Category: **Obligation to Provide Access to Legal Remedies**

Sub-Category: Regional Tribunals and Mechanisms

Name of Good Practice: The Submissions on Enforcement Matters Process of the Commission for Environmental Cooperation

Key Words: Access to Information, Accountability, Internet, Participation, Regional

Implementing Actors: Regional Organisation: North American Commission for Environmental Cooperation; Individuals; Civil Society Organisations; Nation States

Location: Canada, Mexico, United States

Description: Since 1994, Canada, Mexico and the United States have collaborated in protecting North America’s environment through the North American Agreement on Environmental Cooperation (NAAEC), which came into force at the same time as the North American Free Trade Agreement (NAFTA). Articles 14 and 15 of the NAAEC provide for a procedure known as the Submissions on Enforcement Matters (SEM) process, which allows members of the North American public to make an assertion that a State party to the NAAEC is failing to effectively enforce its environmental law. The SEM process is not a dispute resolution mechanism nor can it result in a Party being required to take specific remedial action; its main purpose is to serve as a fact-finding, non-adversarial procedure. According to the Guidelines for the SEM process published by the Commission for Environmental Cooperation (CEC), an intergovernmental organization created by the NAAEC, the SEM process was “established to promote transparency and public participation, and to enhance understanding regarding environmental law and its enforcement in North America. In particular, the public submission process is designed to promote information sharing in order to allow members of the public to draw their own conclusions regarding the effective enforcement of such laws.”

The SEM process, which can take up to two and one-half years in its entirety, begins when an individual or non-governmental organisation files a submission with the Secretariat of the CEC. If the submission meets six criteria set out in Article 14(1) of the NAAEC (e.g., that the matter has been communicated in writing to the relevant authorities of the State Party), then the Secretariat shall determine whether the submission merits requesting a response from the Party. After receiving any solicited responses, the Secretariat then considers whether the submission warrants developing a factual record, upon which the Secretariat shall inform the Council, the CEC’s governing body composed of the highest-level environmental authorities from the State parties, and provide its reasons. The Council can by a two-thirds vote instruct the Secretariat to prepare a record and also by a two-thirds vote make the final factual record publicly available.

Further Information: The SEM process’s website is at: <http://www.cec.org/Page.asp?PageID=1212&SiteNodeID=210&BL_ExpandID=880>; the Guidelines for the SEM process are at: <http://www.cec.org/Storage/158/18645_SEM_booklet_PDF_en_final_web.pdf>.