



DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-CII-CO-2018-0133
RECOMMENDATION FOR A COMPLIANCE REVIEW AND TERMS OF
REFERENCE, REVISED VERSION

ITUANGO HYDROPOWER PLANT

(11794-04)
(11794-04, 3818C/OC-CO-1, 3818C/OC-CO-2, 3818/CH-CO)

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INFORMATION NOTE

GUIDELINES FOR THE COMPLIANCE REVIEW PHASE

These guidelines for the Compliance Review Phase have been prepared in accordance with paragraphs 36 to 41 of the Policy of the Independent Consultation and Investigation Mechanism of the IIC (document CII/MI-1-1).

A Compliance Review is a fact-finding process to determine whether Management at IDB Invest has complied or failed to comply with the Relevant Operational Policies for the operation(s) in question and whether the alleged Harm is related to failure by IDB Invest to comply with the Relevant Operational Policies.

A Compliance Review by the Independent Consultation and Investigation Mechanism (MICI) is subject to authorization by the IIC (IDB Invest) Board of Executive Directors, which receives a *Recommendation* from the MICI for consideration once the latter, within a period of 21 business days, has reviewed the main documents relating to the operation, the information provided by Management, the Request, and the Relevant Operational Policies. In its *Recommendation*, the MICI states its decision to recommend or not to recommend an investigation considering the value added for the specific case, and for IDB Invest in general, in terms of relevance, impact, and efficiency.

For those cases in which an investigation is recommended, the MICI also incorporates Terms of References with the following information:

- The objectives of the investigation.
- The scope of the investigation, including the proposed investigative questions. In all cases, the investigation is limited in scope to the allegations made in the Request and focuses exclusively on IDB Invest acts or omissions in the context of the operation(s) relevant to the case, in relation to 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 made up of the Compliance Review Phase Coordinator serving as Panel Chair, as well as two members selected from the Roster of Experts. The selection of these experts is based on their expertise in the technical areas involved in the investigation and on their availability to participate in the investigation during the required timeframe. These experts are retained only after the Board of Executive Directors approves the investigation, and their contributions are incorporated into the Compliance Review Report.
- The timeline for the investigation, generally not to exceed a maximum period of six calendar months from the date of establishment of the panel. If a longer period is needed, the *Recommendation* will indicate the required timeline and the corresponding rationale.
- The estimated budget for the investigation.

Prior to being presented to the Board of Executive Directors, a preliminary draft of the *Recommendation* and *Terms of Reference*, as applicable, is circulated to Management and the Requesters, and both parties have the opportunity to submit comments in writing to the

MICI. The MICI reviews the comments and accepts those it deems relevant. The comments received from the two Parties are included as annexes to the *Recommendation*. The final version of the *Recommendation* and *Terms of Reference* is submitted to the Board of Executive Directors for consideration by short procedure. The *Recommendation* and *Terms of Reference* is considered approved if by the end of the period established for approval by short procedure, the procedure has not been interrupted by any members of the Board of Executive Directors. However, if an Executive Director interrupts the procedure, the item is placed on the agenda for discussion by the Executive Committee of the Board and subsequent consideration in session by the Board of Executive Directors.

The *Recommendation* and *Terms of Reference* is a public document, and the decision taken by the Board of Executive Directors with respect to it is notified to the Requesters, Management, and the general public through the MICI Public Registry (www.iadb.org/mici).

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

LINKS	
1.	Original Request and Annexes http://www.iadb.org/document.cfm?id=EZSHARE-1002559224-133 http://www.iadb.org/document.cfm?id=EZSHARE-1002559224-134 http://www.iadb.org/document.cfm?id=EZSHARE-1002559224-257 http://www.iadb.org/document.cfm?id=EZSHARE-504054498-101
2.	Response of IDB Invest Management to Request MICI-CII-CO-2018-0133 in Reference to the Ituango Hydropower Plant Project – (CO-11794-04) http://www.iadb.org/document.cfm?id=EZSHARE-1002559224-256
3.	Eligibility Determination Memorandum MICI-CII-CO-2018-0133 http://www.iadb.org/document.cfm?id=EZSHARE-1002559224-270
4.	IDB Invest Public Registry – Request record for MICI-CII-CO-2018-0133 https://www.iadb.org/es/mici/request-detail-iic?ID=MICI-CII-CO-2018-0133&nid=23506
5.	IDB Public Registry – Request record for MICI-BID-CO-2018-0133 https://idblegacy.iadb.org/es/mici/detalle-de-la-solicitud,19172.html?ID=MICI-BID-CO-2018-0133
6.	Project abstract - "Ituango Hydropower Plant" https://idbinvest.org/es/projects/planta-hidroelectrica-ituango
7.	Consultation Phase assessment report http://www.iadb.org/document.cfm?id=EZSHARE-1002559224-299
8.	Environmental and social review summary and environmental and social action plan for the Ituango Hydropower Project https://www.idbinvest.org/en/download/6842
9.	Environmental impact assessment, chapter 3.1, Description of area of influence, Areas of influence https://www.idbinvest.org/en/download/2248
10.	Environmental impact assessment, chapter 3.3, Description of biotic environment https://www.idbinvest.org/en/download/2250
11.	Environmental impact assessment, chapter 3.4, Description of area of influence, Social environment https://www.idbinvest.org/en/download/2252
12.	Environmental impact assessment, chapter 4, Demand, use, exploitation, and/or impact on natural resources https://www.idbinvest.org/en/download/2254
13.	Environmental impact assessment, chapter 5, Impact identification and assessment https://www.idbinvest.org/en/download/2255
14.	Social management plan https://www.idbinvest.org/es/download/6047
15.	Environmental impact assessment, Annex 3.4.K, Archaeological recovery and monitoring report https://www.idbinvest.org/en/download/6041
16.	Ituango Hydropower Project, Analysis of alternatives: Feasibility in 1974 and Feasibility in 1999 https://www.idbinvest.org/en/download/6040
17.	Office of the Comptroller General of the Republic. Compliance audit report. Management of the licensing process for the Ituango Hydropower Project by environmental authorities. August 2018 https://www.contraloria.gov.co/documents/2018/1134239/Informe+Auditoria+ITUANGO.pdf/239ac985-f378-4eda-8cbc-e3129d87a66c?version=1.1

