



DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-BID-CR-2016-110

RECOMMENDATION FOR COMPLIANCE REVIEW AND TERMS OF REFERENCE

REVENTAZÓN HYDROELECTRIC PROJECT

**(CR-L1049, CR-L1056, CR-U001, CR-T1086)
(ATN/OC-12720-CR, 2747/OC-CR, 2806-A/OC-CR, 2806-B/OC-CR,
2804/OC-CR, ATN/OC-13556-CR)**

This document was prepared by Arantxa Villanueva, Compliance Review Phase Coordinator, and Ana María Mondragón, Compliance Review Phase Case Officer, under the supervision of Victoria Márquez-Mees, MICI Director.

This document contains confidential information relating to one or more of the ten exceptions of the Access to Information Policy and will be initially treated as confidential and made available only to Bank employees. The document will be disclosed and made available to the public upon approval.

NOTE

GUIDELINES FOR THE COMPLIANCE REVIEW PHASE

The following guidelines for the Compliance Review Phase have been prepared on the basis of paragraphs 36 to 41 of the Policy of the Independent Consultation and Investigation Mechanism (document MI-47-6).

The Compliance Review Phase is a fact-finding process designed to determine whether the Bank's Management has complied with Relevant Operational Policies in relation to one or more Bank-financed operations and whether the alleged harm is associated with Bank noncompliance with its Relevant Operational Policies.

A Compliance Review by the MICI is subject to approval by the IDB's Board of Executive Directors, which receives a MICI Recommendation for consideration after the MICI has examined the primary documents of the operation, the information provided by Management, the Request, and the Relevant Operational Policies within a maximum term of 21 business days. In its Recommendation, the MICI sets forth its decision whether or not to recommend conducting an investigation, taking into account the added value of an investigation for the case at hand and for the Bank in general in terms of relevance, impact, and efficiency.

In the event that the MICI recommends conducting an investigation, it includes the following in its Recommendation:

- The objectives of the investigation.
- The scope of the investigation, including the proposed investigation questions. The scope is always limited to the allegations made in the Request and is aimed at investigating only the actions or omissions of the Bank in the context of the relevant operation(s) and in respect of compliance with the Relevant Operational Policies.
- The methodology to be used, including the proposed investigative method(s), the activities to be carried out, and the deliverables.
- The investigative team, which is comprised of the Compliance Review Phase Coordinator, acting as Panel Chair, and two members from the Roster. The selection of experts from the Roster is based on their experience in the required technical issues given the scope of the investigation and their availability to participate in the investigation during the required period. These experts are contracted only after the Board approves the investigation, and their contributions are included in the Compliance Review Report.
- The time frame for the investigation activities will generally not exceed a maximum term of six calendar months from the Panel formation date. If a longer time frame is needed, the Recommendation document will indicate the required time frame and the rationale for extending it.
- The estimated budget required to conduct the investigation.

Before being submitted to the Board, the Recommendation is circulated as a preliminary draft to Management and the Requesters, who are given the opportunity to submit comments in writing to the MICI. The MICI reviews these comments and accepts those it deems relevant. The comments received from both parties are included as annexes to the Recommendation. The final version of the Recommendation is submitted to the Board for consideration by short procedure. If at the conclusion of the term provided for approval by short procedure, this procedure is not halted by any of the members of the Board, the investigation is deemed approved. If the procedure is halted by any of the members of the Board, the issue is scheduled for discussion by the Policy and Evaluation Committee and for subsequent consideration at a Board meeting.

The Recommendation is a public document, and the decision made by the Board regarding the Recommendation is disclosed to the Requesters, Management, and the general public through the MICI Public Registry (<http://www.iadb.org/en/mici>).

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Annex I	Management's Comments on the Preliminary Version of the Recommendation for a Compliance Review

ELECTRONIC LINKS	
1.	Original Request http://www.iadb.org/document.cfm?id=40702191
2.	Joint IDB-IIC Management Response to the MICI-BID-CR-2016-110 Request in relation to the Reventazón Hydroelectric Project in Costa Rica http://www.iadb.org/document.cfm?id=40722803
3.	Determination of Eligibility Memorandum http://www.iadb.org/document.cfm?id=40791405
4.	Loan Proposal – Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project and Other Investments) (CR-L1049) http://www.iadb.org/Document.cfm?id=36971354
5.	Project Profile – Reventazón Hydroelectric Project (CR-L1049) http://www.iadb.org/Document.cfm?id=40676799
6.	Technical Cooperation Profile – Studies and Support for the Environmental and Social Strategy for the Hydroelectric Project (CR-T1086) http://www.iadb.org/Document.cfm?id=37418876
7.	Environmental and Social Action Plan (ESAP) included as the sole annex to the Loan Contract for the Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project and Other Investments) (CR-L1049) http://www.iadb.org/Document.cfm?id=36864764
8.	Environmental and Social Management Report for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056) http://www.iadb.org/Document.cfm?id=36879354
9.	Environmental Impact Assessment for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056) http://www.iadb.org/Document.cfm?id=36447344
10.	Additional environmental studies, construction management plan http://www.iadb.org/Document.cfm?id=40754860
11.	Mendonça, Augusto, <i>Análisis de Estabilidad de las Lagunas Lancaster</i> , December 2016. http://www.iadb.org/Document.cfm?id=40856210
12.	Panthera, final report, <i>Programa de Conservación: Enfoque local para una implementación práctica, Subcorredor Biológico Barbilla-Destierro / Paso del Jaguar</i> http://www.iadb.org/Document.cfm?id=40807259

ABBREVIATIONS

ARESEP	Autoridad Reguladora de los Servicios Públicos [Public Utilities Regulatory Authority]
CAO	Compliance Advisor Ombudsman of the IFC
CATIE	Tropical Agricultural Research and Higher Education Center
CM	Complaints Mechanism of the EIB
DSE	Energy Division of the Ministry of Environment, Energy, and Telecommunications
EA	Environmental assessment
EIA	Environmental impact assessment
EIB	European Investment Bank
ESAP	Environmental and Social Action Plan
ESMP	Environmental and Social Management Plan
ESMR	Environmental and Social Management Report
FONAFIFO	Fondo Nacional de Financiamiento Forestal de Costa Rica [Costa Rican National Forest Financing Fund]
GAB	Grupo Asesor en Biodiversidad [Advisory Group on Biodiversity]
ICE	Instituto Costarricense de Electricidad [Costa Rica Power Authority]
IDB	Inter-American Development Bank
IFC	International Finance Corporation
IIC	Inter-American Investment Corporation
MICI	Independent Consultation and Investigation Mechanism
MINAET	Ministry of Environment, Energy, and Telecommunications
MINEREM	Ministry of Natural Resources, Energy, and Mines
OP-703	Environment and Safeguards Compliance Policy
OP-704	Disaster Risk Management Policy
OP-710	Involuntary Resettlement Policy
PES	Payment for ecosystem services
RHP	Reventazón Hydroelectric Project
Roster	List of technical experts appointed on an ad hoc basis as members of the Panel responsible for conducting a Compliance Review

EXECUTIVE SUMMARY

This document is a recommendation from the Independent Consultation and Investigation Mechanism (MICI) to the Board of Executive Directors to conduct a compliance review of the “Reventazón Hydroelectric Project” (CR-T1074, CR-L1049, CR-L1056, CR-U001, and CR-T1086) (ATN/OC-12720-CR, 2747/OC-CR, 2806-A/OC-CR, 2806-B/OC-CR, 2804/OC-CR, and ATN/OC-13556-CR), in relation to allegations made by a group of Requesters regarding a series of environmental and socioeconomic impacts allegedly generated by the Project, particularly due to an increase in the landslide risk on one of the hillsides on the Finca owned by the Requesters and the potential impact on Laguna Lancaster, a protected wetland, as well as on the Barbilla-Destierro Biological Subcorridor and the water quality of the Reventazón River.

The Reventazón Hydroelectric Project, located in the middle reaches of the Reventazón River in the province of Limón, consists in the design, construction, operation, and maintenance of a hydroelectric power plant with installed capacity of 305.5 megawatts and the construction of a 130-meter-high dam and a 6.9-square-kilometer reservoir, as well as a bypass tunnel, a powerhouse, substations, transmission lines, and adjacent roads. In addition to the main permanent components of the Project, the construction of the hydroelectric plant requires major civil works, including the construction of approximately 20 kilometers of access roads, the removal of waste, and the construction of excavation sites and work camps.

On 16 September 2016, the MICI received a Request from a group of individuals¹ who own [REDACTED], located at the tail of the Project reservoir, in which they allege a number of instances of harm that would have been caused during the preparation, construction, and operation of the Project. Specifically, the Requesters claim that during construction of the work, activities were carried out to extract material at the base of a hillside that is part of their property and supports one of the lagoons at Lagunas Lancaster, exacerbating the instability of the area and putting the wetland, which is protected by Decree 29004 of 1994 of Costa Rica’s Ministry of Natural Resources, Energy, and Mines (MIRENEM), at risk of collapse. They also believe that the excavation works could cause the lagoon to drain and dry up.

In addition, the Requesters express concern about the Project’s impacts on the Barbilla-Destierro Biological Subcorridor, a habitat rich in biodiversity and critical for guaranteeing the passage of threatened species, such as the jaguar. The Requesters also allege a failure to comply with the obligations set out in the environmental impact assessment (EIA), claiming that all vegetation was not removed prior to filling the reservoir, which would be leading to water contamination and promoting the generation of greenhouse gases. Lastly, they state that they have suffered economic harm due to the

¹ Because the Requesters requested confidentiality for fear of reprisals, the public version of this document will be redacted to protect their identity

expropriation process and noted that they are unfamiliar with the criteria used to zone the area for expropriation.

On 20 October 2016, the MICI received Management's Response. As part of the eligibility determination process, on 14-18 November 2016 a MICI team conducted a joint mission to Costa Rica with delegations from the accountability mechanisms of the International Finance Corporation (IFC) and the European Investment Bank (EIB)—the Compliance Advisor Ombudsman (CAO) and the Complaints Mechanism (CM), respectively—since both institutions, having participated in financing for the Project, would also have received requests similar to the one received by the MICI. The mission included a field visit to Siquirres, the district where [REDACTED] and the Project are located, in order to meet with the Requesters and tour the area that was allegedly affected. In addition, meetings were held with Project officials from the executing agency, ministry officials, and the IDB and IIC project team at the Country Office, as well as with other actors involved in the Project. The MICI engaged the services of an independent geologist, Dr. Augusto Mendonça, who accompanied the mission to Costa Rica to provide support in assessing the feasibility and imminence of some of the allegations of a geological nature made by the Requesters.

On 23 November 2016, the Eligibility Memorandum was issued, which concluded that the Request was eligible inasmuch as it met all the eligibility criteria of the Policy, with the exception of the fair price for expropriation based on the application of exclusion 19(d) of the MICI Policy, concerning issues or matters that are under arbitral or judicial review. Because the Requesters requested a Compliance Review Phase only with the MICI, following distribution of the Eligibility Memorandum to the Board of Executive Directors on 12 December 2016, the case was transferred to that phase. The MICI had a period of 21 business days to prepare this document.

