

**REGARDING THE SUBMISSION ON ENVIRONMENTAL ENFORCEMENT MATTERS
PRESENTED BY THE NATIVE FEDERATION OF THE MADRE DE DIO RIVER AND ITS
TRIBUTARIES**

POSITION OF THE GOVERNMENT OF PERU

With this document, the Government of Peru responds to the Submission SACA-SEEM/PE/002/2018 (hereinafter, the Submission) of the Native Federation of the Madre de Dios River and Tributaries (hereinafter, FENAMAD) dated July 9, 2018, submitted to the Secretariat for Submissions on Environmental Enforcement Matters (hereinafter, the Secretariat), in accordance with Article 18.8 of the United States-Peru Trade Promotion Agreement (hereinafter, TPA), which asserts an alleged lack of effective environmental law enforcement by the Peruvian Government in the preparation, deliberation, approval, and enactment of Law No. 30723, "Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali is a national priority and interest."

In this regard, in accordance with the provisions of Article 18.8 (5) of the TPA, we proceed to respond to the aforementioned Submission within the period granted by the Secretariat, stating that it should not have been processed because it does not meet the admissibility requirements set forth in the TPA, nor that the Peruvian Government should be required to respond. The arguments supporting this response are stated below:

I. **BACKGROUND:**

1. On January 22, 2018, Law No. 30723 was published, "Law that declares that the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali is a national priority and interest" in the Official Gazette The Peruvian, stating the following:

"Sole article. Declaration of priority and national interest

It is declared that the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali is a national priority and interest, *under the unrestricted respect for protected natural areas and the indigenous peoples that inhabit it.*" (Underlining added).

2. On July 9, 2018, FENAMAD filed the Submission to the Secretariat, in accordance with Article 18.8 of the TPA, in which it alleges a lack of effective **environmental law** enforcement by the Peruvian Government in the preparation, deliberation, approval and enactment of Law No. 30723, "Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest."
3. FENAMAD alleges that the Peruvian Government has not effectively enforced the following laws, which it considers as part of the "environmental laws":
 - a) Articles 1, 4, 5 and 8 of Law No. 28736, "Law for the protection of indigenous or native peoples in a situation of isolation and in a situation of initial contact"; and,
 - b) Law No. 29785, "Law of the right to prior consultation of indigenous or tribal peoples recognized in Convention 169 of the International Labor Organization (ILO)";
4. Additionally, FENAMAD maintains that the Peruvian Government has not effectively enforced the following laws:
 - a) Article 70 of Law No. 28611, "General Environmental Law";

- b) Paragraph 12 of Article II of the Preliminary Title of Law No. 29763, "Forest and Wildlife Law"; and
 - c) Paragraph 3 of Article 18.11 of the TPA.
5. On December 28, 2018, the Executive Director of the Secretariat forwarded the **Determination SACA-SEEM/PE/002/2018/D1** addressed to FENAMAD and to the Members of the TPA Environmental Affairs Council (EAC) through Letter SACA-SEEM/PE/002/2018/02, in which he considers that the Submission filed meets with the admissibility requirements established in paragraph 1 and 2 of Article 18.8 of the TPA.
 6. It should be noted that, regarding the lack of effective enforcement of paragraph 3 of Article 18.11 of the TPA alleged by FENAMAD, the Secretariat states in the Determination SACA-SEEM/PE/002/2018/D1 that "*it is not the competent authority to evaluate the effective enforcement of the provisions contained in the TPA itself ... the matter referred to in paragraph 3 of Article 18.11 of the TPA is related to the Party's environmental laws asserted in the Submission. Accordingly, the Secretariat will limit itself to analyzing the effective enforcement of internal regulations of the Party.*"
 7. On January 11, 2019, the Executive Director of the Secretariat forwarded the **Determination SACA-SEEM/PE/002/2019/D2** to the Members of the EAC, in which he considers that the Submission merits a response from the Peruvian Government for the alleged lack of effective enforcement of the environmental laws asserted by FENAMAD, in accordance with Article 18.8 (4) of the TPA.
 8. On February 5, 2019, the Peruvian Government, by means of Letter No. 028-2019-MINCETUR / VMCE, stated that, while the Government of the United States and the Government of Peru are coordinating the signing of a New Memorandum of Understanding for the General Secretariat of the Organization of American States (GS/OAS) to continue to host the Secretariat, the suspension of the processing of the FENAMAD Submission would be appropriate until further instructions of the ECA of the TPA are received.
 9. On February 22, 2019, the Ministry of Foreign Trade and Tourism (hereinafter, MINCETUR for its Spanish acronym) requested an extension of the term for an additional fifteen (15) days to respond to the request made by the Secretariat, in accordance with Article 18.8 (5) of the TPA, which was granted by electronic communication of the Executive Director of the Secretariat dated February 23, 2019.

