

## **REQUEST FOR THE INDICATION OF NEW PROVISIONAL MEASURES**

### **A. INTRODUCTION**

1. I have the honour to refer to the Application submitted to the Court on 18 November 2010 by which proceedings were instituted on behalf of the Republic of Costa Rica (*Costa Rica*) against the Republic of Nicaragua (*Nicaragua*) in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and to the Court's Order on provisional measures of 8 March 2011.<sup>1</sup>

2. This Request for the indication of new provisional measures is prompted by:

- (i) Nicaragua's continued presence on Costa Rica's territory;
- (ii) the recent and ongoing construction of two artificial channels; and
- (iii) related dredging and dumping activities affecting that territory and detrimentally impacting upon its ecology.

3. Costa Rica respectfully files this Request in accordance with Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court. It is accompanied by Attachments PM-1 to PM-18.

4. For the avoidance of doubt, this is not a request for modification of the Court's Order on provisional measures of 8 March 2011. It is an independent request based on new facts. This Request concerns two distinct and new artificial channels, or *caños*, which Nicaragua is constructing and which Costa Rica has only just become aware of.<sup>2</sup> These are separate and distinct from the first artificial *caño* that Nicaragua began constructing in 2010, between the San Juan River and Laguna Los Portillos. Nevertheless, these two new artificial *caños* are located in the "disputed territory" which is the subject of the Court's Order of 8 March 2011. In its Order, the Court defined the "disputed territory" as:

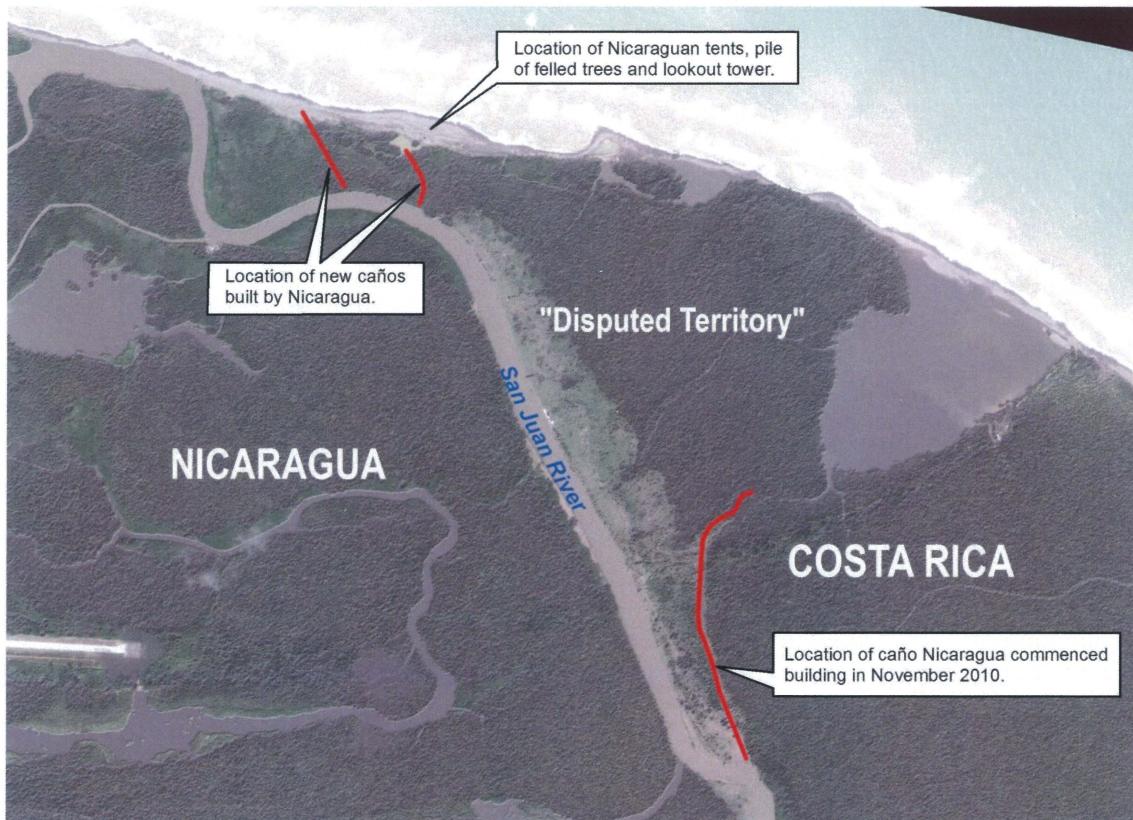
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<sup>1</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Application for Provisional Measures, Order of 8 March 2011, I.C.J. Reports*, p. 6.

<sup>2</sup> Costa Rica first became aware of potential activity in the disputed territory at the end of August. It immediately requested a satellite provider to obtain satellite images. Those images, which are at **Attachment PM-8**, were taken on 5 September 2013 and were provided to Costa Rica on 13 September 2013.

“... the northern part of Isla Portillos, that is to say, the area of wetland of some 3 square kilometres between the right bank of the disputed *caño*, the right bank of the San Juan River up to its mouth at the Caribbean Sea and the Harbor Head Lagoon (hereinafter the ‘disputed territory’).<sup>3</sup>

The disputed territory to which the Order refers is indicated on the satellite image attached to this Request as Attachment PM-9 and reproduced here for convenience:



All three *caños* are indicated on this image: the first, on which construction began in 2010, and the second and third, on which construction commenced between June and September 2013. The precise coordinates of the two new artificial *caños* are indicated on Attachment PM-10.<sup>4</sup>

<sup>3</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Application for Provisional Measures, Order of 8 March 2011, I.C.J. Reports, p. 6, p. 19 (para. 55).*

<sup>4</sup> Satellite image indicating the coordinates of the two new artificial *caños*, **Attachment PM-10**.

## **B. JURISDICTION OF THE COURT**

5. The Court has jurisdiction over the present dispute pursuant to Article XXXI of the American Treaty on Pacific Settlement of Disputes, Bogotá, 30 April 1948 (the *Pact of Bogotá*) and in accordance with the declarations of acceptance of the Court's compulsory jurisdiction pursuant to Article 36(2) of the Statute of the Court made respectively by Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (as modified 23 October 2001). Nicaragua has not challenged the jurisdiction of the Court in the present case. In its Order of 8 March 2011, the Court already concluded that the instruments invoked by Costa Rica "appear, *prima facie*, to afford a basis on which the Court might have jurisdiction to rule on the merits, enabling it to indicate provisional measures if it considers that the circumstances so require".<sup>5</sup>

## **C. THE FACTS RELEVANT TO THIS REQUEST**

6. The Court is acquainted with the background of this dispute; the specific facts are set out in Costa Rica's Application of 18 November 2010, in its Request for provisional measures submitted to the Court on 18 November 2010 and in its Memorial of 5 December 2011. As the Court will recall, Costa Rica's Request for Provisional Measures dated 18 November 2010 was prompted by the ongoing occupation and construction of an artificial *caño* on Costa Rican territory by Nicaragua and the related dredging activities affecting that territory and its ecology.

7. In its Order on provisional measures of 8 March 2011, the Court indicated the following provisional measures:

"(1) ... Each Party shall refrain from sending to, or maintaining in the disputed territory, including the *caño*, any personnel, whether civilian, police or security;

(2) ... Notwithstanding point (1) above, Costa Rica may dispatch civilian personnel charged with the protection of the environment to the disputed territory, including the *caño*, but only in so far as it is necessary to avoid irreparable prejudice being caused to the part of the wetland where that territory is situated; Costa Rica shall consult with the Secretariat of the Ramsar Convention in regard to these actions, give Nicaragua prior notice of them and use its best endeavours to find common solutions with Nicaragua in this respect;

(3) ... Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

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<sup>5</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Application for Provisional Measures, Order of 8 March 2011, I.C.J. Reports, p. 6, p. 18 (para. 52).*

(4) ... Each Party shall inform the Court as to its compliance with the above provisional measures.”

8. Insofar as the dispatching of Costa Rican civilian personnel to the disputed territory is concerned, the Court expressly noted that “Costa Rica must be in a position to avoid irreparable prejudice being caused to the part of that wetland where [the disputed] territory is situated”, and that “for that purpose Costa Rica must be able to dispatch civilian personnel charged with the protection of the environment to the said territory, including the *caño*, but only in so far as it is necessary to ensure that no such prejudice be caused”.<sup>6</sup>

9. In its Order on the requests for the modification of the Order on provisional measures of 16 July 2013, the Court declined both Parties’ requests for modification of the Court’s Order of 8 March 2011. In relation to Costa Rica’s request, however, the Court found that the presence of large numbers of Nicaraguan nationals in the disputed territory “carries the risk of incidents which might aggravate the dispute”, a situation that “is exacerbated by the limited size of the area and the numbers of Nicaraguan nationals who are regularly present there”.<sup>7</sup> Because of this the Court noted that it “wishes to express its concerns in this regard”.<sup>8</sup> Furthermore, because of the presence of Nicaraguan nationals in the disputed territory the Court “thus consider[ed] it necessary to reaffirm the measures that it indicated in its Order of 8 March 2011, in particular the requirement that the Parties ‘shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve’”.<sup>9</sup>

10. The Court considered that it had not been sufficiently demonstrated at that time that there was a risk of irreparable prejudice to the rights claimed by Costa Rica or that there was urgency that would justify the indication of further provisional measures. On that basis, the Court rejected Costa Rica’s request for modification of the Order.<sup>10</sup>

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<sup>6</sup> Ibid, pp. 25-26 (para. 80).

<sup>7</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Requests for the Modification of the Order of 8 March 2011 Indicating Provisional Measures, Order of 16 July 2013*, para. 37.

<sup>8</sup> Ibid, para. 37.

<sup>9</sup> Ibid, para. 38.

<sup>10</sup> Ibid, para. 35.

11. Since the date of the Court's Order of 16 July 2013, Costa Rica has found out about new and grave activities by Nicaragua in the disputed territory, through the receipt of satellite imagery of that area. It now appears that between 30 June and 5 September 2013, Nicaragua commenced construction of two new artificial *caños* in the disputed territory. In so doing, it has felled trees, destroyed undergrowth and excavated and dumped soil and sediment in a protected Ramsar wetland. The clearing of vegetation effected by Nicaragua to commence construction of the corridor for the new *caños*, together with the initial excavations to cut the *caños*, have already caused significant environmental harm to the surrounding area. The continuing work to construct and deepen the *caños* risks causing irreversible harm to the environment and ecology of the disputed territory. Furthermore, if the work continues, it is increasingly likely to change the course of the San Juan River, including the geographical location and the configuration of its exit to the Caribbean Sea. That appears to be the intent of Nicaragua in carrying out this work. The work is therefore risking serious and irreparable prejudice to Costa Rica, as sovereign of the right bank of the San Juan River, and to Costa Rica's rights in the present case pending a final Judgment on the merits.

12. On 13 September 2013, Costa Rica received satellite images which confirmed that Nicaragua is constructing two new artificial *caños* in the disputed territory. The contrast between the position at the end of June and in September is well-illustrated by the satellite images at Attachments PM-7 and PM-8. The first set of images, dated 30 June 2013, depict untouched wetland.<sup>11</sup> The later set of images, dated 5 September 2013, show the two new artificial *caños*, and ongoing construction activities.<sup>12</sup> These new artificial *caños* are located on the disputed territory which is the subject of the Court's Order of 8 March 2011, as described in paragraph 4 above and are depicted on Attachment PM-9 (reproduced in paragraph 4 above), which also indicates the disputed territory.<sup>13</sup>

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<sup>11</sup> Satellite images of part of the disputed territory, Digital Globe Inc., supplied to Costa Rica by GeoSolutions Consulting Inc, 30 June 2013, **Attachment PM-7**.

<sup>12</sup> Satellite images of part of the disputed territory, Digital Globe Inc., supplied to Costa Rica by GeoSolutions Consulting Inc, 5 September 2013, **Attachment PM-8**.

<sup>13</sup> Satellite image showing the disputed territory, indicating the locations of three artificial *caños*, **Attachment PM-9**.

13. It is clear that work on these two new artificial *caños* commenced after June this year.<sup>14</sup>

14. Following Costa Rica's discovery of these two new *caños*, and given the fact that their construction has caused and will likely continue to cause irreparable prejudice to Costa Rica's sovereign rights, Costa Rica immediately protested to Nicaragua and requested that it:

- (i) immediately cease all construction activities in the disputed territory;
- (ii) provide an explanation of its activities and the presence of Nicaraguan equipment and personnel in the disputed territory; and
- (iii) keep the disputed territory clear of any persons emanating from its territory.<sup>15</sup>

Costa Rica's letter to Nicaragua of 16 September 2013 stated as follows:

"Sir,

I write to you on this occasion to refer to a serious incident which my country has learned of in recent days. The Republic of Nicaragua has unlawfully entered the Costa Rican territory of Isla Portillos, which moreover is subject to provisional measures indicated by the International Court of Justice in its Order of 8 March 2011, and it is constructing new artificial *caños* thereon through use of one or more dredgers.

The evidence obtained by Costa Rica shows the opening of at least two new *caños* in the area. The larger of the two *caños* is located at georeferenced coordinates 10 56 13.9919 N, and 83 41 25.7513 W. The dredger is pictured as carrying out works on this larger *caño* on 5 September 2013. The corresponding satellite image is annexed to this note, together with a satellite image of the same location taken three months ago, in which neither of these two new *caños* can be seen to have existed.

The construction of these two new *caños* is not only a serious infringement of Costa Rica's territorial integrity, but (i) is causing significant environmental harm and has the potential to cause further harm in what is a wetland of international importance that enjoys the protection of the Ramsar Convention, and (ii) will, if continued, imminently impact on the course of the San Juan river and the configuration of its exit to the Caribbean Sea, thereby risking serious and irreparable prejudice to Costa Rica.

My country and my Government regret that whilst the President of Nicaragua has made speeches calling for dialogue between our two countries and has affirmed Nicaragua's purported compliance with the decisions of the International Court of Justice, your country has nevertheless carried out acts in the area indicated by International Court of

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<sup>14</sup> The evidence submitted by Nicaragua in its Counter-Memorial in this case shows that these two *caños* did not exist at the time that pleading was submitted, on 6 August 2012. See NCM (*Certain Activities*), Annex 135 (2007 Satellite Image) and Annex 136 (2010 Satellite Image). See also NCM (*Certain Activities*), Figure 6.8 (January 2011 image), p. 330.

<sup>15</sup> Diplomatic Note sent by Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship, Costa Rica, to Samuel Santos López, Minister of Foreign Affairs, Nicaragua, 16 September 2013, Reference DM-AM-536-13 (Spanish original and English translation), **Attachment PM-1**.

Justice, which are overt breaches of Costa Rica's territorial sovereignty as well as the said Order of 8 March 2011.

Additionally, last Monday, 9 September 2013, a Nicaraguan media outlet with close connections to the Nicaraguan Government, *19 Digital*, boasted that more than 10,000 Nicaraguans have made their way to the northern sector of Isla Portillos, renamed by your country as Harbour Head, despite the multiple protests that my country has made, and in open defiance of the Order of the International Court of Justice, when it noted that the presence of large numbers of Nicaraguans in the area carries the risk of incidents which might aggravate the present dispute, and is of concern to the Court, as stated in its Order of 16 June 2013.