As per the MICI Policy, a draft version of this document was sent to the Requesters and Management for comment. The MICI received comments from Management, which were carefully analyzed. This final version reflects that analysis, and its content has been adjusted as the MICI has deemed relevant. The substantive issues raised in the comments will be examined in the investigative phase. The comments are available for consultation in the annexes. The Requesters said they did not have any comments on the document.

In accordance with paragraph 41 of the MICI Policy (document MI-47-6) and as described in detail in this document, it is recommended that the Board of Executive Directors authorize the MICI to conduct a compliance review process for the Project for the purpose of impartially and objectively investigating the allegations made by the Requesters with respect to the Bank's potential noncompliance with Operational Policies OP-703 and OP-704, and in the event that its findings confirm the allegations, determining whether this caused or could cause the alleged harm.²

² In accordance with the MICI Policy, the harm may be actual or potential.

The Reventazón Hydroelectric Project is very important for the country and the region. This investigation is recommended based on the relevance of the Project and the importance of assuring its success as a model of sustainability for hydroelectric projects in the region. It is the MICI's belief that an investigation in this case will be useful for establishing a detailed account of the actions taken by the Bank with respect to its Relevant Operational Policies in the preparation, construction, operation, and supervision of the Project, and in the event of any finding of noncompliance with those policies, for determining whether the noncompliance could result in the harm alleged by the Requesters. In such event, the investigation would help to identify key aspects to propose timely corrective measures aimed at preventing consolidation of the harm and strengthening sustainability of the Project.

This document contains five sections and an annex. Section I provides a brief overview of the IDB-financed Project; Section II lists the allegations made by the Requesters; Section III summarizes Management's response to the Requesters' allegations; Section IV describes the steps taken by the MICI to date; and Section V lays out the reasons for the MICI's recommendation for an investigation and the proposed terms of reference for the Compliance Review: rationale, scope, methodology, timetable, team, and budget. Lastly, Annex I contains Management's comments on the draft version that was circulated.

I. THE PROJECT¹

A. Background

- 1.1 The electricity sector in Costa Rica is characterized by extensive State participation in operations, as well as in policy, planning, and regulatory roles. The Costa Rica Power Authority (ICE) is responsible for developing hydroelectric and geothermal resources, planning the expansion of the interconnected system, and operating it, and it is also in charge of the transmission network and distribution throughout most of the country. Energy policy and planning are the responsibility of the Energy Division (DSE) of the Ministry of Environment, Energy, and Telecommunications (MINAET). The Public Utilities Regulatory Authority (ARESEP) sets electricity rates using the cost-of-service principle, understood as the long-term social opportunity cost of the service, based on criteria of economic efficiency, social equity, environmental sustainability, and resource conservation.²
- 1.2 From 1990 to 2007, Costa Rica posted sustained economic growth, which was reflected in an average annual increase of 5% in demand for electricity in the country. Based on that trend, the government developed the Electricity Generation Expansion Plan for 2010-2021, with plans to add 2,000 megawatts of net generating capacity—92% from renewable sources—between 2010 and 2019, in order to meet annual growth of 5.3% in electricity demand starting in 2011.

B. Reventazón Hydroelectric Project (CR-L1049, CR-L1056, CR-U001, CR-T1086) (ATN/OC-12720-CR, 2747/OC-CR, 2806-A/OC-CR, 2806-B/OC-CR, 2804/OC-CR, ATN/OC-13556-CR)

- 1.3 The Reventazón Hydroelectric Project (RHP),³ which the ICE began to develop in September 2009, is one of the largest initiatives in the Electricity Generation Expansion Plan. Located in the middle reaches of the Reventazón River in the province of Limón, it consists in the design, construction, operation, and maintenance of a hydroelectric power plant with installed capacity of 305.5 megawatts and the construction of a 130-meter-high dam and a 6.9-square-kilometer reservoir, as well as a bypass tunnel, a powerhouse, substations, transmission lines, and adjacent roads.⁴
- 1.4 In addition to the main permanent components of the RHP, the construction of the hydroelectric plant required major civil works, including the construction of approximately 20 kilometers of access roads, the removal of waste, and the construction of excavation sites and work camps. Most of these construction activities were to be carried out on the right bank of the Reventazón River.⁵

¹ Information extracted from the Bank's website and public documents on the operations, available via the electronic links section of this document.

² Project profile (CR-L1049), page 1.

³ Project profile (CR-L1049), page 2.

⁴ Project profile (CR-L1049), paragraph 2.10, and the ESMR (CR-L1049 and CR-L1056), paragraph 2.1.

⁵ ESMR (CR-L1049 and CR-L1056), paragraph 2.3.

- 1.5 In 2011, the IDB approved the first operation associated with the project. The IDB Group is participating in the RHP with five loan operations (see Table 1). In addition to two technical cooperation operations to support environmental and social studies and a guarantee, the IDB's support has been provided via two operations: a sovereign guaranteed loan under the CCLIP CR-X1005 in support of operation CR-L1049, and a nonsovereign guaranteed loan in support of operation CR-L1056. The first operation was directly executed by the ICE, and the second was executed using a trust.

Table 1
Reventazón Hydroelectric Project - List of operations financed by the IDB Group

	Project Number/ Operation	Name	Operation type	Approval date	Operation amount in US\$ millions
1	CR-T1074 ATN/OC-12720-CR	Complementary environmental studies, Reventazón Hydroelectric Project	Nonreimbursable technical cooperation	12 May 2011	0.47
2	CR-L1049 2747/OC-CR	Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project and Other Investments)	Sovereign guaranteed loan	25 June 2012	250.00
3	CR-L1056 2806 A/OC-CR 2806 B/OC-CR	Reventazón Hydroelectric Project	Nonsovereign guaranteed loan	19 October 2012	673.00
4	CR-U0001 2804/OC-CR	Reventazón Hydroelectric Project	Guarantee	19 October 2012	98.00
5	CR-T1086 ATN/OC-13556-CR	Costa Rica: Studies and support for the environmental and social strategy for the Reventazón Hydroelectric Project	Nonreimbursable technical cooperation	4 December 2012	0.74

- 1.6 The total cost of the RHP is estimated at US\$1.4 billion and, in addition to the IDB funding, includes a combination of funding from the ICE and commercial banks in Costa Rica, as well as the International Finance Corporation (IFC) and the European Investment Bank (EIB) through the Central American Development Bank.
- 1.7 The project was classified as a category “A” operation, under Operational Policy OP-703, for its potential to cause significant negative environmental impacts and associated social impacts if adequate mitigation measures are not taken. In addition to the typical effects and risks associated with civil works for the construction of a major infrastructure project, the main environmental and social impacts and risks identified include: (i) the potential adverse direct effects on natural habitats, and particularly on migratory fish in the area of influence of the RHP; (ii) the potential direct and indirect effects (changes in hydrology and

sedimentation) downstream from the powerhouse and along the northern and southern coast of the mouth of the Reventazón River, especially in Tortuguero National Park, an international ecotourism destination and important nesting ground for loggerhead and green sea turtles; (iii) the potential adverse social effects associated with large-scale land acquisitions (though no physical displacement is expected) and on ecotourism activities in the area (rafting); (iv) the cumulative impacts related to the operation of the Angostura, Cachi, and Reventazón hydroelectric plants;⁶ and (v) the loss of connectivity along the Barbilla-Destierro Biological Subcorridor, or the Jaguar Corridor, a critical natural habitat, which would also undermine the effectiveness of important efforts to preserve the Mesoamerican Biological Corridor.⁷

- 1.8 According to the Environmental and Social Management Report (ESMR), the strategy for mitigating these impacts includes activities to: (i) restore the connectivity of the Barbilla-Destierro Biological Subcorridor by rehabilitating and maintaining the habitat at the tail of the reservoir; (ii) support the conservation of an ecologically similar fluvial system; (iii) develop and implement a management program for the Reventazón-Parismina-Tortuguero hydrobiological system; (iv) develop a resettlement framework that incorporates standards and principles on land acquisition procedures in accordance with the standards set out in Operational Policy OP-710; and (v) prepare a specific management plan for construction.⁸ As a condition precedent to the disbursement of funds, the measures specified in the ESAP must be fulfilled by the ICE.⁹ Fulfillment of the ESAP must be actively supervised by the Bank.¹⁰
- 1.9 The project triggered application of the following Relevant Operational Policies: OP-704, OP-703, OP-710, and OP-761.¹¹
- 1.10 The project was officially inaugurated on 16 September 2016. According to the executing agency, in November of the same year, the RHP leasing stage began with the issuance of certificates of compliance, in order to launch operations.

⁶ Project profile (CR-L1049), page 4.

⁷ ESMR, page 16 et seq.

⁸ ESMR, page 16 et seq.

⁹ ESAP, Sole Annex to the Loan Contract (CR-L1049).

¹⁰ Loan proposal, CR-L1049, paragraph 2.6.

¹¹ ESMR, page 13, and project profile (CR-L1049), page 5.

II. THE REQUEST¹²

- 2.1 On 16 September 2016, the MICI received a Request from a group of Requesters who own [REDACTED], six properties located at the tail of the RHP reservoir, and who claim to have been affected by the Project. The group of Requesters asked the MICI to keep their identity confidential.¹³
- 2.2 The Requesters report that they have been present in the area since 1996, when they purchased the first farm for reforestation purposes, inasmuch as the area was in a state of severe erosion. Subsequently, they decided to purchase the other properties in order to create a biological unit for conservation. They indicate to the MICI that there are four bodies of water within the Finca, and two, known as Lancaster Lagoons, were declared protected wetlands on 21 February 1994 by Decree 23004 of Costa Rica's Ministry of Natural Resources, Energy, and Mines (MIRENEM), due to their ecological importance. The Requesters say [REDACTED] is now a valuable habitat that is rich in wildlife and home to endangered species.
- 2.3 The Requesters indicate that in order to raise funds for the reforestation work, they set aside a large area of the Finca for sustainable forestry uses and established payment for ecosystem services (PES) agreements with the Costa Rican National Forest Financing Fund (FONAFIFO).
- 2.4 The Request makes four main claims regarding the alleged harm suffered by the Requesters and the Bank's noncompliance with its Relevant Operational Policies in the preparation, construction, and operation of the project. The main points are summarized below.
- 2.5 **Risk of landslide and collapse of one of the lagoons at Lagunas Lancaster.** The Requesters say that in the context of the project, material was extracted near the base of the hillside that supports one of the lagoons at Lagunas Lancaster for construction of the dam, exacerbating the instability of these lands and putting the hillside and wetlands at serious risk of collapse. They claim that the mining permit obtained by the executing agency did not cover the areas where material was extracted and that extraction activities took place on private property. They also claim that the damage caused by these extraction activities could cause one of the lagoons at Lagunas Lancaster to gradually drain and dry up.¹⁴

¹² The Request is available via the electronic links section of this document and the MICI Public Registry. The information presented in this section reflects the statements made in the Request as well as information obtained during the eligibility mission carried out by the MICI on 14-18 November 2016.

