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Doctor

DAVID MARÍN CORTÉS

Executive Director

Secretariat for Environmental Enforcement Matters

TRADE PROMOTION AGREEMENT BETWEEN COLOMBIA AND THE UNITED STATES OF AMERICA

info@uscolombiasalaseem.org

SUBJECT: Response to Determination – TPA - USCOLSALASEEM/COL/01/2023
Case IVAN SALAZAR PENNA CC 16.186.444

Dear Mr. Marín:

In response to the Determination issued by your office on December 13, 2023, the Ministry of Environment and Sustainable Development is pleased to address the submission made by Mr. Iván Salazar Penna, with citizen ID card No. 16.186.444. The request pertains to environmental enforcement regarding the El Danubio Civil Society Nature Reserve, located on the property with registration number 420-26142 in Caldas village in the municipality of Morelia, Caquetá.

Mr. Salazar Penna's request focuses on the following aspects:

- a) Dissatisfaction with its participation in the execution of Collaborative Agreement No. 026-CNVS-2022 dated November 17, 2022, signed between the Municipality of Morelia and the Caldas Village Community Action Board, concerning the improvement of the sanitary facilities at Palmarito Educational Institution.
- b) Dissatisfaction with its participation in executing the project entitled "construction of a water mains network and drinking water treatment plant for the urban area of the municipality of Morelia, Caquetá."
- c) Pruning and felling of trees in the El Danubio Civil Society Nature Reserve.

The information requested by the Secretariat for Environmental Enforcement Matters through the aforementioned determination is focused on indicating:

(a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, and

(b) of any other information the Party wishes to submit, such as:

- (i) whether the matter was previously the subject of a judicial or administrative proceeding;
- (ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued, or;
- (iii) information concerning relevant capacity-building activities under the ECA.

To address the terms laid out by the Environmental Secretariat and referenced in Article 18.8 (5) of the Colombia – U.S. TPA, this Ministry deems it relevant to lay out preliminary aspects. These serve as a preliminary context and a framework for the decisions that may result from this matter.

Firstly, we will identify the administrative authorities accessible to Mr. Salazar Penna, based on the functional authority granted by the Political Constitution of Colombia and the applicable laws. He can approach these authorities to seek the protection or guarantee of the rights he may deem threatened in his particular situation. Following this, we will discuss the National System of Protected Areas and the Civil Society Nature Reserves as determining factors of the citizen's request. Subsequently, we will highlight administrative and/or judicial mechanisms that address issues similar to those currently at hand. Finally, we will highlight other relevant aspects of this specific case.

I. OBJECTIVES AND FUNCTIONS OF THE MINISTRY OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

The objectives and functions of the Ministry of Environment and Sustainable Development are laid out in Articles 1 and 2 of Decree-Law 3570 of 2011, which explicitly states:

ARTICLE 1. Ministry Objectives. *The Ministry of Environment and Sustainable Development is the governing body in charge of managing the environment and renewable natural resources. It is responsible for guiding and regulating environmental planning in Colombia and defining the policies and regulations to which the recovery, conservation, protection, planning, management, use, and sustainable exploitation of the nation's renewable natural resources and the environment will be subject. This is in order to ensure sustainable development, without detriment to the functions assigned to other sectors.*

The Ministry of Environment and Sustainable Development, in collaboration with the President of the Republic, will set forth the national environmental and renewable natural resources policy to guarantee

the right of all individuals to enjoy a healthy environment and protect the nation's natural heritage and sovereignty.

It is the responsibility of the Ministry of Environment and Sustainable Development to direct the National Environmental System (SINA), established in accordance with Law 99 of 1993. This is to ensure that the respective policies, plans, programs, and projects are adopted and executed in order to guarantee the fulfillment of the duties and rights of the State and individuals concerning the environment and the nation's natural heritage.

ARTICLE 2. FUNCTIONS. *In addition to the functions specified in the Political Constitution and in Article 59 of Law 489 of 1998, as well as other laws, the Ministry of Environment and Sustainable Development will perform the following functions:*

- 1. Design and formulate the national policy regarding the environment and renewable natural resources, and establish the regulations and criteria for environmental planning and the use of land and nearby seas. This is to ensure their conservation and the sustainable exploitation of renewable natural resources and the environment.*
- 2. Design and regulate public policies and general conditions for environmental sanitation, and the use, management, exploitation, conservation, restoration, and recovery of natural resources. This is to impede, prevent, eliminate, and mitigate the impact of activities that result in pollution, deterioration, or destruction of the environment or of the natural heritage in all economic and productive sectors.*
- 3. Support other Ministries and state entities in formulating public policies within their jurisdiction that have environmental and sustainable development implications, and establish the environmental criteria that should be incorporated into the formulation of sectoral policies.*
- 4. Collaborate with the Ministry of Foreign Affairs to formulate international environmental policy and establish the tools and procedures for cooperation. Moreover, represent the National Government in the implementation of international treaties and agreements pertaining to the environment, renewable natural resources, and sustainable development.*
- 5. Guide actions that are aimed at preventing ecological risk in coordination with the National Disaster Prevention and Response System.*

6. *With the guidance of the National Planning Department, prepare plans, programs, and projects addressing environmental matters, renewable natural resources, and environmental planning in Colombia. These should be designed for incorporation into the projects outlined in the National Development Plan and the National Investment Plan, and subject to evaluation by the Congress of the Republic.*

7. *Assess the economic implications and effects of environmental factors, their incorporation into the market value of goods and services, and their impact on the development of the national economy and its external sector. Assess their cost in medium and large infrastructure projects, as well as the economic cost of the deterioration and conservation of the environment and renewable natural resources.*

8. *Conduct economic and fiscal research, analyses, and studies related to the budgetary and financial resources of the environmental management sector. These include on taxes, fees, contributions, rights, fines, and incentives. Additionally, establish the minimum tariff amount for fees concerning the use and exploitation of renewable natural resources, in accordance with the law.*

9. *Lead and coordinate the planning process and the smooth execution of environmental activities among entities that are part of the National Environmental System (SINA). Resolve discrepancies resulting from the carrying out of their activities and establish criteria or make decisions when conflicts arise among them concerning the application of regulations or policies related to the use, management, and exploitation of renewable natural resources or the environment. (...)*

19. *The other functions indicated in Laws 99 of 1993 and 388 of 1997 do not violate the provisions of this decree.*

In accordance with the above, it should be noted that the **Ministry of Environment and Sustainable Development** is a management body tasked with creating national environmental policies. These policies are to be implemented in accordance with the respective area of jurisdiction of each of the environmental authorities, such as:

- The National Authority for Environmental Licenses (ANLA);
- The Special Administrative Unit of the Colombian National Park Service.
- Regional Autonomous Corporations and those for Sustainable Development;
- Regional Autonomous Corporations and those for Sustainable Development may delegate the exercise of this authority to regional entities. They must give special consideration to the technical, economic, administrative, and operational capacity of such entities to perform the delegated functions;

- Municipalities, districts, and metropolitan areas with an urban population exceeding one million (1,000,000) inhabitants within their urban perimeter, as defined by terms of Article 66 of Law 99 of 1993; and
- The environmental authorities established by Law 768 of 2002.

