

Barú Volcano National Park
Submission No.: SALA-CA-PMA/001/2021
Determination No. 002/2021
Date: Friday 7 May 2021.

Determination No.001/2021 pertaining to the analysis to decide whether the filed Submission merits a request for a response from the Party, in compliance with the considerations of Article 17.8 paragraph 4 of the Trade Promotion Agreement between Panama and the United States (Panama–United States TPA).	
Submission No.: SALA-CA-PMA/002/2021 Barú Volcano National Park	Date of receipt: 12 March 2021
Petitioner/Signatory of Submission:	Mr. Ezequiel Miranda Mr. Ángel Aguirre Sánchez Mr. Ariel Rodríguez
Party Country: Panama	

I. Introduction

On Friday 12 March, citizens Ezequiel Miranda, Ángel Aguirre Sánchez, and Ariel Rodríguez presented, via electronic mail, a Submission to the Secretariat for the Enforcement of the Environmental Legislation (SALA), of the Trade Promotion Agreement between Panama and the United States (Panama-United States TPA), in which they state that the Republic of Panama is failing to comply with the effective enforcement of its environmental legislation.

According to Article 17.8 of the Trade Promotion Agreement between Panama and the United States, the procedure pertaining to the Enforcement of the Environmental Legislation is established whereby “any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body (“secretariat”) that the Parties designate.”¹

In accordance with paragraph 2 of the before mentioned Article 17.8 and section 5 of the Working Procedures of the Secretariat, it is the responsibility of the Secretariat to verify the content of the Submission and determine whether it complies with the requirements established by the Treaty. If it is determined that the Submission complies with the stipulated requirements, the Secretariat shall proceed to determine whether the Submission merits a request for a response from the Party, following the parameters of paragraph 4 of Article 17.8.

II. Summary of the content of the Submission filed

In the Submission, identified as No. SALA-CA-PMA/001/2021 and called “Barú Volcano National Park,” the petitioners state that the Republic of Panama has failed to enforce Panamanian environmental legislation pertaining to Executive

¹ Article 17.8 paragraph 1 on Submissions pertaining to the enforcement of Environmental Legislation. Chapter 17. Panama-United States TPA.

Decree No. 40 of 24 June 1976, which establishes Barú Volcano National Park; Resolution AG-0295-2004 of 30 July 2004, which approves the Management Plan; and Resolution No. AG-0904-2009, which reestablishes the validity of the Management Plan for said Park.

The petitioners state that the Panamanian State is not enforcing its environmental legislation in the area of Barú Volcano Natural Park because *“logging activities, encroachment of the agricultural frontier, improper disposal of solid waste, intensive farming practices that place the environmental values of the protected area at risk, the practice of uncontrolled tourism activities or mass-promoted ones, without consideration for the capacity of the site to support them”* are taking place.²

To complement the foregoing legal dispositions, they add other regulations that are not being enforced: Law No. 1 of 3 February 1994, which establishes the Forestry Legislation of the Republic of Panama, specifically its articles 6 and 7³; Law 41 of 1 July 1998, General of the Environment of the Republic of Panama, amended by Law 8 of 25 March 2015, which creates the Ministry of the Environment; and Executive Decree No. 57 of 16 March 2000, which includes the procedure for handling environmental complaints.⁴ They also mention the failure to enforce Law 38 of 31 July of 2000 on General Administrative Procedures⁵ and

² In view of this assertion, it is appropriate to add that Article 5 of Executive Decree No. 40 of 1976 which establishes the Barú Volcano National Park states that: *“The occupation, exploitation, grazing, as well as slash and burn activities are strictly prohibited in the area destined for the park...”*. In addition to this, sanctions are established in article 7 of said regulation for the acquisition of timber, any other forestry product or fauna specimens, as a complement to the penalty dispositions established by the regulation on forestry matters.

³ **Law 1 of 1994.** Which established the Forestry Legislation in the Republic of Panama and stipulates other dispositions:

Article 6: When a forest or forest grounds, which are State-Owned Forest Lands, are declared qualified to become part of the National Parks and other Protected Wilderness Areas due to their certified ecological, environmental, scientific, educational, historical, tourism or recreational value, they shall be regulated by the corresponding legal instrument.