¹³ Because the Requesters requested confidentiality for fear of reprisals, the public version of this document will be redacted to protect their identity.

¹⁴ Attached as an annex to the request, the Requesters presented an independent technical report by the geologist Allan Astorga supporting these claims.

2.6 Impact on the connectivity of the Barbilla-Destierro Biological Subcorridor.

The Requesters state that the measures to restore the connectivity of the Barbilla-Destierro Biological Subcorridor are not being properly implemented, jeopardizing conservation of the area's biodiversity and the species that move through the biological corridor. They claim that: (i) the Finca is located at the tail of the reservoir, a strategic area for restoring the connectivity of the Barbilla-Destierro Biological Subcorridor; (ii) they are unfamiliar with the criteria that were used to zone the area for expropriation, explaining that only part of the Finca was expropriated, destroying the biological unit by physically dividing the forest; (iii) wire fencing and compressed plastic posts have been erected to mark the boundary of the expropriated area, impeding the movement of wild cats and other wildlife; and (iv) the reforestation plan for mitigating the fragmentation of the Barbilla-Destierro Biological Subcorridor has not been fulfilled, and on the contrary, the ICE has felled trees in the area subject to the PES agreement with FONAFIFO.

2.7 Contamination due to flooding of forests. The Requesters claim that contrary to the obligations established in the environmental impact assessment (EIA) for the project, biomass was not removed from the areas that would be flooded when the reservoir was filled. They state that this rotting plant matter and a proliferation of water lily growth in the river have already started to contaminate the water. Furthermore, they claim, this omission would contribute to the generation of greenhouse gases such as methane and carbon dioxide, undermining the environmental sustainability of the project.

2.8 Alleged harm related to expropriation. The Requesters indicate that the ICE expropriated one third of the total area of their property (63 hectares), but they did not receive any information on the criteria used to determine which areas to expropriate. They claim that this expropriation has adversely affected their earnings from the Finca since the expropriated area includes the land set aside for forestry uses, which at the time of expropriation was subject to PES contracts with Costa Rica's forestry authority. In addition, they say that this forced them to dismiss employees and that the access road to the water tank that supplies the Finca is located in the expropriated area. Regarding compensation for the expropriated area, the Requesters claim that the amount does not reflect the environmental and forestry use value. Given that the Requesters did not accept the terms of expropriation proposed by the ICE, the ICE initiated legal expropriation procedures, presently under way, to determine a fair price.

2.9 In summary, the Requesters allege that the aforementioned harm was the result of the Bank's noncompliance with the obligations set out in Operational Policies OP-703 and OP-704, including as they relate to supervision of compliance.

- 2.10 It should be noted that on 9 February 2016, the Requesters contacted IDB Management to convey their concerns about the project. In April 2016, based on that complaint, the IDB and the IFC conducted a technical mission to the area and made arrangements for a dialogue process between the Requesters and the ICE. However, the Requesters decided not to proceed with the dialogue process, feeling that it was not an appropriate forum for addressing their concerns, and instead decided to approach the MICI. In addition, because the IFC and the EIB contributed financing to the project, the Request was also submitted to the accountability mechanisms of those institutions, the Compliance Advisor Ombudsman (CAO) and the Complaints Mechanism (CM), respectively. These mechanisms, having declared the Request to be admissible, are presently in the analysis stage as per their respective procedures.

III. MANAGEMENT'S RESPONSE¹⁵

- 3.1 IDB and IIC Management submitted a joint response to the Request on 20 October 2016, a summary of which follows.
- 3.2 Management comments that the project "has been carefully designed and implemented as a global model for sustainable infrastructure, taking advantage of the synergies between both public and private sector arms of the IDB Group" and adds that "during the two years of preparation of the Project, between 2010 and 2012, IDB's technical cooperation strengthened significantly the Project's environmental and social impact assessment."¹⁶
- 3.3 According to Management, the biodiversity mitigation program designed and implemented for the RHP is unprecedented. It states, "the Jaguar Corridor Program is a first of its kind by aiming to restore and improve connectivity of a biodiversity corridor, using a variety of instruments such as payment for ecosystem services (PES)," and "the aquatic offset program, which aims to protect another river system in compensation for the Project's adverse impact on the Reventazón River, is the first ever implemented in [Latin America and the Caribbean (LAC)] and constitutes a model for future hydropower developments in the Region."¹⁷
- 3.4 Management responded as follows to the main allegations presented by the Requesters:
- 3.5 **Risk of landslide and collapse of one of the lagoons at Lagunas Lancaster.** Management gives assurances that the April 2016 mission found no evidence that

¹⁵ The Joint IDB-IIC Management Response is available via the electronics link section of this document and the MICI Public Registry.

¹⁶ Management Response, page 1.

¹⁷ Management Response, page 1.

the Project had damaged the stability of Lagunas Lancaster or that there had been any deviation from local laws and regulations during extraction activities. Specifically, it says, “the ICE also confirmed that no material was extracted from the river banks,” and although this area is susceptible to landslides, there is no visual evidence that the situation had worsened since the launch of the Project and that “the risk of landslides caused by weathering and erosion processes, which is naturally high in the reach of the Laguna Lancaster, has not been and will not be exacerbated by the construction or the operation of the Project.” Lastly, Management comments that given that the lagoon alleged to be at risk of collapse is located outside the direct area of influence of the reservoir and at a higher elevation, it is very unlikely that it would be directly affected by the reservoir. Management presented a report from an independent engineer, which supports these assertions.¹⁸

- 3.6 **Impact on the Barbilla-Destierro Biological Subcorridor.** Management indicates that possible adverse impacts on the Barbilla-Destierro Biological Subcorridor were identified at the project planning stage, so a mitigation strategy and master plan for implementing the strategy were developed. Management comments that the plan was created by the Tropical Agricultural Research and Higher Education Center (CATIE), and the monitoring framework included, in addition to Bank and executing agency activities, an independent environmental and social auditor, monitoring by the organization Panthera, and guidance and supervision by the Advisory Group on Biodiversity (GAB). Management’s Response further indicates that both Management and the independent environmental and social consultant and the GAB have determined that implementation of the environmental and social mitigation measures called for in the Environmental and Social Action Plan (ESAP) has progressed satisfactorily in all stages of the Project, and close supervision is continuing in the operation stage. It also confirms that “the area of Laguna Lancaster [...] is indeed included in the priority area for the restoration of connectivity at the tail of the Project’s reservoir” and clarified that “the tail end of the reservoir is defined by the Project’s basic design parameters, and therefore its location cannot be changed.”¹⁹
- 3.7 **Contamination due to flooding of forests.** Management comments that removing all biomass prior to filling the reservoir may be impractical and could, on occasion, even lead to undesired environmental impacts such as increased risk of erosion and landslides. It mentions that during project preparation, studies were conducted to model water quality and estimate greenhouse gas emissions, and the finding was that the level of biomass in the reservoir area is low and would not affect water quality or greenhouse gas emissions during operation of the project.²⁰

¹⁸ Management Response, pages 6 and 8. Annex III to the Response. Management hired the independent engineer in response to the complaint submitted by the Requesters.

¹⁹ Management Response, pages 2 and 9.

²⁰ Management Response, page 10.

- 3.8 **Harm related to expropriation.** Management states that in accordance with the Strategic Framework for Resettlement or Improved Living Conditions for the Project, the owners of [REDACTED] “were not considered as vulnerable to the risk of economic displacement, and were eligible for cash compensation at full replacement cost following laws and regulations applicable in Costa Rica.”²¹ It adds that the criteria for land valuation are described in the strategic framework and that the land expropriation process and corresponding compensation are under judicial review in the national courts.

IV. THE MICI PROCESS TO DATE

- 4.1 The Request was received by the MICI on 16 September 2016. In accordance with the MICI Policy, on 23 September 2016, after five business days, the Requesters and Management were notified of the registration of Request MICI-BID-CR-2016-0110.
- 4.2 Given that the IFC and EIB accountability mechanisms would have received identical requests to the one received by the MICI, the MICI Director got in contact with both institutions as stipulated in paragraph 68 of the MICI Policy, regarding cooperation with other accountability mechanisms.
- 4.3 After receiving Management’s Response, and as part of the eligibility determination process, on 14-18 November 2016 a MICI team conducted a joint mission to Costa Rica with delegations from the CAO and the CM. The mission included a field visit to Siquirres, the district where the RHP and [REDACTED] are located, in order to meet with the Requesters and tour the area involving the alleged harm. In addition, meetings were held with project officials from the executing agency, ministry officials, and the IDB and IIC project team at the Country Office, as well as scholars, civil society groups, and other individuals affected by the Project.
- 4.4 Inasmuch as some of the allegations of harm are related to technical concerns of a geological nature, specifically concerning the imminent collapse of one of the lagoons at Lagunas Lancaster, the MICI engaged the services of an independent geologist, Dr. Augusto Mendonça,²² who joined the mission to Costa Rica to provide support to the MICI and the other participating mechanisms in assessing the feasibility of the claims.²³
- 4.5 On 23 November 2016, the Eligibility Memorandum was issued, which concludes that the Request is eligible inasmuch as it meets all the eligibility criteria of the Policy,

²¹ Management Response, page 12.

²² Access to Dr. Augusto Mendonça’s curriculum vitae: <http://www.iadb.org/Document.cfm?id=40726525>.

²³ The report presented by the expert is available via the electronic links section of this document.

with the exception of the fair price for expropriation based on the application of exclusion 19(d) of the MICI Policy, concerning issues or matters that are under arbitral or judicial review.²⁴

- 4.6 Given that the Requesters requested a Compliance Review Phase only with the MICI, following distribution of the Eligibility Memorandum to the Board of Executive Directors on 12 December 2016, the case was transferred to that phase. That date marked the start of the period of 21 business days provided in the MICI Policy for preparing this document, which is based on preliminary documentation and information to help the MICI identify the aspects to analyze in an investigation.
- 4.7 Both Parties had a period of 15 business days to comment on this document.²⁵ The Requesters indicated to the MICI that they did not have comments on the document. On 1 February 2017, the MICI received Management's comments,²⁶ which have been carefully analyzed, and the MICI appreciates the observations and points made. This document has incorporated, in an objective and impartial manner, those comments that the MICI has deemed relevant. The substantive issues raised in the comments will be examined in the investigative phase, if it is authorized by the Board of Executive Directors. Management's original comments are available for consultation in the annexes.
- 4.8 The Recommendation for Compliance Review and Terms of Reference are submitted in final version for consideration by the Board of Executive Directors, which is the entity authorized to approve or deny a compliance review investigation by the MICI.
- 4.9 In relation to the status of the processes at the other mechanisms (CAO and CM), at the time of completion of this Recommendation, both had declared the Request to be admissible and were analyzing it in accordance with their respective procedures. The MICI maintains ongoing communication with both institutions and plans to continue to collaborate with them in subsequent phases.
- 4.10 Lastly, it is important to note that on 7 December 2016, the MICI received a new Request in relation to the RHP from neighbors of the owners of [REDACTED]. The new Request is presently in the determination of eligibility process. Some

²⁴ Eligibility Memorandum, available via the electronic links section of this document.