II. PRELIMINARY ISSUE

10. The Understanding for implementing Article 18.8 of the TPA establishes that the Secretariat will perform the functions set forth in accordance with the provisions of Articles 18.8 and 18.9 of the TPA, under the sole direction and supervision of the Council. In this sense, the Secretariat will report exclusively to the Council, and will not receive instructions, nor will it execute actions of the Department of Sustainable Development of the General Secretariat of the Organization of American States or of any other authority that is not the Council regarding the functions established in said articles.
11. Likewise, Article 5.2 of the aforementioned Understanding states that the Secretariat will apply the operating procedures and other procedures that the Council determines so that the Secretariat may consider public submissions, prepare the factual record, consult with the experts, prepare reports that will be presented to the Council, protect confidential information, make documents available to the public, or other matters related to its functions.

12. In this regard, and before presenting the main arguments that support our response, we raise, as a preliminary matter, the need to approve the working procedures for the Secretariat to be able to process submissions on environmental enforcement matters, in accordance with what is established in Article 5.2 of the aforementioned Understanding.
13. It should be noted that it is in Peru's interest that the procedures processed by the Secretariat be carried out in accordance with the provisions of: a) Articles 18.8 and 18.9 of the Environment Chapter of the TPA, b) the Understanding for Implementing Article 18.8 of the United States – Peru Trade Promotion Agreement ; and c) the decisions that the EAC approves regarding this matter so that the Parties have an adequate participation in these procedures and to avoid any type of questioning that could impact the proper functioning of the Secretariat.

III. **RESPONSE TO THE FENAMAD SUBMISSION**

14. Notwithstanding the above, we will now proceed to argue that the Submission does not meet the requirements of admissibility or with those that determine the merit of a submission to request a response from the Peruvian Government, in accordance with the provisions of the TPA.

III.1 The Submission does not meet the admissibility requirements

15. Through **Determination SACA-SEEM/PE/002/2018/D1**, the Secretariat considered that the Submission filed by FENAMAD meets the following admissibility requirements set forth in Article 18.8 (1) and (2) of the TPA:

“1. Any person of a Party may submit a Submission invoking that a Party is failing to effectively enforce its environmental law. Such submissions must be submitted to a Secretariat or other competent body (Secretariat) designated by the Parties. 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.

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:

(a) is in writing in either English or Spanish;

(b) clearly identifies the person making the submission;

(c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based and identification of the environmental laws of which the failure to enforce is asserted;

(d) appears to be aimed at promoting enforcement rather than at harassing industry;

(e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

(f) is filed by a person of a Party, except as provided in paragraph 3.”

(Underlining added)

16. Regarding the compliance with Article 18.8 (1) of the TPA, the FENAMAD Submission maintains that the Peruvian Government has not effectively enforced environmental laws in the process of preparation, deliberation, approval and enactment of Law No. 30723.
17. Therefore, it is appropriate to analyze the scope of the term "environmental law" in light of what is set out in Article 18.14 of the TPA, which defines "environmental law" as follows:

“Article 18.14: Definitions

For the purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

(a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto;

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas; or

(d) for Peru, the management of forest resources, in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(Underlining added)

18. In this regard, it should be noted that not all laws asserted by FENAMAD qualify as environmental laws within the definition established in Article 18.14 of the TPA. Therefore, what must be considered is the asserted law's main purpose and **if it is achieved through any of the actions in the exhaustive list of Article 18.14 of the TPA** that defines the term "environmental law."