The above undoubtedly leads to the conclusion that the MINISTRY OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT is not one of the entities called upon to address Mr. Iván Salazar Penna. As will be explained later, he has various administrative and judicial mechanisms at his disposal, as outlined in our legal system, specifically designed to resolve disputes similar to those presented by the submitter.

II. THE SPECIAL ADMINISTRATIVE UNIT OF THE COLOMBIAN NATIONAL PARK SERVICE

In response to the need for a specialized entity with the administrative and financial autonomy to oversee the administration and management of the Natural Parks System, as well as the coordination of the National System of Protected Areas, the National Government created the Special Administrative Unit known as the Colombian National Park Service, through Decree 3572 of 2011. Operating nationwide and without the status of a legal entity, this unit possesses administrative and financial autonomy and jurisdiction throughout all of Colombia. This unit was established in accordance with the authority outlined in point d) of Article 18 of Law 1444 of 2011, enabling the reassignment of functions and organizational power among entities and agencies within the National Public Administration and other state entities and agencies.

The entity is responsible for the administration and management of the National Natural Parks System and for coordinating the National System of Protected Areas. This central level body is attached to the Environmental and Sustainable Development Sector, and its functions, which are outlined in Article 2 of Decree 3752 of 2011, are to:

- 1. Administer and manage the National Natural Parks System, as well as regulate the use and operation of the areas within it, in accordance with the provisions of Decree-Law 2811 of 1974, Law 99 of 1993, and its regulatory decrees.*
- 2. Suggest and implement policies and regulations related to the National Natural Parks System.*
- 3. Develop planning tools, programs, and projects related to the National Natural Parks System.*
- 4. Conduct studies for the establishment, demarcation, delimitation, declaration, and expansion of the areas within the National Natural Parks System.*

5. *Suggest policies, plans, programs, projects, and regulations regarding the National System of Protected Areas (SINAP) to the Ministry of Environment and Sustainable Development.*
6. *Coordinate the organization, operation, and improvement of the National System of Protected Areas, in accordance with the policies, plans, programs, projects, and regulations that govern this system.*
7. *Grant permits, concessions, and other environmental authorizations for the use and exploitation of renewable natural resources within the areas of the National Natural Parks System. Provide input within the framework of the environmental licensing process for projects, work, or activities that affect or may affect the areas within the National Natural Parks System, in accordance with the activities permitted by the Constitution and the Law.*
8. *Acquire, through direct negotiation or eminent domain, privately-owned assets, heritage assets of public entities, and other rights associated with properties located within the National Natural Parks Systems, and impose any necessary easements on such properties.*
9. *Settle, collect, and enforce the rights, fees, fines, contributions, and tariffs for the use and exploitation of the renewable natural resources within the areas of the National Natural Parks System. This includes other goods and environmental services provided by such areas.*
10. *In accordance with the law, collect the funds for the evaluation and monitoring services of permits, concessions, authorizations, and other environmental control and management tools established by the law and regulations.*
11. *Working with the departments of the Ministry of Environment and Sustainable Development, propose policies, regulations, and strategies regarding buffer zones in the areas within the National Natural Parks System.*
12. *Manage the national single registry of protected areas within the SINAP.*
13. *Exercise policing and sanctioning functions as stipulated by law.*
14. *Propose and implement financial sustainability strategies to create funds that support the organization's management.*
15. *Carry out any other functions assigned by current regulations, functions that, by their nature, are their responsibility, or those that are assigned or delegated by subsequent regulations.*

The Special Administrative Unit of the Colombian National Park Service conducts environmental administrative procedures and drafts the relevant administrative acts through its Sub-Directorate of Protected Areas Management and Administration. This includes the granting of permits, concessions, authorizations, and other environmental control and monitoring tools, for the use and exploitation of

renewable natural resources in the areas within the National Parks System.

Civil Society Nature Reserves are privately owned protected areas within the SINAP and it is the responsibility of the owners to approach the respective environmental authority, the Colombian National Park Service. In accordance with the functions mentioned in Decree Law 3572 of 2011 and Article 2.2.2.1.1.7 of Decree 1076 of 2015, the Colombian National Park Service is solely responsible for registering the properties that make up the Civil Society Nature Reserves. At the same time, their Regional Directorates promote and support the registration of such reserves.

In this regard, and as indicated by Mr. Salazar Penna, the “El Danubio” Civil Society Nature Reserve in Caldas village in the municipality of Morelia, Caquetá, was registered by the responsible Special Administrative Unit, through Resolution N° 008 of February 14, 2020.

III. OBJECTIVES AND FUNCTIONS OF REGIONAL AUTONOMOUS CORPORATIONS.

The functions and authorities of Regional Autonomous Corporations are those outlined in Article 31 of Law 99 of 1993, which states:

ARTICLE 31. FUNCTIONS. Regional Autonomous Corporations will carry out the following functions:

- 1) Execute national policies, plans, and programs regarding environmental matters defined by the law approving the National Development Plan and National Investment Plan or by the Ministry of Environment, as well as those on a regional level entrusted to them by law, within the scope of their jurisdiction;*
- 2) Act as the highest environmental authority within their jurisdiction, in accordance with higher-level regulations and following the criteria and guidelines established by the Ministry of Environment;*
- 3. Promote and increase community involvement in activities and programs regarding environmental protection, sustainable development, and proper management of renewable natural resources;*
- 4. Coordinate the process of preparing plans, programs, and environmental development projects that various organizations within the National Environmental System (SINA) must develop within their respective jurisdictions. In particular, provide advice to departments, districts, and municipalities within their regional jurisdiction in devising environmental development plans, and in their programs and projects concerning the protection of the environment and renewable natural resources.*

This ensures the alignment and coherence of policies and actions adopted by different regional entities;

5. Work with other relevant organizations and entities within their jurisdiction in land planning and use, ensuring that the environment is taken into consideration in the decisions that are made;

6. Enter into contracts and agreements with regional entities, other public and private entities, and non-profit entities that aim to defend and protect the environment and renewable natural resources. This is in order to carry out certain non-administrative functions more effectively.

(...)

9) Grant concessions, permits, authorizations, and environmental licenses required by law for the use, exploitation, or movement of renewable natural resources or for engaging in activities that affect or may affect the environment. Grant permits and concessions for forest exploitation, concessions for the use of surface water and groundwater, and impose bans on recreational hunting and fishing;

11) Carry out the environmental assessment, control, and monitoring of activities related to the exploration, exploitation, cultivation, transport, use, and depositing of non-renewable natural resources. This includes port activities, excluding those under the authority of the Ministry of Environment, as well as other activities, projects, or factors that may cause or contribute to environmental degradation. This includes issuing the corresponding environmental licenses. The functions referred to in this paragraph will be carried out in accordance with Article 58 of this Law.