²⁵ The timeline and budget for the investigation are not included in the MICI documents sent to the Parties. The investigation timeline is based on the time periods established in the MICI Policy, and since the MICI functions independently from the Bank's Management, budgetary matters are not subject to comment by Management but rather are within the purview of the Board of Executive Directors.

²⁶ In addition, prior to preparing the draft version of the Recommendation for Compliance Review and Terms of Reference, the MICI held two meetings with Management, at Bank headquarters and the Country Office, in order to share information on the project and hear Management's perspective on the Request. The MICI held meetings with the Requesters when the Request was presented and during the determination of eligibility mission.

aspects of the allegations made in the new Request are similar to the those presented in this document.²⁷

V. RECOMMENDATION FOR COMPLIANCE REVIEW

- 5.1 This Recommendation for Compliance Review and Terms of Reference is submitted for consideration by the Board of Executive Directors in accordance with paragraphs 39, 40, and 41 of the MICI Policy.
- 5.2 In accordance with paragraph 41 of the MICI Policy, it is recommended that the Board of Executive Directors authorize the MICI to conduct a compliance review investigation of the Reventazón Hydroelectric Project operation²⁸ for the purpose of determining whether, in reference to the statements made in the Request, the Bank complied with the Relevant Operational Policies, OP-703 and OP-704, and in the event that it did not, whether this caused or could cause the harm alleged by the Requesters.
- 5.3 Specifically, given the magnitude of the project in terms of its size and the type and extent of environmental and social impacts that it has been determined that it would generate, as well as the fact that the Bank has worked hard to create a recognized set of environmental and social best practices for hydroelectric projects in the region, the MICI has determined that an investigation would allow for a detailed account of the actions taken by the Bank during preparation, approval, and supervision of the Project with respect to the provisions stipulated in the Relevant Operational Policies. The findings generated by an investigation will make it possible to confirm whether the Bank has complied or not with the obligations set out in the Relevant Operational Policies, and if it has not, to identify and establish timely corrective measures to prevent/mitigate the negative environmental and social impacts that the Project may have generated or could generate in terms of:
- (a) Protection of the area's rich biodiversity, especially in relation to the Biological Subcorridor;
 - (b) Conservation of the wetlands located on [REDACTED], declared protected areas by the Costa Rica authorities;
 - (c) The disaster risks associated with the potential collapse of the hillsides adjacent to the tail of the reservoir, especially those located within [REDACTED] and [REDACTED]

²⁷ Request received on 7 December 2016. Reventazón Hydroelectric Project, MICI-BID-CR-2016-0112. Available via the MICI Public Registry: <http://www.iadb.org/es/mici/detalle-de-la-solicitud.19172.html?ID=MICI-BID-CR-2016-0112>.

²⁸ CR-T1074, CR-L1049, CR-L1056, CR-U001, CR-T1086, ATN/OC-12720-CR, 2747/OC-CR, 2806 A/OC-CR, 2806 B/OC-CR, 2804/OC-CR, and ATN/OC-13556-CR.

- (d) The negative impacts on the economies, livelihoods, and ways of life of the owners of the property subject to expropriation, particularly with regard to the expropriation of areas designated for forestry use under PES contracts and access roads to water sources.

- 5.4 Recognizing the importance that the Costa Rican government places on biodiversity and environmental conservation, the importance of generating electricity from renewable sources, the relevance of the alleged harm, and taking into account the discrepancies between the positions of the Requesters and Management on matters essential to the identification and mitigation of risks, the MICI believes that it is appropriate to conduct an investigation to clarify the allegations concerning acts and omissions by the Bank, exclusively in relation to its obligations deriving from the Relevant Operational Policies.
- 5.5 Furthermore, the MICI believes that the investigation is important given the leadership role that the Bank has had in developing the project with respect to the other private and multilateral participants in the financing structure, noting that the accountability mechanisms of the two multilateral banks (IFC and EIB) are also processing this complaint.

A. Rationale

Regarding compliance with the Disaster Risk Management Policy (OP-704)

- 5.6 The purpose of Operational Policy OP-704 is to guide the Bank's efforts to assist its borrowers in reducing risks emanating from natural hazards and in managing disasters, in order to support the attainment of their social and economic development goals. The policy defines natural hazards as "natural processes or phenomena affecting the biosphere that may constitute a damaging event,"²⁹ including phenomena such as landslides and floods. It defines a disaster as "a serious disruption of the functioning of a society, community, or project causing widespread or serious human, material, economic, or environmental losses which exceed the coping ability of the affected society, community, or project using its own resources."³⁰ One of the specific objectives of Operational Policy OP-704 is "to strengthen the Bank's effectiveness in supporting its borrowers to systematically manage risks related to natural hazards by identifying these risks, reducing vulnerability, and preventing and mitigating related disasters before they occur."³¹

²⁹ OP-704, III, Key Definitions.

³⁰ OP-704, III, Key Definitions.

³¹ OP-704, II, Objectives. The policy defines vulnerability as a condition determined by physical, social, economic, and environmental factors or processes that increase the susceptibility of a community to the impact of hazards. See OP-704, III, Key Definitions.

- 5.7 Directive A-2 of Operational Policy OP-704 establishes the need to determine the disaster risk in Bank-financed projects and establish measures to reduce it. The policy specifies that special care should be taken to assess risk for projects that are located in areas that are highly prone to disasters, as well as in sectors such as energy, water and sanitation, and infrastructure. It likewise establishes that in the analysis of risk and project viability, consideration should be given to both structural and nonstructural mitigation measures, which means paying attention to the capacity of the competent national institutions to enforce proper design and construction standards.³² In addition, if significant risks due to natural hazard are identified at any time during the project preparation process, appropriate measures should be taken to establish the viability of the project, including the protection of populations and investments affected by Bank-financed activities. The policy also states that alternative prevention and mitigation measures that decrease vulnerability must be analyzed and included in project design and implementation, and these should include safety and contingency planning to protect human health and economic assets. In the case of physical assets, the policy specifies that the Bank will require that, as part of project preparation, the borrower establish protocols to carry out periodic safety evaluations and conduct proper maintenance of the project equipment and works in accordance with generally accepted industry norms.³³
- 5.8 The Requesters allege that material was extracted from the hillsides adjacent to the tail of the reservoir and at the base of the hillside supporting one of the lagoons at Lagunas Lancaster, which, in their view, would have exacerbated the natural instability of those slopes, creating a serious risk of collapse of the hillside and the wetland. In addition, they claim that fluctuations in the water level of the reservoir during operation could worsen the natural vulnerability of the hillsides.
- 5.9 According to the report from the expert hired by Management, the landslide risk in the area is high but the risk would not have been exacerbated by the RHP. The report states that due to geological conditions in the area, the lagoon in question at Lagunas Lancaster is likely to be affected over time by gradual landslides and erosion as a result of the natural erosive processes of the Reventazón River and the Moncha Stream, and even by earthquakes.³⁴
- 5.10 The geologist who supported the MICI eligibility mission says there is no indication that extraction activities could have led to a movement of ground of the magnitude suggested by the Requesters.³⁵ However, he does identify active movements of land and confirmed, as did the expert hired by Management, that the hillside

³² OP-704, Directive A-2. Risk and Project Viability.

³³ OP-704, Directive A-2. Risk and Project Viability.

³⁴ Fichter, Reventazón Hydroelectric Project – Stability of Laguna Lancaster, October 2016, page 18.

³⁵ Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016, page 7.

supporting Laguna Lancaster is located in a highly unstable area.³⁶ In addition, based on a preliminary review of the project documents, the MICI finds several mentions of the instability of the hillsides in the area of the reservoir, as well as active ground movements in the Lagunas Lancaster zone.³⁷ Along the same lines, the MICI finds that Management determined that Operational Policy OP-704 should be activated in relation to the height of the dam, the storage capacity of the reservoir, volcanic activity, and possible landslides in the reservoir area.³⁸

- 5.11 The MICI finds that, based on the technical reports prepared by the participating geologists and the project documents, there is evidence attesting to the instability of the area and to the fact that the hillside supporting Laguna Lancaster is located in an area at very high risk of landslides and active shifts in land masses³⁹ (see Image 1). The geologists' reports have recommended monitoring the area and/or conducting additional studies to gain a better understanding of the geological and hydrogeological characteristics of the area and the geotechnical parameters of the properties of the hillside and to establish a program for monitoring the evolution of active ground movements or to carry out stabilization works in the future.⁴⁰
- 5.12 Based on the preliminary review of the project documents, the information obtained from the eligibility determination mission, and Management's Response, the MICI has not found any documentation presenting a strategy to prevent or mitigate the disaster risk posed by active landslides on the hillside supporting Laguna Lancaster, nor measures to reduce the vulnerability of this area. Based on the preliminary analysis, the MICI has been able to verify the existence of excavation remains along the river banks, approximately 700 meters downstream from the Lancaster area⁴¹ (see Image 2) and has received images showing extraction activity near the base of the hillside that supports Laguna Lancaster⁴² (see Image 3).

³⁶ Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016, page 32 et seq., and Fichter, Reventazón Hydroelectric Project – Stability of Laguna Lancaster, October 2016, page 18.

³⁷ EIA, section 7; EIA, pages 308, 376, and 364 et seq. See also, Fichter, Reventazón Hydroelectric Project – Stability of Laguna Lancaster, October 2016.

³⁸ Project profile, CR-L1049, paragraph 3.3.