19. In this context, the objects of the laws asserted by FENAMAD are detailed below:

Asserted Laws	Object of the Law
Articles 1, 4, 5 and 8 of Law No. 28736 , "Law for the protection of indigenous or tribal peoples in a situation of isolation and in a situation of initial contact."	<p>Article 1 of Law No. 28736: Article 1.- Object of the Law The object of this Law is to establish the special cross-sectoral legal framework for the protection of the rights of the Indigenous Peoples of the Peruvian Amazon that are in a situation of isolation or in a situation of initial contact, particularly guaranteeing their rights to life and health, safeguarding their existence and integrity.</p>
Law No. 29785 , "Law on the right to prior consultation of indigenous or tribal peoples recognized in Convention 169 of the International Labor Organization (ILO)."	<p>Article 1 of Law No. 29785: Article 1. Object of the Law This Law develops the content, principles and procedure of the right to prior consultation with indigenous or tribal peoples regarding legislative or administrative measures that directly affect them. It is interpreted in accordance with the obligations established in Convention 169 of the International Labor Organization (ILO), ratified by the Peruvian State through Legislative Resolution 26253.</p>
Article 70 of Law No. 28611 , "General Environmental Law"	<p>Article 70 of Law No. 28611: In the design and enactment of the environmental policy and, particularly, in the environmental territorial planning process, the rights of the indigenous peoples, peasant and native communities recognized in the Political Constitution and in the international treaties ratified by the State must be safeguarded. Public</p>

	authorities promote their participation and integration in environmental management.
Paragraph 12 of Article II of the Preliminary Title of the Law No. 29763 , "Forest and Wildlife Law".	Paragraph 12 of Article II of Law No. 29673: 12. Integration with other legal frameworks The laws related to other natural resources or economic activities or of any nature that could directly or indirectly affect the integrity, conservation and security of the national forest and wildlife patrimony are governed by and in accordance with current law on this matter, including the recognition and respect for the rights of indigenous peoples in accordance with ILO Convention 169. The implementation of this Law, its regulations and any other related measure comply with the obligations stipulated in the international treaties of which the country is a party and are in effect.

20. In relation to the aforementioned laws, the Secretariat has indicated that:

- Articles 1, 4, 5 and 8 of Law No. 28736, qualify as "environmental laws" within the framework of the TPA, in particular with the subparagraph (c) referred to the protection of wild flora and fauna, endangered species of extinction, their habitat and the natural areas under special protection.
- The provisions of Law No. 29785 are framed within the definition of "environmental law" in subparagraph (c) of the TPA, to the extent that reference is made to the collective rights of indigenous peoples and the impact of their participation in the process of prior consultation in relation to the protection of biodiversity, natural resources, habitats and natural areas under special protection found in their geographical area.
- The General Environmental Law, aims to establish the basic principles and rules to ensure the effective exercise of the right to a healthy, balanced and adequate environment for the development of life. Specifically, Article 70 refers to the need to safeguard the rights of indigenous peoples, which fall within the definition of the environmental laws of the TPA.
- The Forest and Wildlife Law aims to promote the conservation, protection, increase and sustainable use of forest and wildlife patrimony within the national territory of the Peruvian State, which is linked to the definition of environmental law by the TPA in Article 18.14.

21. In this regard, we must point out that the interpretation made by the Secretariat exceeds the provisions of the TPA. Specifically, the main purpose of the Law of Prior Consultation is not the protection of the environment or the prevention of a danger to human, animal or plant life or health, but to structure the process for prior consultation of legislative or administrative measures that directly affect to indigenous or tribal peoples.

22. In this sense, the filed Submission and the admissibility criteria applied goes beyond the definition of environmental law set out in the TPA. It should be noted that this, under no circumstances, prevents a person who considers that their rights are or have been affected, from resorting to the appropriate internal mechanisms established by the Parties, according to their laws, or to the relevant international mechanisms.

23. On the other hand, it should be noted that Article 18.8 (2) (c) of the TPA provides that the Secretariat may consider a submission if it *"provides sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based and identification of environmental laws of which the failure to enforce is asserted. "*
24. In this regard, we must mention that the Submission filed does not meet the aforementioned requirement of admissibility since it does not provide sufficient information to allow the Secretariat to review it.
25. This is so because, although the Submission includes documentary evidence and identifies the environmental laws of which there is an alleged lack of effective enforcement by the Peruvian Government, it does not substantiate how this lack of enforcement might have occurred with respect to the three other laws asserted, namely: Law No. 29785, "Law on the right to prior consultation with indigenous or tribal peoples recognized in Convention 169 of the International Labor Organization (ILO)"; Article 70 of Law No. 28611, "General Environmental Law"; and, paragraph 12 of Article II of the Preliminary Title of Law No. 29763, "Forestry and Wildlife Law".
26. Moreover, the Submission only presents arguments regarding an alleged lack of effective enforcement of Law No. 28736, "Law for the protection of indigenous or tribal peoples in a situation of isolation and in a situation of initial contact". However, it does not provide further arguments with respect to the other three laws asserted.
27. In this context, it is clear that the Submission does not comply with the requirement to provide sufficient information to allow the Secretariat to review it, so it should have been rejected at that stage, given that it does not meet this important requirement of admissibility.
28. Based on the above, it can be concluded that the FENAMAD Submission does not comply with all the requirements established in Article 18.8 (1) and (2) of the TPA, so it should not have been admitted for processing by the Secretariat.