Therefore, my Government presents its strongest protest and demands that Nicaragua respects the sovereignty and territorial integrity of Costa Rica, and that it fully complies with the provisional measures indicated by the International Court of Justice. To this end, Costa Rica demands:

- (i) the immediate cessation of all construction activities on the two *caños* and any other construction activities in the area, alongside an immediate assurance from Nicaragua that such construction activities have ceased and will not be recommenced;
- (ii) that Nicaragua immediately provide to Costa Rica explanations for the construction activities and for the presence of Nicaraguan personnel and equipment in Isla Portillos, part of the Northeast Caribbean Wetland;
- (iii) that Nicaragua keep the area clear from any person emanating from Nicaraguan territory.

I take this opportunity to reiterate assurances of my highest consideration.”<sup>16</sup>

15. On 17 September 2013, Costa Rica informed the Court,<sup>17</sup> Ramsar<sup>18</sup> and Nicaragua<sup>19</sup> of its intention to carry out a site visit with its environmental personnel, pursuant to paragraph 86(2) of the Court's Order of 8 March 2011.<sup>20</sup>

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<sup>16</sup> **Ibid, Attachment PM-1.**

<sup>17</sup> Note sent by Ambassador Jorge Urbina, Co-Agent of Costa Rica, to His Excellency Mr. Philippe Couvreur, Registrar of the International Court of Justice, 17 September 2013, Reference ECRPB-059-13, **Attachment PM-3**.

<sup>18</sup> Note sent by Ambassador Manuel B. Dengo, Permanent Representative of the Republic of Costa Rica to the United Nations Office and other international organizations in Geneva, to Mr. Christopher Briggs, Secretary General to the Ramsar Convention, 17 September 2013, Reference MPCR-ONUG/2013-407 (Spanish original and English translation), **Attachment PM-4**.

<sup>19</sup> Diplomatic Note sent by Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship, Costa Rica, to Samuel Santos López, Minister of Foreign Affairs, Nicaragua, 17 September 2013, Reference DM-AM-537-13 (Spanish original and English translation), **Attachment PM-2**.

16. Nicaragua responded to Costa Rica's note on 18 September 2013, stating:

"Honourable Minister:

I am addressing you in reference to your note DM-AM-537-13 DATED September 17 of this year, and your note DM-AM-536-13 of the same date, both related to the process joined by the International Court of Justice, namely 'Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)' and 'Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).

In your note DM-AM-537-13, the Government of Costa Rica indicates that 'during this week... Costa Rica will be sending personnel for environmental protection to assess the wetland's situation' in the disputed area of Harbour Head.

In this regard, the Government of Reconciliation and National Unity of the Republic of Nicaragua reiterates what has been expressed on multiple occasions in previous notes, in relation to the capricious interpretation of the measures issued by the International Court of Justice in its Order of 8 March 2011. As in previous occasions, Costa Rica insists on performing last minute notifications to Nicaragua in a superficial attempt to disguise its noncompliance with the Order of the Court, which clearly indicates in paragraph 86 subsection 2 that it may dispatch civilian personnel charged with the protection of the environment to the disputed territory, but only insofar as there is a need to avoid irreparable prejudice to the disputed area, and it shall consult RAMSAR and give Nicaragua prior notice so as to work jointly and thus find solutions. Costa Rica has decided once again to disregard what was indicated in the Order.

It is quite surprising that the Government of Costa Rica still intends to claim a need to 'assess the situation' of the disputed area subject to the provisional measures due to 'important changes in its nature,' in view of the recent decision by the Court to reject the request for modification of the provisional measures filed by Costa Rica. In its Order of 16 July 2013 the Court highlighted that 'in the light of the evidence before it, the Court considers that, as matters stand, it has not been demonstrated sufficiently that there is a risk of irreparable prejudice to the rights claimed by Costa Rica' and that the evidence 'does not ... establish the existence of a proven risk of irreparable damage to the environment.' Similarly, the Court expressed that this request lacked urgency, contrary to that claimed by your Government. Based on the foregoing, Costa Rica's intention to send personnel to the disputed area puts in question the real intention of your government in performing this field visit.

On the other hand, in relation to the use of a 'boat for the transfer [of personnel] by water,' the Government of Reconciliation and National Unity of the Republic of Nicaragua, in strict compliance with the decisions of the International Court of Justice, wishes to remind you once again that your request goes beyond that granted by the International Court of Justice to Costa Rica, which in the judgment of 13 July 2009 in relation to the case 'Dispute concerning Navigational and Related Rights (Costa Rica v.

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<sup>20</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Application for Provisional Measures, Order of 8 March 2011, I.C.J. Reports, p. 6, p. 27 (para. 86(2)) (quoted in paragraph 7 above).*

Nicaragua)' limits Costa Rica's right of navigation exclusively to 'navigation for purposes of commerce.'

In this regard, the Costa Rican government's intention to navigate the San Juan River with the aforementioned goal represents a violation of that established by the Court, in conformity with the Jerez-Cañas Treaty of Limits.

Similarly, on repeated occasions the Government of Nicaragua has objected to the numerous violations of the air space committed by the Government of Costa Rica, and in this regard I reiterate that the international regulations require your government to use the corresponding mechanisms to request due authorization of the flyover in Nicaraguan territory.

Regarding your note DM-A-AM-536-13, the Government of Nicaragua reminds the Government of Costa Rica that Harbour Head is a swamp area connected by a number of historical channels that have been recognized since the Alexander era, both by RAMSAR and widely addressed and demonstrated by Nicaragua in its counter-memorial in the case 'Certain activities by Nicaragua in the border area (Costa Rica v. Nicaragua).'

In addition, as you are fully aware, we are in the heavy rain season, which normally alters the water levels in the entire area. Consequently, it would not be abnormal for the aspect of some channels to have changed in the last few months. In any case, the Government of Nicaragua has not authorized any type of work in the disputed area and has not sent personnel there.

In view of the foregoing, I cannot help but notice that this new verbal escalation by your Government seems to have the purpose of joining the campaign by other countries in the region against Nicaragua.

Finally, I wish to reaffirm that the Government of Nicaragua has complied with and will continue to fully comply with the provisional measures issued by the Court in its Order of 8 March 2011, and it calls to its sister nation of Costa Rica to do the same and avoid 'any action which might aggravate or extend the dispute.'

I take this opportunity to express the assurances of my highest consideration."<sup>21</sup>

17. As is clear from Nicaragua's response, Nicaragua refused to immediately cease its construction activities on the two new *caños* in the disputed territory and even went so far as to claim that "the aspect of some channels" may have changed due to "the heavy rain season". The suggestion that these new *caños* may have been naturally formed are squarely contradicted by the evidence of dredgers, which can be seen in Attachments PM-6, PM-8, PM-10, PM-13, PM-14, PM-16 and PM-17. Moreover, Nicaragua's assertion that it has not authorized the work is directly contradicted by Mr. Edén Pastora, the "Contra" commander, now in the service of the

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<sup>21</sup> Diplomatic Note sent by Samuel Santos López, Minister of Foreign Affairs, Nicaragua, to Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship, Costa Rica, 18 September 2013, Reference MRE/DM/521/09/13 (Spanish original and English translation), **Attachment PM-5**.

Sandinista Government, who has publicly stated that he is responsible for the dredging works on the San Juan River and that he is conducting works in the area where the two new *caños* are being constructed.<sup>22</sup>

18. In accordance with Costa Rica's notification to the Court, Ramsar and Nicaragua, Costa Rican personnel attempted to access the disputed territory on 18 September 2013 by paying a boatman and navigating on the San Juan River. Nicaragua detained the personnel attempting to access the disputed territory by boat at the "Delta Nicaragua" border post for more than an hour and a half. Following their detention, Nicaragua refused to allow the personnel to navigate on the San Juan River, preventing those personnel from navigating on the River in accordance with Costa Rica's right of navigation established in the 1858 Treaty of Limits and the Cleveland Award, and recognized by the Court in its 2009 Judgment in the *Navigational Rights* case.<sup>23</sup>

19. Despite Nicaragua's deliberate obstruction of Costa Rican personnel accessing the disputed territory, Costa Rica was able to conduct an overflight of the disputed territory by helicopter that same day. Their inspection and photographic and video materials revealed that:

- (i) the work undertaken by Nicaragua to create the new *caños*, including significant clearing of vegetation, has caused and, if it does not immediately cease, will continue to cause significant harm to the disputed territory;
- (ii) there is a dredger in the new *caño* to the east, which is presently working to deepen and enlarge the already wide *caño*. The use of a dredger to deepen and enlarge this *caño* is causing and will continue to cause more serious environmental and ecological damage than would be caused if the work is effected by manual labour;
- (iii) the new *caño* to the east is particularly wide at its upstream end close to the San Juan River, and its dimensions and funnel shape appear to be intended to attract as

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<sup>22</sup> Video interview of Mr. Edén Pastora, 18 September 2013, available online from Nicaraguan media outlet "Noticias Nicaragua" at <<[<sup>23</sup> \*Dispute regarding Navigational and Related Rights \(Costa Rica v. Nicaragua\), Judgment, I.C.J. Reports 2009\*, p. 213, p. 269 \(para. 156\). See also Report of Costa Rican Ministry of Environment and Energy \(MINAE\) and the National System of Conservation Areas \(SINAC\), 18 September 2013 \(Spanish original and English translation\), \*\*Attachment PM-6\*\*.](http://www.youtube.com/watch?v=J6YV0598vqE&featurebe&t=2m18s>> (Spanish transcription and English translation), <b>Attachment PM-18</b>. Electronic copies of this video are submitted with this Request.</a></p></div><div data-bbox=)

- much water as possible from the River and divert it away from the natural course of the San Juan and through the *caño* to the Caribbean Sea; and
- (iv) for the same *caño*, to the east, Nicaragua is also digging a trench with a wide mouth leading to a narrower channel which extends from the shore of the small natural lagoon at the northern end of the new *caño* some way across the beach to the north east towards the Caribbean Sea. The purpose of this trench appears to be artificially to breach the beach, connecting the new *caño* through the lagoon and to the Caribbean Sea, and so to create a new course for the San Juan River.

The aerial observations of Costa Rica's environmental personnel are recorded in photographs which are included as Attachments PM-11 to PM-16,<sup>24</sup> and in a video which is Attachment PM-17.<sup>25</sup> The report of the environmental personnel is also attached as Attachment PM-6.<sup>26</sup>

20. The construction of these two new *caños* is not only a serious infringement of Costa Rica's territorial integrity, but –

- (i) the clearing of vegetation to construct the new *caños* has caused significant environmental harm to the surrounding area;
- (ii) the continuing work to construct and deepen the new *caños* risks causing irreversible harm to the environment and ecology of the disputed territory, which is a wetland of international importance under the protection of the Ramsar Convention; and

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<sup>24</sup> Photograph of the disputed territory showing one of the new *caños* with tree stumps, and the lagoon visible, 18 September 2013, **Attachment PM-11**; Photograph of the disputed territory showing one of the new *caños* with tree stumps, the lagoon, the trench dug in beach adjacent to lagoon visible, 18 September 2013, **Attachment PM-12**; Photograph of disputed territory showing Nicaraguan dredger in one of the new *caños*, 18 September 2013, **Attachment PM-13**; Photograph of the disputed territory showing Nicaraguan dredger in the one of the new *caños*, lagoon adjacent to Caribbean Sea, and Nicaraguan tents, 18 September 2013, **Attachment PM-14**; Photograph of the disputed territory showing a close-up of the Nicaraguan camp of four tents, the pile of felled trees next to the camp, a further tent-like structure, and a lookout tower adjacent to the Caribbean Sea, 18 September 2013, **Attachment PM-15**; and Photograph of the disputed territory showing a close-up of the Nicaraguan dredger undertaking works in one of the new *caños*, 18 September 2013, **Attachment PM-16**.

<sup>25</sup> Video of onsite visit undertaken by Costa Rica in a civilian helicopter, 18 September 2013 (extract), **Attachment PM-17**. Electronic copies of this video are submitted with this Request.

<sup>26</sup> Report of Costa Rican Ministry of Environment and Energy (MINAE) and the National System of Conservation Areas (SINAC), 18 September 2013 (Spanish original and English translation), **Attachment PM-6**.

- (iii) if it continues, this work is increasingly likely to change the course of the San Juan River and the location and configuration of its exit to the Caribbean Sea, thereby risking serious and irreparable prejudice to Costa Rica, as sovereign of the right bank of the San Juan River, and to Costa Rica's rights in the present case, pending a final judgment on the merits.

In these circumstances, including where Costa Rica has asked Nicaragua to cease these works and Nicaragua has refused to do so (going so far as to deny the existence of the new artificial *caños* in the face of inconvertible evidence in satellite images), Costa Rica makes this Request for the indication of new provisional measures.

#### **D. THE RIGHTS COSTA RICA IS SEEKING TO PROTECT**

21. The object of provisional measures pursuant to Article 41 of the Court's Statute is to preserve the respective rights of the parties pending the Court's judgment on the merits.<sup>27</sup> Costa Rica's rights that are the subject of the dispute are set out in its Application of 18 November 2010, in its Request for provisional measures submitted to the Court on 18 November 2010 and in its Memorial of 5 December 2011. Costa Rica's rights which are the subject of this Request for new provisional measures are the same as those for which the Court indicated provisional measures in its Order of 8 March 2011, i.e. its rights to sovereignty, to territorial integrity and to non-interference with its lands and environmentally protected areas. These rights are the subject of Costa Rica's Application in the present case. In relation to these rights, the Court has already held that "the title to sovereignty claimed by Costa Rica over the entirety of Isla Portillos is plausible".<sup>28</sup>

22. By constructing two further *caños* in the disputed territory, Nicaragua has caused and is continuing to cause irreparable harm to Costa Rican rights at issue in the present proceedings. Nicaragua's course of conduct demonstrates complete disregard for the rights of Costa Rica

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<sup>27</sup> See e.g., *Armed Activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda, Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2001*, p. 111, p. 127 (para. 39); and *Land and Maritime Boundary between Cameroon and Nigeria, Provisional Measures, Order of 15 March 1996, I.C.J. Reports 1996*, p. 13, p. 21 (para. 35).

<sup>28</sup> *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Application for Provisional Measures, Order of 8 March 2011, I.C.J. Reports*, p. 6, p. 19 (para. 58).

pending the Court's final Judgment in this case. Additional provisional measures are required in these circumstances, notably to prevent further irreparable prejudice to Costa Rica's rights.

#### E. URGENCY AND IRREPARABLE PREJUDICE

23. The present Request is of real urgency. Nicaraguan presence in the disputed territory includes members of Nicaragua's armed forces. The construction of these two new *caños* and the fact that Nicaragua is currently engaged in detrimental activity to the environment, including dumping of materials, require urgent action. The urgency of this Request is demonstrated by the continued damage inflicted by Nicaragua on Costa Rican territory which is the subject of the present dispute, notwithstanding the Court's Order on provisional measures of 8 March 2011.

24. Moreover, through its construction and ongoing dredging of the *caños*, Nicaragua is attempting unilaterally to modify, to its own benefit, the location and configuration of a River, the right bank of which constitutes a valid, agreed and settled international boundary. In particular, the new artificial *caño* to the east has been and is continuing to be constructed with a very wide mouth on its upstream end on the San Juan River, indicating that it is intended to divert as much water as possible from the River and convey it to the Caribbean Sea. At the Caribbean end, the new artificial *caño* to the east has a wide mouth leading to a narrower channel which is intended artificially to breach the beach, connecting the new *caño* to the Caribbean Sea, in an attempt to create a new course for the San Juan River.

25. However, as matters stand at the date of this Request, the beach has not yet been breached. Furthermore, the work in both new *caños* is incomplete and ongoing. In a period of just over two months, Nicaragua has already made substantial progress on construction of the *caños* and its work is continuing. There is a real risk that Nicaragua's continued activities in the disputed territory will cause further irreparable prejudice to Costa Rica's rights which are the subject of the present case. In the circumstances, the indication of provisional measures under Article 41 of the Court's Statute is warranted.