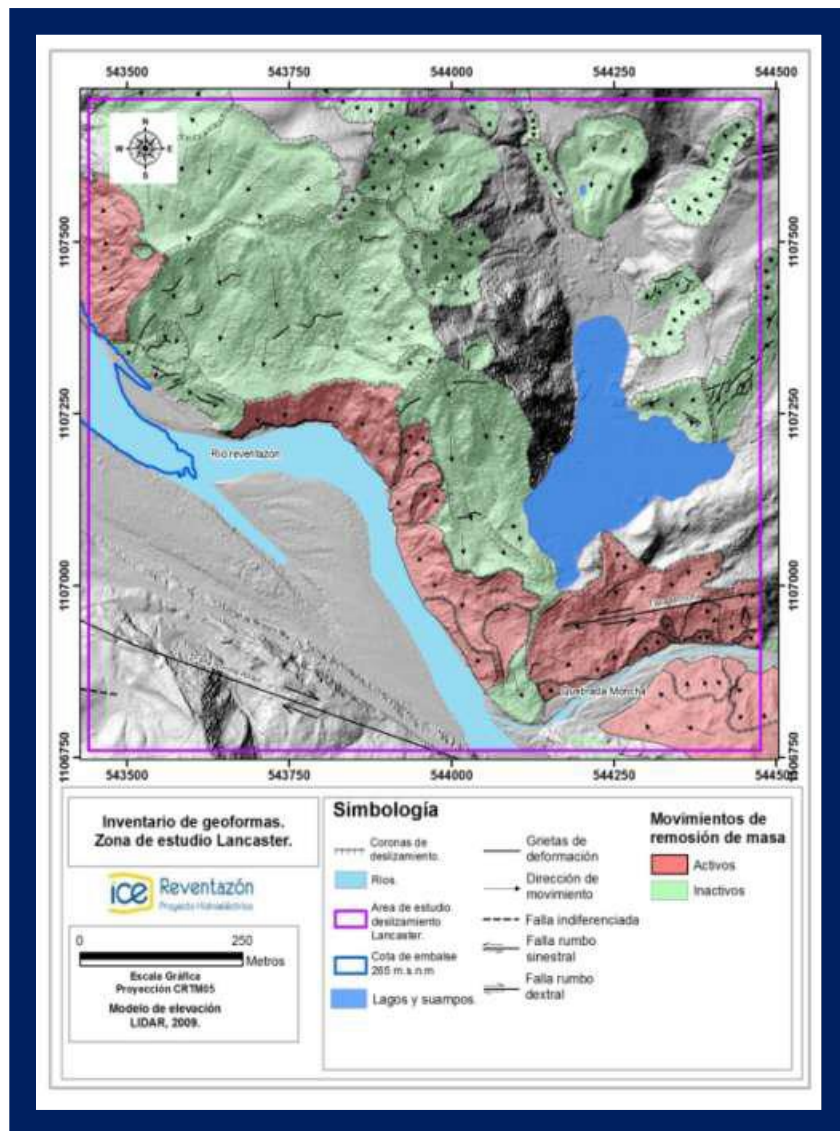
³⁹ Fichter, Reventazón Hydroelectric Project – Stability of Laguna Lancaster, October 2016, pages 9, 18, and 19; Astorga, Allan, Expert technical opinion on the risk of collapse of the Lancaster wetlands as a result of construction of the Reventazón Hydroelectric Project, September 2016, page 5; and Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016, pages 32 et seq.

⁴⁰ Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016, page 6; Fichter, Reventazón Hydroelectric Project – Stability of Laguna Lancaster, October 2016, page 21; and Astorga, Allan, Expert technical opinion on the risk of collapse of the Lancaster wetlands as a result of construction of the Reventazón Hydroelectric Project, September 2016, page 8.

⁴¹ Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016, page 13.

⁴² The geologist hired by the MICI concluded that there is evidence of extraction activity on the hillside supporting Laguna Lancaster. See Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016, page 20.

Image 1. Active landslides in the Laguna Lancaster area



Map of areas with active and inactive ground movements.
Source: Annex 3, Management Response.

Image 2.



Remains of excavation works adjacent to the right bank of the river.
Source: MICI team, 16 November 2016.

Image 3.



Excavation and earthmoving operations next to the hillside supporting Laguna Lancaster.
Source: Request.

- 5.13 Although the MICI has found, in its preliminary analysis, that the various experts and documentation coincide on the existence of active landslides of the hillside and the high risk characterizing the area due to its instability, it has also identified

contradictory accounts with respect to three main points: (i) the occurrence of the alleged extraction of material from the hillside; (ii) the possible contribution of this extraction to increased instability of the hillside; and (iii) the degree of risk and magnitude of a potential collapse of the hillside and Laguna Lancaster.

- 5.14 Given the complexity of the situation, the MICI believes that an investigation would help to clarify whether the Bank carried out actions to evaluate, prevent, manage, and/or, as applicable, reduce the risk of a natural threat in this case and/or its exacerbation, in accordance with the requirements of Operational Policy OP-704.

Regarding compliance with the Environment and Safeguards Compliance Policy (OP-703) and its directives B.1, B.2, B.4, B.5, B.7, B.9, B.11, and B.12

- 5.15 Directive B.1 of Operational Policy OP-703 states that the Bank will only finance operations that comply with the directives of the policy and are consistent with the relevant provisions of other Bank policies. Directive B.2 establishes that the Bank will require the borrower for an operation to ensure that it is designed and carried out in compliance with the environmental laws and regulations of the country where it is being implemented. Meanwhile, Directive B.4 stipulates that in addition to risks posed by environmental impacts, the Bank will identify and manage other risk factors that may affect the environmental sustainability of its operations, including the governance capacity of executing agencies or third parties, sector-related risks or risks associated with highly sensitive environmental and social concerns, and vulnerability to disasters.
- 5.16 Directive B.5 establishes the minimum requirements that an environmental impact assessment (EIA) must meet, specifying the need for to conduct screening and scoping for impacts and to give due consideration to direct, indirect, regional, and cumulative impacts using adequate baseline data as required; impact mitigation and management plans presented in an environmental and social management plan (ESMP); the incorporation of environmental assessment (EA) findings into project design; and measure for adequate follow-up of implementation of the ESMP. Directive B.7 indicates that the Bank will monitor compliance by the executing agency with all safeguard requirements stipulated in the loan agreement and project operating or credit regulations. It also specifies that category "A" projects will be reviewed at least annually to assess safeguard compliance.
- 5.17 Directive B.9 establishes that the Bank will not support operations that, in its opinion, significantly convert or degrade critical natural habitats, unless: (i) there are no feasible alternatives acceptable to the Bank; (ii) comprehensive analysis demonstrates that overall benefits from the operation substantially outweigh the environmental costs; and (iii) mitigation and compensation measures are incorporated that are acceptable to the Bank and that are adequately funded, implemented, and monitored. Directive B.11 stipulates that operations will include,

as appropriate, measures to prevent, reduce, or eliminate pollution emanating from their activities. Furthermore, the Bank will encourage the reduction and control of greenhouse gas emissions, and in the case of operations that produce significant emissions, direct emissions will be measured on an annual basis. Lastly, Directive B.12 states that the Bank will finance operations already under construction only if the borrower can demonstrate that the operation complies with all relevant provisions of the policy.⁴³

- 5.18 The Requesters claim that the instability of the hillside was accelerated as a result of activities to extract material near its base, which left holes and was done in violation of the concession. They state that conservation of the zone's biodiversity and the species that move along the biological corridor have been jeopardized by the wire fencing and compressed plastic posts erected to mark the boundary of the expropriated area, which impede the movement of wildlife. They also state that the reforestation plan for mitigating the fragmentation of the Barbilla-Destierro Biological Subcorridor is not being implemented and claim that, on the contrary, trees have been felled in the expropriated area. The Requesters allege that they are not familiar with the criteria used to delimit the buffer zone, nor the reason for splitting up the biological unit of [REDACTED] despite its location at the tail of reservoir. They also note that biomass was not removed prior to filling the reservoir, which has already led to contamination of the water and may lead to the generation of greenhouse gases. They add that one third of the total area of their property (63 hectares) was expropriated, leaving [REDACTED] unable to sustain itself economically inasmuch as the expropriated portion largely corresponded to the area set aside for forestry uses. In addition to the loss of income from PES agreements, they say that this has forced them to dismiss workers and has blocked the road providing direct access to the Finca's water tank. They further state that the Strategic Framework for Resettlement or Improved Living Conditions has not been fulfilled.
- 5.19 Management states that it did not find any evidence of noncompliance with local laws and regulations during the extraction activities and that, "ICE also confirmed that no material was extracted from the river banks."⁴⁴ In addition, it says that given that the Laguna Lancaster that was allegedly at risk of collapse is located outside the direct area of influence of the reservoir and that its elevation is higher, it is unlikely to be directly affected by the reservoir.⁴⁵ Furthermore, Management says that from the project planning stage, possible adverse impacts on the Barbilla-Destierro Biological Subcorridor were detected, for which a mitigation strategy and master plan were prepared and have been validated by the independent environmental and social auditor and the Advisory Group on Biodiversity (GAB). It

⁴³ OP-703, B.12.

⁴⁴ Management Response, page 6.

⁴⁵ Management Response, page 6.

states that the effectiveness of implementation of the plan was supervised by the organization Panthera.⁴⁶ It also confirms that, “the area of Laguna Lancaster [...] is indeed included in the priority area for the restoration of connectivity at the tail of the project’s reservoir.”⁴⁷ Regarding the inundation of forests, Management comments that during project preparation, water quality modelling and greenhouse gas emission estimation studies were performed, based on which it was concluded that the level of biomass in the reservoir area was low and would not affect water quality and greenhouse gas emissions during operation of the project.⁴⁸ Lastly, Management reports that as per the Strategic Framework for Resettlement or Improved Living Conditions, the Requesters were not considered as vulnerable to the risk of economic displacement, which meant they were eligible for cash compensation, a process governed by local law.⁴⁹

- 5.20 The MICI found that the Construction Management Plan called for a series of measures to be taken in the context of construction activities, including avoiding interventions in protected areas or areas with strong ecological or scenic value.⁵⁰ The MICI was also able to verify that the material extraction concession issued by the MINAE prohibited extraction along river banks and limited extraction to sand, gravel, and alluvial deposits.⁵¹ However, as described in the section on Operational Policy OP-704, the MICI has found indications of activities to extract materials near the base of the hillside supporting Laguna Lancaster and found evidence of the existence of holes on the right bank, 700 meters downstream from this area (Images 2 and 3). The MICI believes that an investigation would make it possible to confirm extraction activities in the area and clarify whether these activities, as well as the management and supervision thereof, were provided in the environmental impact assessment or in other Project documents.⁵²
- 5.21 The MICI has confirmed that the Finca and Lagunas Lancaster constitute critical natural habitats under the terms of Operational Policy OP-703 inasmuch as they have been declared protected wetlands, and [REDACTED] is an area of high conservation value (see Image 4). Moreover, because it is located at the tail of the reservoir,⁵³ it represents a key area for reconnecting the Barbilla-Destierro

⁴⁶ Management Response, page 2.

⁴⁷ Management Response, page 8.

⁴⁸ Management Response, page 10.

⁴⁹ Management Response, page 11.

⁵⁰ Additional Environmental Studies, Part D: Construction Management Plan, 2012, pages 66 and 49.

⁵¹ Resolution R-0239-2013-MINAE, 4 June 2013. Available at: http://www.gaceta.go.cr/pub/2013/07/04/COMP_04_07_2013.pdf.

⁵² Based on the preliminary review conducted in this phase of the recommendation for investigation, the MICI did not find any plan for this activity in the original EIA. See: Environmental impact study, Reventazón Hydroelectric Project, Case No. 0331-08-Setena; Strategic Environmental Studies, Phase 2, May 2012; and Mendonça, Augusto, *Análisis de Estabilidad de las Lagunas Lancaster*, December 2016, page 43.