ABBREVIATIONS

ANLA	Autoridad Nacional de Licencias Ambientales [National Environmental Licensing Authority]
DANE	Departamento Administrativo Nacional de Estadística de Colombia [Colombia National Administrative Department of Statistics]
EIA	Environmental impact assessment
ELN	Ejército de Liberación Nacional [National Liberation Army]
EPM, Company, or Client	Empresas Públicas de Medellín
ESAP	Environmental and social action plan
ESDD	Environmental and social due diligence
ESMP	Environmental and social management plan
ESRS	Environmental and social review summary
ESS	Environmental and social strategy
FARC	Fuerzas Armadas Revolucionarias de Colombia [Revolutionary Armed Forces of Colombia]
IDB Group	The IDB Group is comprised of the Inter-American Development Bank, IDB Invest, and IDB Lab (formerly the MIF)
IDB Invest	IDB Group institution that supports the private sector, formerly the IIC. ¹
IESC	Independent environmental and social consultant for the Ituango Hydropower Project
IFC	International Finance Corporation
Management	The IIC manager or managers, executives, or chiefs of division in charge of the relevant IIC-financed Operation, or any delegate thereof
MICI or the Mechanism	Independent Consultation and Investigation Mechanism of the IDB Group
MICI Policy	Policy of the Independent Consultation and Investigation Mechanism of the IIC (document CII/MI-1-1)
Operation	Operation CO-11794-04 financed by IDB Invest
Operations	Technical cooperation operation CO-T1250 financed by the IDB and operation CO-11794-04 financed by IDB Invest
Parties	The Requesters, Management, the Borrower, and/or the Client, if applicable
Phases	MICI's Consultation Phase and Compliance Review Phase
Project or Hidroituango	Ituango Hydropower Project
SMP	Social management plan
UCP	Unified Command Post

¹ In November 2017, the IIC adopted a new brand and now it refers to itself as IDB Invest (in English) and BID Invest (in Spanish, French, and Portuguese).

I. EXECUTIVE SUMMARY

This is a Recommendation from the MICI to the Board of Executive Directors of the IIC (known by the trade name IDB Invest) to conduct a Compliance Review of the Ituango Hydropower Project (11794-04; loans 3818C/OC-CO-1, 3818C/OC-CO-2, and 3818/CH-CO), and it also contains Terms of Reference for the proposed investigation, in relation to claims made by 477 residents of the municipios of Sabanalarga, Valdivia, Ituango, Caucaasia, San Andrés de Cuerquia, Toledo, Briceño, Peque, and Sopetrán, located in the department of Antioquia, alleging that the construction and operation of the Project has had and will have a number of social and environmental impacts on them.

The Ituango Hydropower Project, currently under construction, is a hydropower plant with an installed capacity of 2,400 MW, eight turbines, and an estimated investment of US\$5.508 billion. It is located on the Cauca River in the department of Antioquia. Construction on the Project began in March 2011. This is expected to be Colombia's largest hydropower plant. According to the Project documents that have been reviewed to date, the Project's area of influence, in the aforementioned department, includes municipios in the Norte, Occidente, and Bajo Cauca subregions. This region has been particularly affected by the dynamics of the armed conflict, and despite the recent peace process, multiple armed groups are still operating outside the law there.

The IDB Group is participating in the Project through two operations: (i) an unsecured corporate loan of US\$1 billion to Empresas Públicas de Medellín, E.S.P. (EPM) in support of the construction of the Ituango Hydropower Project, approved by the Boards of Executive Directors of the IIC and the IDB on 30 November 2016; and, prior to that, (ii) a contingent technical cooperation operation, "Support for Structuring the Ituango Hydropower Project" (CO-T1250), approved by the IDB in 2012 for the Project's initial financial, economic, technical, environmental, and social evaluations.

In April 2018, an emergency occurred at the Project site and in its area of influence due to an obstruction of the auxiliary diversion tunnel, following by other events in subsequent days that caused the water level in the river to rise suddenly. This caused flooding in the areas near the dam, resulting the evacuation of approximately 17,000 people from the communities facing the highest risk, as well as other impacts.

In response to the initial obstruction, a decision was made in May 2018 to flood the powerhouse to allow water to flow through it. Between January and February 2019, EPM moved up the closing process for the powerhouse gates, as a way of addressing other risks that had been identified. The closing of the second gate significantly decreased the river's flow downstream for several days, causing a number of impacts on the aquatic fauna and on the availability of water.

On 5 June 2018, the MICI received a Request associated with the Project, made by 477 residents of 9 municipios in the department of Antioquia. The Requesters are represented before the MICI by Isabel Cristina Zuleta and are supported by three civil society organizations. In their Request, they alleged actual and potential damages during the Project construction and operation stages, associated with the identification of the Project's area of influence and affected population; the identification and handling of social and environmental impacts; the increase in conflicts, insecurity, and violence in the Project area, and gender-differentiated impacts; the lack of public consultations and effective forms of participation; and the lack of effective resettlement or compensation plans to address the physical and economic displacement resulting from construction of the Project. Furthermore, they indicated that the emergency that began in April 2018 exacerbated the impacts and caused new ones both upstream and downstream from the dam, and that EPM managed its consequences and related information inadequately. The Requesters have indicated that although they fear retaliation in response to their opposition to the Project and the presentation of this

complaint, they have asked the MICI not to keep their names confidential as they believe that making their situation and their Request visible may confer some protection.

This document is divided into two main sections: (i) the Recommendation for an investigation, which provides the rationale for the recommendation to investigate, based on a very preliminary review of some of the documentation associated with the allegations; and (ii) the Terms of Reference for the investigation, which provides an indication of what can be expected from it, based on the provisions of the MICI Policy.

The Recommendation is not a determination of compliance or noncompliance by IDB Invest with its Relevant Operational Policies. Rather, it is within the scope of an investigation that the MICI will be able to report to the Board of Executive Directors on the actions taken by IDB Invest and whether such actions comply with the institution's Operational Policies.

Thus, in accordance with paragraph 41 of the MICI Policy and as discussed in detail in this document, a Recommendation is made to the Board to authorize the MICI to conduct a Compliance Review of the Project, for the purpose of performing an impartial and objective investigation of the actions taken by IDB Invest with respect to due diligence and supervision concerning some of the allegations made by the Requesters regarding potential noncompliance by IDB Invest with its Environmental and Social Sustainability Policy, and specifically, with IDB Operational Policies OP-703, OP-710, OP-704, and OP-761, and with IFC Performance Standards 1, 3, 4, 5, 6, and 8 referenced in this general policy, and if the findings confirm these allegations, to determine whether that caused or could cause the alleged Harm with respect to: (i) the assessment and identification of the area of influence and affected population; (ii) the evaluation and identification of social and environmental impacts, including the alleged increase in conflicts and insecurity in the Project area and gender-differentiated impacts; (iii) public consultations and other forms of participation for the affected communities; (iv) the scope, design, and supervision of implementation of the resettlement or compensation plans to address the physical and economic displacement resulting from construction of the Project; and (v) in relation to the allegations made concerning the emergency and management thereof, the identification and assessment of disaster risk and the approval and supervision of the plan for managing the risks, including regarding the availability, access, and handling of information thereon.

