to the environment from failure to enforce the environmental law with respect to the management of hazardous waste, special management waste, and urban solid waste⁸⁴

There are failures to enforce the environmental law in connection with waste management. Specifically, the EIA lacks a proper study on the impacts arising from the generation of hazardous waste, specially managed (construction) waste, and solid urban waste.

⁷⁸ *Decreto por el que se declara Área de Valor Ambiental del Distrito Federal al Bosque de Chapultepec* (Chapultepec AVA Declaration) of 2 November 2003; see <http://www.contraloriadf.gob.mx/prontuario/vigente/466.htm>.

⁷⁹ <http://whc.unesco.org/en/tentativelists/1273/>.

⁸⁰ Eighth recital of the Chapultepec AVA Declaration of 2 November 2003.

⁸¹ Thirteenth of the Chapultepec AVA Declaration of 2 November 2003.

⁸² Sixth recital of the Chapultepec AVA Declaration of 2 November 2003.

⁸³ Article 1 of the *Decreto por el que se modifica el diverso por el que se declara como Área de Valor Ambiental del Distrito Federal al Bosque de Chapultepec* (Amendment to the Chapultepec AVA Declaration).

⁸⁴ **Legal basis:** LGEEPA Articles 3 paragraph XXXIII, 5 paragraph VI, 7 paragraph IV, 11 paragraph II, 109 bis, 134 paragraph II, 135, 150, and 151 bis. LGPGIR Articles 1, 5 paragraphs X, XVII, XXI, XXIX, XXX, XXXI, XXXII and XXXIII, 6, 7, 9, 31, and 42.

Furthermore, the Developer has not been asked to provide estimates of waste generation and has been allowed to commence construction of the Metrobús project without the corresponding Waste Management Plans. In short, neither the federal authorities (Semarnat and Profepa) nor the Mexico City authorities (Sedema and PAOT) are effectively enforcing the relevant environmental laws. Negative consequences will ensue, in terms of soil contamination and health issues among Mexico City's inhabitants.

I. Harm to the environment from failure to enforce the environmental law with respect to air emissions and greenhouse gases and compounds⁸⁵

There are failures to enforce the environmental law in the EIA process with respect to air emissions, inasmuch as no study has been requested regarding the estimated emissions during the construction phase and subsequently, once Metrobús Line 7 is in operation. In short, neither the federal authorities (Semarnat and Profepa) nor the Mexico City authorities (Sedema and PAOT) are effectively enforcing the relevant environmental laws. Negative consequences will ensue in terms of air pollution and cardio-respiratory illnesses among Mexico City's inhabitants.

Furthermore, the Developer has not been asked to submit a registry of certified greenhouse gas and compound reductions pursuant to the RLGCCRE.

J. Harm to the environment from failure to enforce the environmental law with respect to consultation of Indigenous communities⁸⁶

Not only is Mexico City one of the world's largest cities, but it is also highly multicultural, as attested by the existence of its Indigenous population, which was not consulted by the Mexico City government prior to approval of the project.

AMDA demonstrated the presence of Indigenous groups who use public transit in Mexico City by consulting the *Catálogo de Colonias y Pueblos Originarios del Distrito Federal 2010*, a document which disaggregates the geoelectoral integration of 1,775 neighborhoods and 40 Indigenous Peoples, as per the LPC.⁸⁷ In addition, an anthropological survey was presented, identifying the Indigenous communities and peoples whose environmental rights are impacted by the construction of Metrobús Line 7.

VIII. Matters helping to achieve the goals of the NAAEC

This admission of this submission for review will contribute to achieving the following goals, enumerated in Article 1 of the Agreement:

- foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- better conserve, protect, and enhance the environment, including wild flora and fauna;
- support the environmental goals and objectives of NAFTA;
- avoid creating trade distortions or new trade barriers;
- strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;

RLGPGR Articles 2, 16, 17, 20, 21, 24, 26, and 29. LRS Articles 3 paragraphs XXV, XXXIV, XXXVII and XXXVIII, 6, 9, 10, and 59. RLRS Articles 2 paragraphs VII and XXIV, 3, 12–24. NADF-007-RNAT-2013. NOM-161-SEMARNAT-2011.

Authorities failing to effectively enforce environmental law: Sobse, Semarnat, Profepa, Sedema, PAOT.

⁸⁵ **Legal basis:** LGEEPA Articles 8 paragraph III, 109 bis, and 110. LGCC Article 87. RLGCCRE Articles 8 paragraph III, 26, 27, 109 bis, and 110.

Authorities failing to effectively enforce environmental law: Sobse, Semarnat, Profepa, Sedema, PAOT.

⁸⁶ **Legal basis:** Articles 1, 14, and 16 of the Constitution. Convention C169 Articles 6, 7, and 8. CDMX Constitution Articles 2, 15(A)(4) and (9), 15(B)(4), 25(A)(6) and (F), and 26(A). LAPT Articles 85 section VI and 86 bis 2. LIAMMH Article 33. LPC Article 50 bis.

Authorities failing to effectively enforce environmental law: Sobse, Sedema, Semovi, Mayor of Mexico City, borough mayors of GAM, Cuauhtémoc and Miguel Hidalgo boroughs.

⁸⁷ Instituto Electoral del Distrito Federal, *Catálogo de Colonias y Pueblos*.

<http://www.iedf.org.mx/index.php/elecciones/geografia-electoral-00/174-catalogo-de-colonias-y-pueblos/1350-catalogo-de-colonias-y-pueblos> (viewed 17 May 2017).

- enhance compliance with, and enforcement of, environmental laws and regulations;
- promote transparency and public participation in the development of environmental laws, regulations and policies;
- promote economically efficient and effective environmental measures, and
- promote pollution prevention policies and practices.

Furthermore, review of the submission would bolster an objective of NAFTA Article 102: that of substantially increasing investment opportunities in the territories of the Parties. Effective law enforcement encourages investment and certainty as to the rule of law.

IX. Private remedies pursued

As mentioned in the foregoing record of events, an amparo motion was filed in May of last year. This might suggest that the Mexican government is now taking action in this matter. However, as can be seen, the Mexico City authorities have ignored the permanent injunction granted to prevent environmental harm.

We have therefore been compelled to turn to international bodies to secure environmental law enforcement and/or, if this project does proceed, to ensure that its implementation is in compliance therewith—but also to stop the unlawful construction of Line 7, in accordance with the judicial decisions discussed herein.

X. Appendices

Appendix 1. Photographs of injunction violations; see <https://goo.gl/D8eSrf>

Appendix 2. Party's replies to correspondence; see <https://goo.gl/CFVBTv>

Appendix 3. Harms and competent authorities; see <https://goo.gl/Ps5hrk>