## **F. CONSEQUENCES IF THE COURT DOES NOT INDICATE THE REQUESTED PROVISIONAL MEASURES**

26. There is a real risk that without the indication of further provisional measures, Nicaragua will continue to take further action prejudicial to the rights of Costa Rica before the Court has the opportunity to render its final Judgment on the merits. This is even more likely in light of Nicaragua's letter dated 18 September 2013, set out in paragraph 16 above. Nicaragua has shown complete disregard for Costa Rica's rights while this case is pending. Nicaragua considers that it is free to modify the natural configuration of the disputed territory and is taking action to do so, even after the Court indicated provisional measures. If the Court does not take, with urgency, the requested provisional measures, Costa Rica, which is unable to exercise its territorial sovereignty over the disputed territory (a protected wetland) pending the resolution of this dispute, will only be able to receive in the final judgment an area geographically altered and seriously damaged. In short, there is a real risk that action prejudicial to Costa Rica's rights which are more than plausible will continue and significantly alter the factual situation on the ground before the Court has an opportunity to render its final decision on the questions for determination set out in Costa Rica's Application.<sup>29</sup>

## **G. THE MEASURES REQUESTED**

27. For these reasons, Costa Rica respectfully requests the Court as a matter of urgency to order the following provisional measures so as to prevent further breaches of Costa Rica's territorial integrity and further irreparable harm to the territory in question, pending the determination of this case on the merits:

- (1) the immediate and unconditional suspension of any work by way of dredging or otherwise in the disputed territory, and specifically the cessation of work of any kind on the two further artificial *caños* in the disputed territory, as shown in the satellite images attached as Attachment PM-8;

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<sup>29</sup> C.f. *Passage through the Great Belt (Finland v. Denmark)*, Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991, p. 12, p. 19 (para. 23); *Certain Criminal Proceedings in France (Republic of the Congo v. France)*, Provisional Measure, Order of 17 June 2003, I.C.J. Reports 2003, p. 102, p. 107 (para. 22); and *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures, Order of 23 January 2007, I.C.J. Reports 2007, p. 3, p. 11 (para. 32).

- (2) that Nicaragua immediately withdraw any personnel, infrastructure (including lodging tents) and equipment (including dredgers) introduced by it, or by any persons under its jurisdiction or coming from its territory, from the disputed territory;
  - (3) that Costa Rica be permitted to undertake remediation works in the disputed territory on the two new artificial *caños* and the surrounding areas, to the extent necessary to prevent irreparable prejudice being caused to the disputed territory; and
  - (4) that each Party shall immediately inform the Court as to its compliance with the above provisional measures not later than one week of the issuance of the Order.
28. Costa Rica reserves its right to amend this Request and the measures sought in light of further information which may be received as to Nicaragua's unilateral plans and actions.

.....  
Ambassador Jorge Urbina

Co-Agent of the Government of Costa Rica

23 September 2013

I have the honour to certify that the documents annexed to this Request are true copies and conform to the original documents and that the translations into English made by Costa Rica are accurate translations. Together with this Request, electronic copies of the video footage (Attachments PM-17 and PM-18 listed below) are being provided to the Registry.

.....  
Ambassador Jorge Urbina  
Co-Agent of the Government of Costa Rica

23 September 2013

## LIST OF ATTACHMENTS

### **Diplomatic and other correspondence**

**Attachment PM-1.** Diplomatic Note sent by Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship, Costa Rica, to Samuel Santos López, Minister of Foreign Affairs, Nicaragua, 16 September 2013, Reference DM-AM-536-13 (Spanish original and English translation)

**Attachment PM-2.** Diplomatic Note sent by Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship, Costa Rica, to Samuel Santos López, Minister of Foreign Affairs, Nicaragua, 17 September 2013, Reference DM-AM-537-13 (Spanish original and English translation)

**Attachment PM-3.** Note sent by Ambassador Jorge Urbina, Co-Agent of Costa Rica, to His Excellency Mr. Philippe Couvreur, Registrar of the International Court of Justice, 17 September 2013, Reference ECRPB-059-13

**Attachment PM-4.** Note sent by Ambassador Manuel B. Dengo, Permanent Representative of the Republic of Costa Rica to the United Nations Office and other international organizations in Geneva, to Mr. Christopher Briggs, Secretary General to the Ramsar Convention, 17 September 2013, Reference MPCR-ONUG/2013-407 (Spanish original and English translation)

**Attachment PM-5.** Diplomatic Note sent by Samuel Santos López, Minister of Foreign Affairs, Nicaragua, to Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship, Costa Rica, 18 September 2013, Reference MRE/DM/521/09/13 (Spanish original and English translation)

**Attachment PM-6.** Report of Costa Rican Ministry of Environment and Energy (MINAE) and the National System of Conservation Areas (SINAC), 18 September 2013 (Spanish original and English translation)

### **Satellite Images**

**Attachment PM-7.** Satellite images of part of the disputed territory, Digital Globe Inc., supplied to Costa Rica by GeoSolutions Consulting Inc, 30 June 2013

**Attachment PM-8.** Satellite images of part of the disputed territory, Digital Globe Inc., supplied to Costa Rica by GeoSolutions Consulting Inc, 5 September 2013

**Attachment PM-9.** Satellite image showing the disputed territory, indicating the locations of the three artificial *caños*

**Attachment PM-10.** Satellite image indicating the coordinates of the two new artificial *caños*

### **Photographs**

**Attachment PM-11.** Photograph of the disputed territory showing one of the new *caños* with tree stumps, and the lagoon visible, 18 September 2013

**Attachment PM-12.** Photograph of the disputed territory showing one of the new *caños* with tree stumps, the lagoon, the trench dug in beach adjacent to lagoon visible, 18 September 2013

**Attachment PM-13.** Photograph of the disputed territory showing Nicaraguan dredger in one of the new *caños*, 18 September 2013

**Attachment PM-14.** Photograph of the disputed territory showing Nicaraguan dredger in the one of the new *caños*, lagoon adjacent to Caribbean Sea, and Nicaraguan tents, 18 September 2013

**Attachment PM-15.** Photograph of the disputed territory showing a close-up of the Nicaraguan camp of four tents, the pile of felled trees next to the camp, a further tent-like structure, and a lookout tower adjacent to the Caribbean Sea, 18 September 2013

**Attachment PM-16.** Photograph of the disputed territory showing a close-up of the Nicaraguan dredger undertaking works in one of the new *caños*, 18 September 2013

### **Videos**

**Attachment PM-17.** Video of onsite visit undertaken by Costa Rica in a civilian helicopter, 18 September 2013 (Extract)

**Attachment PM-18.** Video interview of Mr. Edén Pastora, 18 September 2013, available online from Nicaraguan media outlet “Noticias Nicaragua” at  
<<<http://www.youtube.com/watch?v=J6YV0598vqE&featurebe&t=2m18s>>> (Extract, Spanish transcription and English translation)

**Attachment PM-1**

Diplomatic Note sent by Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship,  
Costa Rica, to Samuel Santos López, Minister of Foreign Affairs, Nicaragua

16 September 2013, Reference DM-AM-536-13

Spanish original and English translation

*El Ministro de Relaciones Exteriores y Culto*

16 de septiembre de 2013  
DM-AM-536-13

Señor Ministro:

Me dirijo a usted en ocasión de referirme a un grave hecho del que ha tomado conocimiento mi país en días recientes. La República de Nicaragua ha penetrado ilegalmente en el territorio costarricense de Isla Portillos, que además fuera objeto de las medidas provisionales indicadas por la Corte Internacional de Justicia en su Providencia del 8 de marzo de 2011, y construye nuevos caños artificiales ahí, para lo cual se ha hecho valer de una o más dragas.

La evidencia obtenida por Costa Rica muestra la apertura de al menos dos nuevos caños en el área. El más grande de los dos caños se ubica en las coordenadas georeferenciadas 10 56 13.9919 N, y 83 41 25.7513 W. Una draga se muestra ejecutando trabajos en este caño más grande, el 5 de septiembre de 2013. La imagen satelital anexa a la presente nota, en conjunto con otra de la misma zona tomada tres meses antes, demuestra que ninguno de esos dos nuevos caños existían.

La construcción de estos dos nuevos caños no sólo es una grave violación de la integridad territorial de Costa Rica, pero además (i) está causando daño ambiental significativo y tiene el potencial de causar un daño mayor sobre un humedal de importancia internacional que goza de protección por medio de la Convención de Ramsar, y (ii) en caso de continuar tendrá un impacto inminente sobre el curso del río San Juan y la configuración de su salida al Mar Caribe, arriesgando con ello un perjuicio grave e irreparable a Costa Rica.

Mi país y mi Gobierno deploran que, mientras el Presidente de Nicaragua hacía discursos llamando al diálogo entre nuestros dos países y afirmaba el supuesto cumplimiento por parte de Nicaragua de las decisiones de la Corte Internacional de Justicia, su país, sin embargo, perpetraba actos en el área indicada por la Corte Internacional de Justicia, que entraña una abierta violación de la soberanía territorial de Costa Rica, lo mismo que de la referida Providencia del 8 de marzo de 2011.

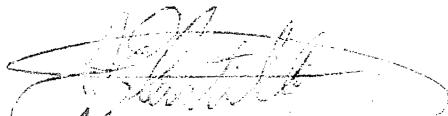
Asimismo, el pasado lunes 9 de septiembre, el medio nicaragüense afín al Gobierno, el *19 Digital*, hacía alarde de que ya más de 10,000 nicaragüenses han hecho su paso por el sector norte de Isla Portillos, rebautizado por su país como Harbour Head. Esto a pesar de las múltiples

protestas que mi país ha hecho, y en abierto desafío a lo dispuesto por parte de la Corte Internacional de Justicia, cuando señaló que la presencia de gran cantidad de nicaragüenses en ese sector acarrea el riesgo de incidentes que pueden agravar la presente disputa, y es motivo de preocupación para la Corte, según lo indicó en su resolución del pasado 16 de junio de 2013.

En consecuencia, mi Gobierno presenta su más enérgica protesta y exige que Nicaragua respete la soberanía e integridad territorial de Costa Rica, y que cumpla a cabalidad con las medidas provisionales indicadas por la Corte Internacional de Justicia. Con este fin, Costa Rica demanda:

- i) La inmediata cesación de toda actividad de construcción de los dos caños y de cualquier otra actividad de construcción en el área, conjuntamente con seguridades inmediatas de Nicaragua que tales actividades de construcción han cesado y que no se reiniciarán;
- ii) Que Nicaragua brinde a Costa Rica explicaciones satisfactorias inmediatas sobre las actividades de construcción y por la presencia de personal y equipo nicaragüense en Isla Portillos, parte del Humedal Caribe Noreste.
- iii) Que Nicaragua mantenga el área libre de cualquier persona proveniente del territorio de Nicaragua.

Aprovecho la ocasión para reiterar las seguridades de mi consideración.



Enrique Castillo Barrantes  
Ministro

Recibido  
29.  
19/01/2013  
10:35 AM

Excelentísimo señor  
Samuel Santos López  
Ministro de Relaciones Exteriores  
República de Nicaragua



10 56 18.7526 N, | 83 41 41.5297 W

10 56 13.9919 N, | 83 41 25.7513 W

10 56 9.6392 N, -83 41 37.1226 W

10 56 7.4085 N, 83 41 24.0374 W



Translation

**The Minister of Foreign Affairs and Worship**

16 September 2013  
DM-AM-536-13

Sir,

I write to you on this occasion to refer to a serious incident which my country has learned of in recent days. The Republic of Nicaragua has unlawfully entered the Costa Rican territory of Isla Portillos, which moreover is subject to provisional measures indicated by the International Court of Justice in its Order of 8 March 2011, and it is constructing new artificial *caños* thereon through use of one or more dredgers.

The evidence obtained by Costa Rica shows the opening of at least two new *caños* in the area. The larger of the two *caños* is located at georeferenced coordinates 10 56 13.9919 N, and 83 41 25.7513 W. The dredger is pictured as carrying out works on this larger *cano* on 5 September 2013. The corresponding satellite image is annexed to this note, together with a satellite image of the same location taken three months ago, in which neither of these two new *caños* can be seen to have existed.

The construction of these two new *caños* is not only a serious infringement of Costa Rica's territorial integrity, but (i) is causing significant environmental harm and has the potential to cause further harm in what is a wetland of international importance that enjoys the protection of the Ramsar Convention, and (ii) will, if continued, imminently impact on the course of the San Juan river and the configuration of its exit to the Caribbean Sea, thereby risking serious and irreparable prejudice to Costa Rica.

My country and my Government regret that whilst the President of Nicaragua has made speeches calling for dialogue between our two countries and has affirmed Nicaragua's purported compliance with the decisions of the International Court of Justice, your country has nevertheless carried out acts in the area indicated by International Court of Justice, which are overt breaches of Costa Rica's territorial sovereignty as well as the said Order of 8 March 2011.

Additionally, last Monday, 9 September 2013, a Nicaraguan media outlet with close connections to the Nicaraguan Government, *19 Digital*, boasted that more than 10,000 Nicaraguans have made their way to the northern sector of Isla Portillos, renamed by your country as Harbour Head, despite the multiple protests that my country has made, and in open defiance of the Order of the International Court of Justice, when it noted that the presence of large numbers of Nicaraguans in the area carries the risk of incidents which might aggravate the present dispute, and is of concern to the Court, as stated in its Order of 16 June 2013.

Therefore, my Government presents its strongest protest and demands that Nicaragua respects the sovereignty and territorial integrity of Costa Rica, and that it fully complies with the provisional measures indicated by the International Court of Justice. To this end, Costa Rica demands:

- (i) the immediate cessation of all construction activities on the two *caños* and any other construction activities in the area, alongside an immediate assurance from Nicaragua that such construction activities have ceased and will not be recommenced;
- (ii) that Nicaragua immediately provide to Costa Rica explanations for the construction activities and for the presence of Nicaraguan personnel and equipment in Isla Portillos, part of the Northeast Caribbean Wetland;
- (iii). that Nicaragua keep the area clear from any person emanating from Nicaraguan territory.

I take this opportunity to reiterate assurances of my highest consideration

Enrique Castillo Barrantes

His Excellency  
Samuel Santos López  
Minister of Foreign Affairs  
Republic of Nicaragua

**Attachment PM-2**

Diplomatic Note sent by Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship,  
Costa Rica, to Samuel Santos López, Minister of Foreign Affairs, Nicaragua

17 September 2013, Reference DM-AM-537-13

Spanish original and English translation

*El Ministro de Relaciones Exteriores y Culto*

17 de septiembre de 2013  
DM-AM- 537 -13

Señor Ministro:

Me dirijo a usted en ocasión de referirme al caso “*Ciertas Actividades de Nicaragua en la zona fronteriza (Costa Rica v. Nicaragua)*” ante la Corte Internacional de Justicia.

En razón de graves actividades que se han detectado en el área sujeta a la orden indicando Medidas Provisionales, emitida por la Corte Internacional de Justicia el 8 de marzo de 2011, y que han producido importantes cambios en su naturaleza, y con el objeto de evitar de que se produzca un daño irreparable al Humedal Caribe Noreste, de conformidad con la citada providencia de la Corte, le informo que en el curso de esta semana, sujeto a las condiciones meteorológicas, Costa Rica estará enviando personal para la protección ambiental a fin de evaluar la situación del humedal.

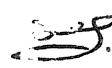
Para facilitar el acceso y las acciones que debe conducir el referido personal, es posible que el acceso al área se haga pagando una embarcación para su traslado por agua, se haga por tierra y/o por aire, para lo cual ese personal utilizaría una aeronave civil, según sea necesario.