Article 7: Any project involving public works or human activities which is fully or partially financed with public, private, or mixed funds; or which must be authorized by public entities, shall have an environmental impact study when said works or activities affect or may deteriorate the environment and the natural world. Said document shall be reviewed and approved by the Ministry of the Environment, as long as the measures and provisions to avoid, eliminate, or reduce the deterioration of the environment are contained within it.

Failure to comply with the stipulations of the study shall authorize the Ministry of the Environment to suspend said works or activities, without prejudice to the application of the corresponding sanctions.

⁴ **Executive Decree No. 57 of 16 March 2000:** Which regulates the formation and functioning of the Environmental Consultative Commissions, stipulates in its Title V Of Complaints Due to Administrative Violations, a special procedure for the handling of complaints by the Ministry of the Environment and stipulates the following in its articles 51 and 52:

Article 51: Any natural or legal person may report environmental violations of Law No. 41 of 1998, General Environmental Law, in accordance with the provisions of these regulations.

Article 52: All complaints shall be filed with the office of the Ministry of the Environment that is geographically closest to the residence of the complainant, or which has regional jurisdiction over the event that is the subject of the complaint.

⁵ **Law 38 of 2000.** Regulates the General Administrative Procedures, **Article 44:** *“Any person who has filed a petition, inquiry or complaint has the right to know the status of the process, and the corresponding public entity is obliged to inform him/her accordingly within five days, beginning on the date of its filing. If the entity is unable to resolve the petition, consultation or complaint within the term stipulated by law, the pertinent authority shall inform the interested party of the*

Law 6 of 22 January 2002,⁶ on Transparency in Public Management, since these laws establish the duties of the institutions to respond to the requests of the public.

To introduce a description of the facts, the petitioners state that Barú Volcano National Park has been exposed to several threats, with the project known as the “Ecological Road” being the most notable one. They move on to describe that this is one of the most symbolic protected areas at the national level. It has seven habitat zones and is an area of great ecosystem value, where water supply services, opportunities for recreation and tourism, mitigation of extreme events (floods), prevention of erosion, and climate regulation can be highlighted.

It is also mentioned that since 1983, UNESCO declared the La Amistad Biosphere Reserve with an area of 612,570 hectares. In Panama, this area was established beginning in 2000, and consisted of the adjacent protected areas and zones, such as La Amistad Natural Park, Barú Volcano National Park, Isla Bastimentos Marine Park, Fortuna Forest Reserve, the San San Pond Sak Wetlands of International Importance, the Lagunas de Volcán Wetlands, and Palo Seco Forest Reserve. The petitioners describe the area by referring to its natural characteristics: it is covered by tropical rain and cloud forests; rocky peaks; mountain masses; moors; bogs. They mention that the region is inhabited by four separate indigenous tribes.

The petitioners assert that despite its importance, this protected area has suffered great impact due to human intervention, whose activities have produced a deterioration of the environmental values of the Park. The zoning regulations in the Management Plan have not been observed,⁷ and activities have not been minimized. For eight years now, the Ministry of the Environment has not concretized the necessary elements to update said Management Plan, which was issued in 2004, despite joint efforts made from 2012 to 2014 by the civil society of Chiriquí and academic sectors to bring it up to date. The institution has advanced other instruments such as the Public Use Plan⁸ for the promotion of tourism activities due to their economic benefits, but not the Management Plan. The latter is the instrument that will guide the programs related to the protection and conservation of the protected area,⁹ and it will allow to approach tourism activities separately.

status of the process, which shall include a statement to the interested party justifying the reasons for the delay.”

⁶ **Law 6 of 2002.** Regulates Transparency in Public Administration. **Article 2:** “Any person has the right to request, without having to substantiate any justification or motivation whatsoever, public access information held by or known by the institutions stipulated in this Law...”. **Article 7:** “The receiving officer shall have thirty calendar days from the date of submission of the request to answer it in writing and, if the request does not contain the requested documents or records, shall so inform... In the case of a complex or extended request, the officer shall inform in writing, within the thirty calendar days indicated, of the need to extend the term to gather the requested information. In no case shall such term exceed thirty additional calendar days...”