12) Carry out the environmental assessment, control, and monitoring of the uses of water, soil, air, and other renewable natural resources. This includes the discharge, emission, or incorporation of substances or waste in liquid, solid, or gaseous forms into water, air, or soil, as well as discharges or emissions that may cause harm to or endanger the normal sustainable development of renewable natural resources, or hinder their use for other purposes. These functions include issuing the respective environmental licenses, permits, concessions, authorizations, and transportation permits;

(...)

17) As a preventive measure and without detriment to the power conferred by law to other authorities, impose and enforce the policing measures and sanctions stipulated by law in the event of a violation of environmental protection and renewable natural resource management regulations. Seek compensation for damages caused in accordance with relevant regulations;

(...)

PARAGRAPH 4. Regional Autonomous Corporations will carry out their duties in close collaboration with regional entities and the organizations to which they have assigned responsibilities within their jurisdiction;

(...)

As is evident thus far, the Ministry of Environment and Sustainable Development does not act as a sanctioning body with the legal authority or ability to impose or enforce policing measures and sanctions as stipulated by law in the event of a violation of environmental protection and renewable natural resource management regulations. Furthermore, it does not have the ability to seek compensation for damages caused, in accordance with relevant regulations.

Nevertheless, any individual may approach the environmental authorities within their jurisdiction to express their views on the matter and to advocate for the relevant administrative actions to ensure compliance with environmental regulations. These authorities carry out and fulfill their functions autonomously, as highlighted by the Constitutional Court¹ when referring to the autonomy of Regional Corporations, which states:

*“(...) they are national administrative entities that can represent the nation within the framework of the autonomy regulations outlined in Article 7 of the Constitution. Established by the Constitutional Assembly, they are for the autonomous pursuit and fulfillment of specific purposes as defined by the Constitution or by law. These entities operate independently **without being affiliated with or linked to any ministry or administrative department.** Furthermore, within legally defined boundaries, and with due consideration for their financial, patrimonial, administrative, and political autonomy, they can serve as agents of the National Government, carrying out certain autonomous functions as stipulated by law.”* Emphasis added.

Regarding the scope of autonomy held by these organizations, the Constitutional Court² has also stated: “Thus, Regional Autonomous Corporations are subject to the law and decisions of the Central Administration concerning environmental matters, since ecological issues fall under the jurisdiction of national authority.

*“...Nevertheless, the option of restricting the extent of their autonomy cannot go as far as preventing Regional Autonomous Corporations from fully carrying out their functions, **nor can it encroach upon their functions that only concern local matters** (...).”*

¹ CONSTITUTIONAL COURT. Ruling C-593 of 1993 Judge-Rapporteur Fabio Morón Díaz.

² CONSTITUTIONAL COURT Ruling C-462 of 2008 Judge-Rapporteur: Marco Gerardo Monroy Cabra.

It must also be taken into account that the carrying out of administrative tasks is founded on the principle of legality regarding public acts. Such a principle entails that “public servants can only carry out duties stipulated by the Constitution, laws, or regulations, and **under no circumstances can they carry out functions that are beyond their jurisdiction,**” as stated by the Constitution Court in ruling C-337/93 of August 19, 1993, case D-296, Reporting Judge: Vladimiro Naranjo Mesa.

In the same way, within the framework established by Law 99 of 1993, in alignment with Law 1333 of 2009, the only entities with the authority to impose compensatory, punitive, or preventive measures during environmental sanctioning processes are the Regional Autonomous Corporations, the ANLA, and the other previously mentioned authorities.

Regarding this matter, Article 31 of Law 99 of 1993 states that it is the responsibility of regional environmental authorities, among other, to **act as the highest environmental authority within their jurisdiction**, in accordance with higher-level regulations and following the criteria and guidelines established by the Ministry of Environment and Sustainable Development. They are responsible for carrying out the environmental assessment, control, and monitoring of the uses of water, soil, air, and other renewable natural resources. Additionally, **as a preventive measure and without detriment to the power conferred by law to other authorities, it is their responsibility to impose and enforce the policing measures and sanctions stipulated by law in the event of a violation of environmental protection and renewable natural resource management regulations. They are also tasked with seeking compensation for damages caused in accordance with relevant regulations.**

Whilst the Ministry is the governing body of the National Environmental System, as mentioned a few lines above, this ministerial department is **NOT the hierarchical superior of the Regional Autonomous Corporations**. These entities have administrative and financial autonomy, as stipulated by Articles 150 of the Political Constitution and 23 of Law 99 of 1993. In that regard, paragraph 36 of Article 5 of Law 99 of 1993 states that this Ministry carries out inspections and oversight functions, but does not exert control over the Regional Autonomous Corporations.

The extent of the inspection and oversight function carried out by this Ministry was specified by the Constitutional Court in ruling C-570 of 2012, in the following terms:

*“(ii) The Regional Autonomous Corporations are a unique class of national constitutional bodies, as they combine various features of decentralized service entities. Specifically, they oversee the administration of natural resources, as well as the planning and promotion of regional development using environmental sustainability criteria. **However: a) they are not subject to oversight or other strict administrative control mechanisms that allow the central authority***

to revoke or change their decisions - a stance that is not contrary to jurisdictional controls, and b) they are not affiliated with any ministry and are not part of any administrative sector.

In addition, in the quoted ruling, the Court also stated the following:

*“(iv) Within this institutional framework, endorsed by constitutional jurisprudence, and given the significant amount of interest involved, it is justified for the Ministry to have tools at its disposal such as preventive assessment and control, as well as inspection and oversight over the entities comprising the National Environmental System, including the Regional Autonomous Corporations. This is essential to verify the implementation of policies and to assess their effectiveness. As will be examined below, these are less stringent control tools that **under no circumstances authorize the Ministry to change the decisions made by corporations. Instead, they serve to foster dialogue with them and the supervisory authorities.**”*

“As can be observed, inspection and oversight could be classified as less stringent or intermediate control mechanisms. Their purpose is to detect irregularities in the provision of a service, while control involves the power to implement corrections, that is, to directly influence the decisions of the entity that is subject to control.” Emphasis added.

In this specific case, as reported by the submitter regarding the pruning and felling of trees in the El Danubio Civil Society Nature Reserve in the Municipality of Morelia, Caquetá, it is a matter that falls under the jurisdiction of the Corporation for Sustainable Development of the Southern Amazon (CORPOAMAZONÍA). In accordance with its legal authority, it may address Mr. Ivan Salazar Penna's requests. Nevertheless, we are unaware if the submitter has pursued any action with this environmental authority to date.