Habida cuenta de la presencia nicaragüense en el área, mi gobierno hace un firme llamado al de Nicaragua de abstenerse de toda acción que impida que el personal ambiental pueda cumplir con su misión, o que ponga en riesgo la integridad física del personal costarricense, a fin de que tome todas las medidas necesarias a fin de evitar tales acciones.

Aprovecho la ocasión para reiterar las seguridades de mi consideración.

  
Enrique Castillo Barrantes

*Recibido*

  
17/09/2013  
10:36 AM

Excelentísimo señor  
Samuel Santos López  
Ministro de Relaciones Exteriores  
República de Nicaragua

Translation

**The Minister of Foreign Affairs and Worship**

September 17, 2013

DM-AM-537-13

Honourable Minister:

I write to you in relation to the case “Certain Activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)” before the International Court of Justice.

Due to grave activities detected in the area subject to the Provisional Measures ordered by the International Court of Justice on 8 March 2011, which have caused important changes in its nature, and to prevent irreparable damage to the Northeast Caribbean Wetland, in conformity with the aforementioned Court’s Order, I hereby inform you that during this week, subject to the weather conditions, Costa Rica will be sending environmental protection personnel to assess the wetland’s situation.

To facilitate access and the actions to be carried out by said personnel, their transport to the area may be carried out by means of a paid boat for transport by water, or by land or air, for which they would use a civilian aircraft, as necessary.

Considering the Nicaraguan presence in the area, my government urgently calls to Nicaragua to abstain from any action that would prevent the environmental personnel from complying with their mission, or that would put at risk the physical integrity of the Costa Rican personnel, so that it may take all measures necessary to prevent said actions.

I hereby express the assurance of my highest consideration.

Enrique Castillo Barrantes  
Minister

Honourable Minister  
Samuel Santos López  
Minister of Foreign Affairs  
Republic of Nicaragua

Received  
17/9/2013  
10:36 a.m.

**Attachment PM-3**

Note sent by Ambassador Jorge Urbina, Co-Agent of Costa Rica, to His Excellency Mr. Philippe  
Couvreur, Registrar of the International Court of Justice

17 September 2013, Reference ECRPB-059-13



*Embajada de Costa Rica  
ante el Reino de los Paises Bajos*

17 September 2013  
ECRPB-059-13

Excellency,

I have the honour to refer to the Order on provisional measures of 8 March 2011 in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*.

I wish to inform the Court that the Republic of Nicaragua has carried out further activities in the area indicated by the Court in its Order. These activities include, but may not be limited to, the construction of at least two new *caños* in the area.

These activities present a risk of irreparable prejudice being caused to the area, which forms part of a wetland of international importance in respect of which Costa Rica bears obligations under the Ramsar Convention. As a result, during the course of this week, Costa Rican civilian personnel charged with the protection of the environment will carry out an onsite visit to the area in order to assess the gravity of the Nicaraguan actions carried out thereon, and to ensure that no further prejudice be caused. The onsite visit may include an overflight of the area by a civilian aircraft.

In view of the presence of a number of Nicaraguan nationals in the area, Costa Rica has requested Nicaragua to refrain from taking any action that would prevent or otherwise impede the Costa Rican civilian personnel from carrying out their mission.

Costa Rica is also notifying the Secretariat of the Ramsar Convention and the Government of the Republic of Nicaragua of this onsite visit.

Accept, Excellency, the assurances of my highest consideration,

A handwritten signature in black ink, appearing to read "Jorge Urbina".

Ambassador Jorge Urbina  
Co-Agent of Costa Rica

His Excellency  
Mr. Philippe Couvreur  
Registrar  
International Court of Justice  
Peace Palace 2517 KJ The Hague



A handwritten signature in black ink, appearing to read "SONB".

17:12  
17.09.

**Attachment PM-4**

Note sent by Ambassador Manuel B. Dengo, Permanent Representative of the Republic of Costa Rica to the United Nations Office and other international organizations in Geneva, to Mr. Christopher Briggs, Secretary General to the Ramsar Convention

17 September 2013, Reference MPCR-ONUG/2013-407

Spanish original and English translation



Misión Permanente  
de Costa Rica  
Ginebra

Revisado  
Manu 17-09-13  
G

REF. MPCR-ONUG/2013-407  
14.4.1

Ginebra, 17 de Septiembre del 2013

Sr. Christopher Briggs  
Secretario General  
Convención sobre Humedales de Importancia Internacional (Ramsar)  
Gland, Suiza

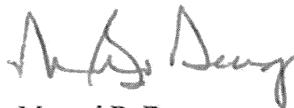
Estimado señor Secretario-General,

Escribo en nombre del Ministro de Relaciones Exteriores de Costa Rica y le trasmito, con sumo agrado, las felicitaciones del Gobierno de Costa Rica al asumir Usted ese importante cargo este mes de septiembre de 2013.

Como usted sabrá, Ramsar acompaña técnicamente desde 2010 la evolución del daño ambiental causado Humedal Caribe Noreste, uno de los sitios Ramsar de Costa Rica, que motivaran una acción de mi país ante la Corte Internacional de Justicia y la indicación por ésta de medidas provisionales, en las que Ramsar juega un papel importante.

1. El objetivo principal de esta nota, es informarle a la Secretaría a su cargo que se han detectado nuevas nuevas actividades en el área sujeta a las Medidas Provisionales dictadas por la Corte Internacional de Justicia. Estas actividades incluyen, y pueden no solo limitarse a, la construcción de dos nuevos caños conforme lo muestran las imágenes de satélite adjuntas.
2. En las imágenes del 30 de junio de 2013 no se aprecia ningún nuevo caño, mientras que en las imágenes del 5 de septiembre de 2013 se observan dos caños artificiales recientemente abiertos, así como el equipo de dragado en acción dentro de uno de estos caños.
3. Como resultado de esta acción, Costa Rica enviará personal de protección del ambiente para hacer una evaluación del grado de daño provocado al Humedal Caribe Noreste y su irreversibilidad.
4. Esta visita técnica al Humedal Caribe Noreste se hará esta semana; Costa Rica mantendrá informada a la Secretaría de Ramsar sobre los resultados de esta misión así como de cualquier otra información adicional que se considere pertinente.

Reciba las muestras de mi más alta y distinguida consideración.



Manuel B. Dengo  
Embajador  
Representante Permanente



Anexos:

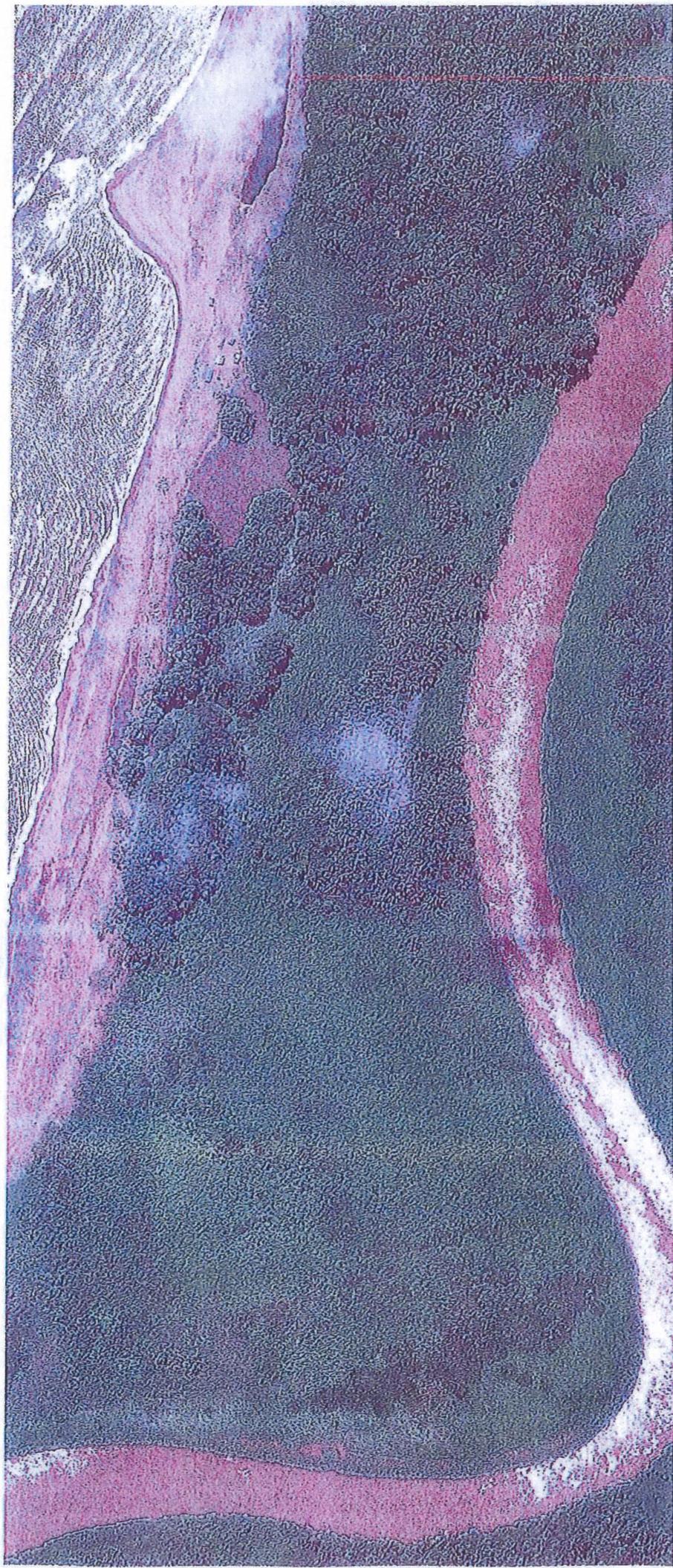
- 1) Imagen verdadero Junio 30 2013
- 2) Imagen color falso Junio 30 2013
- 3) Imagen color verdadero Septiembre 5 2013
- 4) Imagen color falso Septiembre 2013
- 5) Imagen indicando coordenadas de caños recientemente construidos.