⁷ It must be mentioned here that since the establishment of Barú National Volcano Park, article 7 of **Executive Decree No. 40 of 1976** stipulates the following: **Article 7:** *Privately owned lands within the Barú Volcano National Park area will be subject to the land use regime established by the Ministry of Environment, formerly the National Directorate of Renewable Natural Resources of the Ministry of Agricultural Development.*

⁸ Resolution No. DAPVS-0006-2016 of 6 July 2016, which approves the Public Use Plan for Barú Volcano National Park. Official Gazette No. 28075-A.

⁹ Account of the SECOND to FOURTH facts of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park.

The Submission proceeds to describe the concern of the environmental civil society in the province--Province of Chiriquí--and the country. In 2019, a meeting with the Minister of the Environment was requested, which was held in October of that year. The concerns with regard to the condition and management of the protected area were expressed in said meeting, but the problems that were discussed were not followed up on. The petitioners state that a letter detailing the various environmental problems in the protected areas of the west of Panama was submitted on 22 October 2020. This letter was generated by a lack of concrete answers; the constant complaints arising from logging activities; the encroachment of agricultural, livestock, and coffee farming activities; and the growth of waste disposal sites. This letter is attached to this Submission; the only reply received was an electronic mail dated 6 January 2021, addressed to the petitioners, which referred to a letter dated 21 December 2020 stating that a reply to the note was being drafted. However, no reply had been received two months after this exchange, not even a partial one mentioning any of the events cited therein. Consequently, the 30-day term allowed for a reply was exceeded, as well as the term corresponding to an extension.¹⁰

The petitioners reaffirm, in the SEVENTH fact of the Submission, their request for concrete answers to the issues raised in the letter dated 22 October. They refer in a general manner to aspects such as:

- Request for information as to whether the institution has prepared Environmental Impact Studies for improvements to the access to the summit; conditioning of the infrastructure for tourism and coffee farming inside the Park, in the sector of Los Fogones.
- Regulations enforceable by the Ministry for improvement projects, for roads located inside the protected area that are carried out by local authorities or private companies.
- Concrete results for the logging cases that have taken place in the agricultural sectors of Alto Pineda, Bajo Grande, Las Cumbres among other sites; as well as complaints arising from logging within the protected area. These complaints were also lodged with the office of the public prosecutor, but it is unknown if inspections, technical reports, or sanctions were applied.
- Request for an opinion on the governing mechanism proposed for the Park by environmental organizations (Trust for its Administration).
- The procedure used to halt the works that were being carried out within the PNVB, which violated the environmental regulations since they did not have an Environmental Impact Study, but neither was the restoration of the affected sites ordered.
- Process for updates to the Management Plan in force since 2004, based on current diagnoses of the impacts experienced by the park. These updates should help with the review of zoning regulations, in order to strengthen conservation programs and curtail any regression in management aspects.¹¹

The petitioners close the Submission by referring to the situation that unfolded in November 2020 after the events caused by the ETA and IOTA hurricanes. A proposal was made at the beginning of the current year to relocate the families affected by these events to sites located within the protected area, Barú Volcano National Park. This situation led to a local and national debate, and to threats to

¹⁰ Account of the FIFTH AND SIXTH facts of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park.

¹¹ Summary of references made of the SEVENTH fact of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park, alluding to the note dated 22 October 2020 which was sent to the Ministry of the Environment.

area environment advocates, who had voiced their concerns over compliance with environmental regulations. The description notes that although the situation was resolved with a proposal for relocation outside the Park, *“the situation evidenced once again that the non-inclusion of citizens’ participation in the analysis, and search for solutions, may generate unnecessary conflicts...”*

Evidence in the form of various electronic address links to news reports and press releases pertaining to construction projects within the road leading to Barú Volcano is provided. Formal complaints about the lack of a response from authorities in the case of logging incidents, as well as photographs of the meeting held with the Minister of the Environment in October 2019; the open Letter sent to the Minister of the Environment in October 2020; and the letter sent to the Ministry of the Environment in February 2021 are included.