Regarding the issues related to potential noncompliance with IDB Invest's Disclosure of Information Policy that the Requesters mentioned, the MICI believes that there are insufficient elements to propose a Compliance Review. However, the MICI does not include in this Recommendation issues related to the recovery of bodies thrown into the Cauca River during the armed conflict and related to the analysis of the Project's compliance with domestic environmental regulations, as these issues were excluded as a result of the eligibility analysis.

The MICI also notes that IDB Invest, in its comments on the preliminary version of this document, reported two new legal cases that were under way and two potential cases that might be filed in the future. As a result, Management has commented that any actions associated with the emergency would have to be excluded from a proposed investigation based on clause 19 (d) of the MICI Policy.

As a result, the MICI conducted an in-depth analysis of the various cases and concluded that: regarding the latter two cases mentioned by Management, clause 19 (d) of the MICI Policy establishes the exclusion of issues or matters that are presently under judicial review, so it is not for this Mechanism to refrain from addressing matters based on potential cases that have yet to be filed for judicial review or are not legal matters at present. Furthermore, with respect to the two active cases, in accordance with the information remitted by IDB Invest itself, both cases are seeking damages for the alleged suffering, anguish, and distress caused by the risks of collapse of the dam. Given that the MICI is proposing to investigate actions taken by IDB Invest during the period of due diligence to ensure proper identification of disaster risks, in accordance with the

Disaster Risk Management Policy (OP-704), and the corresponding planning to address them in the form of a management plan or contingency plan, it is the MICI's view that none of the matters subject to active judicial review are being addressed and, therefore, there are no grounds for excluding issues as proposed by Management.

Taking into account that this Project is in the construction phase, the various events that occurred, and the seriousness of the allegations made, the MICI believes that it is not only relevant to conduct an investigation to determine whether IDB Invest complied with the provisions of its Environmental and Social Sustainability Policy but rather imperative to ensure that IDB Invest has conducted a robust due diligence and supervision process consistent with the risks of a category "A" project, as warranted for a project such as this one. If noncompliance in connection with the alleged Harm is found, the investigation would allow corrections to be made in order to come into compliance, address the potential Harm, and ensure the environmental and social sustainability of this important operation.

In accordance with the corresponding Terms of Reference, this investigation, if approved, would be completed within nine months from the contracting of the independent experts indicated in the MICI Policy. These Terms of Reference include the budget for an investigation. The final product will be a report on findings with specific recommendations linked to the determinations of compliance, so that the IIC Board of Executive Directors has the elements it needs to make decisions regarding the actions of IDB Invest in this context of this operation.

Lastly, the document includes in detail the various allegations made, the preliminary information identified as supporting the Recommendation for an investigation, as well as Terms of Reference for the proposed investigation. In addition, it includes the comments made by Management and the Requesters on the draft Recommendation and Terms of Reference. We thank both parties for their comments, as well as for the various meetings and telephone calls that took place during preparation of this Recommendation and Terms of Reference.

Confidentiality note

Considering that this document contains confidential information, this unredacted version is for internal use only. For purposes of disclosure and in accordance with IDB Invest's Disclosure of Information Policy, the preliminary version that was shared with the Requesters was redacted, and the final version for public disclosure will be redacted as well. This has been communicated to IDB Invest Management, which has also indicated to us which information is confidential in its comments on the preliminary version.²

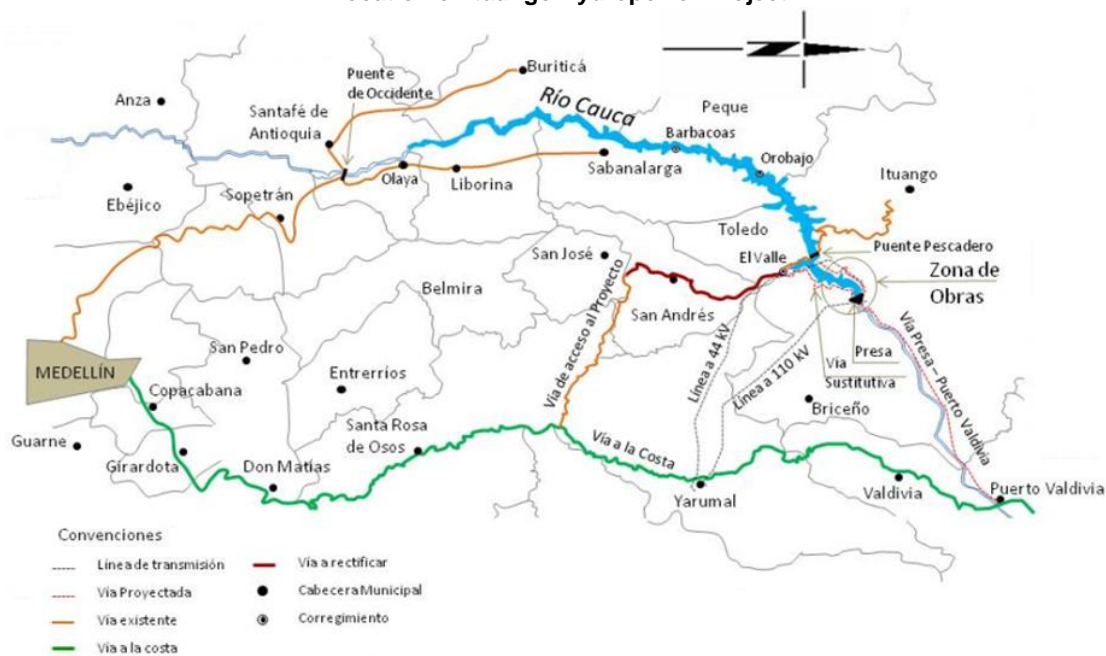
² For the information of the Board of Executive Directors, the public version of this document, in which the confidential information has been redacted, is available on the Public Registry