IV. THE ROLE OF OTHER ENTITIES IN RELATION TO DOMESTIC THE WATER MAINS NETWORK PUBLIC SERVICE

Article 365 of the Political Constitution of Colombia states:

“ARTICLE 365. Public services are integral to the social purpose of the State. It is the duty of the State to ensure they are efficiently provided to all inhabitants of the country.

Public services shall be subject to the legal framework established by law and may be provided directly or indirectly by the state, by organized communities, or by private entities. In any case, the State shall exercise regulation, control, and oversight over these services. If, for reasons related to sovereignty or social interest, the State, through a law approved by a majority of members in both chambers, upon the Government's initiative, chooses to reserve certain strategic activities or public services,

it must compensate, in advance and in full, individuals who by virtue of said law, are deprived of the ability to carry out a lawful activity.”

The domestic water mains network public service consists of the distribution of water suitable for human consumption, which includes its connection, measurement, water collection, processing, treatment, storage, conveyance, and transportation. In other words, the domestic water mains network public service or the domestic drinking water public service consists of the distribution of water suitable for human consumption, including its connection and measurement.

Complementary features are also included in this service, such as water collection, processing, treatment, storage, conveyance, and transportation. Article 76 of Law 715 of 2001 explicitly states that, in addition to the powers established in the Constitution and in other provisions, it is the responsibility of municipalities to promote, finance, or co-finance projects of municipal interest. This can be done either directly or indirectly, utilizing their own resources from the General Resource Allocation System (SGP) or other resources. Regarding public services, in addition to the powers established in other valid regulations, this includes undertaking, either directly or through third parties, the construction, expansion, restoration, and improvement of public service infrastructure.

Specifically, the functions and regulatory framework pertaining to domestic public services, such as the water mains network are laid out in Law 142 of 1998 *“which establishes the framework for domestic public services and includes other provisions”*, as follows:

- For the Municipality of Morelia, Caquetá:

“...ARTICLE 5. JURISDICTION OF MUNICIPALITIES REGARDING THE PROVISION OF PUBLIC SERVICES. In relation to public services, it is within the jurisdiction of municipalities to exercise their authority in accordance with the law and regulations established by the councils:

5.1. Ensure that inhabitants are efficiently provided with domestic services including a water supply, a sewage system, waste collection, electricity, and a public switched telephone network*. *This should be provided either by official public, private, or mixed-ownership utility companies, or directly by the respective municipality’s central administration in the cases outlined in the following article...”*

...

ARTICLE 26. MUNICIPAL PERMITS. *In every municipality, the providers of public services will be subject to the general regulations governing urban planning, travel and transit, use of public spaces, and the safety and peace of mind of citizens. Authorities may also require them to provide adequate guarantees to address the risks they create.*

Municipalities must allow the permanent installation of networks that are intended for the operations of public utility companies, or for the provision of the goods and services they offer, underneath roads, bridges, public areas, sidewalks, and other properties designated for public use. In any case, the companies will be liable for any damage or harm caused by the inadequate construction or operation of their networks.

Municipal authorities may not, under any circumstances, deny or attach conditions to licenses or permits for public utility companies, which they are authorized to issue under the law, for reasons which fall under the jurisdiction of other authorities with the power to grant permits, licenses, or concessions, nor to favor monopolies or limit competition...

- For the Ministry of Housing, City, and Territory

They are outlined in Decree 3571 of 2011, as follows:

"...ARTICLE 2. FUNCTIONS. <Article modified by Article 1 of Decree 1604 of 2020. The new text is as follows:> In addition to the functions specified in the Political Constitution and in Article 59 of Law 489 of 1998, as well as other laws, the Ministry of Housing, City, and Territory will perform the following functions:

1. Devise, oversee, and coordinate policies, plans, programs, and regulations concerning housing, financing of urban and rural housing, urban development, land planning and land use within its jurisdiction, drinking water, and basic sanitation, as well as regulatory tools for their implementation.

9. Devise schemes for subsidizing public domestic services such as the water mains network, sewage systems, and waste collection, by employing the resources established by current regulations.

10. Design and promote special programs for providing drinking water and basic sanitation in rural areas, in collaboration with the relevant national and regional entities.

11. Monitor the resources within the General Resource Allocation System (SGP) for drinking water and basic sanitation.

12. Establish criteria for the feasibility and eligibility of projects concerning the water mains supply, sewage systems and waste collection, drinking water, and basic sanitation, and approve them for feasibility.

13. *Contract services for the monitoring of projects concerning drinking water and basic sanitation that receive financial support from the national government.*

14. *Establish technical and strategic planning criteria for financial support, technical assistance, and policy coordination for the public waste collection service, comprehensive waste management, and the circular economy.*

15. *Define the technical requirements that companies must fulfill in their works, equipment and procedures. This is necessary when the Regulatory Commission for Drinking Water and Basic Sanitation, through general resolutions, deems these specifications necessary to ensure the quality of drinking water and basic sanitation services, without imposing unwarranted restrictions on competition.*

16. *Integrate housing and urban and rural housing financing policies with those of drinking water and basic sanitation, and, in turn, align them with environmental, infrastructure, mobility, health, and rural development policies.*

17. *In collaboration with the National Planning Department, prepare sectoral policy proposals to be submitted for consideration, deliberation, and approval by the National Council for Economic and Social Policy (Conpes).*

18. *Provide technical assistance to regional entities, environmental authorities, and to domestic public service providers, in accordance with the sector's competencies.*

19. *Promote and guide the incorporation of risk management components into sectoral policies, programs, and projects in collaboration with entities that are part of the National Disaster Prevention and Response System.*

20. *Develop information management policies for the Administrative Sector of the Ministry of Housing, City, and Territory.*

21. *In collaboration with the Ministry of Foreign Affairs, guide and lead international negotiations and international cooperation processes concerning housing and the financing of urban and rural housing, urban and regional development, drinking water, and basic sanitation.*

22. *Within its jurisdiction, support collaborative processes between regional entities in matters related to urban and rural housing, urban and regional development, drinking water, and basic sanitation.*

23. *Any other functions assigned by the Constitution or the law..."*

In conclusion, the Ministry of Housing, City, and Territory develops and implements public policies through programs and projects that enable access to water, basic sanitation, land use planning, urban development, comprehensive water resource management, housing solutions, and sustainability. These initiatives are tailored to the needs of regions to improve the quality of life of their inhabitants in relation to the water mains network public service. Furthermore, it provides technical assistance to regional entities and domestic public service providers. It designs and promotes special programs for drinking water and basic sanitation in rural areas, and fulfills other functions as mandated by the Constitution and the law.

V. NATIONAL SYSTEM OF PROTECTED AREAS (SINAP)

The National System of Protected Areas comprises protected areas, social stakeholders, and management strategies and tools, which as a whole aim to contribute to the achievement of the country's conservation goals. It includes all protected areas, under public, private, or community governance, and whether they are under the jurisdiction of national, regional, or local management.

