

## **SUBMISSION**

Secretariat for Submissions on Environmental Enforcement Matters

Trade Promotion Agreement, United States-Panama

Messrs, SEEM TPA USA-PANAMA:

The undersigned, Ezequiel Miranda, male, Panamanian, of legal age, with personal identity card number 4-119-1576, located in Bajo Boquete, district of Boquete, province of Chiriquí, mobile phone No. 66811818, Angel Aguirre Sánchez, male, Panamanian, of legal age, with personal identity card number 4-159-353; resident of Guadalupe, with office address at FUNDICCEP, Cerro Punta, district of Tierras Altas, province of Chiriquí, where we receive personal and legal notifications, and can be reached by telephone at 771-2171 or 66712171 and by email [amisconde@fundiccep.org](mailto:amisconde@fundiccep.org), and Ariel Rodríguez Vargas, male, Panamanian, with personal identity card No. 4-237-244, resident in David, province of Chiriquí, reachable at mobile phone No. 65927208 and e-mail address [Ariel.rodriguez@proyectoprimatespanama.org](mailto:Ariel.rodriguez@proyectoprimatespanama.org) or [arielrod24@gmail.com](mailto:arielrod24@gmail.com), hereby and in accordance with Article 17.8 of Chapter 7 on Environmental Enforcement of the U.S.-Panama Trade Promotion Agreement, we are submitting an ENVIRONMENTAL SUBMISSION for non-compliance with Panamanian environmental legislation with regard to Decree 40 of June 24, 1976 which creates the Baru Volcano National Park, Baru Volcano National Park Management Plan, approved by Resolution No. AG-0295-2004 of July 30, 2004, published in the Official Gazette No. 25116, resolution No. AG-0904-2009 "Whereby the Baru Volcano National Park Management Plan is re-established and other provisions are issued". We believe that the Panamanian State is not duly applying environmental legislation due to logging activities, the advancing agricultural frontier, poor disposal of solid waste, intensive agricultural practices which endanger the environmental values of the protected area, uncontrolled tourist activities, or activities that are promoted on a massive scale without considering the carrying capacity of the site. Some of the norms that we consider are not being implemented include: Law No. 1 of February

3, 1994, which establishes forestry legislation in the Republic of Panama and establishes other provisions. Specifically, in articles 6 and 7. The General Environmental Law, Law 41 of 1998, modified by Law 8 of 2015, the Executive Decree No. 57 of 2000, which establishes the procedure for handling environmental complaints. Similarly, Law 38 of 2000 (General Administrative Procedure) and Law 6 of 2002 (Transparency in Public Administration) on the State's duty to respond to requests from the public within 30 calendar days and 15 days extension.

Baru Volcano National Park has been exposed to different threats, one of the most notorious being the "Ecological Road" project. In the ruling of February 9, 2006, under the presentation of Judge Winston Spadafora F., the Chamber referred to the issue of natural and biological wealth under the protection of certain norms that only allow the Environmental Authority to authorize such activities. Let us see:

"...

The Baru Volcano National Park in the Province of Chiriqui was established by Decree No. 40 of 24 June 1976, with the purpose of protecting those areas which, due to their ecological conditions, directly influenced the hydrological regime and the conservation and defense of the soil, fauna and flora and, consequently, to avoid the irrational and destructive exploitation of the area's renewable natural resources which, at that time, had been taking place.

The natural and biological richness of Baru Volcano National Park led to "El Paso del Respingo" – Los Quetzales Trail, located within the Park, being declared a State Forest Heritage Site and part of the La Amistad Biosphere, Panama by UNESCO's Man and Biosphere Program. In turn, it has been catalogued as a special forest, under certain regulations that only allow the respective environmental authority to authorize harvesting activities within the Park that are compatible with its nature and creation objectives.

In addition to the above, Baru Volcano National Park is part of the Biosphere Reserve and, as such, the Panamanian State has ratified the Conventions on Biological Biodiversity and Biodiversity Conservation and the protection of priority wilderness

areas in Central America (Law 2 and 9 of 1995). Both provisions are aimed at protecting Baru Volcano National Park, among others, as part of the La Amistad International Park. After analysis of the provisions of the subject matter of the contract N° DINAC-1-119-02 and in Articles 5 of Decree No 40 of June 24, 1976 and 4 of the Board Resolution of INRENARE 021-88, the Chamber warns that the construction of the so-called ecological road is incompatible with the activities that are prohibited within Baru Volcano National Park, since it requires not only the felling of trees to build the road, but also excavations and the erection of buildings that do not harmonize with nature and undoubtedly cause a negative environmental impact. This was recognized by the State when it considered through Executive Decree No. 107 of November 13, 2003 that it was necessary to amend Decree No. 40 of June 24, 1976 in order to be able to build the ecological road, as the latter established a series of restrictions in the Baru Volcano National Park “and it is described therein”