II. THE PROJECT³

A. Geographical and social context of the Project

- 2.1 The Ituango Hydropower Project is located on the Cauca River in what is known as the “Cauca Canyon” in northwestern Antioquia, 170 km from Medellín. In accordance with environmental and social review summary (ESRS), the Project’s area of influence in the department includes municipios in the Norte, Occidente, and Bajo Cauca subregions.⁴ The main works are located in the municipios of Ituango and Briceño, while complementary Project works will be built on properties in the municipios of Santa Fe de Antioquia, Buriticá, Peque, Liborina, Sabanalarga, Toledo, Olaya, San Andrés de Cuerquia, Valdivia, and Yarumal. Six percent of the population of Antioquia lives in municipios in the Project’s area of influence. According to forecasts from the National Administrative Department of Statistics (DANE), in 2018 these municipios had a total population of 414,053, 44% of whom live in rural areas.⁵

Figure 1.
Location of Ituango Hydropower Project



Source: www.skyscrapercity.com

- 2.2 As a department, Antioquia is considered to be one of the most important to the country’s economy. In 2017, it contributed 15% of the country’s gross domestic product, the second largest share after Bogotá D.C. (26%).⁶ However, the Norte, Occidente, and Bajo Cauca subregions face significant challenges in terms of poverty and security conditions.

³ Information taken from the IDB and IDB Invest’s website and public documents on the Project. These documents are available in the links section of this Recommendation.

⁴ Ituango, Briceño, Santa Fe de Antioquia, Buriticá, Peque, Liborina, Sabanalarga, Toledo, Olaya, San Andrés de Cuerquia, Valdivia, and Yarumal. ESRS, page 3.

⁵ DANE. Colombia population forecasts 2005-2020.

⁶ DANE. Departmental gross domestic product.

- 2.3 Indeed, the Bajo Cauca and Occidente subregions report the department's highest percentages of individuals living in poverty. According to the unmet basic needs measurement, in 2016, 58.96% and 49.95% of the populations of these two subregions, respectively, were living in poverty. The same measurement shows that in the Norte subregion, 37.46% of the population was living in poverty. The poverty rates are higher in rural areas, reaching 71.44% in Bajo Cauca, 61.84% in Occidente, and 50.64% in Norte.
- 2.4 The main economic activities of the inhabitants of these subregions are agriculture, ranching, fishing, and small-scale mining. With regard to the latter, it should be noted that a significant number of persons work as miners using traditional, ancestral practices, especially in the Bajo Cauca subregion. As of early 2019, the country's Open Data Portal listed approximately 17,386 registered gold panners (*barequeros*) in the three subregions,⁷ a figure that does not include anybody who is engaged in the activity informally.
- 2.5 In terms of security challenges, the Antioquia municipios in general have been historically affected by the armed conflict. Due to their strategic position for drug trafficking and their significant natural resources, the Norte, Oriente, and Bajo Cauca subregions have been contested by unlawful armed groups, and their civilian populations have been negatively affected as a result.
- 2.6 In November 2016, the national government and the Revolutionary Armed Forces of Colombia (FARC) signed a peace agreement. However, the resulting departure of the guerilla group from the area has led to a restructuring of the armed groups that are on the ground there. Since early 2018, groups that identify as dissidents from the FARC 36th and 18th fronts have been found to be present in the municipios of Briceño, Ituango, and Yarumal (Norte subregion). Likewise, in the last few years, the presence of groups with origins in paramilitary structures like the Autodefensas Gaitanistas de Colombia (Gaitanist Self-Defense Forces of Colombia) has been noted. Recently, incursions have been made by the Caparrapos group, which was part of the Autodefensas; certain groups from Medellín; and the National Liberation Army (ELN). These groups dispute control of the drug production centers and microtrafficking networks mostly found in Bajo Cauca.

B. The Ituango Hydropower Project

- 2.7 The Ituango Hydropower Project is a hydropower plant with an installed capacity of 2,400 MW, eight turbines, and an estimated investment of US\$5.508 billion. Construction began in March 2011, and the plant is to be built in two stages. The first stage includes four turbines that were expected to enter into commercial operation in 2019. The second stage includes the other four turbines, which were expected to enter into commercial operation in 2022. Once completed, the Project will provide 17% of the country's installed capacity.
- 2.8 The IDB Group has been participating in the Project since the early construction stages. On 30 July 2012, the IDB approved the contingent technical-cooperation operation "Support for Structuring the Ituango Hydropower Project" (loan CO-T1250) for the Project's initial financial, economic, technical, social, and socioenvironmental evaluations.⁸ This operation was followed by a corporate loan approved by the Boards of Executive Directors of the IIC and the IDB on 30 November 2016, in support of the construction of

⁷ Gold panning or *barequeo* is the manual washing of sand without any machinery or mechanical aids, in order to separate out and collect precious metals that may have been mixed in. Precious and semiprecious stones may also be collected through similar means (Law 685 of 2001, Article 155). Open Data Portal. Colombia Digital Government. <https://www.datos.gov.co/Economia-y-Finanzas/BAREQUEROS-LEGALIZADOS-EN-EL-PA-S/y26x-cdjt/data>.

⁸ See Recommendation for case MICI-BID-CO-2018-0133.

the Ituango Hydropower Project (loan CO-11794-04).⁹ In both cases, the client is Empresas Públicas de Medellín, E.S.P. (EPM). This Recommendation addresses the latter operation only.

- 2.9 Loan operation CO-11794-04 includes an A loan for US\$400 million from the IDB Group and US\$50 million in cofinancing from the Government of China administered by IDB Invest. It also includes a B loan for US\$650 million from international commercial banks and institutional investors from North America, Europe, and Asia (CDPQ, KFW IPEX, BNP Paribas, ICBC, Sumitomo Mitsui, BBVA, and Banco Santander). The Project has been classified by IDB Invest as a category “A” operation, in accordance with its Environmental and Social Sustainability Policy.
- 2.10 The Project includes the construction of a 225-meter-high dam, located on the Cauca River just upstream from the mouth of the Ituango River, and an underground power station with an installed capacity of 2,400 MW and an average annual energy output of 17,460 GWh. The Project also includes the works on the right bank to temporarily divert the Cauca River, as well as associated works that include the powerhouse access tunnel, the ventilation tunnel and emergency exit, the surge tank ventilation and exhaust shafts, and infrastructure works: camps, transmission line, and construction substation and access routes, in particular the road from Puerto Valdivia to the dam site.