Various social and institutional stakeholders at both regional and local levels contribute to the development of subsystems for protected areas. Additionally, the Colombian National Park Service fosters understanding to define and implement activities within the work plan for protected areas, including the National System of Protected Areas action plan.

The main functions of the Special Administrative Unit of the Colombian National Park Service within the National System of Protected Areas are:

- To administer the protected areas of the National Natural Parks System in the categories of National Natural Park (PNN), Fauna and Flora Sanctuary (SFF), Unique Natural Area (ANU), Natural National Reserve (RNN), and Parkway.
- To contribute to the development and consolidation of the National System of Protected Areas.
- To coordinate and implement policies, plans, programs, regulations, and procedures related to the National System of Protected Areas.

The National System of Protected Areas is based on regional work in protected areas: Processes of corporations and authorities in large urban centers; **Civil Society Nature Reserves**; conservation processes carried out by indigenous communities, Afro-Colombian communities, and farmers; subsystems of protected areas on regional, departmental, subregional, provincial, municipal, local and other levels, and the National Natural Parks System.

VI. CIVIL SOCIETY NATURE RESERVES – PART OF THE NATIONAL SYSTEM OF PROTECTED AREAS (SINAP)

As established in Decree 1996 of 1999, "*By which Articles 109 and 110 of Law 99 of 1993 on Civil Society Nature Reserves are regulated*", compiled in Decree 1076 of 2015, there are two categories of protected areas: public and private. Civil Society Nature Reserve are part of the latter category, meaning that they are part of the National System of Protected Areas (SINAP). These reserves are defined as a portion or entirety of a property area that preserves a sample of a natural ecosystem and is managed according to the principles of sustainability in the use of natural resources. They are designated voluntarily by the owner for sustainable use, conservation, or restoration with a long-term commitment.

Civil Society Nature Reserves are established by the property owner's initiative, in a free, voluntary, and autonomous manner. However, Decree 1076 of 2015 is clear in stating that landowners who wish for properties designated as Civil Society Nature Reserves to be included as areas that are part of the SINAP must register them with the Colombian National Park Service. Likewise, if they so desire, they are free to request the cancellation of the registration, to withdraw the area from the National System of Protected Areas.

When someone registers their property as a Civil Society Nature Reserve, they can access incentives offered for the landowners of these areas, such as:

1. Rights to participate in the planning processes of development programs
2. Prior consent for the execution of public investments that affect them
3. Right to incentives
4. Civil Society Nature Reserves are recipients of biodiversity loss compensation measures
5. Investments in environmental control
6. Scheme for payment for environmental services, in accordance with the provisions of Decree 1007 of 2018
7. Possibility of property tax discount according to municipal agreements
8. Exemption from income tax for ecotourism services in accordance with the provisions of Decree 2755 of 2003 and Resolution 890 of 2005

9. The Civil Society Nature Reserve can be part of Amigos de la Fauna (Friends of Wildlife), in accordance with the provisions of Resolution 2064 of 2010 issued by the Ministry of Environment and Sustainable Development.

10. Additional benefits established by each Regional Autonomous Corporation and municipal mayors

11. Any other participation rights established by law

It is important to note that the holder of the registration for the Civil Society Nature Reserve may dispose (sell) a property where a Civil Society Nature Reserve is already registered. It should be noted that the property registered as a Civil Society Nature Reserve is not excluded from commerce, as the owner may carry out acts of disposal, alienation, or limitation of ownership, provided that they notify the Colombian National Park Service within thirty (30) days following the execution of these acts.

While Civil Society Nature Reserves do constitute a limitation on the right of ownership and are subject to real estate registration with the Public Instruments Registry Office, this occurs only if the holder of the registration so decides.

Furthermore, as previously mentioned, the Colombian National Park Service undertakes the registration of the Civil Society Nature Reserve in the National Single Registry of Protected Areas (RUNAP), constituting an act that establishes both rights and obligations. This action triggers the corresponding legal consequences, including the requirement to fulfill certain activities aimed at maintaining and/or achieving specific conservation conditions for the property.

In this regard, the registration of the reserve primarily entails obligations of refraining from certain actions or ceasing to engage in them, such as suspending planned activities and uses if they pose potential risks or negative impacts to the natural ecosystem.

However, this limitation on ownership does not restrict the property's attributes, nor does it entail the loss of rights over the property, since at any time the individual may request to change or cancel the reserve's registration. Based on this understanding, **the limitation on ownership resulting from the registration of a Civil Society Nature Reserve is of a private and not a public nature.** The above, in accordance with the provisions of Article 2.2.2.1.17.15 of Decree 1076 of 2015, the "Unified Regulatory Decree of the Environment and Sustainable Development Sector."

It is also relevant to mention that the zoning of a Civil Society Nature Reserve refers to the delineation of areas within the reserve with specific uses and activities, as established in Article 2.2.2.1.17.4 of Decree 1076 of 2015. It is important to emphasize that Civil Society Nature Reserves must have at least one conservation area.

In accordance with the provisions of the aforementioned regulation, Civil Society Nature Reserves may include the following zones:

1. Conservation Zone: an area consisting of a landscape or a natural community (animal or plant) either in a primary state or naturally evolving and undergoing a process of recovery.
2. Buffer and Special Management Zone: the transition area between the human-modified landscape and conservation zones, or between the former and special protection areas such as water sources, wetlands, and watercourses. This zone may contain scrubland or secondary vegetation and may be subject to sustainable agricultural and extractive activities of regular intensity.
3. Agro-systems Zone: an area used for sustainable agricultural production for human or animal use, both for domestic consumption and commercial purposes, promoting food security.
4. Intensive Use and Infrastructure Zone: an area designated for housing, restaurants, lodgings, stables, sheds, warehouses, nurseries, trails, roads, viewpoints, electrical and fixed machinery installations, sanitation and basic sanitation facilities, as well as facilities for education, recreation, and sports.

To conclude this section, it is pertinent to remember that **the owner of a property that constitutes or includes a Civil Society Nature Reserve that is threatened by force majeure, fortuitous event, or the actions of a third party has the duty to inform the Special Administrative Unit of the Colombian National Park Service and the corresponding Environmental Authority** within 15 days following the event, as mentioned in Article 2.2.2.1.17.15 of Section 17 of Decree 1076 of 2015.

VII. LEGAL COMPLIANCE CONTROL MECHANISMS

Control of the legality of public authorities' administrative actions is primarily based on the relationship between administrative acts and the legal system. This control is enforced through control mechanisms that any citizen is entitled to exercise against these acts before an administrative judge.

However, acts are not the only element subject to control by administrative justice; other actions by authorities are also subject to scrutiny, such as administrative operations, actions and omissions by the Administration, and contractual acts. Control by the judicial authority represents the administration's compliance with the law as the highest expression of the principle of legality that governs all actions of entities at all levels, whether at the municipal, departmental, or national level.