*Misión Permanente  
de Costa Rica  
Ginebra*

**Anexo I  
Imagen color verdadero Junio 30 2013  
2013-06-30\_AMPLIACION2.JPG**

Anexo I  
Imagen color verdadero Junio 30 2013  
2013-06-30\_AMPLIACION2.JPG

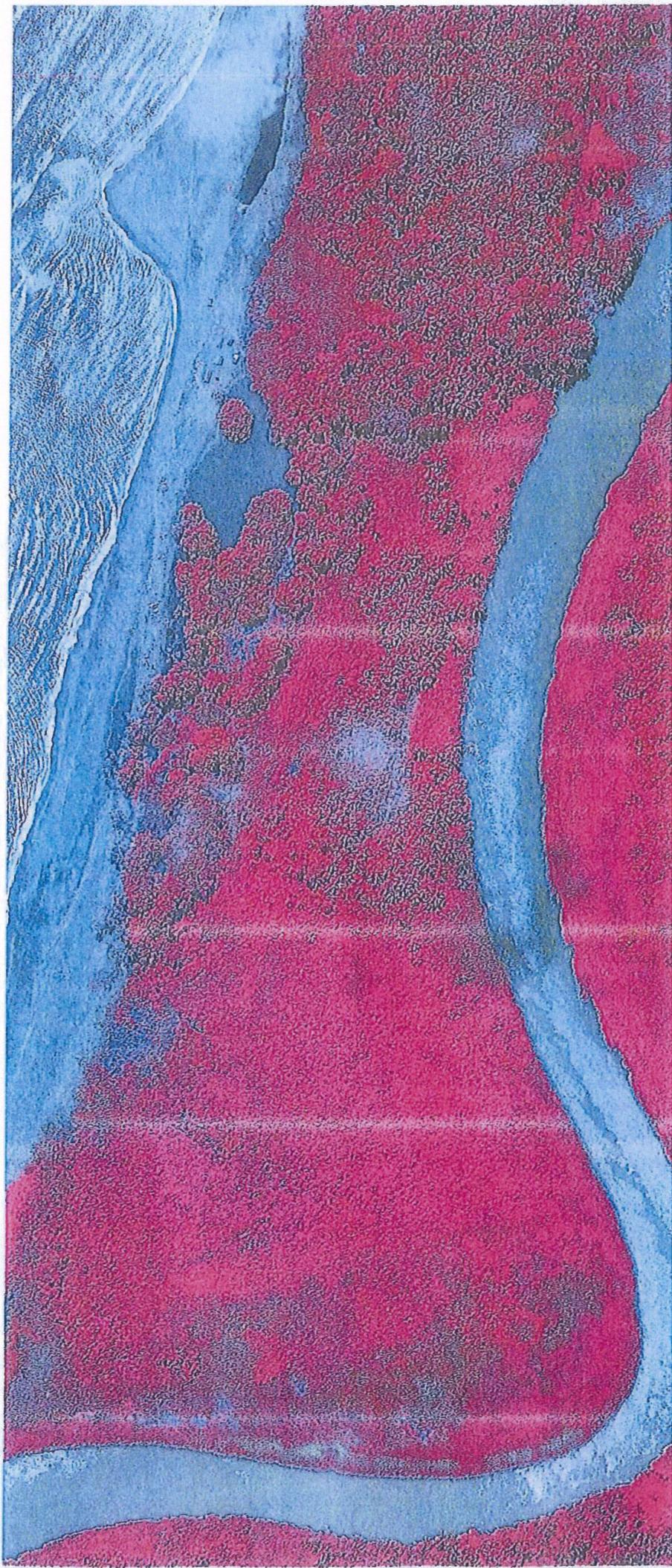




*Misión Permanente  
de Costa Rica  
Ginebra*

**Anexo II  
Imagen color falso Junio 30 2013  
2013-06-30\_AMPLIACION2\_IR.JPG**

Anexo II  
Imagen color falso Junio 30 2013  
2013-06-30\_AMPLIACION2\_IR.JPG



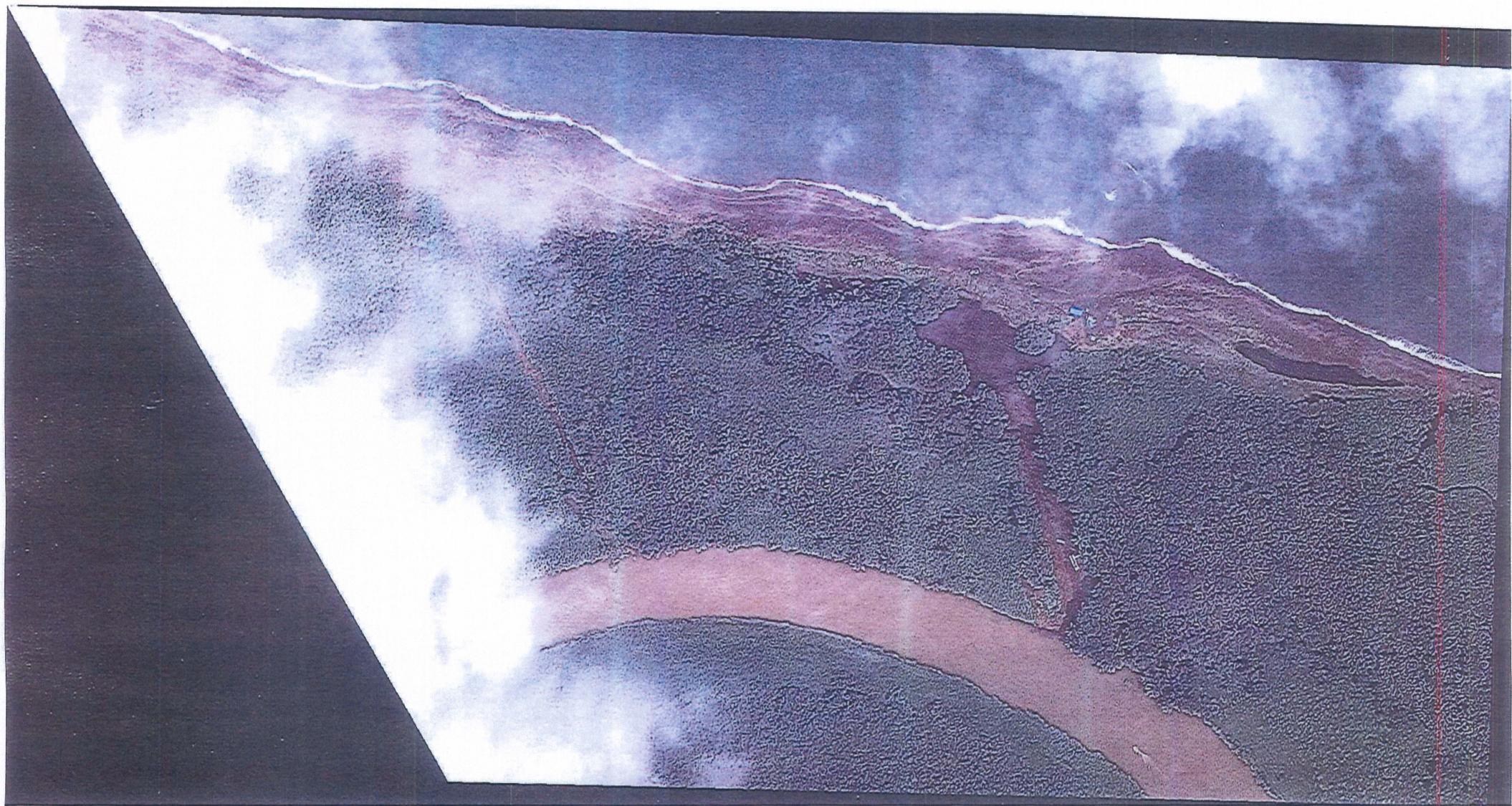


*Misión Permanente  
de Costa Rica  
Ginebra*

**Anexo III  
Imagen color verdadero Septiembre 5 2013  
2013-09-05\_ACERCAMIENTO2.JPG**

Anexo III

Imagen color verdadero Septiembre 5 2013  
2013-09-05\_ACERCAMIENTO2.JPG

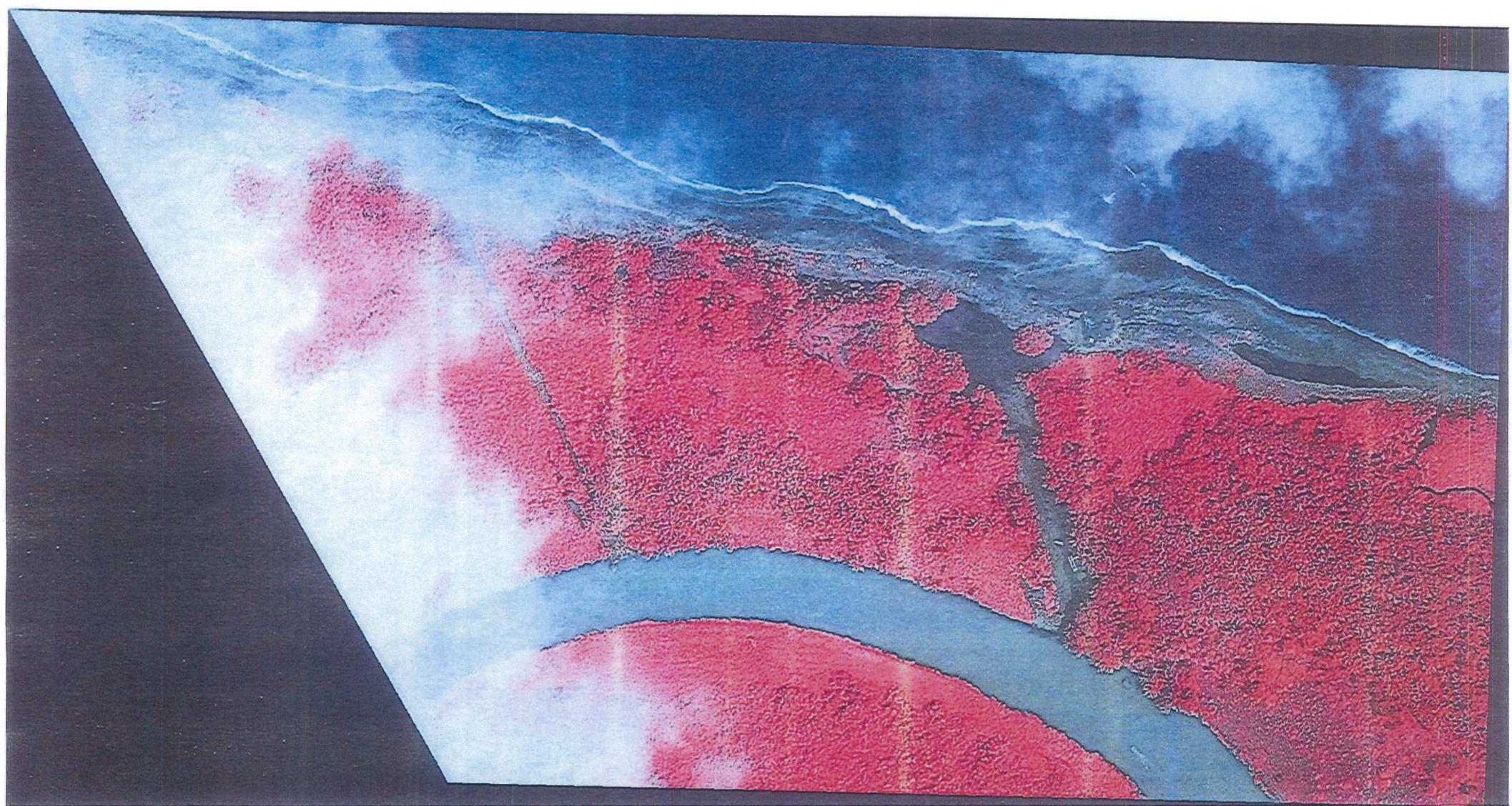




*Misión Permanente  
de Costa Rica  
Ginebra*

**Anexo IV  
Imagen color falso Septiembre 2013  
2013-09-05\_ACERCAMIENTO2-IR.JPG**

Anexo IV  
Imagen color falso Septiembre 2013  
2013-09-05\_ACERCAMIENTO2-IR.JPG

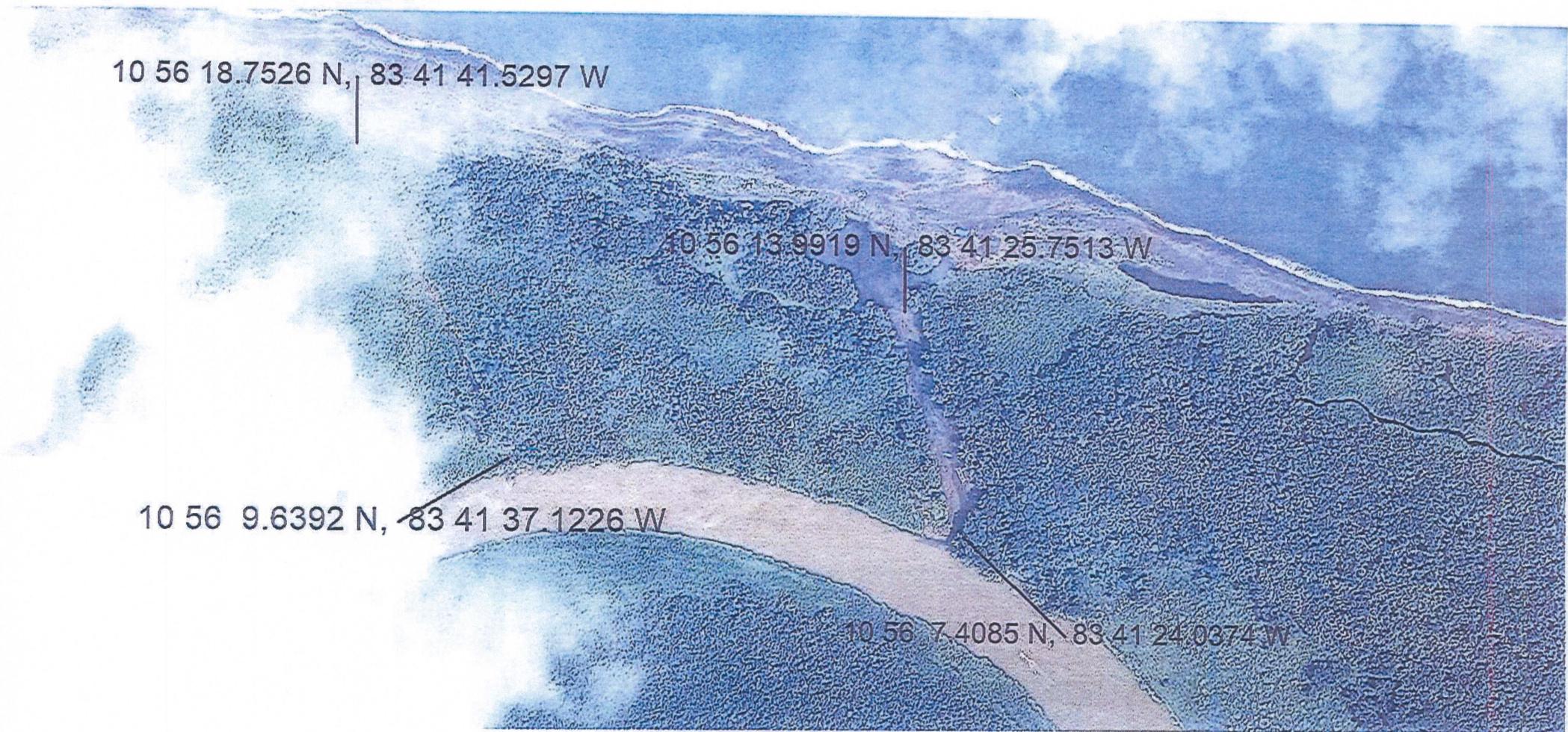




*Misión Permanente  
de Costa Rica  
Ginebra*

**Anexo V**  
**Imagen indicando coordenadas de caños recientemente  
construidos**  
**NUEVOS CANALES ISLA PORTILLOS.JPG**

Anexo V  
Imagen indicando coordenadas de caños recientemente construidos  
NUEVOS CANALES ISLA PORTILLOS.JPG



Permanent Mission of Costa Rica in Geneva

REF. MPCR-ONUG/2013-407

14.4.1

Geneva, 17 September 2013

Mr. Christopher Briggs

Secretary General

Convention on Wetlands of International Importance (Ramsar)

Gland, Switzerland

Honourable Secretary General,

I am writing to you on behalf of the Minister of Foreign Affairs of Costa Rica, and I convey congratulations from the Government of Costa Rica regarding the position which you assumed in September 2013.

As you are aware, Ramsar has been providing technical assistance since 2010 as regards to the environmental damage caused to the Northeast Caribbean Wetland, one of the Ramsar sites of Costa Rica, which originated a complaint by my country before the International Court of Justice, and the latter ruled provisional measures in which Ramsar has an important role.

1. The main goal of this note is to report to the Secretariat that new activities have been identified in the area subject to the Provisional Measures ordered by the International Court of Justice. These activities include, but are not limited to, the construction of two new channels, as shown in the attached satellite images.
2. In the images from 30 June 2013 no new artificial channel is visible, while in the images from 5 September 2013 two new recently opened artificial channels can be seen, as well as the dredging equipment at work within one of these channels.
3. As a result of this action, Costa Rica will send personnel for the protection of the environment to perform an assessment of the extent of the damage caused to the Northeast Caribbean Wetland and its irreversibility.
4. This technical visit to the Northeast Caribbean Wetland will be performed this week; Costa Rica will maintain the Ramsar Secretariat updated on the results of this mission and any other additional information deemed pertinent.

Please receive the assurances of my highest consideration,

*Signed – Manuel B. Dengo*  
Ambassador, Permanent Representative

*Stamped* – Permanent Mission of Costa Rica in Geneva

Appendices:

- 1) True colour image from 30 June 2013
- 2) Infrared image from 30 June 2013
- 3) True colour image from 5 September 2013
- 4) Infrared image from 5 September 2013
- 5) Image indicating coordinates of recently built channels

**Attachment PM-5**

Diplomatic Note sent by Samuel Santos López, Minister of Foreign Affairs, Nicaragua, to  
Enrique Castillo Barrantes, Minister of Foreign Affairs and Worship, Costa Rica

18 September 2013, Reference MRE/DM/521/09/13

Spanish original and English translation



*El Ministro de Relaciones Exteriores*

Managua, 18 de septiembre del 2013  
MRE/DM/521/09/13

Señor Ministro:

Me dirijo a Usted en ocasión de hacer referencia a su nota DM-AM-537-13 de fecha 17 de septiembre del año en curso y su nota DM-AM-536-13 de la misma fecha, ambas relacionados a los proceso unificados por la Corte Internacional de Justicia, a saber *Ciertas actividades de Nicaragua en la Zona Fronteriza (Costa Rica v. Nicaragua) y Construcción de una carretera en Costa Rica a lo largo del Río San Juan (Nicaragua v. Costa Rica)*.

En su nota DM-AM-537-13, el Gobierno de Costa Rica indica que "en el curso de esta semana...estará enviando personal para la protección ambiental a fin de evaluar la situación del humedal" de la zona en disputa Harbour Head.

Al respecto, el Gobierno de Reconciliación y Unidad Nacional de la República de Nicaragua reitera lo expresado innumerables veces en notas anteriores, en relación a la antojadiza interpretación de las medias establecidas por la Corte Internacional de Justicia mediante su Ordenanza del 8 de Marzo de 2011. Tal y como ha sucedido anteriormente, Costa Rica insiste en realizar notificaciones de último momento a Nicaragua, en un intento superficial de disfrazar su incumplimiento a la Ordenanza de la Corte, la cual es clara al indicar en su párrafo 86, numeral segundo, que puede enviar personal civil encargado de la protección del medio ambiente única y exclusivamente ante la necesidad de evitar una daño irreparable en la zona en disputa, lo cual además debe de ser consultado de forma previa con RAMSAR y notificado a Nicaragua para trabajar en conjunto y de esta forma encontrar soluciones. Costa Rica ha decidido una vez mas no cumplir con lo indicado por dicha Ordenanza.

Sorprende sobremanera que el Gobierno de Costa Rica todavía pretenda alegar una necesidad de "evaluar la situación" del territorio objeto de las medidas provisionales ya que se han producido "importantes cambios en su naturaleza", en vista de la reciente decisión de la Corte de rechazar la solicitud de modificación de las medidas provisionales presentada por Costa Rica. En su



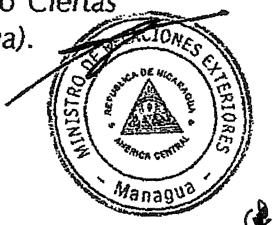
Ordenanza del 16 de Julio de 2013 la Corte remarcó que "en vista de la evidencia presentada, la Corte considera que, según la presente situación, no ha sido demostrado suficientemente que haya un riesgo de perjuicio irreparable a los derechos reclamados por Costa Rica" y la evidencia "tampoco [...] establece la existencia de un comprobado riesgo de daño irreparable al medio ambiente". De igual forma, la Corte manifestó que tal solicitud carecía de toda urgencia, contrario a lo alegado por su Gobierno. En razón de lo anterior, la intención de Costa Rica de enviar personal al área en disputa pone en entredicho la verdadera intención de su gobierno al realizar esta visita de campo.

