



INDEPENDENT CONSULTATION
AND INVESTIGATION MECHANISM

MEMORANDUM

CONSULTATION PHASE ELIGIBILITY DETERMINATION

FROM: Isabel Lavadenz-Paccieri, Project Ombudsperson
TO: Executive Secretary
CC: MICI
REFERENCE: Case PA MICI1/2010
RELATED PROJECT: The Pando-Monte Lirio Hydroelectric Energy Project (PN-L1054)
COUNTRY: Panama
DATE: October 8, 2010

Summary:

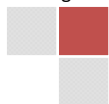
A number of Panamanian organizations and community representatives submitted a complaint expressing social and environmental concerns with regards to the Pando-Monte Lirio Hydroelectric Energy Project (the Project), financed by IADB, IFC (International Finance Corporation), CAF (Andean Development Corporation), and other private investors. After a detailed review, this Ombudsperson has determined that the complaint is eligible for the Assessment and Consultation Phases under the Mechanism¹.

I. Background

On March 12, 2010, the Mechanism received a complaint filed by 16 organizations of farmers, environmentalists, producers, religious and social welfare groups from the Province of Chiriquí, in Panama. The complaint raised a series of environmental and social concerns regarding the Project. This is a Non Sovereign Guarantee loan of 40 million dollars approved by the IADB Board on December 9, 2009.

The complainants highlighted the potential cumulative impacts that may result from the development of all hydroelectric projects in the Chiriquí River Basin, some of which have not started construction and/or do not receive funding from the IADB. Examples of impacts mentioned by the complainants include

¹ **The terms:** Mechanism, Management, Executive Secretariat, Project Ombudsperson, Panel, Mechanism Policy, Eligibility, Consultation Phase, Assessment and any other relevant term in this memorandum shall have the meaning assigned to them in the Independent Consultation and Investigation Mechanism (ICIM) Policy approved on February 17, 2010



Project Ombudsperson

Independent Consultation and Investigation Mechanism- Inter-American Development Bank

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damage to the environment, the quality of water for human consumption and local agriculture, the need to maintain the ecological flow² without impacting the river's fish and animal species, etc. Concerns also include lack of a participatory consultation process with communities, possibility of flooding communities downstream and limited community access to water.

The same complaint was logged with the IFC. The IFC has already determined the complaint's eligibility for the consultation process under its policies and procedures.

The group of local organizations³ that filed the complaint before the Mechanism consists of:

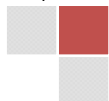
1. Foundation for Integrated and Communitarian Development and Conservation of Ecosystems In Panama (FUNDICEP)
2. Environmental Association of Chiriquí – ASAMCHI
3. Friends of Amistad International Park – AMIPILA
4. Alliance for Environmental Development of the Highlands – ADATA
5. Association of Biosphere Conservation – ACB
6. Association of Export Crop Producers – APCE
7. Association of Producers of Renacimiento – APRE
8. Ecological Group of Renacimiento for the Protection of Amistad International Park - GERPROPILA
9. Association of Agro-Ecological Producers of Amistad– ADPAELA
10. Committee for the Defense of the Chiriquí Viejo River
11. Central Mission of la Concepción – CEMCODE
12. "Colibri" Ecological Association of Panama
13. Macho Mountain Group of Cuesta De Piedra
14. Ecological Association of La Rovira Organic Producers- ASEPOR
15. Committee for the Defense of the Gariche River and its Tributaries

II. Eligibility Analysis

The Ombudsperson's consultation process starts with the Eligibility Determination to then move to the Assessment Phase, and finally to the Consultation and Mediation Phases, if so agreed by all parties.

² "Environmental or Ecological Flow (EF) is the water regime that occurs in a river, wetland or coastal zone to maintain ecosystems and their benefits where there are competing uses of water and where flows are regulated. EF contributes decisively to river health, economic development and poverty alleviation by ensuring the constant availability of benefits that rivers and surface water and groundwater systems contribute to society." Republic of Panama, Official Gazette, Monday, March 27, 2006. N. 25511.

3. The Association Agro-ambientalista de Santa Clara was originally in the group of 16 complainants and later asked to be removed from the complaint.



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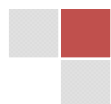
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As part of the Eligibility analysis, an initial dialogue with the Project team is established, and information on the complaint, complainants and the relevant project (s) is gathered. The results of such an analysis are expressed in the table below.

ELIGIBILITY CRITERIA	OMBUDS DETERMINATION	COMMENTS
Names and contact information available	YES	From communities, NGOs and other CSOs
Bank-financed operation identified	YES	Pando-Monte Lirio Hydro Power Project (PN-L1054)
Requesters reside in Panama	YES	
None of the exclusions of the policy applies	YES	
Requesters have asserted that they have been or could be directly, materially affected by the Project, and they have described the direct and material harm by an act carried out or omitted to be carried out by the Borrower in relation to the Project in violation of a relevant Operational Policy	YES	Violations have been alleged in relation to OP-703- ENV and SFGD Compliance; OP-102 Disclosure of Information; OP-704 Disaster Risk Mgmt; and OP-710 Involuntary Resettlement. All in relation to the Project (PN-L1054).
Parties are amenable to a Consultation Phase and dialogue	YES	Parties have expressed interest in the Ombuds process and requested for this to be conducted together with the IFC.
Requesters have taken steps to bring the issue to the attention of Management and/or project team	YES	Requesters have contacted the project teams, both from IADB and IFC.

As this case is also being addressed by the IFC, the Mechanism and the CAO have agreed to conduct a joint consultation/ mediation process to the extent possible and in compliance with the norms and policies of the respective institutions. A separate agreement to reflect details of this collaboration is under preparation.



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III. Initial consultation with Management

The ICIM's policy calls for an initial consultation with Management to learn what the status of the issue at hand is, confirm that the project team and/or management and/or the relevant country office have been made aware of the complaint, verify the steps taken by the requester to bring this issue to the attention of the Bank, and learn more about the operational response thus far. In this case, both the project team and the country office were contacted and are already collaborating with this process.



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IV. Conclusion

In line with the ICIM Policy, the Project Ombudsperson has determined that the complaint related to the Pando-Monte Lirio Hydroelectric Energy Project (PN-L1054) **is eligible** for the Consultation Phase.

The Consultation Phase starts with an Assessment by the Ombudsperson . The purpose of the Assessment is to work with the complainants, management and any other interested stakeholders to identify on the ground and clarify the issues raised by the complainants, gather information on the various points of view and help stakeholders determine whether and how they may be able to resolve the issues raised.

The Assessment is limited to a maximum of 120 days, but may be completed more quickly. In this case, the CAO has already completed its assessment, and – after a thorough review - this Ombudsperson considers the CAO's assessment as adequate to comply with ICIM's requirements, and to enable the Mechanism to move to the Consultation Phase jointly with the CAO. Additional information, if needed, will be gathered during the preparatory meetings. CAF, as a project co-financier, has also been invited to participate in the Consultation Phase.

Although a complaint may meet ICIM's eligibility criteria, **this does not imply** any judgment on the part of the ICIM of the merit of the issues raised in the complaint.

Within the next two (2) business days, the Executive Secretariat will post the notice of registration on the Registry and notify the Requester.

Isabel Lavadenz-Paccieri
Project Ombudsperson
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IADB



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