In this sense, the Administrative Procedure and Administrative Litigation Code constitutes the norm for the implementation of administrative procedural law. It is based on the Political Constitution of Colombia and embodies the fact that judicial bodies for administrative litigation exercise direct legality control and indirect constitutionality control over the actions of public authorities.

Control mechanisms are regulated by Article 137 and subsequent articles of Law 1437 of 2011 (CPACA). They can be classified, among other criteria, based on their normative precedence, into control mechanisms of legal or constitutional origin. They can be classified based on the activity involved in the process, into mechanisms referring to the unilateral or bilateral activity of the administration. They can also be classified based on the purpose pursued by the actor, into subjective or objective control mechanisms.

Therefore, any citizen who is dissatisfied with administrative actions may approach the administrative litigation jurisdiction as the appropriate authority for these matters, in order to ensure their rights are protected, depending on which they consider to be threatened or violated. According to Mr. Ivan Salazar Penna's statement, he disagrees with the way public authorities have applied current regulations within the legal framework.

It is worth mentioning the control mechanism provided by Article 137 of the CPACA, which states:

"...Anyone may request, either personally or through a representative, the annulment of general administrative acts.

This shall apply when they have been issued in violation of the rules on which they should be based, without jurisdiction, illegally, without recognition of the right to a hearing and defense, through false motivation, or through the misuse of the issuer's powers.

The nullification of service memorandums and certification and registration acts may also be requested.

In exceptional cases, the annulment of administrative acts with specific content may be requested in the following cases:

- 1. When the claim does not pursue, or the annulment judgment does not result in, the automatic restoration of a subjective right benefitting the plaintiff or a third party*
- 2. When it involves the recovery of public assets*
- 3. When the administrative act has serious harmful public, political, economic, social, or ecological impacts*

4. When the law expressly stipulates it

PARAGRAPH. If it is clear from the claim that the automatic restoration of a right is pursued, it shall be processed in accordance with the rules of the following article..."

Likewise, the provisions of Article 138 *ibidem*:

"...Anyone who believes their subjective right protected by a legal norm has been infringed upon, may request the nullification of the specific, express, or alleged administrative act, and the restoration of their right; they may also request compensation for damages. The nullification shall apply on the same grounds established in the second paragraph of the preceding article.

Likewise, the annulment of the general administrative act may be pursued and the restoration of the right directly violated by it for the specific plaintiff, or the compensation for the damage caused to this individual by it, may be requested. This is contingent upon the claim being filed within the required timeframe, namely, within four (4) months following its publication. If there is an intermediate act, for the execution or fulfillment of the general act, the aforementioned term shall be counted from the date of notification of that act..."

There is also the possibility for control on legal and constitutional compliance by the administrative litigation jurisdiction through actions for protection, popular actions, and group actions. These pursue, through special procedures, the fulfillment of individual fundamental rights and collective rights and interests, among other aspects.

Popular actions, for example, are legal instruments established to benefit citizens to protect collective rights and interests related to public heritage, space, safety, and health, the environment, and other similar matters. These collective rights and interests, which are protected through popular actions, are interpreted in accordance with the Constitution, laws and international treaties that Colombia has signed. In compliance with the constitutional mandate of Article 88, they were expanded by Law 472 of 1998 and are also regulated by CPACA Articles 144, 270 and 272.

So far, we have seen how the Colombian state guarantees judicial and administrative procedures with a variety of authorities, which are currently available to investigate, sanction and remedy violations of environmental legislation. It also ensures that any citizen can request environmental or jurisdictional authorities to conduct investigations or proceedings for events that may constitute violations or threats to environmental regulations, as well as access remedies for such reasons. Always with fair, equitable, transparent treatment and with full adherence to due process.

VIII. OTHER RELEVANT ASPECTS FOR MR. IVAN SALAZAR PENNA'S SPECIFIC CASE

The aspects upon which Mr. Salazar Penna's submission to the Environmental Secretariat focuses are related to his dissatisfaction with administrative actions or alleged omissions. In his interpretation, the authorities with jurisdiction in relation to the events he has reported fail to comply with environmental regulations. According to the contents of the document entitled "Determination of compliance with Article 18.8(4) of the Colombia-United States Trade Promotion Agreement," according to the submitter: *"the Government of Colombia is failing to effectively apply its environmental legislation, regarding the El Danubio Civil Society Nature Reserve ('RNSC' or the 'Reserve') located in the Caldas village in the municipality of Morelia, Department of Caquetá (Colombia)..."* In summary, the complaint refers to:

- a) Dissatisfaction with its participation in the execution of Collaborative Agreement N° 026-CNVS-2022 dated November 17, 2022, between the Municipality of Morelia and the Caldas Village Community Action Board concerning the improvement of the sanitary facilities at the Palmarito Educational Institution.
- b) Dissatisfaction with its participation in executing the project entitled "construction of a water mains network and drinking water treatment plant for the urban area of the municipality of Morelia, Caquetá."
- c) Pruning and felling of trees in the El Danubio Civil Society Nature Reserve.

COLLABORATIVE AGREEMENTS BETWEEN MUNICIPALITIES AND COMMUNITY ACTION BOARDS

Law 136 of 1994 *"By which norms are established to modernize the organization and functioning of municipalities,"* modified by Law 1551 of 2012, part of the Guiding Principles for the Exercise of Municipal Authority, states that, in compliance with the principle of concurrence, the competent entities for fulfilling the function or providing the service must enter into agreements or use any of the forms of association provided for in the organic law of land use planning to avoid duplications and to make administrative activities more efficient and economical.

Likewise, it indicates that, in accordance with the principle of complementarity, municipalities may use association, co-financing, and/or agreement mechanisms to improve the provision of services under their responsibility and the implementation of local projects.

Article 3 of Law 136 of 1994, which establishes the functions of municipalities, in its sections 16 and 18, specifically mentions:

"...In accordance with the provisions of Article 355 of the Political Constitution, municipalities and

indigenous communities organizations, community action organizations, and other civil organizations and associations operating in Colombia, for the joint implementation of programs and activities established by law for municipalities and districts, in accordance with their implementation plans..."

"...Enter into agreements for the use of public goods and/or community usufruct with indigenous councils, authorities, and organizations, as well as with community action groups and other community groups..."

Later, the same regulation states:

"... Paragraph 3. Collaborative Agreements. Collaborative agreements are understood as complementary institutional, community, economic, and social efforts for the construction of infrastructure and the fulfillment of communities' needs and aspirations.

Paragraph 4. Departmental and municipal regional entities are authorized to enter directly into collaborative agreements with community action boards for the purpose of executing works up to a minimum amount. For the execution of these, they must contract residents from the community..."

Based on the cited information, community action boards can enter into collaborative agreements, partnership agreements, and contracts for collaboration and public interest with state entities. The criteria to be taken into account will depend on the type of work or services intended to be contracted, as well as the type of resource contribution that will guarantee the execution of the agreement or contract.