⁵³ Both Management and the Requesters are in agreement on this point.

Biological Subcorridor,⁵⁴ and thus for preserving threatened and migratory species.⁵⁵ The MICI believes that an investigation would make it possible to determine whether the potential direct and indirect impacts of the Project on these critical natural habitats were assessed.

5.29 The MICI has ascertained that there is a Master Plan to mitigate the effects of the RHP on the connectivity and functionality of the Barbilla-Destierro Biological Subcorridor and that one priority is to significantly increase vegetative coverage at the tail of the reservoir and reforest the corresponding buffer area.⁵⁶ It also corroborated that the organization Panthera, in the framework of technical cooperation established with the Bank, presented recommendations for the implementation of this Master Plan in its final report of 2015.⁵⁷ However, the MICI found that the technical cooperation in question ended in 2015. To date, the MICI has not seen any documentation indicating whether Panthera's recommendations were implemented nor is it aware of the implementation status or effectiveness of the mitigation measures set out in the Master Plan.⁵⁸

5.30 The MICI found that the Master Plan described Laguna Lancaster as an area devoid of freshwater conservation where riparian coverage should be re-established.⁵⁹ Likewise, the recommendations issued by the organization Panthera call for actions to increase vegetative coverage at the tail of the reservoir as a priority area for re-establishing the connectivity of the Barbilla-Destierro Biological Subcorridor, reforesting areas associated with bodies of water, evaluating the functionality of the environmental buffer area for the movement of wildlife, and installing fences that allow the passage of animals.⁶⁰ According to documentation provided by the Requesters and observations made during the eligibility mission, it is MICI's understanding that Lagunas Lancaster are not part of the expropriated area included for the Project.⁶¹ In addition, the MICI observed

⁵⁴ The Barbilla-Destierro Biological Subcorridor is considered a critical natural habitat in accordance with Directive B.9. See ESMR, paragraph 2.10.

⁵⁵ See the definition of critical natural habitats, Operational Policy OP-703.

⁵⁶ Master Plan to mitigate the effects of the RHP on the connectivity and functionality of the Barbilla-Destierro Biological Subcorridor, May 2013.

⁵⁷ Panthera, Final Report, *Programa de Conservación: Enfoque local para una implementación práctica, Subcorredor Biológico Barbilla-Destierro / Paso del Jaguar*, November 2015.

⁵⁸ In its response, Management attached a report on the status of measures related to the program for payment for ecosystem services and the delivery of trees to plant at the tail of the reservoir and the program for good practices in agriculture. See ICE, ESAP, Progress report on indicators. Activities to maintain the functionality of the Barbilla-Destierro Biological Subcorridor, "Cola del Embalse" priority area, June 2015.

⁵⁹ Master Plan to mitigate the effects of the RHP on the connectivity and functionality of the Barbilla-Destierro Biological Subcorridor, May 2013, page 27.

⁶⁰ Panthera, Final Report, *Programa de Conservación: Enfoque local para una implementación práctica, Subcorredor Biológico Barbilla-Destierro / Paso del Jaguar*, page 56 et seq. The organization Panthera mentioned that it described the type of fencing that would allow animal crossings but said it was unfamiliar with the final design. See Panthera, Final Report, *Programa de Conservación: Enfoque local para una implementación práctica, Subcorredor Biológico Barbilla-Destierro / Paso del Jaguar*, page 75.

⁶¹ Documentation on the expropriation submitted by the Requesters.

that the area owned by the Requesters that is subject to expropriation was delimited with wire fencing that impedes the passage of animals (see Images 5 and 6). An investigation would make it possible to learn about the criteria and process used to zone the expropriated area and its compliance with the Relevant Operational Policies.

- 5.31 The MICI observed trees in the flooded areas, as well as floating vegetation at the river's edge in some areas, including trunks and water lilies (see Images 7 and 8). An investigation would make it possible to determine whether there are recent studies that evaluate the potential for this situation to contribute to water contamination, and whether, if necessary, measures have been established in the framework of the Project to prevent, reduce, or eliminate the vegetative matter.⁶²
- 5.32 Lastly, the MICI has observed that the fencing used to divide the expropriated area from [REDACTED] has blocked direct access to the Finca water tank and that the areas set aside for forestry use on the Finca, which make it economically viable according to the Requesters, were expropriated. By conducting an investigation, the MICI could look into the criteria used to determine which areas to expropriate and whether, at the time of such determination, these elements were considered with a view to mitigating the adverse impact generated by the expropriation.
- 5.33 Taking the foregoing into consideration, the MICI believes that an investigation in this case would help to clarify whether the Bank evaluated the Project's potential direct or indirect impacts on the Finca and Lagunas Lancaster, as critical natural habitats, as well as the economic impact on the Requesters; whether it identified and managed other risk factors; whether it took adequate measures to mitigate the identified risks; and whether it has supervised the compliance of all these measures with the terms established in Operational Policy OP-703. An investigation would make it possible to clarify the criteria used in the Project to zone the expropriated area and also to identify whether any activities that may have occurred to extract materials in the area complied with local laws and regulations and whether measures were in place to mitigate possible impacts from these activities on the integrity of Laguna Lancaster. Lastly, it would help to determine whether measures have been taken to prevent, reduce, or eliminate the alleged contamination resulting from the Project.
- 5.34 Lastly, with respect to the Requesters' allegation of noncompliance with the Strategic Framework for Resettlement or Improved Living Conditions,⁶³ the MICI believes that, in principle, this should be analyzed against Operational Policy OP-710. However, the MICI has determined that Operational Policy OP-710 covers situations involving the involuntary physical/economic displacement of

⁶² The MICI obtained the water quality and greenhouse gas emissions studies conducted in 2012 as part of the additional environmental studies.

⁶³ Request, page 23.

individuals as a result of a Bank project. Its finding is that Operational Policy OP-701 was activated in the case of this Project due to the risk of economic displacement of 18 vulnerable households⁶⁴ and that the risk was mitigated by the preparation of the aforementioned Strategic Framework. The MICI verified that the Requesters were not considered part of a vulnerable group but were eligible for cash compensation, and that the expropriation process is under judicial review in Costa Rica,⁶⁵ so the MICI has no jurisdiction over it in the framework of a compliance review.

Image 4.



Access to [REDACTED]

Source: MICI team, 16 November 2016.

⁶⁴ Project profile, CR-L1049, paragraph 3.3.

⁶⁵ Given that the matter of fair price for the expropriated properties is under judicial review in Costa Rica, the MICI applied exclusion 19(d) in the Eligibility Memorandum. See: MICI, Eligibility Memorandum, 12 December 2016, page 14.

Image 5.

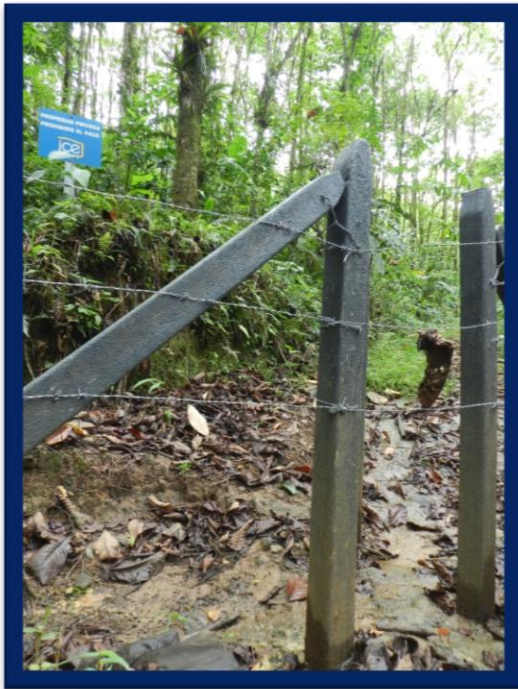
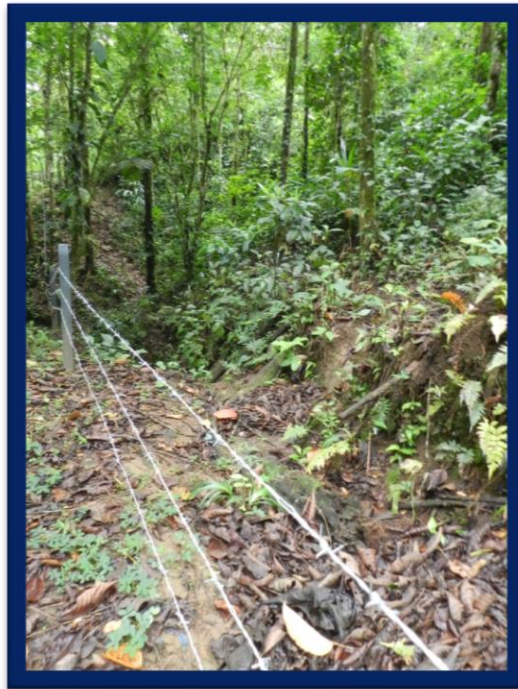


Image 6.



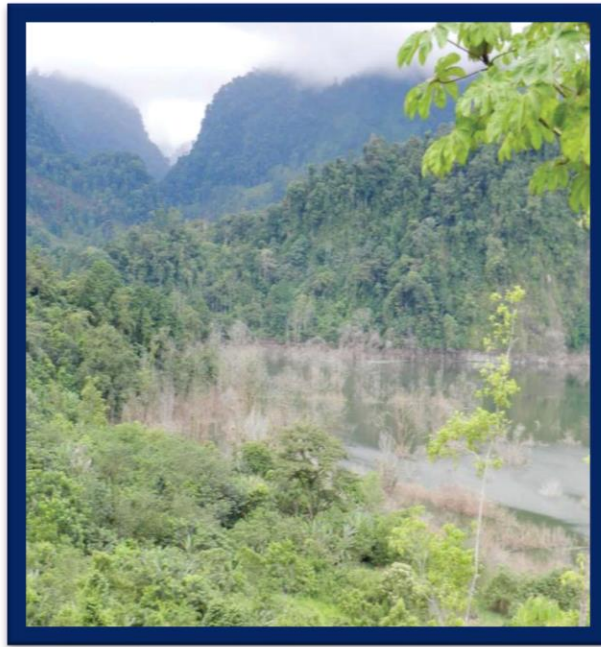
Boundary limit of the expropriated area.
Source: MICI team, 16 November 2016.

Image 7.



Flooded vegetation and water lilies on the right bank of the reservoir.
Source: MICI team, 16 November 2016.

Image 8.



Flooded vegetation in the area of the reservoir.
Source: MICI team, 16 November 2016.