Por otro lado, en relación al uso de una "embarcación para su traslado [del personal] por agua" el Gobierno de Reconciliación y Unidad Nacional de la República de Nicaragua, como fiel cumplidor de las decisiones de la Corte Internacional de Justicia, desea recordarle una vez más que su solicitud va más allá de lo otorgado por la Corte Internacional de Justicia a Costa Rica, el cual en su sentencia del 13 de Julio 2009, en relación al caso "*Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*", limita el derecho de navegación de Costa Rica única y exclusivamente a navegación "con fines de comercio".

En ese sentido, la intención del Gobierno de Costa Rica de navegar el Río San Juan de Nicaragua con los fines anteriores, representa un desconocimiento a lo dispuesto por la Corte en concordancia con lo establecido en el Tratado de Límites Jerez-Cañas.

Así mismo, en reiteradas ocasiones el Gobierno de Nicaragua, ha objetado las numerosas violaciones del espacio aéreo perpetradas por el gobierno de Costa Rica, y en ese sentido le reitero que las normativas internacionales obligan a su gobierno a utilizar los mecanismos pertinentes para solicitar la debida autorización de sobrevuelo en territorio nicaragüense.

En relación a su nota DM-A-AM-536-13, el Gobierno de Nicaragua, tiene a bien recordarle al Gobierno de Costa Rica, que Harbour Head es un área pantanosa interconectada por una serie de caños históricos que han sido reconocidos desde la época de Alexander, como por RAMSAR y ampliamente abordado y demostrado por Nicaragua en su Contra-Memoria del caso *Ciertas actividades de Nicaragua en la Zona Fronteriza (Costa Rica v. Nicaragua)*.



Además, como es de su pleno conocimiento, estamos en época de lluvias intensas que normalmente alteran el nivel de aguas en toda esa zona. Por consiguiente, no sería de extrañar que el aspecto de algunos caños pueda haber variado en los últimos meses. En todo caso, el Gobierno de Nicaragua no ha autorizado que se efectúen trabajos de cualquier tipo en el área en disputa, ni ha enviado personal a esa zona.

En vista de lo anterior, no puedo dejar de notar que ésta nueva escalada verbal de su Gobierno pareciera tener por propósito insertarse en la campaña orquestada por otros países de la región en contra de Nicaragua.

Finalmente, deseo reafirmarle que el Gobierno de Nicaragua ha cumplido y continuará cumpliendo a cabalidad las medidas provisionales dictadas por la Corte en su Ordenanza del 8 de Marzo de 2011, y llama a la hermana nación costarricense a hacer lo mismo y evitar “*cualquier acción que pueda agravar o extender la disputa ante la Corte o dificultar su resolución*”.

Sin otro particular, aprovecho la ocasión, para reiterarle las muestras de mi estima y consideración.



Samuel Santos López



Excelentísimo Señor  
Enrique Castillo Barrantes  
Ministro de Relaciones Exteriores  
República de Costa Rica

(Republic of Nicaragua, Central America)

Minister of Foreign Affairs

Managua, September 18, 2013

MRE/DM/521/09/13

Honourable Minister:

I am addressing you in reference to your note DM-AM-537-13 DATED September 17 of this year, and your note DM-AM-536-13 of the same date, both related to the process joined by the International Court of Justice, namely "Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)" and "Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)".

In your note DM-AM-537-13, the Government of Costa Rica indicates that "during this week... Costa Rica will be sending personnel for environmental protection to assess the wetland's situation" in the disputed area of Harbour Head.

In this regard, the Government of Reconciliation and National Unity of the Republic of Nicaragua reiterates what has been expressed on multiple occasions in previous notes, in relation to the capricious interpretation of the measures issued by the International Court of Justice in its Order of 8 March 2011. As in previous occasions, Costa Rica insists on performing last minute notifications to Nicaragua in a superficial attempt to disguise its noncompliance with the Order of the Court, which clearly indicates in paragraph 86 subsection 2 that it may dispatch civilian personnel charged with the protection of the environment to the disputed territory, but only insofar as there is a need to avoid irreparable prejudice to the disputed area, and it shall consult RAMSAR and give Nicaragua prior notice so as to work jointly and thus find solutions. Costa Rica has decided once again to disregard what was indicated in the Order.

It is quite surprising that the Government of Costa Rica still intends to claim a need to "assess the situation" of the disputed area subject to the provisional measures due to "important changes in its nature," in view of the recent decision by the Court to reject the request for modification of the provisional measures filed by Costa Rica. In its Order of 16 July 2013 the Court highlighted that "in the light of the evidence before it, the Court considers that, as matters stand, it has not been demonstrated sufficiently that there is a risk of irreparable prejudice to the rights claimed by Costa Rica" and that the evidence "does not ... establish the existence of a proven risk of irreparable damage to the environment." Similarly, the Court expressed that this request lacked urgency, contrary to that claimed by your Government. Based on the foregoing, Costa Rica's intention to send personnel to the disputed area puts in question the real intention of your government in performing this field visit.

*Translation into English*

On the other hand, in relation to the use of a “boat for the transfer [of personnel] by water,” the Government of Reconciliation and National Unity of the Republic of Nicaragua, in strict compliance with the decisions of the International Court of Justice, wishes to remind you once again that your request goes beyond that granted by the International Court of Justice to Costa Rica, which in the judgment of 13 July 2009 in relation to the case “Dispute concerning Navigational and Related Rights (Costa Rica v. Nicaragua)” limits Costa Rica’s right of navigation exclusively to “navigation for purposes of commerce.”

In this regard, the Costa Rican government’s intention to navigate the San Juan River with the aforementioned goal represents a violation of that established by the Court, in conformity with the Jerez-Cañas Treaty of Limits.

Similarly, on repeated occasions the Government of Nicaragua has objected to the numerous violations of the air space committed by the Government of Costa Rica, and in this regard I reiterate that the international regulations require your government to use the corresponding mechanisms to request due authorization of the flyover in Nicaraguan territory.

Regarding your note DM-A-AM-536-13, the Government of Nicaragua reminds the Government of Costa Rica that Harbour Head is a swamp area connected by a number of historical channels that have been recognized since the Alexander era, both by RAMSAR and widely addressed and demonstrated by Nicaragua in its counter-memorial in the case “Certain activities by Nicaragua in the border area (Costa Rica v. Nicaragua).”

In addition, as you are fully aware, we are in the heavy rain season, which normally alters the water levels in the entire area. Consequently, it would not be abnormal for the aspect of some channels to have changed in the last few months. In any case, the Government of Nicaragua has not authorized any type of work in the disputed area and has not sent personnel there.

In view of the foregoing, I cannot help but notice that this new verbal escalation by your Government seems to have the purpose of joining the campaign by other countries in the region against Nicaragua.

Finally, I wish to reaffirm that the Government of Nicaragua has complied with and will continue to fully comply with the provisional measures issued by the Court in its Order of 8 March 2011, and it calls to its sister nation of Costa Rica to do the same and avoid “any action which might aggravate or extend the dispute.”

I take this opportunity to express the assurances of my highest consideration.

*(Signed) Samuel Santos López  
(Stamped) Ministry of Foreign Affairs – Nicaragua*

Honourable Minister  
Enrique Castillo Barrantes, Minister of Foreign Affairs, Republic of Costa Rica

**Attachment PM-6**

Report of Costa Rican Ministry of Environment and Energy (MINAE) and the National System  
of Conservation Areas (SINAC)

18 September 2013

Spanish original and English translation

Oficio: **ACTo-GMRN-EPMF-293-2013**

### INFORME DE GIRA

Fecha: 18 de Setiembre de 2013

A: Ing. Ana Lorena Guevara Oficina/ASP: Viceministra de Ambiente  
Msc. Rafael Gutiérrez Director Ejecutivo SINAC

Código Tipo de Ley:	Forestal	Código Tipo de Delito Ambiental:	-Dragado de humedales (construcción de canales artificiales)	Código ASP:	-Corredor Fronterizo (estatal)_V14
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**TIPO DE ACCIÓN REALIZADA:** Atención a queja ( ) Control Tenencia V. Silvestre ( ) Patrullajes reconocimiento exploración ( ) Presencia institucional ( ) Supervisión de torneos de caza ( ) Operativos en carretera ( ) Seguimientos Procesos conciliatorios ( ) Valoración Daño Ambiental ( ) Prevención, control incendio ( ) Asistencia a Juicio o declaraciones ( ) Asistencia inspecciones oculares judiciales ( ) Control actividades de Contaminación ( ) Puestos fijos ( ) Inspección a ferias del agricultor ( ) Inspección a establecimientos comerciales ( ) Otro()

Detalle:

- 1- Sobrevuelo en área afectada por la construcción de nuevos canales artificiales dentro de Isla Portillos, dentro de los límites del Refugio Corredor Fronterizo y del Humedal Caribe Noreste.  
 2- Inspección vía acuática a la zona afectada por la construcción de nuevos canales artificiales descritos anteriormente

Fecha de gira: 18-09-2013 Hora inicio: 08:00 Hora final: 13:00

#### Lugar visitado

Provincia: Limón y Heredia	Cantón: Pococí y Sarapiquí	Distrito: Colorado y Llanuras del Gaspar	Caserío: Isla Portillos Delta
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Código Ubicación Administrativa: 706 y 404 Dirección exacta: Isla Calero

Hoja Cartográfica: Coordenadas CRTM 05	Punta Castilla Este: Ver cuadro anexo	Norte: Ver cuadro anexo
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**RESULTADOS:** Hubo imputados ( ) Decomisos ( ) Infracciones ( ) Contactos ( ) Sospechosos ( ) Vehículos revisados ( ) Otros (X)

Detalle:

Localización y georeferenciación con receptor GPS de anomalías ambientales mediante coordenadas

Registro fotográfico con 5 tomas del nuevo canal artificial principal

**EVIDENCIA DE:** Caza diurna ( ) Nocturna ( ) Tapezcos ( ) Pesca ( ) Picadas ( ) Rancho ( )

Casa de aves ( ) Ingresos extraños ( ) Huella de perros ( ) Restos animales ( ) Aserrío ( )

Tala ( ) Rastro palmíteros ( ) Extracción bejucos ( ) Extracción musgo o plantas ( ) Otros (X)

Detalle:

Construcción de nuevos canales artificiales y afectación de humedales

#### **Descripción de Resultados:**

Con relación al sobrevuelo, se obtuvieron los siguientes resultados:

- Se documentó la existencia de un nuevo canal artificial construido dentro de áreas de humedal en la Isla Portillos. Dentro del canal se observó la presencia de una draga y tubería de descarga de sedimentos. El canal artificial está orientado con dirección sur-norte y ubicado entre el Río San Juan y una laguna natural próxima a la línea de costa. Se estima que el canal tiene aproximadamente de 15 a 20 metros de ancho y unos 200 metros de longitud, además de aparentes diferencias de profundidad. Debido a las restricciones y los peligros potenciales, el piloto realizó un único rodeo sobre el canal artificial, lo que limitó la toma de material fotográfico y de video. Es importante destacar que cerca de este canal hay un campamento en el sector de playa, hacia el extremo norte. Se observó la corta de árboles y de palmas de Yolillo (*Raphia taedigera*). El helicóptero empleado para el sobrevuelo corresponde con la matrícula TI-AZM de la empresa Aerodiva S.A

Con respecto a la Inspección vía acuática, se indica lo siguiente:

- Se arribó al sitio conocido como Delta Costa Rica a las 8:05 am según se había programado. Se dio un lapso para la coordinación respectiva y se inició el desplazamiento hacia Delta Nicaragua aproximadamente a las 10:45 am. Esto con la intención de informar a las autoridades nicaragüenses sobre el desplazamiento de personal del Sistema Nacional de Áreas de Conservación, voluntarios que apoyan la gestión de las áreas silvestres protegidas, y de varios medios de prensa de Costa Rica hasta Isla Portillos a través del Río San Juan. Una vez en el lugar, los presentes permanecieron dentro de las embarcaciones a excepción de los Asesores Jurídicos tanto del Ministerio de Relaciones Exteriores como del Sistema Nacional de Áreas de Conservación. Se estableció un diálogo entre estos y las autoridades nicaragüenses (que correspondían a dos funcionarios de Migración y cuatro del Ejército Nicaragüense). Se les presentó tanto los listados de las personas que viajaban en las lanchas como las identificaciones de cada uno para su respectiva revisión. Luego dichas autoridades nicaragüenses dijeron que previo a la autorización para transitar sobre el río debían consultar con las autoridades superiores, lo cual hizo demorar aproximadamente 2 horas. Al final de ese tiempo llegó una embarcación del ejército nicaragüense con 9 militares, dentro de los cuales venía uno de mayor rango. A éste se le explicó la razón de la presencia de las embarcaciones costarricenses y él se negó rotundamente a permitir el tránsito sobre el río San Juan hacia el





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sector de Isla Portillos, aduciendo que el conflicto entre ambos países (el cual se ventila en la Corte Internacional de Justicia) no ha sido resuelto. Situación que motivo el retorno de las dos embarcaciones de costarricenses hacia Delta Costa Rica y sin lograr el objetivo descrito en un principio.

**Conclusiones y / o Recomendaciones:**

- 1- Existe un nuevo canal artificial dentro de territorio costarricense y dentro de un Área Silvestre Protegida de Costa Rica (Refugio Nacional Corredor Fronterizo) que atraviesa un área de humedal, que es parte del Humedal Ramsar Caribe Noreste.
- 2- Se recomienda trasladar el caso a la Convención Internacional de Humedales RAMSAR para su debida valoración

Nombre del presunto infractor: En investigación Cédula: NA

**Personas contactadas**

Nombre: NA Cargo: NA

Nombre de funcionario	Firma:
Miguel Aguilar Badilla	
Miguel Araya Montero	
Sebastián Bonilla Sánchez	
Olman Mena Valverde	
Luis Rojas Bolaños	
Renato Sánchez González	



Cuadro 1. Coordenadas de ubicación del nuevo canal artificial tomadas a partir del sobrevuelo realizado. Colorado, Pococí. Se incluyen las coordenadas de ubicación del puesto de control de Delta Nicaragua.

Punto	Coordenadas CRTM 05		Descripción	Ubicación según ASP
	X	Y		
1	533799	1209308	Punto medio de nuevo canal artificial	Dentro de Refugio Corredor Fronterizo y de Humedal Caribe Noreste
2	525609	1191355	Puesto de Delta Nicaragua	Nicaragua

Se adjuntan las fotografías mencionadas.



Foto 1. Vegetación que cubre el canal artificial en sentido sureste-noroeste



Foto 2. Vista parcial del nuevo canal artificial. Nótese la draga en medio del canal. En el extremo superior derecho se observa una sección del río San Juan.





Foto 3. Vista del extremo sur del canal artificial en el río San Juan.

6 / 8





Foto 4. Vista parcial del canal artificial. En la esquina superior izquierda se observa parte de la laguna natural cercana a la línea de costa.