III.2 The Submission did not merit a response from the Peruvian Government

29. With **Determination SACA-SEEM/PE/002/2019/D2**, the Secretariat considered that the Submission filed by FENAMAD merited the request for a response of the Peruvian Government, in accordance with Article 18.8 (4) of the TPA even though the Submission does not meet the admissibility requirements set forth in Article 18.8 (1) and (2) of the TPA, as established in the previous section.
30. To that end, the Secretariat had to analyze whether each of the following criteria set forth in Article 18.8 (4) was met.

"Article 18.8: Submissions on Enforcement Matters

(...)

4. When the Secretariat determines that the submission meets the criteria set forth in paragraph 2, the Secretariat will determine whether the submission merits a response from the Party. To decide whether to require a response, the Secretariat will proceed noting whether:

- (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 offered by the Council and the Environmental Cooperation Commission established in the ECA;*
- (c) private remedies available under the Party's law have been pursued; and*
- (d) the submission is drawn exclusively from mass media reports. "*

(Underlining added).

31. In this regard, in accordance with the provisions of Article 18.8 (4) of the TPA, the Secretariat must determine that a filed submission merits a response from a Party when the concurrent requirements detailed in said article are met. The Secretariat has analyzed for the compliance to these requirements in the current case as follows:
- (a) If the submission is not frivolous and alleges harm to the person making the submission: The Secretariat has noted that it considers as frivolous those Submissions that do not have legal merit and that are presented in bad faith for the aim of harassing one of the Parties. In the current case, it considers that the Submission is not frivolous in that it asserts the lack of effective enforcement of the Party's environmental law. Additionally, it considers that the lack of effective environmental law enforcement poses a potential harm to the legal entity FENAMAD.
 - (b) if 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 the guidelines regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA: The Secretariat considers that the Submission deals with the participation and right to prior consultation of indigenous peoples, as well as the protection of the life and integrity of these peoples in relation to the environment and conservation. of biological diversity. In particular, the vulnerability of indigenous or tribal peoples in a situation of isolation and in a situation of initial contact; for this reason, the Secretariat states that the Submission does contribute to advancing the goals of Chapter 18 of the TPA.
 - (c) if private remedies available under the Party's law have been pursued: The Secretariat determined that there is no evidence that the Submitter has pursued the remedies available under the Party's law; and
 - (d) if the submission is drawn exclusively from mass media reports: The Secretariat considers that the information contained in the Submission is not exclusively drawn from mass media reports.
32. As seen, although the Secretariat conducted a review of the requirements set forth in Article 18.8 (4) of the TPA, it did not take into consideration that in order to determine the merit of requesting a response from a Party, such requirements must be met. Such situation has not been established in the current case because it has been proven that the requirements (a) and (b) of Article 18.8 (4) of the TPA have not been met, according to the analysis that we specify below:

III.2.1 Harm asserted by FENAMAD

33. The Secretariat, without further analysis, has considered that the Submission meets the requirement established in subparagraph (a) of Article 18.8 (4) of the TPA, since FENAMAD asserts potential harm to the biodiversity and the ecosystems found in territories of the indigenous peoples of the Ucayali region.
34. In this regard, it should be noted that the Secretariat has erroneously interpreted subparagraph (a) of Article 18.8 (4) of the TPA, since it does not consider that Law No. 30723, "Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest"—the matter being questioned—is a declaration of interest and that the Peruvian Executive Branch has not taken any action under the Act that could cause any type of harm to the legal entity FENAMAD.

35. The law under discussion Law No. 30723, has only one article that states:

“Sole article. Declaration of priority and national interest

It is declared that the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali is a national priority and interest, ***under the unrestricted respect for protected natural areas and the indigenous peoples that inhabit it.*** (Underlining added)

36. Therefore, it is pertinent to highlight that it is a law that is of a **programmatic nature**, since, in the first place, no action has been taken to implement it; and second, because the construction of roads belongs to the competence of the Executive Branch. Therefore, it is legally impossible for Law No. 30723 to result in an alleged lack of effective environmental law enforcement by the Peruvian Government, and even less so that it will cause any harm to any natural or legal person.