B. Scope

- 5.35 This Recommendation proposes that the Board of Executive Directors conduct an investigation of the operation focused on verifying Bank compliance with Operational Policies OP-703 and OP-704.
- 5.36 The output of the investigation will be a Compliance Review Report on the operation, describing the investigation process, its findings, and the evidence-based conclusions on compliance or noncompliance with the Relevant Operational Policies, as well as the connection, if any, between any noncompliance and the harm alleged by the Requesters.
- 5.37 In view of the information that Management has already provided to the MICI, the investigation will focus on answering the following questions:⁶⁶
- 5.38 With regard to the disaster risk management requirements established in Operational Policy OP-704:

⁶⁶ The investigation questions are aimed at guiding the investigation process and the search for relevant facts that can shed light on the case in question. With these facts in hand, the Panel can determine how and why a Bank action or omission, if any, could have resulted in noncompliance with the applicable operational policies and whether this caused or could cause harm.

- Did the Bank adequately evaluate and manage the landslide risk to the hillside and/or the possibility that it would become exacerbated, as stipulated in Operational Policy OP-704?
- As necessary, have measures been taken to assist the executing agency in reducing the risk emanating from a natural hazard and managing the risk of disaster in that case?
- Was an analysis of risks from natural hazards performed in the project preparation stage, and as necessary, were prevention and mitigation measures established to reduce vulnerability to disasters as stipulated in Operational Policy OP-704?
- If the requirements set out in Operational Policy OP-704 were not met, did this cause harm to the Requesters?

5.39 With regard to the requirements established in Operational Policy OP-703:

- Were the potential direct and indirect impacts of the Project evaluated, and were adequate mitigation measures proposed, in accordance with the requirements of Operational Policy OP-703?
- Were other risk factors related to the Project identified and managed?
- Was the Project implemented in compliance with local laws and regulations in accordance with the requirements of Directive B.2?
- Has the Bank supervised compliance with all safeguard requirements stipulated for the Project?
- Have all the measures for preventing the degradation of critical natural habitats and instances of contamination resulting from the Project been incorporated and implemented?
- If the requirements set out in Operational Policy OP-703 were not met, did this cause harm to the Requesters?

C. Proposed methodology

5.40 The proposed investigation would utilize documentary review and targeted interviews as a primary fact-finding method. The results would be compared against the directives of the Relevant Operational Policies to determine compliance or noncompliance. Lastly, in the event of a finding of noncompliance, a causal analysis would be performed to determine whether there are links between the noncompliance and the alleged harm.

5.41 Given that this Request is being analyzed simultaneously by the accountability mechanisms of the EIB (CM) and the IFC (CAO), the MICI will strive to work in coordination with these institutions, with a view to optimizing resources and working more efficiently and effectively in accordance with the principles set out in the MICI Policy, while preserving at all times the independence, impartiality, and objectivity of the MICI.

5.42 Based on the above, the MICI would carry out the following activities:

- i. **Contracting of the Roster experts who, along with the MICI Compliance Review Phase Coordinator, will form the Investigative Panel.**
- ii. **One-on-one interviews with the following actors:**
 - Bank staff involved in the Project at Headquarters and at the Country Office in Costa Rica.
 - Executing agency (ICE) team.
 - Members of the Advisory Group on Biodiversity (GAB).
 - Expert consultants and organizations hired by the Project.
 - Requesters.
 - Other actors identified as relevant during the investigation.
- iii. **Documentary review.**
 - Review of both public and confidential documents in the Bank's possession regarding the Project and relevant to the investigation.
 - Reports issued by the executing agency and other third parties in accordance with their respective contractual requirements with the Bank.
 - Other relevant reports and studies.
- iv. **Mission to Costa Rica by the Investigative Panel for context purposes and to contact the Requesters, the executing agency, Bank staff at the Country Office, and other parties.**
- v. **Review of the Roster experts' reports.**
- vi. **Comparison analysis and determination regarding the main findings.**
- vii. **Preparation of preliminary report.**

D. Timeline and team

5.43 In accordance with the provisions of the MICI Policy, the proposed investigation would be conducted within a maximum period of six calendar months, running from the formation of the Compliance Review Panel.

Table 2.
Proposed timeline of activities for compliance review of Case MICI-BID-CR-2016-0110

Compliance review for MICI-BID-CR-2016-0110		Month 0				Month 1				Month 2				Month 3				Month 4				Month 5				Month 6									
SCHEDULE OF ACTIVITIES		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34
1	Contracting of experts																																		
2	Preparatory meeting and preliminary desk review																																		
3	Fact-finding mission in the Program area (tentative date)																																		
4	Interviews with Bank staff																																		
5	Targeted desk review – verification of findings																																		
6	Preparation of reports on findings by the experts and corroboration of information																																		
7	Preparation of the preliminary report																																		
8	Final data verification																																		
9	Issuance of the preliminary report																																		

5.44 The investigative team would be comprised of the Compliance Review Phase Coordinator, Arantxa Villanueva, two Roster experts, and a Case Officer. The names of the experts will be communicated to the Board of Executive Directors, Management, and the Requesters by means of a direct notice, once the team has been assembled.

E. [REDACTED]

[illegible]

Annex I

Management Comments on the Preliminary Version of the Recommendation for a Compliance Review



Joint IDB-IIC Management Comments to the ICIM-BID-CR-2016-0110 draft Recommendation for Compliance Review and Terms of Reference (TOR) regarding the Reventazón Hydroelectric Project in Costa-Rica

Management acknowledges the opportunity given by the ICIM to review and comment on the draft Recommendation and Terms of Reference (TOR) (the “Recommendation”), in connection with the “Reventazón Hydroelectric Project” (the “Project”), and reaffirms its view that the Project is to be considered as a global model for sustainable infrastructure. Management wishes that the comments and clarifications provided herein, and clarifications in Annex I be useful for the ICIM while reviewing the Recommendation. In this regard, Management would like to offer the following comments on the Recommendation:

- In accordance with the ICIM Policy (MI-47-6), the Recommendation for the investigation will be prepared by the ICIM “in consultation with Management and the Requesters”¹. In this regard, it should be noted that **Management has not been consulted by ICIM in the context of the preparation of the Recommendation**. Management believes that had ICIM consulted Management, the Recommendation would have been better informed and would be more precise and accurate in its content and approach².
- Furthermore, **Management considers that the TOR is incomplete**, as it does not present a proposed timeline and budget for the investigation, and anticipated use of consultants. In addition, it is worth-mentioning that in accordance with the ICIM Policy, the Recommendation should have been sent to Management for its comments upon completion of the TOR³.

¹ ICIM Policy, paragraph 39.

² See comments in Annex I.

³ ICIM Policy, paragraph 40

- In light of the **high level of complexity and technicality of the issues subject to review and analysis**, Management recommends using internationally recognized consultants and experts with significant experience in geotechnical and biodiversity issues in the hydropower sector, and safeguard policies of Multilateral Development Banks (MDBs).
- The draft Recommendation notes in many instances⁴ that the ICIM has looked at the limited documentation they have and has not found evidence that substantiates Management's view on the allegations. In this regard, **Management considers that those statements are at best premature in the context of a recommendation for compliance review due to the fact that those conclusions have been drawn before the ICIM has even started the investigation and the review of the extensive documentation available that would provide for a complete and objective analysis of the facts.** Management will ensure that the ICIM has full access to any and all of the vast number of documents, and additional information that may be requested by the MICI for purposes of the investigation.⁵
- Management understands that the objective of the Compliance Review Phase is to investigate allegations that the Bank has failed to comply with its Operational Policies and has caused harm to the Requesters, therefore **the scope of the investigation should focus on whether the Bank did or did not comply with its Operational Policies, and in case it did not whether it caused harm to the Requesters.**⁶ In addition, Management recommends that the investigation focus further on the exact and specific requirements of the IDB's policies:

1. In connection with the risk of landslides in the reach of Laguna Lancaster and compliance with provisions of OP-704:

The risk of landslides in the reach of Laguna Lancaster, while of high probability, is considered "low risk" under OP-704 for the following reasons:

- The natural risk of landslides in the reach of Laguna Lancaster is localized and of small magnitude relative to the Project's overall footprint, and is unlikely to affect the viability of the Project, i.e. its physical integrity or its capacity to deliver expected developmental benefits, i.e. generation of electricity. This type of risk (Type 1 risk under the OP-704 Guidelines) is therefore considered as low.

⁴ For examples, see paragraphs 5.12, 5.21, 5.29, 5.30, 5.31, 5.32.

⁵ Also see paragraph 5.37: "Considerando la información que la Administración ya ha proporcionado al ICIM, la investigación se enfocará en responder las siguientes preguntas:"

⁶ Footnote 63: "Con los mismos, el Panel podrá determinar de qué modo y por qué razón una acción u omisión del Banco pudiese haber resultado en el incumplimiento de las políticas operativas en comento de ser así el caso."

- As evidenced by ICE experts and independently confirmed by the review of an independent geologist⁷, the risk of landslides caused by weathering and erosion processes, which is naturally high in the reach of Laguna Lancaster, has not been and will not be exacerbated by the construction or the operation of the Project⁸. This type of risk (Type 2 risk under the OP-704 Guidelines) is therefore also considered as low.

OP-704 does not require further mitigation of low risks.

Therefore, the investigation should focus first on whether the Bank has adequately assessed this specific risk as “low risk” under OP-704 – instead of whether the Bank took measures to help ICE to mitigate this existing natural risk⁹, which is not required under OP-704 if this risk does not affect Project viability and is unlikely to be exacerbated by the Project.

To that end and due to the high technicality need to analyze and review this matter, **Management notes that adequate expertise and resources, and engagement with ICE and its experts will be needed.** Management understands that lack of engagement with ICE of the expert contracted by the ICIM in the eligibility determination phase on this technical issue has conveyed to the Bank’s client the perception that the ICIM has not acted with all due impartiality and objectivity, which is impacting the Bank’s long term relationship with ICE. In this context, Management hopes for a greater involvement of ICE in the technical work developed by the ICIM in the context of addressing the Request and that any expert report be shared with the Bank and ICE.

2. In connection with the alleged damages on the biodiversity of Laguna Lancaster and compliance with provisions of OP-703:

OP-703 requirements relate to assessment and management of environmental impacts caused or potentially caused by a project. Laguna Lancaster is located outside of the Project’s footprint and is not directly impacted by the Project. **The only indirect impact that could affect Laguna Lancaster is if the landslide risk would be exacerbated by the Project.** The Bank assessed this risk and considered it “low risk” (see above). Therefore, the investigation should focus on **whether the Bank adequately assessed this risk of indirect impact on Laguna Lancaster.**

In terms of the Project’s impact on natural and critical habitats, it may be worth noting that, as reported in the ESMR, the Bank considered the full Barbilla Destierro Biological Sub-corridor

⁷ Mr. Hans-Georg SCHÜTZ, a geologist with 32-year of experience including on large scale hydropower projects around the world (Georgia, Indonesia, Liberia, Tajikistan, Germany).

⁸ See Management’s comments on the Request and specifically Annex 3.

⁹ Paragraph 5.39 of the draft recommendation.