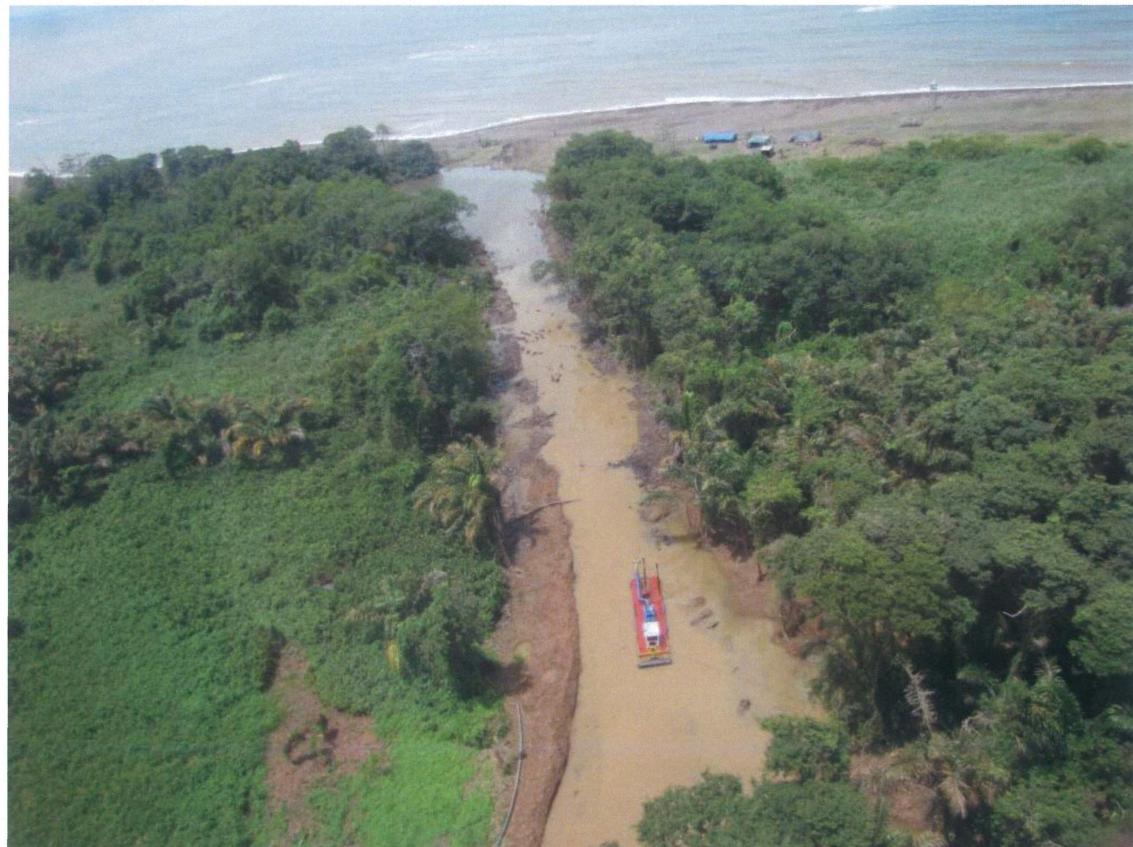


Foto 5. Vista parcial del canal artificial en sentido sur-norte. Se puede observar en la parte superior tanto la laguna como el campamento.

cc. Rafael Gutiérrez Rojas, Director del SINAC  
Personal ACTo  
Archivo

Note: **ACTo-GMRN-EPMF-293-2013**

### INSPECTION REPORT

 Date: September 18, 2013

 To: Ana Lorena Guevara, Eng. Office/ASP: Vice-Minister of the Environment

Code Type of Law:	Forestry	Code – Type of environmental crime:	-Dredging of wetlands (construction of artificial channels)	ASP Code:	-Border corridor (state)_V14
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**TYPE OF ACTION PERFORMED:** Address complaint ( ) Control Landholding v. Wildlife ( ) Patrolling for examination, exploration ( ) Institutional presence ( ) Supervision of hunting tournaments ( ) Road operations ( ) Follow-up on reconciliation processes ( ) Valuation of Environmental Damage ( ) Prevention, fire control ( ) Assistance to trial or statements ( ) Assistance judicial visual inspections ( ) Control contamination activities ( ) Permanent stations ( ) Farmers' market inspections ( ) Inspection of commercial establishments ( ) Other () Details:

- 1- Flyover of the area affected by the construction of new artificial channels in Isla Portillos, within the limits of the Border Corridor Refuge and the Northeast Caribbean Wetland  
 2- Aquatic inspection of the area affected by the construction of the new artificial channels described above.

 Inspection date: 18-09-2013 Beginning at: 08:00 Ended at: 13:00

## Place visited

Province: Limón and Heredia	Canton: Pococí and Sarapiquí	District: Colorado and Llanuras del Gaspar	Village: Isla Portillos Delta
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 Administrative location code: 706 and 404 Exact address: Isla Calero

 Quadrangle map: Punta Castilla




Coordinates CRTM  
05

East: See attached  
table

North: See attached  
table

**RESULTS:** There were accused parties ( ) Confiscation ( ) Infractions ( ) Contacts ( ) Suspects ( ) Vehicles checked ( ) Other ()

Details:

Location and georeferencing with GPS receiver of environmental anomalies through coordinates

Photographic records with 5 pictures of new main artificial channel

**EVIDENCE OF:** Daylight hunting ( ) Night-time hunting ( ) Tapezcos ( ) Fishing ( ) Picadas ( ) Ranch ( ) Bird hunting ( ) Strange entries ( ) Dog tracks ( ) Animal remains ( ) Logging ( ) Felling ( ) Traces of Palm cutting ( ) Reed extraction ( ) Extraction of moss or plants ( ) Other (  )

Details:

Construction of new artificial channels and damage to wetlands.

#### Description of Results:

In relation to the flyover, the results obtained were the following:

- The existence of a new artificial channel was documented, within the area of the wetland in Isla Portillos. A dredger was observed within the channel, as well as piping for sediment discharge. The artificial channel's orientation is south-north, located between San Juan River and a natural lagoon near the coastline. The channel's estimated width is 15 to 20 meters and length 200 meters, with apparent differences in depth. Due to the restrictions and potential danger, the pilot circled around the artificial channel only once, which limited the ability to take pictures and video. It is worth noting that near this channel there is camp on the beach, toward the north side. The cutting of trees and raffia palm (*Raphia taedigera*) was observed. The helicopter used for the flyover corresponds to registration TI-AZM of the company Aerodiva S.A.

Regarding the aquatic inspection, we indicate the following:

- We arrived at the site known as Delta Costa Rica at 8:05 am, as programmed. Some time was given for the corresponding coordination, and the transport toward Nicaragua Delta began at approximately 10:45 am. This was in order to inform the Nicaraguan authorities of the transportation of personnel from Sistema Nacional de Áreas de Conservación (National System of Conservation Areas), protected area volunteers and several Costa Rican media to Isla Portillos through San Juan River. Once there, the individuals present remained within the boats, except for the Legal Advisors of both the Ministry of Foreign Affairs and the Sistema Nacional de Áreas de Conservación, who engaged in a dialogue with the Nicaraguan authorities (two Immigration officers and four soldiers of the Nicaraguan Army). They were given the lists of persons traveling in the boats as well as IDs of each for their corresponding review. The Nicaraguan authorities then stated that before granting authorization to enter the River they had to clear this with higher authorities, which caused a delay of approximately two hours. After this time elapsed a Nicaraguan boat arrived with 9 military personnel, including one of a higher rank. The latter was given an explanation of the presence of Costa Rican vessels, and he rejected





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outright allowing transit on San Juan River toward the sector of Isla Portillos, claiming that the conflict between both countries (which is at the International Court of Justice) has not been resolved. Consequently, both Costa Rican vessels returned to the Delta Costa Rica without achieving the previously described objective.

**Conclusions and/or Recommendations:**

- 1- There is a new artificial channel in Costa Rican territory, and within a protected wildlife area (Border Corridor Refuge) that crosses a wetland, which is part of the North East Caribbean Wetland.
- 2- We recommend transferring the case to the Ramsar Convention on Wetlands of International Importance, for its adequate assessment.

Name of the alleged offender: Under investigation ID number: NA

**Persons contacted**

Name: NA Position: NA

Name of the employee	Date:
Miguel Aguilar Badilla	
Miguel Araya Montero	
Sebastián Bonilla Sánchez	
Olman Mena Valverde	
Luis Rojas Bolaños	
Renato Sánchez González	



**Table 1.** Coordinates of the location of the new artificial channel taken during the flyover performed. Colorado, Pococí. Includes the location coordinates of the control station of Delta Nicaragua.

Point	Coordinates CRTM 05		Description	Location according to ASP
	X	Y		
1	533799	1209308	Midpoint of new artificial channel	Within the Border Corridor Refuge (Refugio Corredor Fronterizo) and Northeast Caribbean Wetland (Humedal Caribe Noreste)
2	525609	1191355	Delta Nicaragua station	Nicaragua

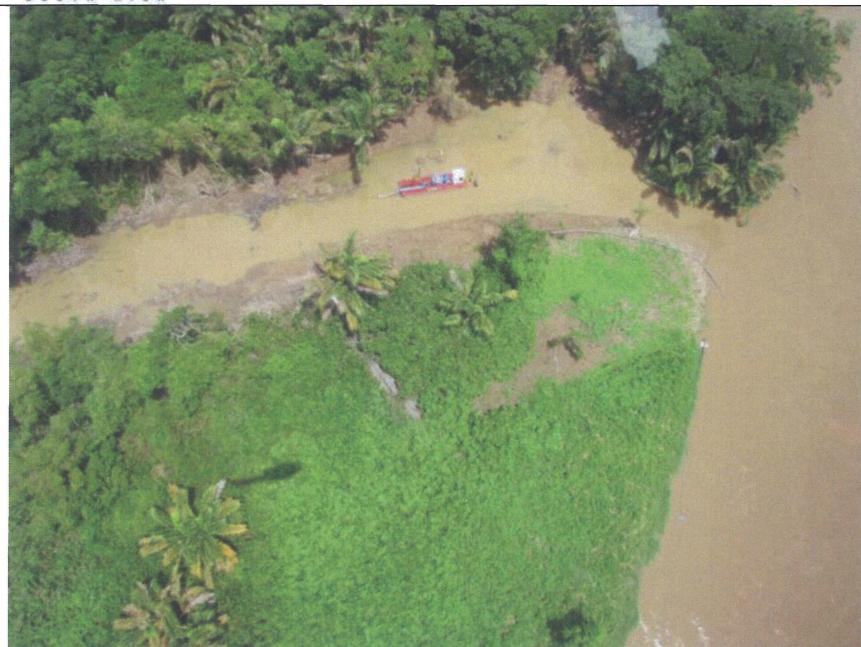
The aforementioned pictures are attached below:





Picture 2. Partial view of the new artificial channel. Note the dredger in the middle of the channel. A section of the San Juan River can be seen in the upper right corner.





Picture 3. View from southern end of the artificial channel in the San Juan River.



Picture 4. Partial view of artificial channel. Part of the natural lagoon near the coastline is visible on the upper left corner.



Picture 5. Partial view of the artificial channel, south-north. Both the lagoon and the camp can be seen on the top part.

OMV/Report flyover new channel\*21.09.2013

cc. Rafael Gutiérrez Rojas, SINAC Director  
Personal ACTo  
File



**Attachment PM-7**

Satellite images of part of the disputed territory, Digital Globe Inc., supplied to Costa Rica by  
GeoSolutions Consulting Inc