As non-profit legal entities, community organizations can enter into collaboration or public interest contracts for the purpose of promoting programs and activities in the public interest. Likewise, they can engage in partnership agreements for the joint implementation of activities related to the functions of state entities. The former are regulated by Article 2 of Decree 092 of 2017, while the latter are regulated by Articles 5, 6, 7, and 8.

For the execution of solidarity agreements, several requirements must be met: (i) the parties involved shall consist of a national, departmental, or municipal Colombian entity and a community action board; (ii) the purpose of the contract shall consist of the execution of works or the promotion of programs and activities in the public interest in accordance with regional or national development plans; and (iii) the contract shall not exceed the minimum amount.

Under the general regime of State Contracting, contracts of this nature can be executed through a preferential procedure that does not require a public bidding process, as established by Article 94 of Law 1474 of 2011, which supplemented Article 2 of Decree 1150 of 2007. Therefore, what is established by Law 1551 of 2012 and Law 136 of 1994 is an implementation of the contracting modality for matters relating to the minimum amount. In this modality, it is not necessary to carry out a bidding process and it maximizes the participation of the community action boards in the implementation of works that impact their community.

We see then that, although it is not the responsibility of this ministerial office to express an opinion regarding the legality or convenience of Collaboration Agreement No. 026-CNVS-2022 of November 17, 2022, executed between the Municipality of Morelia and the Caldas Village Community Action Board, concerning the improvement of sanitary facilities at Palmarito Educational Institution, it is involved in the current national legal framework as a contractual authority of the territorial entity.

Now, regarding the concern about the transit of people or motorcycles through the El Danubio Civil Society Nature Reserve, it is also relevant to mention that the zoning of a Civil Society Nature Reserve refers to the delineation of areas within the reserve with specific uses and activities, as established in Article 2.2.2.1.17.4 of Decree 1076 of 2015. It is important to remember, once again, that Civil Society Nature Reserves must have at least one conservation area.

In accordance with the provisions of the aforementioned regulation, Civil Society Nature Reserves may include the following zones:

1. Conservation Zone: an area consisting of a landscape or a natural community (animal or plant) either in a primary state or naturally evolving and undergoing a process of recovery.
2. Buffer and Special Management Zone: the transition area between the human-modified landscape and conservation zones, or between the former and special protection areas such as water sources, wetlands, and watercourses. This zone may contain scrubland or secondary vegetation and may be subject to sustainable agricultural and extractive activities of regular intensity.
3. Agro-systems Zone: an area used for sustainable agricultural production for human or animal use, both for domestic consumption and commercial purposes, promoting food security.
4. Intensive Use and Infrastructure Zone: an area designated for housing, restaurants, lodgings, stables, sheds, warehouses, nurseries, trails, roads, viewpoints, electrical and fixed machinery installations, sanitation and basic sanitation facilities, as well as facilities for education, recreation, and sports.

The following activities are considered incompatible with Civil Society Nature Reserves. Their presence inside or in the vicinity of the reserve is a matter verified in the documents submitted or requested from the user and during the technical visit, for its registration:

- Exploration, drilling, and hydrocarbon production projects
- Mining activities

- Diverting natural bodies of water
- Road or infrastructure projects
- Electrical projects
- Other activities that not only affect the ownership of the property but also involve the extraction or inappropriate use of natural resources and affect the ecosystem being conserved

In line with their powers and jurisdiction, environmental authorities will study factors like, for example, the presence of a right of way in a Civil Society Natural Reserve. This is a burden imposed on a property for the benefit of another property with a different owner. This is land that offers convenient access to the road, or by other means to another property, as indicated in Article 879 and subsequent articles of the Colombian Civil Code.

Within what Mr. Ivan Salazar Penna has stated, there is no indication that any of these conditions currently exist within the El Danubio Civil Society Nature Reserve. However, **the owner of a property that constitutes or includes a Civil Society Nature Reserve that is threatened by force majeure, fortuitous event, or the actions of a third party has the duty to inform the Special Administrative Unit of the Colombian National Park Service and the corresponding Environmental Authority** within 15 days following the event, as mentioned in Article 2.2.2.1.17.15 of Section 17 of Decree 1076 of 2015.

MORELIA MAINS WATER PUBLIC SERVICE

Regarding the dissatisfaction expressed about the participation or consultation for the project "*construction of a water mains network and drinking water treatment plant for the urban area of the municipality of Morelia, Caquetá,*" this, like any administrative action, is governed by the principle of legality. It is subject to control by authorities such as the General Comptroller's Office, Departmental or Municipal Comptroller's Offices according to the scope of their authority and jurisdiction, in line with their functions of inspection, surveillance, and control.

When a citizen or a community deems that with the execution of such projects in administrative acts issued by local authorities, they are entitled to initiate the administration of justice by using control mechanisms and constitutional actions available for the study of their legal compliance.

In such a case, it will be up to administrative dispute judges, within those legal actions initiated individually or collectively by citizens, to determine whether the administrative actions undertaken comply with the regulations that govern them. If this is not the case, they will define which authorities are responsible for any potential disregard of such regulations.

Similarly, it is the judges of the republic who decide whether the authorities are responsible for the violation of collective rights to the enjoyment of public safety and sanitation, access to a service infrastructure that guarantees public sanitation, access to public services, and ensuring their provision is efficient and timely, as well as the rights of consumers and users. This could be due to the absence of a mains water system in a municipality or if it is not in a suitable condition to fulfill its purpose. It could also be because it is considered that it does not meet the environmental requirements that must be complied with.

In the case of a matter of such fundamental importance as the provision of drinking water, a right whose effectiveness should be a top priority for all municipal authorities, administrative judges can order the adoption of necessary measures to ensure the continuous, efficient, and timely supply of drinking water. This ensures that the violation of collective rights will cease. This includes ordering the necessary activities for the execution of mains water works in municipalities such as Morelia.

If municipalities state that they do not have the resources to address these situations, due to exceeding their budget, a lack of economic resources is not an excuse for not undertaking or exercising the appropriate actions under their authority. Given the need to ensure the provision of public services by municipalities, through subsidiary or concurrence, and in the face of scarce or insufficient economic and technical resources, they may seek co-financing and support from departmental and national bodies.

PRUNING AND FELLING OF TREES IN THE EL DANUBIO CIVIL SOCIETY NATURE RESERVE

According to Mr. Ivan Salazar Penna's account regarding the pruning and felling of trees that are part of the El Danubio Civil Society Nature Reserve in the Municipality of Morelia, Caquetá, this is a matter within the jurisdiction of the Corporation for Sustainable Development of the Southern Amazon (CORPOAMAZONÍA). In accordance with its legal powers, CORPOAMAZONÍA can address Mr. Ivan Salazar Penna's requests. However, it is unknown whether the submitter has sought any action from the aforementioned environmental authority to date.

However, it is important to mention that addressing situations related to deforestation is one of the fundamental components of the environmental policies being implemented by the National Government, represented by the Ministry of Environment and Sustainable Development.