## **I. FACTS**

### **FIRST:**

Baru Volcano National Park is one of the most symbolic protected areas in the country, established by Decree No. 40 of June 24, 1976. Its characteristics and diversity, as it has 7 life zones, is what generates great interest for its conservation. It is an area of great ecosystem value, where the services of water provision, recreation and tourism opportunities, moderation of extreme events (floods) and erosion prevention, and climate regulation stand out.

In 1983, UNESCO declared the La Amistad Biosphere Reserve, comprising 612,570 hectares. The geographical location of this exceptional site -which preserves traces of the Quaternary Era glaciations -has facilitated contact between the flora and fauna of North and South America. Inhabited by four distinct indigenous tribes, the area is covered by tropical rain and cloud forests, as well as regions crowned by peaks and rocky massifs covered with extensive areas of undisturbed moorland, where cold swamps are found. The conservation of the site is the object of close cooperation between Costa Rica and Panama. In Panama, the reserve was established in 2000

and is made up of protected areas and adjoining zones, namely: La Amistad International Park, Baru Volcano National Park, Bastimentos Island Marine Park, Fortuna Forest Reserve, San San Pond Sak Wetland of International Importance and Lagunas de Volcan Wetland, as well as the Palo Seco Protection Forest.

**SECOND:**

That, despite its importance, throughout its 46 years of declaration as a National Park, this protected area has suffered strong impacts as a result of human intervention with invasive activities, which have progressively caused great deterioration to the park's environmental values. The zonings established in the management plan of the protected areas have not been respected, some activities have not been minimized, others have not been regulated, and management processes have not improved.

**THIRD:** That the Ministry of Environment has not yet, after 8 years, taken the necessary steps to update the management plan for Baru Volcano National Park, which dates back to 2004 and was declared in force by resolution in 2009. In the period from 2012 to 2014, the organized civil society of Chiriqui and academic sectors made efforts to update the plan, however, this effort was not followed up on the verbal agreements between the Autonomous University of Chiriqui, environmental organizations and the Ministry of Environment, in order for it to become a reality.

**FOURTH:** That the Management Plan is the tool to direct the programs related to the protection, management and conservation of the protected area, however, the institution has focused on promoting other tools, such as the Public Use Plan of the park, but not in complying with the programs and projects established in the current Management Plan. On the contrary, the Public Use Plan promotes tourism activities because of their connotations and economic benefits; however, this in isolation does

not contribute to the objective of creating the protected area.

Although tourism (planned and strategically developed) could be an element of support for conservation, research and community integration programs, if the activity is promoted without considering the environmental impacts and the Management Plan, it becomes an activity of greater pressure and vulnerability for the area.

**FIFTH:** Due to the concern of environmental civil society in the province and the country, in 2019 we requested a meeting with the Minister of Environment, which was held in October 2019. During the meeting, concerns were raised regarding the status and management of the protected area; however, no follow-up was given to the issues raised.

**SIXTH:** In the absence of concrete answers and the constant complaints of logging, the advance of the agricultural, cattle and coffee frontier, the growth of garbage dumps, fires in the protected area, among others, on October 22, 2020, one year after the meeting held with the Minister, the environmental organizations presented a detailed letter of different environmental problems in the protected areas of Western Panama -which we attach-. The only response received so far has been a letter addressed to Angel Aguirre Sánchez, Ezequiel Miranda and Ariel Rodríguez Vargas, who sent a note dated December 21, 2020 and sent by e-mail on January 6, 2021, indicating that *“we are in the process of responding to it, since several directorates of this Ministry need to process some specific data in order to provide you with assistance consistent with your interest in accessing the relevant information”*. More than two months have elapsed since the sending of this letter without at least a partial response to any of the facts indicated, thus exceeding the 30 calendar days stipulated in the legal norms for providing a response, as well as the term that would apply as the corresponding extension.