30 June 2013



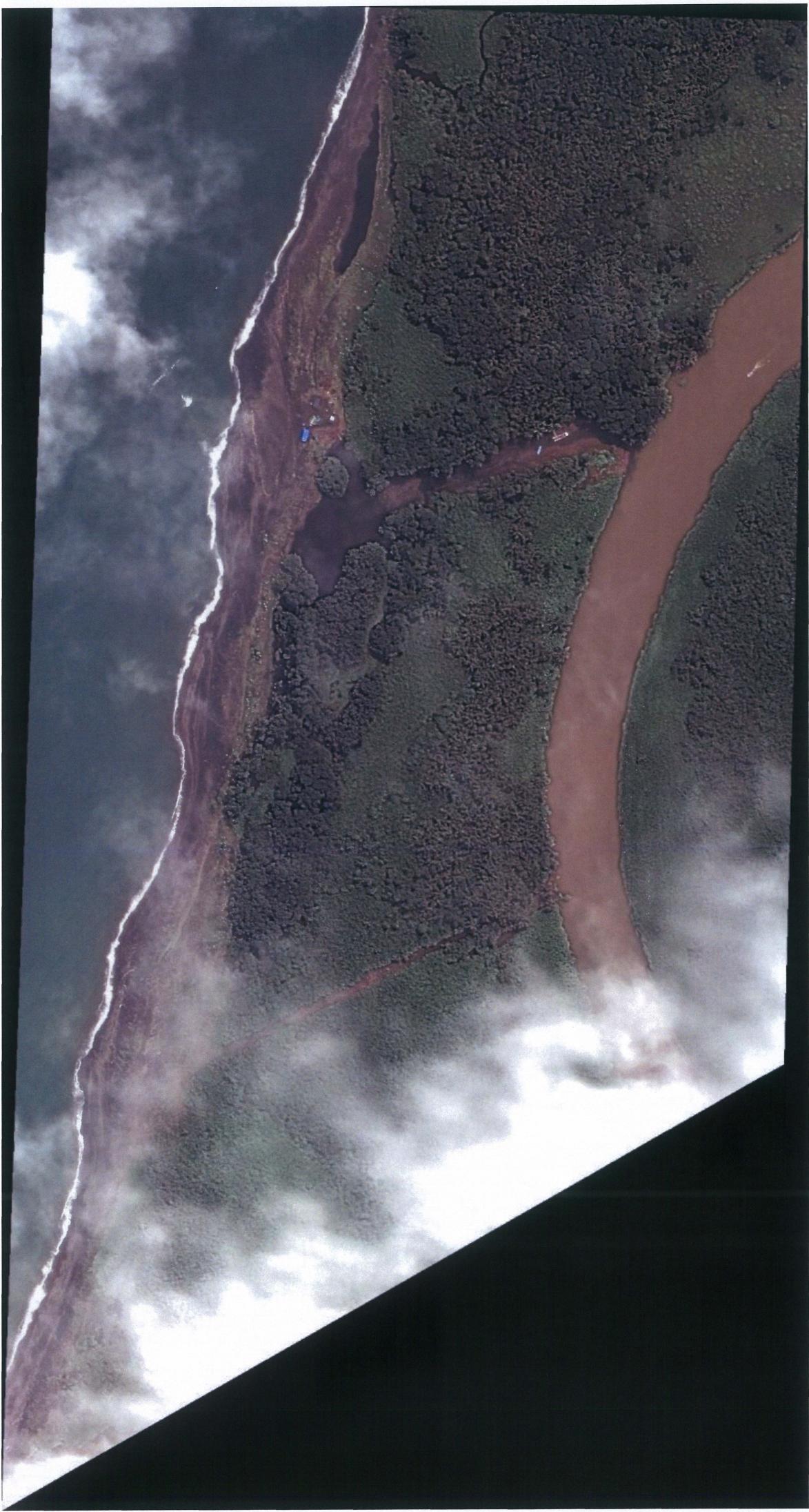




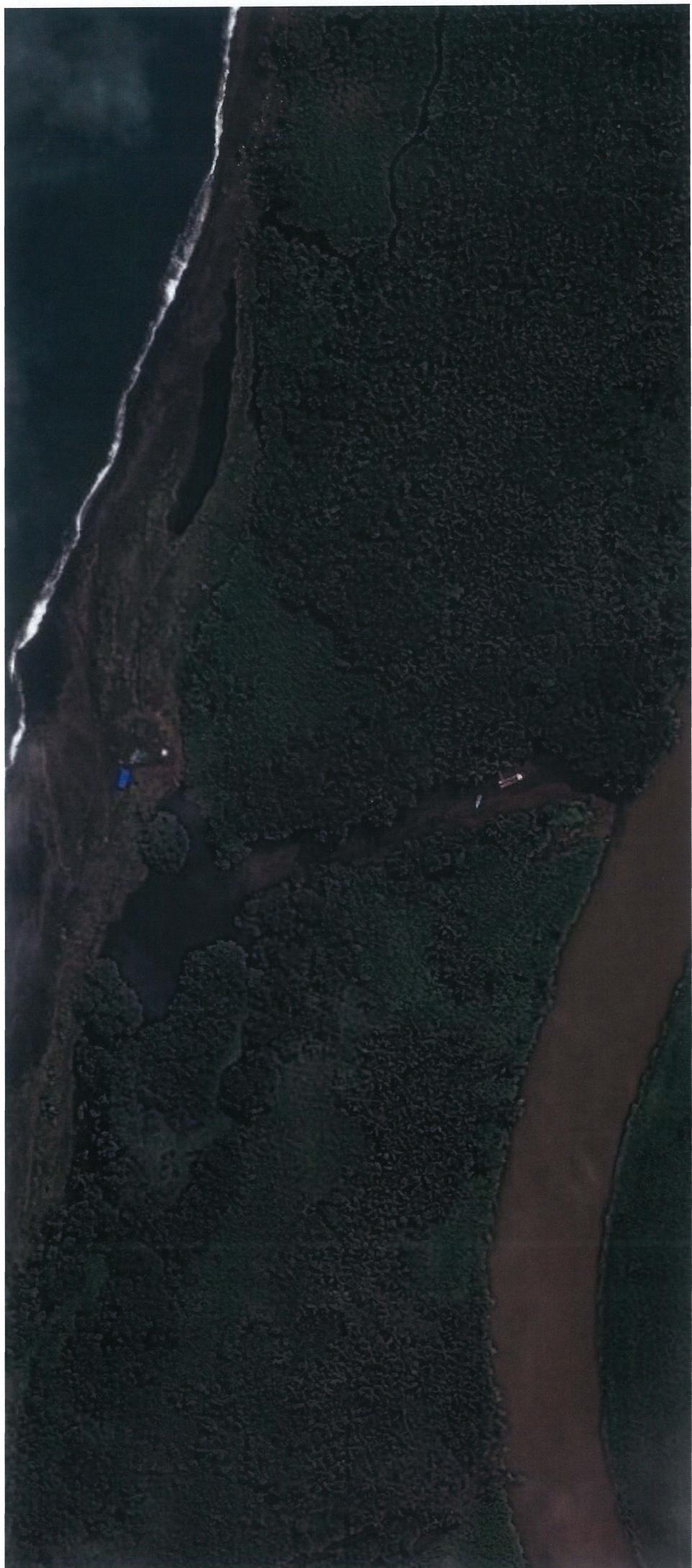
**Attachment PM-8**

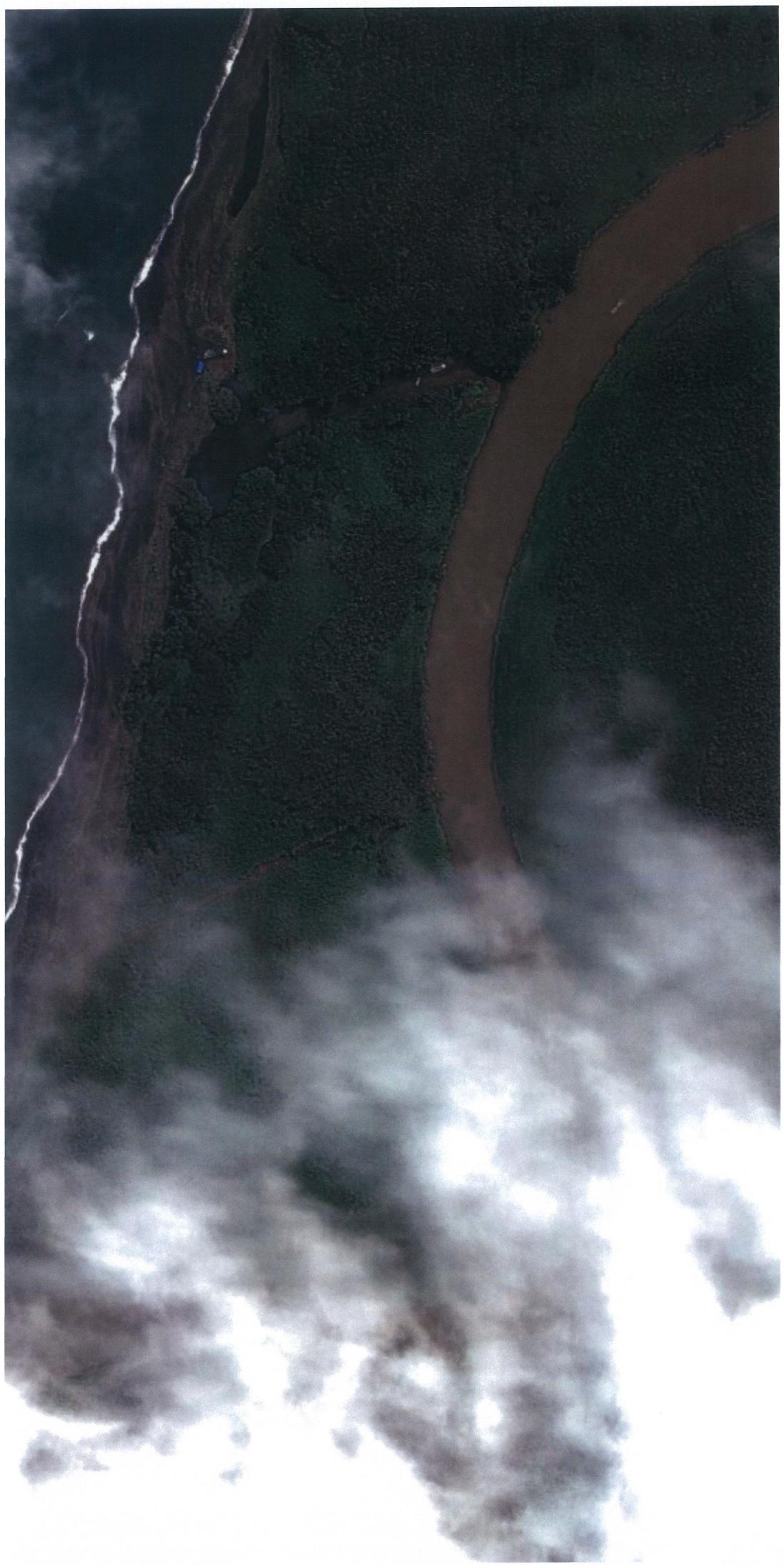
Satellite images of part of the disputed territory, Digital Globe Inc., supplied to Costa Rica by  
GeoSolutions Consulting Inc

5 September 2013









**Attachment PM-9**

Satellite image showing the disputed territory, indicating the locations of the three artificial

*caños*



**Attachment PM-10**

Satellite image indicating the coordinates of the two new artificial *caños*



**Attachment PM-11**

Photograph of the disputed territory showing one of the new *caños*, with tree stumps, and the lagoon visible

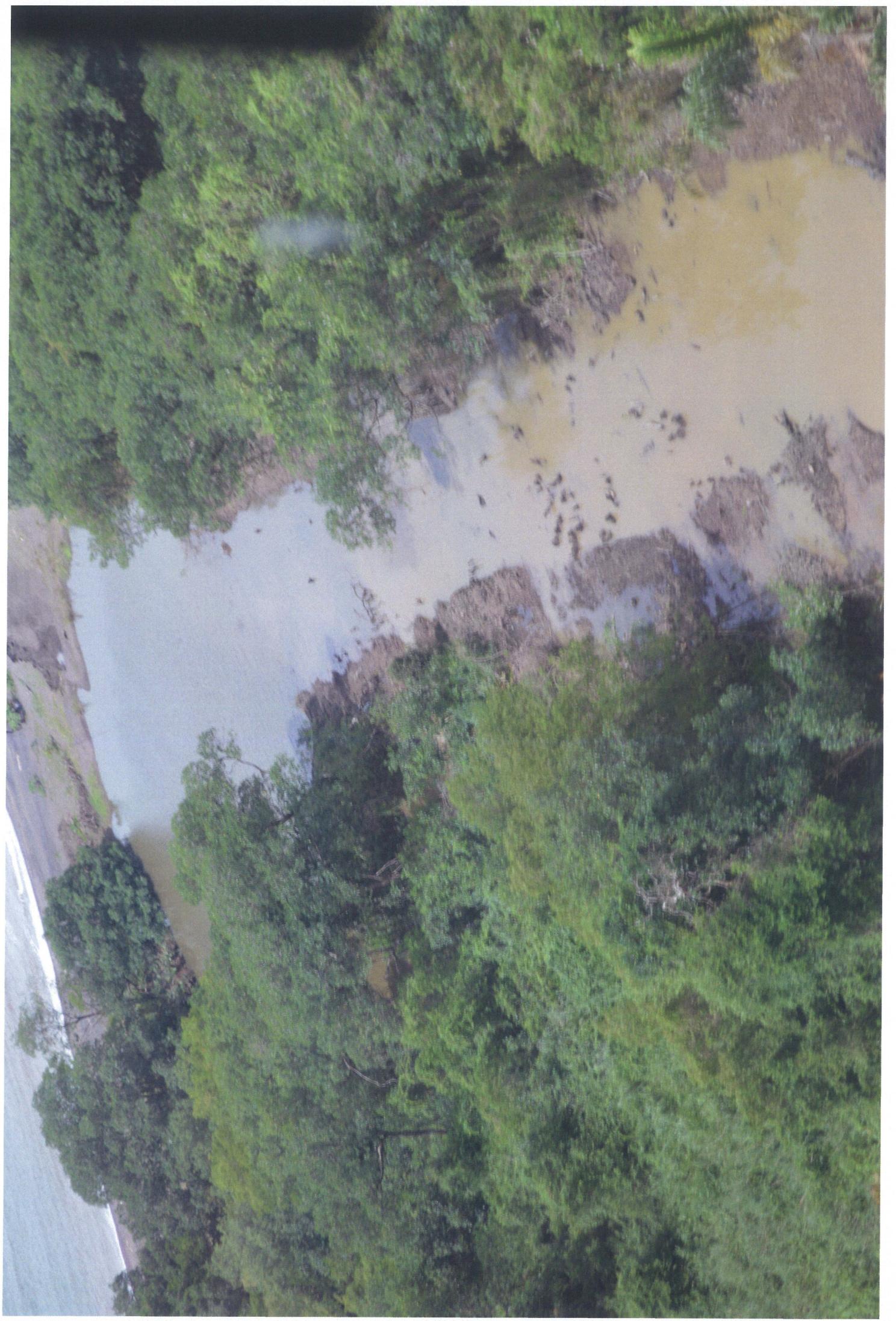
18 September 2013



**Attachment PM-12**

Photograph of the disputed territory showing one of the new *caños*, with tree stumps, the lagoon, the trench dug in beach adjacent to lagoon visible

18 September 2013



**Attachment PM-13**

Photograph of disputed territory showing Nicaraguan dredger in one of the new *caños*

18 September 2013



**Attachment PM-14**

Photograph of the disputed territory showing Nicaraguan dredger in one of the new  
*caños*, lagoon adjacent to Caribbean Sea, and Nicaraguan tents

18 September 2013



**Attachment PM-15**

Photograph of the disputed territory showing a close-up of the Nicaraguan camp of four tents, the pile of felled trees next to the camp, a further tent-like structure, and a lookout tower adjacent to the Caribbean Sea

18 September 2013



**Attachment PM-16**

Photograph of the disputed territory showing a close-up of the Nicaraguan dredger  
undertaking works in one of the new *caños*

18 September 2013



**Attachment PM-17**

Video of onsite visit undertaken by Costa Rica in a civilian helicopter

18 September 2013

Extract

Electronic file submitted to Registry

**Attachment PM-18**

Video interview of Mr. Edén Pastora, 18 September 2013, available online from Nicaraguan

media outlet “Noticias Nicaragua” at

<<<http://www.youtube.com/watch?v=J6YV0598vqE&featurebe&t=2m18s>>>

Extract, Spanish transcription and English translation

Electronic file submitted to Registry

### **Transcripción del video**

Noticia: **“Nicaragua Costa Rica insertada en campaña orquestada en contra de nuestro país”**

Medio de Comunicación: Canal 15, Nicaragua

Publicado: 18 de septiembre del 2013

Dirección electrónica: <http://www.youtube.com/watch?v=J6YV0598vqE>

00:02:20.      **Edén Pastora:** “Aquí está Harbour Head”

00:02:21      **Periodista:** “Mapas en mano, el comandante Edén Pastora, encargado de las labores de dragado en el Río San Juan, desmiente al Gobierno de Costa Rica y advierte que Nicaragua está en su derecho de limpiar la salida del afluente al mar.”

00:02:34      **Edén Pastora:** “No he hecho caño, he limpiado el Delta de la desembocadura del Río San Juan, estoy limpiado y voy a limpiar todo esto, pero de aquí a aquí son 150 metros y todo esto son, pero todo esto es gamalote, lirio, vamos a ver in situ, a menos que me digan que ese gamalote es de Costa Rica, que ese lirio es de Costa Rica, que esa yuca marina es de Costa Rica, son plantas acuáticas que nacieron allí”

00:03:05      **Periodista:** “y los surcos que ellos mencionan comandante? ...”

00:03:06      **Edén Pastora:** “No existen, mentiras aquí está el caño que ellos enseñan y este caño es mentira, no es caño”

00:03:16      **Periodista:** “Es reciente esta fotografía?”

00:03:18      **Edén Pastora:** “esta fotografía es de ayer.

00:03:20      **Edén Pastora:** “La Corte Internacional de Justicia dijo que prohibía que llegaran funcionarios públicos, que llegaran militares o policías, y los que llegan ahí a reforestar es una ONG, de ambientalistas de Guardabarranco, se llama Guardabarranco son muchachos y muchachas que llegan a reforestar esa zona...”

**Transcription of the video**

News: “**Nicaragua Costa Rica part of campaign orchestrated against our country**”

Media: Canal 15, Nicaragua

Published: September 18, 2013

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00:02:20.      **Edén Pastora:** “Here is Harbour Head”

00:02:21      **Journalist:** “Maps in hand, Commander Edén Pastora, in charge of the dredging works in the San Juan River, refutes the Government of Costa Rica and notes that Nicaragua has the right to clean the river’s mouth into the sea.”

00:02:34      **Edén Pastora:** “I have not made a channel, I have cleaned the Delta in the mouth of the San Juan River, I am cleaning and will clean all of this; but from here to there there’s 150 metres, and all of this is arrowgrass (*gamalote*), water hyacinth, we should go see *in situ*, so unless they tell me that this arrowgrass belongs to Costa Rica, that this water hyacinth belongs to Costa Rica, that this water manioc (*yuca marina*) belongs to Costa Rica... these are aquatic plants that grew there.”

00:03:05      **Journalist:** “and the grooves that they mention, Commander?...”

00:03:06      **Edén Pastora:** “They don’t exist... not true, here is the channel that they show, and this channel, it’s a lie, it’s not a channel.”

00:03:16      **Journalist:** “Is this picture recent?”

00:03:18      **Edén Pastora:** “This picture is from yesterday.

00:03:20      **Edén Pastora:** “The International Court of Justice said that it prohibited the arrival of public employees, military or police, and those who arrive there to reforest is an NGO, of Guardabarranco environmentalists; it’s called Guardabarranco and these are boys and girls that go to reforest the area...”