37. In this regard, it is important to bear in mind what was stated in the Legal Report No. 036-2013-JUS/DNAJ dated April 10, 2013, prepared by the General Directorate of Development and Laws of the Judiciary of the Ministry of Justice and Human Rights of Peru, concerning statements of national interest:

"(...) part of the legal doctrine maintains that the notion of public interest is the equivalent to the categories of public necessity and national interest, understanding them as supreme ethical laws that, when enacted, will always call to the fundamental moral goals of society. Therefore, there must be congruence and compatibility between the aforementioned notions and the intended objective, in order to be beneficial to the whole of society¹."

38. From the above, it can be inferred that the laws containing categories of public necessity and national interest seek that the State develop actions that allow the objective stated in said law to be achieved to the extent that its fulfillment is beneficial for society.

39. Following these arguments, it should be kept in mind that the laws that declare the development of an activity of national interest do not cause any impact at the time of its enactment and publication, but instead seek to highlight the benefits that the development of the planned activity is seeking to create.

40. Additionally, the sole article of Law No. 30723 clearly establishes that the object of said law safeguards the protected natural areas, as well as the rights of the indigenous peoples that inhabit them.

41. As a result, Law No. 30723, being of a programmatic and declarative nature, does not cause legal effects and, therefore, could not cause any harm to a person. Therefore, it is clear that the Submission does not satisfy the requirement set forth in Article 18.8 (4) (a) of the TPA.

42. Regarding this requirement, FENAMAD asserts potential harm to biodiversity and ecosystems found in the territories of indigenous peoples; however, the TPA makes no mention of potential harm, thus the allegation is not sustained.

43. It should be noted that, in accordance with Article 31 of the Vienna Convention on the Law of Treaties, treaties (including the TPA) must be interpreted according to ordinary meaning so that the term "harm" has to be understood in accordance with its definition according to the common language, not allowing extensive interpretations of the terms.

¹ Pages 7 and 8 Official Gazette The Peruvian N° 02-2013-DGDOJ/MINJUS.

44. In this regard, the Royal Spanish Academy (Spanish: Real Academia Española) defines the term "harm" as follows:

"Harm: Effect of harming."²

"Harming: cause detriment, impairment, pain or discomfort."³

45. Therefore, the analysis carried out by the Secretariat does not follow the provisions of the TPA since, without any support, the "potential harm" is being equated with the term "harm" in such a way that the Secretariat is inappropriately applying a broad interpretation of the TPA.

46. In addition, the Letter, dated January 26, 2018, issued by the Ministry of Environment must be taken in consideration. This Letter, through which the Peruvian Government ratifies its commitment to sustainable development, to respecting the rights of the indigenous peoples and to the conservation of the Amazonian forests, and calls for the analysis of the declaration of national interest contained in Law No. 30723 and, in general, any road infrastructure project that could affect the collective rights of indigenous or tribal peoples, within the framework of Law No. 29785, Law No. 28736 and Supreme Decree No. 038-2001-AG and amendments.

III.2.2 The Submission is not linked/in accordance to the objectives of Chapter 18 of the TPA

47. On the other hand, to determine that the Submission meets the requirement set forth in subparagraph (b) of Article 18.8 (4) of the TPA, the objectives of the TPA Environment Chapter must be considered. These are written in the following terms:

"Recognizing that each Party has sovereign rights and responsibilities with respect to its natural resources, the objectives of this Chapter are to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive, to promote the optimal use of resources in accordance with the objective of sustainable development, and to strive to strengthen the links between the Parties' trade and environmental policies and practices, which can take place through environmental cooperation and collaboration."

48. In this regard, the Secretariat has indicated that the Submission is linked to the objectives of Chapter 18 (Environment) and the ECA, for which reason it is necessary to request the Peruvian Government to issue a response.

49. The law that drives the Submission is a declaration of national interest, so there is no action or inaction identified. In this sense, the impact that the future construction of the roads could have on the TPA objectives could not be validly sustained, *a priori*, and, therefore, we are faced with alleged "potential" impacts rather than actual harm, as explained in the previous paragraph.