Timeline for the Ituango Hydropower Project

1969	Initial Project concept
1979-1983	First feasibility studies for the Project
1998	Creation of Sociedad Promotora de la Hidroeléctrica Pescadero S.A.
2001-2007	First environmental impact assessment
2009	Environmental license for the Project issued
2009	Start of works associated with the Project
2011	Start of Project works
	Environmental impact assessment updated
2012	IDB-financed technical cooperation operation CO-T1250 approved
July-October 2016	Environmental and social due diligence by IDB Invest
November 2016	Loan CO-11794-04 for financing of the Ituango Hydropower Project approved by the Boards of Executive Directors of the IIC (IDB Invest) and the IDB
February 2017	IDB-financed technical cooperation operation CO-T1250 completed
December 2017	Loan contract for Project financing signed
April 2018	Project’s emergency situation began

Source: EPM website, Movimiento Ríos Vivos Antioquia website, and Project documents.

C. The emergency

- 2.11 Between late April and early May 2018, an emergency situation arose at the Project, which developed into significant flooding in neighboring areas and downstream from the Project,

⁹ Crossbooking operations such as this are considered as IIC-financed operations for the purposes of the MICI Policy. See the Glossary in the MICI Policy.

with the subsequent evacuation of thousands of people due to the risk of increased flooding, as well as a major temporary decrease in the flow of the Cauca River. The emergency began because obstructions of the auxiliary diversion tunnel reduced the river's flow downstream and caused the reservoir to fill upstream. In response to this situation, the Client focused on unblocking the two original tunnels that had been used to divert the river early in the works. When this became too difficult, and given the risk of a dam collapse, a decision was made to flood the powerhouse on 10 May 2018, to allow the water to flow through it. Two days later, a sudden increase in the river's flow unexpectedly unblocked one of the original tunnels.

- 2.12 This caused flooding in the areas near the dam, as well as an increasingly dangerous situation for the communities neighboring and near the Project, particularly the ones located downstream from the dam. According to data from the Antioquia Administrative Department for Disaster Prevention, Response, and Recovery, 668,561 people from 17 municipios of Antioquia, Sucre, Bolívar, and Córdoba were put at risk.¹⁰ As a result, several communities were evacuated; the number of people evacuated to temporary housing and shelters at the time of the emergency totaled 17,184.¹¹
- 2.13 In response to the emergency, on 9 May 2018, a Unified Command Post (UCP) was set up, the National Disaster Risk Management System was activated, and a management plan was deployed. Furthermore, on the recommendation of the Ministry of Mines and Energy and the National Environmental Licensing Authority (ANLA), the Technical Monitoring Center was established and operated 24 hours per day. In this context, in June 2018, temporarily and for preventive purposes, ANLA suspended the environmental license for regular construction activities at Hidroituango. While this suspension was in effect, the only existing license would be for activities related to managing the emergency and mitigating its effects.¹²
- 2.14 By late September 2018, 12,770 individuals had returned to their homes.¹³ By October, 1,500 families were expected to return to their places of residence in the *corregimiento* of Puerto Valdivia.¹⁴ According to information from the UCP, on 20 February 2019, the alert levels by municipio were as follows:¹⁵

¹⁰ Information cited by the United Nations Office for the Coordination of Humanitarian Affairs (18 May 2018).

¹¹ National Unit for Disaster Risk Management. News bulletin 183.

¹² ANLA press release, 30 June 2018, available at: <http://www.anla.gov.co/Noticias-ANLA/ANLA-suspende-actividades-regulares-construccion-Hidroituango>.

¹³ National Unit for Disaster Risk Management, News bulletin 183.

¹⁴ EPM. Press room: Information on the Ituango Hydropower Project.

¹⁵ UCP–EPM daily report of 20 February 2019.

Table 1.
Municipios by alert level

Alert level	Municipios
Yellow Notice to prepare for evacuation	Caucasia, Nechí, Ayapel, San Jacinto del Cauca, Guaranda, Majagual, Achi, San Marcos, San Benito de Abad, Sucre, and Magangué.
Orange Ready for immediate evacuation	Cáceres and Tarazá.
Red Permanent preventive evacuation	Briceño, Ituango, and Valdivia.

Source: EPM-UCP. Daily report.

- 2.15 On 7 November 2018, EPM closed an intake gate and opened the other three radial gates.¹⁶ Subsequently, on 16 January 2019, the Company decided to move up the closing process for the powerhouse gates, after discovering a cavity in the mountain. It proceeded to close one of its gates. On 5 February 2019, EPM also closed the other powerhouse gate, due to the risk of a dam collapse because of a rise in the reservoir and uncertainty about the structure's resistance to pressure.
- 2.16 After the second gate was closed, the river's flow downstream from the Project decreased significantly, to approximately 20% of its normal flow. As a result, during the first two days after the second gate was closed, 57,309 fish died, while 263,379 fish were rescued by teams deployed as part of a mitigation measure.¹⁷ According to EPM press releases, the main impact was on fish species. In response to a decline in the availability of drinking water, the company reported on measures taken to meet the demand from municipios located downstream.¹⁸
- 2.17 Because of the decrease in the Cauca River's flow, on 21 January 2019, ANLA began a process of sanctions against Hidroituango for allegedly not ensuring a sufficient ecological flow downstream from the dam in order to secure the integrity of the ecosystem services and the protection of the environmental assets of the Cauca River.¹⁹ In addition to this administrative process before ANLA, other administrative investigations have been opened in response to the emergency with various authorities in the country, such as the Offices of the Comptroller General and of the Attorney General, in accordance with the specific competencies of each of these Colombian agencies, with respect to management of the emergency and its consequences.

¹⁶ EPM news bulletin, 7 November 2018.

¹⁷ EPM, Ituango Project indicators. Report 2, 7 February 2019.

¹⁸ EPM press releases, 6 and 8 February 2018.

¹⁹ Press release on closing of Hidroituango's gate 1, 5 February 2019.