**SEVENTH:** We would like to reiterate through this ENVIRONMENTAL SUBMISSION, the request for concrete answers to the statements presented in the letter sent to the Ministry of Environment, received by this entity on October 22, 2020 and from which we reaffirm the following aspects:

- It is necessary to know if the institution has issued Environmental Impact Assessments and the categories for activities such as: improvements to the access to the summit, development of tourist infrastructure in the Los Fogones sector, establishment of tourist towers and cultivation of geisha coffee within the park's lands.
- What is the norm being applied by the ministry for works related to road improvements within the protected area, which are developed by local governments and/or private companies?
- What has been the concrete result of the logging cases in the agricultural sectors of Alto Pineda, Bajo Grande, Las Cumbres, Los Altos de Bambito, Cordillera, Santa Marta, Las Monjas, Cochea? In lands of high productive value, the scheme of administrative sanctions with fines does not solve the problem, as the offenders make use of the land for agricultural activities, recovering the cost of the fines in a short period of time and continuing to use the felled areas.
- The Ministry of Environment has received reports of logging within the protected area, which were also presented to the public prosecutor's office; however, the reports of inspections, scope or sanctions established are unknown.
- The environmental organizations of Chiriquí proposed to establish a Board of Trustees for the administration of the protected area, which would include the participation of academia, local government, users of ecosystem services, environmental organizations and private companies in order to make progress on governance issues in the protected area, but this has not been actively pursued in order to achieve a governance mechanism for the park.

- What plan does the Ministry of Environment have to professionalize park rangers and protected area staff and make their stability at the sites a monitoring mechanism. A sustainable AP program is not possible if the staff is subject to mobilization for governmental periods.
- How public infrastructure projects; for example, the opening of the road to the summit or the removal of vegetation material to build tourist infrastructure in vulnerable sites (dwarf forest), which can be justified as needs for infrastructure improvements and tourism development, research, education or others, respond to management strategies of the protected area? Have all the elements established by environmental regulations been incorporated?
- The 2004 management plan of the PNVB is still in force to date. It is essential to update the Management Plan based on current diagnoses of the impacts that the park has suffered, to determine the vulnerable zones and, accordingly, to revise the zoning in order to strengthen the program according to the present realities and emphasizing the strengthening of conservation and not favoring regression in aspects of management and protection of the park.
- In 2018, environmental organizations filed a complaint with the public prosecutor's office for works carried out inside the PNVB in breach of environmental regulations. The ruling in this case did not consider this event to be a crime and did not consider the jurisprudence relating to Baru Volcano National Park. Despite the ruling, the intervention that took place and the environmental impact generated, there is no evidence of a concrete action plan for restoration by the administrative entity, nor is there evidence of an environmental impact study or a resolution of viability for such activity. It is important for civil society to know what procedure was used to suspend the activity and determine non-compliance due to the lack of an environmental impact study, but the affected sites were not restored.

Finally, we add that a recent proposal to relocate people and families affected by the ETA and IOTA events in November 2020 to a housing development within the protected area generated local and national debate. This made it clear that the first step of revising the norm governing the park was not the guide to initiate studies, announce proposals, which even generated threats to environmental defenders who expressed concerns regarding possible non-compliance with environmental standards. Attached is a letter issued by FUNDICCEP to the Ministry of Environment in February 2021.

**Similarly, the Official Gazette published** Executive Decree No. 59 of February 4, 2021, ordering the expropriation of land for "reasons of urgent social interest", in favor of the *Banco Hipotecario Nacional* (National Mortgage Bank), within Baru Volcano National Park, to locate housing for people affected by the natural events of November 2020. Although this decree was repealed and a solution was found for the relocation to a site outside the park, the situation showed once again that the non-inclusion of citizen participation in the analysis and search for solutions can provoke unnecessary conflicts, since the alternatives found could be analyzed before generating confrontations.

## **II. EVIDENCE**

<https://www.miambiente.gob.pa/ministro-de-ambiente-asegura-que-no-se-construira-una-nueva-via-al-volcan-baru-2/>

<https://burica.wordpress.com/2008/07/09/devastacion-en-el-parque-nacional-volcan-baru/>

<https://www.miambiente.gob.pa/wp-content/uploads/2020/10/COMUNICADO-AP.pdf>

<https://www.frecuenciainformativa.com/chiriqui/ambientalistas-denuncian-falta-de-respuesta-de-las-autoridades-ante-tala-en-parques-la-amistad-y-volcan-baru/>

<https://redaguapanama.org/2018/03/23/centinelas-del-volcan-baru-interponen-denuncia-ambiental-por-danos-en-el-pnrb/>

PDF document with the following scans:

- Photos of meeting with the Minister of Environment, October 2019.
- Open letter addressed to the Minister of Environment, signed by three organizations and endorsed by 32 other organizations and social movements in the country.
- Letter from FUNDICCEP to the Ministry of Environment, dated February 2021.

Tierras Altas, February 24, 2021.

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