50. On the other hand, it should be noted that making interpretations and considerations regarding the TPA are not functions of the Secretariat, in accordance with the provisions of Articles 18.8 and 18.9 of the TPA.

51. Based on the above, it can be concluded that the Submission does not meet the requirements established in Article 18.8 (4) of the TPA. Therefore, there is no merit to the Secretariat's request to the Peruvian Government to issue a response to the Submission. This is to be considered in light of the interpretation of the Secretariat exceeding the provisions of the TPA; likewise, the scope of the objectives of the Environment Chapter has been decontextualized and, since this concerns

²Definition available in: <http://dle.rae.es/?id=BrhkDYt> Accessed 04.03.19. 10

³Definition available in: <http://dle.rae.es/?id=BrdY6Ro> Accessed 04.03.19.

a questioned law that declares a matter of national interest, the "harm" established in the TPA has not been determined.

52. Notwithstanding the above, it should be noted that the Peruvian Government approved on March 2, 2018, Supreme Decree No. 005-2018-MTC that sets forth provisions applicable to road infrastructure projects and for the update and/or modification of the Route Classifier of the National Road System (SINAC for its Spanish acronym), which aims to establish provisions applicable to road infrastructure projects and to update and/or modify the Route Classifier of the National Road System - SINAC, ensuring compliance with environmental regulations, natural protected areas, and that which guarantees the Protection of Indigenous or Tribal Peoples in Situation of Isolation and Situation of Initial Contact.
53. Finally, it is pertinent to highlight that the second article of the aforementioned Supreme Decree states that: *"The road infrastructure projects under the National Government, through the Ministry of Transport and Communications, Regional Governments and Local Governments are developed in compliance with environmental regulations, protected natural areas, and those that guarantee the Protection of Indigenous or Tribal Peoples in Situation of Isolation and Situation of Initial Contact"*.

IV. CONCLUSIONS:

54. It is imperative to approve the pertinent work procedures so that the Secretariat can process Submissions on Environmental Enforcement Matters in accordance to the provisions of paragraph 5.2 of the Understanding.
55. This Submission should not have been accepted to be processed. It is alleged that there has been a lack of effective environmental law enforcement by the Peruvian Government in the process of preparing, deliberating, approving and enacting Law No. 30723, "Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest." However, the law is of a programmatic nature and deals with a matter (road infrastructure) that belongs to the exclusive competence of the Executive Branch. Thus, Law No. 30723 does not generate legal effects that lead to an action or inaction of the Peruvian State that may cause any type of harm, in accordance with the terms contained in the TPA, especially if Law No. 30723 itself explicitly considers *"the unrestricted respect for protected natural areas and the indigenous peoples that inhabit it."*
56. Notwithstanding the above, the Submission does not comply with the admissibility requirements established in Article 18.8 (1) and (2) of the TPA because it alleges that Peruvian Government did not effectively enforce laws that do not qualify as environmental laws under the terms established in the TPA. Additionally, the Submission does not provide enough information to allow the Secretariat to review the submission because it has only presented arguments regarding one of the four cited laws.
57. In the analysis of conformity of the Submission in accordance to the provisions of Article 18.8 (4) of the TPA, the Secretariat has not considered that all the requirements set out in the TPA must be met to determine whether the Submission merits a response from the Party. This is not set forth in the present case since the requirements set out in subparagraphs (a) and (b) of Article 18.8 (4) of the TPA do not apply.

V. PETITION:

Bearing in mind the arguments presented by the Government of Peru through this response, we request that you, Mr. Executive Director of the Secretariat, terminate the process with respect to the

SACA-SEEM/PE/002/2018 Submission, because it does not meet the requirements set out in Article 18.8 (1), (2) and (4) of the TPA and, therefore, the development of a Factual Record is not warranted.

VI. SUPPORTING DOCUMENTATION:

We attach the following documents:

1. Letter, dated January 26, 2018, issued by the Ministry of Environment.
2. Supreme Decree No. 005-2018-MTC, Supreme Decree that establishes provisions applicable to road infrastructure projects and for the update and/or modification of the Route Classifier of the National Road System (SINAC for its Spanish acronym).

Finally, in accordance with the provisions of Article 18.8 (5) of the TPA, the Peruvian Government informs the Secretariat that the specific matter in question is not the subject of a pending judicial or administrative proceeding and that it has not previously been the subject of judicial or administrative proceedings.

Lima, March 12, 2019