III. THE REQUEST²⁰

- 3.1 On 5 June 2018, the MICI received a Request associated with the operations described in section II.B hereof. The Request was made by 477 residents of 9 municipios in the department of Antioquia who are part of the Movimiento Ríos Vivos Antioquia.²¹ The Requesters are represented before the MICI by Isabel Cristina Zuleta. They are also supported by three civil society organizations: the Center for International Environmental Law, the Inter-American Association for Environmental Defense, and the International Accountability Project.
- 3.2 The Request alleges current and potential Harm related to the design, construction, and future operation of the Ituango Hydropower Project, with respect to social and environmental considerations, including Harm that has been exacerbated by the emergency that began last 28 April. The following paragraphs will summarize the Requesters' allegations. More details are included in the Rationale section of this Recommendation.
- 3.3 The Requesters alleged Harm associated with the identification and handling of social and environmental impacts. They also noted the lack of access to information and the failure to guarantee effective participation.
- 3.4 With respect to the social impacts, the Requesters alleged impacts related to issues that include: (i) census of the affected population; (ii) impact on the livelihoods of persons who work in small-scale mining, fishing, or agriculture on the river; (iii) differentiated impacts for women; (iv) lack of access to information and failure to guarantee effective participation; (v) shortcomings in the resettlement plan, compensation, and relocation sites for those who were resettled; (vi) forced evictions; (vii) impact on the social fabric; (viii) a perception of rising violence due to the migration of workers to the area; (ix) impact on archaeological sites; (x) impact on the investigation into the presence of the remains of the bodies of victims of massacres and homicides that were committed during the armed conflict;²² and (xi) situations involving violence and retaliation.
- 3.5 With regard to environmental impacts, the Request alleges impacts related to issues that include: (i) the assessment of cumulative impacts; (ii) the impact on species endemic to the tropical dry forest; (iii) the impact on groundwater and bodies of water associated with the Cauca River; and (iv) noise and air pollution.
- 3.6 With respect to the emergency situation, in general, the Request alleges that this is the result of an inadequate assessment of risks, and specifically, it indicates environmental and social impacts related to the assistance provided to the displaced population and the return to their homes; humanitarian aid in the shelters; communities that have been cut off and the impact on their daily lives; generation of sediment; and the potential increase in greenhouse gases resulting from the inundation of vegetative cover.

²⁰ The Request and Annexes are available in the links section of this document. This section includes information received by the MICI directly from the Requesters during the mission to Colombia conducted between 30 July and 3 August 2018, specifically to the cities of Medellín and Bogotá, as well as to the Project site in the Cauca Canyon, during the eligibility phase.

²¹ The municipios are: Sabanalarga, Valdivia, Ituango, Caucasia, San Andrés de Cuerquia, Toledo, Briceño, Peque, and Sopetrán.

²² This issue was excluded from the MICI process during the eligibility phase, since it was not found to be associated with a potential breach of compliance with IDB Invest policies.

- 3.7 In terms of Operational Policies, the Requesters stated that the Project did not comply with IDB Invest's Environmental and Social Sustainability Policy or its Disclosure of Information Policy.

IV. MANAGEMENT'S RESPONSE²³

- 4.1 Management stated that when it first became involved in the Ituango Hydropower Project in early 2016, it recognized the Project's complexity and initiated a rigorous environmental and social due diligence (ESDD) process, which was conducted between July and October of that year. The ESDD included four general elements: (i) a documentary review of the Project's environmental, social, cultural, and occupational safety and health information; (ii) interviews and technical meetings with various parties involved in the Project, including the Company and representative social actors, among them families who had already been resettled; (iii) an evaluation of the Project's compliance with IDB Invest's Sustainability Policy; and (iv) preparation of an environmental and social action plan (ESAP) to close any gap between what had been verified and what was prescribed by the applicable environmental and social requirements.
- 4.2 In its Response, Management indicated various actions carried out as part of the Project with respect to: consultation, participation, and access to information processes; Project measures regarding involuntary, physical, and economic resettlement and the process for their establishment; attention to vulnerable groups and their inclusion in the Project's mitigation measures; impact evaluation of the migration of workers for the Project; the handling of the emergency situation and the corresponding communication processes; and the situation of violence and human rights violations in the Project area.
- 4.3 Lastly, Management also highlighted the Project's enormous importance for Colombia and the positive impacts of boosting the installed capacity from renewable sources in this country, as well as on the communities in the region due to the investments received for business development, education, health, and infrastructure. The information provided by Management with respect to all the issues raised will be covered in greater depth in the relevant portions of the Rationale section of this Recommendation.

V. THE MICI PROCESS TO DATE

- 5.1 The MICI received the Request on 5 June 2018. During that month, the MICI met with various actors in order to gain a better understanding of the Project and the Request. During this process, the MICI Director found that, to analyze the eligibility, two cases needed to be registered: (i) the first case, notified under number MICI-CII-CO-2018-0133 of 11 June, regarding corporate loan operation 11794-04 approved by the Boards of Executive Directors of the IIC and the IDB in November 2016; and (ii) the second case, under number MICI-BID-CO-2018-0133, regarding technical cooperation operation CO-T1250 approved by the IDB in July 2012. On 11 June 2018, the Requesters and Management were notified of the registration of the Request concerning operation CO-11794-04.
- 5.2 On 1 August 2018, the MICI received Management's Response. As part of the eligibility determination process, from 30 July to 3 August 2018, a MICI team conducted a mission to Colombia, during which there was a visit to the Project site as well as meetings with the various parties involved in the Project and relevant third parties. The Request was

²³ Management's Response is available in the links section of this document. This section includes information extracted from that Response, as well as information received by the MICI directly from Management during meetings and communication as part of researching this case.

declared eligible by the MICI Director on 30 August 2018 because it met eligibility criteria, except for issues related to: (i) the recovery of bodies thrown into the Cauca River during the conflict, since this could not be linked to an IDB Invest act or omission with respect to its environmental and social regulations; and (ii) potential noncompliance with domestic environmental regulations, since this issue is already being addressed in an ongoing legal action.

- 5.3 Since the Requesters had asked that their Request be processed for both MICI phases, the assessment stage of the Consultation Phase began on 26 September. On 16 November 2018, the assessment report was issued, showing that there were no favorable conditions for a dialogue process during the Consultation Phase.
- 5.4 On 7 December 2018, the case was transferred to the Compliance Review Phase. Because of the multiple issues raised in the Request and the need to identify and distinguish the various types of Harm alleged and the operations associated with them, the MICI requested that the Board of Executive Directors grant more time than originally called for in the Policy to prepare the Recommendation. On 14 December 2018, the Board of Executive Directors approved this deadline extension. Therefore, the MICI sent the draft of this document to the Requesters and Management on 28 February 2019 to obtain their comments.
- 5.5 Both Parties had a period of 15 business days to comment. At Management's request, the Board of Executive Directors was asked to extend this period to 12 April 2019, which was approved, such that both Parties had a total of 31 business days to prepare their comments. On that date, the MICI received comments from the Requesters and Management. These comments were carefully reviewed, and the MICI appreciates the remarks and points made. This version objectively and impartially reflects the comments that the MICI deemed relevant. The original comments sent by the Requesters and Management can be consulted in the annexes section of this document.
- 5.6 The MICI notes that IDB Invest, in its Comments on the preliminary version of this document, reported two new active legal cases and two potential cases that it believes may eventually be filed in the future. According to Management, these cases address matters related to the contingency. As a result, it asked the MICI to exclude emergency-related actions from the proposed investigation, based on clause 19 (d) of the MICI Policy.
- 5.7 Regarding the two latter cases mentioned by Management,²⁴ clause 19 (d) of the MICI Policy establishes the exclusion of issues or matters that are presently under judicial review, so it is not for this Mechanism to refrain from addressing matters based on potential cases that have yet to be filed for judicial review or are not legal matters at present.²⁵ Furthermore, with respect to the two active cases, in accordance with the information remitted by IDB Invest and additional information that the MICI was able to verify on the portal of the Colombian

²⁴ See the citation below for a description of these cases.