In order to curb deforestation in the country, deforestation containment plans are being implemented in the main deforestation hotspots, with a focus on the Amazon. Development Programs with a Regional Approach (PDET) are also being considered in municipalities, with the goal of transforming them into hubs of forestry and biodiversity development. These are founded on social agreements, legal security in land tenure, payment for environmental services, implementation of productive projects, and green businesses.

In addition to this, practical actions and joint initiatives are being undertaken to dismantle criminal structures related to deforestation in coordination with entities such as the Attorney General's Office and the National Police.

Furthermore, processes of restoration and conservation of the natural foundation are being implemented to compensate for the impact of deforestation and climate change, specifically in ecosystems, protected areas, and other environmentally strategic areas. Restoration is undertaken based on knowledge management and ecosystem health, considering and respecting the ancestral and traditional wisdom and values of the communities and stakeholders involved.

Complementary conservation strategies are promoted, and progress is made in the restoration of degraded ecosystems, with an emphasis on ecosystems whose loss threatens the integrity of biodiversity, climate resilience, and human well-being. Monitoring, reporting, and verification of implemented restoration projects are strengthened to increase the effectiveness of future investments. Similarly, germplasm banks are being strengthened, and comprehensive management models are being implemented for the prevention, response, recovery, and restoration of environmental liabilities.

A key aspect to highlight is the forestry grants for farmers, which have shown that local communities can achieve deforestation rates close to zero in areas covered by these concessions. In Colombia, these grants are established in the Natural Resources Code. However, they have not been rolled out significantly. The National Government has rightly included forestry grants for farmers in the National Development Plan.

As a result, in Law 2294 of 2023 "*Whereby the National Development Plan 2022- 2026 'Colombia World Power of Life' is issued*", the forestry grants for farmers scheme is integrated as a mechanism to allow communities to use second category reserves, providing a greater security to ensure forest economic activities carried out are suitable for the soil. This is driven by the Ministry of Environment and Sustainable Development and it is an opportunity that has been awaiting development since the Natural Resources Code.

The positive aspects include: (i) the inclusion and recognition of farmer organizations and families, women farmers' associations and organizations that have entered the transitional justice models, who largely represent the type of communities with a real presence in the reserve territory; (ii) it has a focus on forest conservation based on community forest economy and sustainable forest management of timber products, non-timber products and ecosystem services, which can become an economic alternative beyond the typically-imposed ban that ignores the contextual relationship of the communities with the forest; (iii) the 30-year term means a previously unconsidered timeframe that provides a guarantee for the consolidation of community economic models in relation to the forest; (iv) it respects the lands and collective rights of indigenous and Afro-Colombian communities.

STATEMENT REGARDING THE TERMS INDICATED BY THE ENVIRONMENTAL SECRETARY AND REFERRED TO IN ARTICLE 18.8(5) OF THE COLOMBIA - U.S. TPA

The points explained in detail so far provide a response for the Environmental Secretariat's request. They also give a clear overview of the specific situations mentioned by Mr. Ivan Salazar Penna, a useful resource for any decision. Likewise, they present the scope of the powers held by national, departmental, and municipal authorities, as well as the means available to the submitter to seek participation, assistance, and the protection of individual or collective rights that can be considered to be violated, always with administrative and jurisdictional authorities.

Now, the information requested by the Secretariat for Environmental Enforcement Matters through the aforementioned Determination from of December 13, 2023, focuses on the obligation to indicate:

- (a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, and
- (b) of any other information the Party wishes to submit, such as:
 - (i) whether the matter was previously the subject of a judicial or administrative proceeding;
 - (ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued, or;
 - (iii) information concerning relevant capacity-building activities under the ECA.

Based on the above, to provide a specific response to what was required by the Environmental Secretariat, relevant consultations were made on public access platforms, whose information is not subject to legal confidentiality intended by public entities, to verify whether there are any administrative or judicial processes related to the events described by Mr. Ivan Salazar Penna.

Once that search was carried out, it was determined that, with regard to publicly available information that is freely accessible, the specific matters raised by Mr. Salazar Penna are currently not the subject of any administrative or judicial action. Essentially, this is because the submitter has not initiated them with any competent authority to address them.

In the specific case, the result of the consultations carried out by this ministry shows that the citizen has not appealed to the judges of the republic as natural administrators of justice to resolve this type of matters where an individual considers that certain administrative procedures disregard specific regulations. There was also no evidence found that he had initiated proceedings with authorities beyond those indicated by the individual in his submission, namely:

i) A report filed with the Attorney General's Office, the existence of which cannot be confirmed because processes conducted under the Colombian Accusatorial Penal System include preliminary stages in which information is subject to legal confidentiality.

ii) A complaint filed with the Police Inspectorate of the municipality of Morelia, an administrative procedure over which this ministry has no jurisdiction, and whose current status and results are unknown.

Both actions are outside the scope of the Ministry of Environment and Sustainable Development's constitutional and legal powers. Therefore, the authorities with jurisdiction over these matters, in accordance with their procedures, will determine the outcomes of what has been reported by the submitter.

For these reasons, we consider that based on the events presented by Mr. Salazar Penna, the powers governing administrative and jurisdictional authorities to address the various circumstances presented by the submitter are clearly established in the current national legal system and in consideration of functional and regional factors. Likewise, public order regulations clearly indicate to all citizens the mechanisms available to resolve their conflicts with the administration at the municipal, departmental, or national level, to pursue the upholding of interests or rights they may consider violated or threatened.

As can be seen above, the Colombian State, in full compliance with the parameters outlined in the Colombia - U.S. TPA, effectively applies its environmental legislation and laws, regulations, and other measures to fulfill its obligations under the covered agreements in a way that does not affect trade or investment between the Parties. Likewise, in accordance with the terms of the agreement, it maintains the right to exercise discretion regarding actions before courts or administrative authorities when, due to a submission by a citizen or the government itself, acting ex officio, they deem it appropriate.

Once again, Mr. Ivan Salazar Penna, like any citizen, has a wide institutional framework consisting of various, both administrative and judicial, public entities, who he can approach to have his claims addressed, regarding what he considers to be behaviors or actions that violate the provisions of Decree 1996 of 1999. Indeed, in his own submission he states that he has filed a criminal complaint and a lawsuit, which are pending resolution.

Based on the above, along with what has been extensively discussed throughout this document and in accordance with the provisions of Chapter Eighteen of the TPA, we find it prudent and appropriate to respectfully request the Secretariat for Environmental Enforcement Matters not to proceed with the request made by Mr. Ivan Salazar Penna. Consequently, in the absence of merit, the preparation of a factual record should be disregarded and the matter should be archived.

Cordially,

ALICIA ANDREA BAQUERO ORTEGÓN
Chief Legal Advisor

Drafted by: César Barrera Montañez – Contractor OAJ

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