III. Analysis of the Submission

Considering that according to Determination No. 001/2021 of April 12, 2021, the requirements of Submission No.: SALA-CA-PMA/001/2021 Barú Volcano National Park were verified, and it was determined that it complies with the provisions of paragraph 2 of Article 17.8 of the Agreement pertaining to the formal requirements for its admissibility, it is then up to the Secretariat to analyze the substantive content of the Submission, to determine if it merits a response from the Party in accordance with the provisions of paragraph 4 of Article 17.8, which reads as follows:

“17.8 Submission pertaining to the enforcement of Environmental Legislation: ... 4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by the following considerations:

- a. The submission is not frivolous and alleges harm to the person making the submission;*
- b. The submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;*
- c. Private remedies available under the Party's legislation have been pursued; and*
- d. The submission is drawn exclusively from mass media reports.”*

Analysis of the considerations stipulated by Article 17.8 paragraph 4, of the Panama-United States TPA, to determine whether the Environmental Submission presented merits a response from the Party.	
Considerations	Analysis
<i>a. The submission is not frivolous and alleges harm to the person making the submission;</i>	The facts described in the Environmental Communication filed by the petitioners refer to a series of activities and events that have been taking place, and which have been formally reported, within the boundaries of Barú Volcano National Park and other

	<p>adjacent areas. These activities and events are associated with possible violations to the environmental legislation, such as the construction and operation of tourism infrastructure works, and of roads or means of access which lack an environmental impact study or management plan. Complaints have also been filed regarding the logging activities that are being carried out for the development of tourism and agricultural activities, such as coffee growing in several areas (Palmira, Colgá River, Camiseta, Cerro Punta, Paso Ancho, Alto Pineda among others); the lack of investigation of events such as the logging of forests for livestock farming (Los Pozos, Jurutungo, Las Nubes, Guadalupe among others. No actions calling for investigations, penalties, or reparations for damages, among others, have been observed for these administrative cases.</p> <p>As the petitioners assert, this information was relayed to the Ministry of the Environment, the authority with jurisdiction over these matters. This information was relayed through the filing of complaints, followed by a public meeting held in October 2019. The information was reiterated in a note written in October 2020, and the petitioners have not received a reply at all as of the date of this Submission. They have not even received a partial reply to one of the points raised in their request for information, other than a note stating that information was being compiled in order to issue a response.</p> <p>The Secretariat does not consider that there is any element of frivolity in the arguments raised. The events described by the petitioners in the Submission and in the note requesting information that is provided state concrete activities in specific sites, and references as to why the lack of control of such actions is detrimental to the natural characteristics and special nature of Barú Volcano National Park Protected Area. When analyzing and comparing the activities described by the petitioners with the applicable legal dispositions, justification is found for their request.</p> <p>With respect to the allegation of damages on the part of the person filing the Submission, The General Environment Law of the Republic of Panama stipulates that "...collective and diffuse interests are recognized in order to actively legitimize any citizen or civil organization in administrative, civil, and criminal proceedings for environmental damages."¹²</p> <p>In view of the foregoing, any person who feels affected by potential environmental damage or a violation has the right to resort to the processes established by the environmental legislation for the resolution of the former.</p>
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¹² Article 111 of Law 41 of 1 July 1998, General of the Environment of the Republic of Panama, amended by Law 8 of 25 March of 2015 and Article 106 of the Single Text No. N/N of 8 September 2016.

<p><i>b. The submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;</i></p>	<p>According to article 17.1 of the Agreement on Levels of Protection, one of the goals sought by the Chapter is for each Party to ensure that its laws and policies provide and foster high levels of environmental protection, and that they shall strive to improve these laws and policies.</p> <p>As set forth in article 17.10 paragraph 3, for the implementation of article 17.10 paragraph 4 on Environmental Cooperation of Chapter 17 of the Trade Promotion Agreement between Panama and the United States, "The ECA (Environmental Cooperation Agreement) stipulates that the work program prepared by the ECC (Environmental Cooperation Commission) shall reflect the national priorities, which shall include environmental cooperation activities related to:</p> <ul style="list-style-type: none"> a. Strengthening each Party's environmental management systems, which includes reinforcing institutional and legal frameworks and the capacity to develop, implement, administer and enforce environmental legislation, regulations, standards and policies; b. ... c. Fostering partnerships to address current and emerging conservation and environmental management issues, including personnel training and capacity building; d. ... e. ... f. Promoting best practices in environmental management leading to sustainable development; g. ... h. ... i. Building capacity to promote public participation in the process of environmental decision-making; ..." j. <p>In accordance with the previous article, and given that the basic motivation of the present Environmental Submission refers to the enforcement of environmental legislation related to administrative investigation processes for possible violations of environmental legislation; restoration processes of damaged areas; a request for information for active public participation; updates to legislation and instruments that regulate the Barú Volcano National Park protected area, such as the Management Plan, as well as the proposal to create rules to establish governance mechanisms to support governmental management of the area's conservation tasks, it is the opinion of this Secretariat that the study that can be carried out in relation to the present petition can help identify ways to effectively enforce environmental legislation, and thus comply with the general objectives of Chapter 17 of the Agreement and the Environmental Cooperation Agreement (ECA).</p>
<p><i>c. Private remedies available</i></p>	<p>Panamanian legislation establishes the right of every person to file respectful petitions and complaints before</p>