²⁵ One of the potential legal cases reported by IDB Invest corresponds to an investigation by the Office of the Attorney General of the Nation. A criminal inquiry does not constitute a judicial proceeding according to clause 19 (d) of the MICI Policy. This is an investigation that may or may not result in criminal charges being brought, and in the event that they are, a legal case would be filed. In addition, the MICI cautions that any criminal case brought in the future would be to prosecute alleged crimes committed by individual people. The MICI does not investigate the commission of crimes in the framework of a Compliance Review, so this would not be a matter for the investigation proposed in this document. The other potential case reported by IDB Invest was characterized as such by Management itself, which indicated that "it is regarded as a potential case insofar as the Office of the Inspector General may file a class action suit at any time against EPM, as it stated officially in February. However, so far, it is uncertain as to whether a case will be filed or not, because no recent announcements on the matter have been made by the office."

Judiciary,²⁶ both cases are seeking damages for the alleged suffering, anguish, and distress caused by the risks of collapse of the dam.²⁷ As explained below (see paragraphs 6.7, 6.93, and 6.94 *infra*), the investigation proposed in this document would not address these issues. Concerning the Requesters' allegations about the emergency, the MICI is proposing to investigate actions taken by IDB Invest during the period of due diligence to ensure proper identification of disaster risks, in accordance with the Disaster Risk Management Policy (OP-704), and the corresponding planning to address them in the form of a management plan or contingency plan. Thus, it is the MICI's view that none of the matters subject to active judicial review are being addressed and, therefore, there are no grounds for excluding issues as proposed by Management.

Active cases			
Case	Parties	Matter	Status
Case No. 05001233300020180154800, before the Administrative Court of Antioquia	Plaintiff: Class of individuals (Yeyson Acevedo Giraldo and others) / Defendant: ANLA and Hidroituango	Moral harm (change in quality of life, degrading conditions, stress, fear, and suffering) caused by the evacuation to which communities downstream from the dam were subjected as a result of the emergency.	The case was admitted on 7 September 2018. Pending decision.
Case No. 23001-33-33-001-2019-00013-00, before the First Oral Administrative Court of Monteria	Plaintiff: Class of residents of the 15 municipios that were placed on red, orange, and yellow alert during the emergency (Valdivia, Cáceres, Caucasia, Nechí, Taraza, Majagual, Guaranda, San Marcos, Sucre, Caimito, San Benito de Abad, Ayapel, Achi, Magangué, and San Jacinto del Cauca) /	Moral harm caused by the suffering, anguish, and distress inflicted by the risk of collapse of the dam and subsequent flooding, during both the emergency and operation of the Project.	The case was notified to EPM on 5 March 2019. Pending decision.

²⁶ See <https://www.ramajudicial.gov.co/>.

²⁷ The first case, files as Case No. 05001233300020180154800 with the Administrative Court of Antioquia, was brought in response to "the EVACUATION ORDER issued by the National Unit for Disaster Risk Management (UNGRD), in coordination with the Armed Forces, for all communities in the municipios located downstream from the dam due to the possibility of a sudden rise in the level of the Cauca River, which endangered their lives due to a possible avalanche resulting from the collapse of the Cauca River diversion tunnels during the construction and fill stage of the "PESCADERO – ITUANGO" HYDROELECTRIC DAM PROJECT, a situation that put the dam at serious risk of collapse, reducing or affecting the quality of life of all people who reside, work, or study in the riverside communities along the Cauca River downstream from the site of the dam, as well as the population located in the area of direct influence of the cited megaproject." Order dated 24 April 2019 rejecting the admission of evidence ex officio, issued by the Fourth Oral Chamber of the Administrative Court of Antioquia. The second active case reported by IDB Invest, filed as Case No. 23001-33-33-001-2019-00013-00 with the First Oral Administrative Court of Monteria seeks "to have [the codefendants] declared as administratively, extracontractually, and patrimonially liable for the moral harm caused on all members of the group who reside in the 15 municipios of Valdivia, Cáceres, Caucasia, Nechí, Taraza, Majagual, Guaranda, San Marcos, Sucre, Caimito, San Benito de Abad, Ayapel, Achi, Magangué, and San Jacinto de Cauca, who were living and live in the areas declared to be on red, orange, and yellow alert, by resolutions 034, 035, 041, and 042 of the National Unit for Disaster Risk Management, holding them solely and exclusively responsible for this moral harm; the creation of the risks created by the construction and operation of the Ituango Hydroelectric Dam." Order dated 29 May 2019 upholding the appeal for reversal of the ruling deciding against the consolidation of both cases, issued by the Fourth Oral Chamber of the Administrative Court of Antioquia.

	Defendant: EPM, Hidroituango and others.		
Potential cases			
Case	Matter	Status	
Inquiry before the National Environmental Unit of the Office of the Attorney General of the Nation.	The Office of the Attorney General of the Nation announced, via press release on 27 February 2019, that it was pursuing certain lines of investigation related to Hidroituango, the emergency, and potential environmental damage, including: improper management of solid waste, unpermitted works and modifications, and failure to assess risks and establish contingency plans. If the case were to proceed, it would be to prosecute crimes committed by individual persons.	Investigation under way to determine whether to prosecute the case.	
Announcement by the Office of the Inspector General that it will file a class action suit against EPM with the Administrative Court of Cundinamarca	The Office of the Inspector General of the Nation announced, via press release on 27 February 2019, that it would file a class action suit against EPM with the Administrative Court of Cundinamarca, in defense of the rights of the communities adjacent to Hidroituango. According to the Inspector General's Office, the case will seek preventive protection, to ensure food and non-food items, health services, first aid, lodging for families who have not been relocated, and immediate activation of an early alert system to issue flood and landslide warnings.	No information is available other than the press release.	