(SBBB) - including Lagunas Lancaster - as critical natural habitat, and helped ICE designing and implementing a mitigation strategy accordingly. While the Laguna Lancaster is included in the priority area for the restoration of connectivity at the tail of the Project's reservoir, there were no specific actions in the management plan for the restoration of connectivity (Plan Maestro) required to be implemented in Laguna Lancaster. **On this issue, the investigation should therefore focus on whether the mitigation strategy and efforts for the restoration of connectivity were adequate and in line with the requirements of OP-703, Directive B.9.**

Management notes that the Advisory Biodiversity Group (GAB) composed of internationally recognized biodiversity experts¹⁰ and contracted by the IDB and the IFC to provide independent scientific and technical advice with respect to the potential detrimental effects that the Project may have on effective function of the SBBB and state-of-the-art and best practices to enhance the structural and functional connectivity of biological corridors, validated the adequacy of the proposed mitigation strategy.

Finally, Management notes that neither OP-703 nor OP-704 includes requirement or criteria regarding land expropriation, and understands that OP-710 is excluded from the scope of the investigation.

¹⁰ Ms. Catherine Pringle from Georgia University; Claudio Sillero-Zubiri from University of Oxford; and Guy Dutson and Antoine Escalas from The Biodiversity Consultancy.

Annex I: specific comments and clarification to the draft Recommendation

Paragraph 4.7. “Ambas Partes contaron con un periodo de 21 días hábiles para realizar comentarios. El 6 de febrero de 2017, el MICI recibió los comentarios de los Solicitantes y de la Administración, respectivamente.”

Date should be corrected.

Paragraph 5.3, b) “la conservación de áreas protegidas naturales, en particular en lo que se refiere a los humedales ubicados en la [REDACTED] y declarados como área de protección por las autoridades costarricenses”

The Lagunas Lancaster have been identified as “wetlands” by the Ministry of Natural Resources, Energy and Mines (MIRENEM) in 1994 but they don’t currently benefit from any specific conservation or protections status and are not registered in the Sistema Nacional de Áreas de Conservación (SINAC) in Costa-Rica.

Paragraph 5.10: “Con base en estas informaciones, entre otras, la Administración determinó que la OP-704 debería ser activada “en relación a la altura de la presa, la capacidad de almacenamiento del embalse, y la actividad volcánica y posibles deslizamientos de tierra en la zona del embalse”.

The quote on the triggering of OP-704 is from the Project Profile which was prepared in 2011. The Bank did not have specific information on whether the project could have exacerbated risk of landslides for Laguna Lancaster at that time. OP-704 was triggered – and the project was classified as high-risk Type1 due to “due to its location and sector” (Environmental and Social Strategy, paragraph 4.8) – which is normal practice for a dam of this magnitude.

Paragraph 5.11: “Al respecto, los informes de los tres geólogos han recomendado realizar estudios adicionales para, entre otras cosas, obtener una mayor comprensión sobre las características geológicas e hidrogeológicas del área, los parámetros geotécnicos del material de la ladera, y establecer un programa de monitoreo de la evolución de los movimientos de masa activos. Estos estudios serían la base para realizar eventuales trabajos de estabilización.”

The report of the Independent Engineer does not recommend additional studies, but monitoring: “In order to get deeper knowledge about the local mass movements and risk of landslides it is recommended to execute a monitoring program”.

Management’s presentation provided to the ICIM also clarified that: “Monitoring program recommended by the Independent Engineer will be carried out within the PHR’s operational

monitoring and adaptive management framework, as well as within the routine supervision by the IDBG” (slide 15).”

Paragraph 5.14: “si el Banco ha cumplido con lo que establece la OP-704, específicamente en cuanto a sus acciones para prevenir y/o reducir el riesgo derivado de una amenaza natural en este caso y para gestionar un riesgo de desastre.”

Such actions are not required under OP-704 if this specific risk does not affect project viability and is unlikely to be exacerbated by the project.

Paragraph 5.20: “El MICI no encontró información que indique que una operación de extracción de materiales cerca de la base de la ladera que sostiene la Laguna Lancaster estuviera prevista en el Estudio de Impacto Ambiental original”.

See EIA, Chapter 5, p. 129-130.

Paragraph 5.21: “Asimismo, el MICI halló que el Plan de Manejo de la Construcción prevé una serie de medidas a tomar en el marco de las actividades de construcción, incluyendo evitar ubicar áreas de intervención, en zonas protegidas o con alto valor ecológico o escénico”.

This statement appears to imply that construction activities took place on the site of Laguna Lancaster, which is not the case.

Paragraph 5.22: “Por otro lado, el MICI ha constatado que la Finca y las Lagunas Lancaster constituyen hábitats naturales críticos en los términos de la OP-703, pues han sido declaradas humedales protegidos, y la [REDACTED] tiene un alto valor de conservación (ver Imagen 4). También, al encontrarse ubicada en la cola del embalse, representa un área clave para reconectar el SBBD, y por ende, para mantener especies amenazadas y migratorias. De una revisión preliminar de los documentos de Proyecto, el MICI no ha encontrado una caracterización de los potenciales impactos, directos o indirectos, del Proyecto sobre estos hábitats naturales críticos.”

The Lagunas Lancaster have been identified as “wetlands” by the Ministry of Natural Resources, Energy and Mines (MIRENEM) in 1994 but they don’t currently benefit from any specific conservation or protections status and are not registered in the Sistema Nacional de Áreas de Conservación (SINAC) in Costa-Rica.

The Lagunas Lancaster are outside of the Project’s footprint and are not directly impacted by the Project. As reported in the ESMR, the Bank considered the full Barbilla Destierro Biological Sub-corridor (SBBD) – including Lagunas Lancaster - as critical natural habitat, characterized the Project’s impact and defined a mitigation strategy.

Paragraph 5.29: “A la fecha, el MICI no ha accedido a documentación que indique si las recomendaciones de la organización Panthera fueron implementadas ni conoce sobre el avance de la implementación y la efectividad de las medidas de mitigación planteadas en el Plan Maestro.”

At this stage, the ICIM has not yet requested the information. The Project counts with quarterly biodiversity monitoring reports (BEMP) that Management will be glad to share with the ICIM when requested.

Footnote 55: “En su respuesta, la Administración allegó un informe respecto del avance de medidas relacionadas con el programa de PSA en la cola del embalse y del programa de buenas prácticas de agricultura exclusivamente.”

It also includes reforestation efforts (see *Arboles entregados*) –and all the indicators defined in the ESAP/PAAS prior to commencement of filling of the Reservoir.

Paragraph 5.30: “Según la documentación aportada por los Solicitantes y de acuerdo a lo observado en la misión de elegibilidad, el MICI entiende que las Laguna Lancaster, no hace parte de la zona de expropiación destinada a fines de conservación”.

The Project has not expropriated any land for environmental/biodiversity conservation purpose.

Paragraph 5.31: “No se ha tenido acceso a estudios recientes que evalúen si esta situación ha contribuido a generar contaminación del agua, ni se conoce si se han establecido medidas destinadas a prevenir, disminuir o eliminar dicha materia vegetal”.

At this stage, the ICIM has not yet requested the information. Management will be glad, when requested by the ICIM, to share the monitoring reports and the actions undertaken by ICE to control and remove floating materials in the reservoir, including water hyacinths.

Footnote 63: “Con los mismos, el Panel podrá determinar de qué modo y por qué razón una acción u omisión del Banco pudiese haber resultado en el incumplimiento de las políticas operativas en comento de ser así el caso.”

Management understands that the objective of the compliance review phase is to investigate allegations that the Bank has failed to comply with its ROP and has caused harm to the requesters. The questions of the investigation should therefore focus on whether the Bank complied with its ROP, and in case of non-compliance whether it caused harm

Paragraph 5.38: “En relación a los requerimientos para la gestión de riesgos de desastre establecidos en la OP-704:

o ¿Se han tomado medidas para asistir a la AE a reducir el riesgo derivado de una amenaza natural y para gestionar un riesgo de desastre en este caso?”

This question should be clarified. Such actions are not required under OP-704 if this specific risk does not affect project viability and is unlikely to be exacerbated by the project

O” ¿Se llevó a cabo un análisis de riesgos por amenazas naturales en la etapa de preparación del Proyecto, y se establecieron medidas de prevención y mitigación destinadas a reducir la vulnerabilidad ante desastres conforme a lo establecido en la OP-704?”

If a specific risk is low, no further mitigation is required under OP-704. **The question that the investigation should address first is therefore whether the Bank adequately assessed this specific risk as “low risk” under OP-704**

Paragraph 5.29:

5.39 *En relación a los requerimientos establecidos en la OP-703:*

o ¿Se evaluaron todos los potenciales impactos, directos e indirectos, del Proyecto y se plantearon medidas de mitigación adecuadas, de conformidad con los requisitos de la OP-703?

This question should be clarified. OP-703 does not require that all potential environmental impacts be evaluated and mitigated, irrespective of their significance. Directive B.3 requires that the significance of potential negative environmental impacts be considered in the screening process. Contents of an EIA as defined in Annex 2 of OP-703 Guidelines recommend that “emphasis be given to the quantification and mapping of all significant impacts”. Directive B.5 requires that the ESMP include a presentation of “the key direct and indirect impacts and risks”.

o ¿Se identificaron y manejaron otros factores de riesgo del Proyecto?

This question should be more specific on the other risk factors the investigation will focus on. Question related to the natural disasters risks should be addressed under OP-704.

o ¿El Banco garantizó que el prestatario implementara la operación en cumplimiento con la legislación del país?

This question should be clarified. Directive B.2 does not require the Bank to guarantee that the project is implemented in conformance with laws and regulations but “to require the borrower for that operation to ensure that it is designed and carried out with environmental laws and regulations of the country”.

o ¿El Banco ha supervisado el acatamiento de todos los requisitos de salvaguardia estipulados para el Proyecto?

This question should be clarified that as per OP-703, Directive B7, those are “all safeguards requirements stipulated in the loan agreement and project operating or credit regulations”

o ¿Se han incorporado e implementado todas las medidas para evitar la degradación de hábitats naturales críticos y situaciones de contaminación derivadas del Proyecto?

This question should be reformulated to be aligned with requirements of Directives B.9 (no significant conversion or degradation of critical natural habitats) and Directive B.11 (operations will include measures to prevent, reduce or eliminate pollution emanating from their activities).

ENLACES ELECTRÓNICOS

A reference to the following documents should be included:

- i) Reventazón Hydroelectric Project - Stability Laguna Lancaster, Landslide Potential of Rio Reventazón Right Riverside, prepared by Georg Schultz – FICHTNER
- ii) Proyecto Hidroeléctrico Reventazón: Estudios Ambientales Adicionales Parte B: Estudio de Calidad del Agua <http://www.iadb.org/Document.cfm?id=36689437>
- iii) Proyecto Hidroeléctrico Reventazón: Estudios Ambientales Adicionales Parte I: Emisiones de Gases de Efecto Invernadero <http://www.iadb.org/Document.cfm?id=36689431>