<p><i>under the Party's legislation have been pursued; and</i></p>	<p>civil servants for reasons of social or individual interest, and to obtain a prompt resolution. The civil servant to whom a petition, inquiry, or complaint is submitted must resolve it within thirty days.¹³</p> <p>The description of the events contained in the filed Submission demonstrates that the petitioners notified the competent institution of the incidents of non-compliance with the regulations. They did so through administrative and criminal complaints; an in-person meeting; and a formal note requesting information on the status of the files pertaining to the facts of the complaints. They requested information as well on the actions taken by the institution, and those that it plans to adopt in the future, along with a proposal for the creation of legal structures allowing for joint work.</p> <p>With this reference, it is the opinion of this Secretariat that the resources/procedures offered by the legislation of the Party, in this case Panama, have been invoked to request the investigation of the facts mentioned, as well as the response or access to information pertaining to the result of such investigations.</p>
<p><i>d. The submission is drawn exclusively from mass media reports.</i></p>	<p>The documents presented as evidence, and the facts described in the text of the Submission, show actions undertaken by the petitioners in a direct manner, through the filing of complaints; participation in a meeting in which the facts were presented; and the submittal of a formal request for information note, reiterating all the facts that were raised previously.</p> <p>The evidence provided included links to news and press releases which described, among other things, the reports on the activities that were carried out; the requests submitted to the institution; and some of the logging and road construction events that subsequently led to the filing of complaints. However, the petition is not based exclusively on these mentions by media outlets.</p>

IV. Determination of the Secretariat

Having analyzed the substantive content of the Environmental Submission filed by the petitioners, the Secretariat concludes that the substance of the petition seeks the enforcement of the environmental legislation generally related to the conservation of Barú Volcano National Park and its surrounding areas; with the update, execution, and enforcement of its Management Plan; with processes for sanctions, and restoration, for potential violations of environmental regulations associated with environmental impact studies and illegal logging; with processes for public participation, and access to information pertaining to the status of the natural resources, and the conservation status of the protected area; as well as the status and actions adopted by the State within the complaint processes filed previously by the petitioners.

Having verified compliance with the formal requirements for the admissibility of

¹³ Article 41 of the Political Constitution of the Republic of Panama, set forth in article 74 of Law 38 of 31 July 2000, which regulates the Administrative General Procedures.

the Submission, as set forth in paragraph 2 of article 17.8 of the Agreement, and having analyzed the considerations set forth in paragraph 4 of article 17.8, in association with the provisions of the Working Procedures of SALA, the Secretariat, in compliance with its functions, hereby **DETERMINES** that the Submission **MERITS** the request of a response from the Party, in this case from Panama, in compliance with the terms established in paragraph 5 of article 17.8 of the Agreement, and the corresponding sections of the Working Procedures of the Secretariat.

BE IT SO NOTIFIED to the petitioners and to the Environmental Affairs Council, for the purposes set forth in Chapter 17, Environment of the Panama-United States TPA, and the Working Procedures of SALA.

FORMALLY REFER to the Party the Environmental Submission provided, its attached documents, as well as the Determinations issued by this Secretariat, in order to reply to the statements made by the petitioners, pursuant to the terms of paragraph 5 of article 17.8 of the Trade Promotion Agreement between Panama and the United States.



Bethzaida E. Carranza Ch.
Executive Director.