- 5.8 The final version is submitted for the consideration of the Board of Executive Directors, which is responsible for approving the MICI's Recommendation to conduct or to not conduct a Compliance Review investigation.
- 5.9 Considering that this document contains confidential information, this unredacted version is for internal use only. For purposes of disclosure and in accordance with IDB Invest's Disclosure of Information Policy, the preliminary version that was shared with the Requesters was redacted, and the final version for public disclosure will be redacted as well. This has been notified to the IDB Invest Management, which has also indicated to us which information is confidential in its comments on the preliminary version.²⁸
- 5.10 This document has two main sections: (i) the MICI's Recommendation and corresponding rationale as to whether to conduct a Compliance Review, in which the MICI states its decision to recommend an investigation and offers the reasons for the recommendation, based on a preliminary review of the main documents associated with the Operation, the perspective of the Parties, and the requirements of the Relevant Operational Policies (section VI *infra*) in reference to the allegations of noncompliance that have been presented; and (ii) the Terms of Reference for the recommended investigation of this Operation that is

²⁸ For the information of the Board of Executive Directors, the public version of this document, in which the confidential information has been redacted, is available on the Public Registry.

being recommended. The purpose of these Terms of Reference is to guide the Compliance Review Phase and inform the Parties as to what to expect, pursuant to paragraph 39 of the MICI Policy (section VII *infra*).

VI. RECOMMENDATION FOR A COMPLIANCE REVIEW

- 6.1 This *Recommendation* for a Compliance Review and its Terms of Reference are submitted to the Board of Executive Directors for its consideration, pursuant to paragraphs 39 to 41 of the MICI Policy.
- 6.2 The MICI observes that the Requesters are alleging a number of actual and potential Harms in connection with potential noncompliance by IDB Invest with its Environmental and Social Sustainability Policy, specifically: (i) inadequate and insufficient assessment and identification of environmental and social impacts, including gender-differentiated impacts; (ii) lack of consultations and effective forms of participation for the communities affected; (iii) increase in conflicts, insecurity, and violence in the Project's area of influence; (iv) lack of effective resettlement or compensation plans to address the physical and economic displacement of the persons affected, including allegations of forced evictions; and (v) mismanagement and lack of information for the emergency that began in April 2018. These allegations involve obligations by IDB Invest arising from the following IDB Operational Policies: Environment and Safeguards Compliance Policy (OP-703), Disaster Risk Management Policy (OP-704), Operational Policy on Involuntary Resettlement (OP-710), and Operational Policy on Gender Equality in Development (OP-761). They also involve obligations arising from the following International Finance Corporation (IFC) Environmental and Social Performance Standards: Assessment and Management of Environmental and Social Risks and Impacts (Performance Standard 1); Resource Efficiency and Pollution Prevention (Performance Standard 3); Community Health, Safety, and Security (Performance Standard 4); Land Acquisition and Involuntary Resettlement (Performance Standard 5); Biodiversity Conservation and Sustainable Management of Living Natural Resources (Performance Standard 6); and Cultural Heritage (Performance Standard 8).
- 6.3 The MICI notes that, according to the IIC Environmental and Social Sustainability Policy, prior to approval of an investment, IDB Invest "assesses potential environmental and social risks and impacts of all proposed investments for compliance with host country laws and regulations and this Sustainability Policy and associated standards and guidelines." The Sustainability Policy establishes that the IDB Operational Policies and IFC Environmental and Social Performance Standards are applicable for compliance with this sustainability policy, along with "other related regulations and guidelines," including IDB sector guidelines and general guidelines, and IFC environmental, health, and safety guidelines. Likewise, pursuant to the Environmental and Social Sustainability Policy, in cases where there is a difference between an IDB and IFC standard, the IIC will follow the relevant IDB policy. The MICI likewise notes that the Environmental and Social Sustainability Policy establishes that as part of its roles and responsibilities, "the IIC is responsible for implementing this policy and assuring that all investments financed by the IIC are in compliance with it," by means of "its environmental and social appraisal and supervision procedures."
- 6.4 The MICI, pursuant to its mandate, has performed a preliminary review of certain documentation regarding IDB Invest's obligations starting with its involvement in the Project in March 2016, as well as the additional information provided by Management and the Requesters since the Request was registered, specifically with respect to the development and management of the emergency associated with the Project.

- 6.5 The MICI observes that there are contrasting assertions and differing perspectives about the allegations of Harm and compliance with the Relevant Operational Policies between the Requesters and Management. Given the relevance of the alleged Harm, which includes allegations of displacement of people, impact on livelihoods, intensification of violence in the area, as well as the events surrounding the emergency that have occurred since April 2018, and ensuing serious social and environmental impacts in the area, the MICI deems it relevant to conduct an investigation to clarify the alleged facts regarding IDB Invest acts or omissions, exclusively with respect to its obligations arising from the Relevant Operational Policies.
- 6.6 The MICI believes that an investigation in this case can contribute to clarifying facts and actions that will have the effect of strengthening the Project. This would also contribute valuable information to the Board in terms of compliance with the Relevant Operational Policies for this major Project in the private sector, with respect to sensitive issues such as involuntary resettlement, project execution in conflict zones, respect for human rights, and management of disaster risks. This investigation will also be in line with IDB Invest's commitment to zero tolerance for any type of retaliation, such as threats, intimidation, harassment, or violence, against those who voice their opinion or opposition to IDB Invest projects and that it is committed to addressing complaints of this nature.²⁹
- 6.7 Therefore, **the MICI submits to the IDB Invest Board of Executive Directors for its consideration, pursuant to paragraphs 39, 40, and 41 of the MICI Policy, the Recommendation to conduct a Compliance Review of the allegations presented. In this regard, it has decided to focus the scope of a possible investigation on determining whether IDB Invest has complied with the provisions of its Environmental and Social Sustainability Policy regarding IDB Operational Policies OP-703, OP-710, OP-704, and OP-761, and IFC Performance Standards 1, 3, 4, 5, 6, and 8, with respect to: the assessment and identification of the area of influence and population to be impacted, and of the social and environmental impacts, including the alleged increase in conflicts and insecurity in the Project area and gender-differentiated impacts; public consultations and other forms of participation for the affected communities; the scope, design, and supervision of implementation of the resettlement and compensation plans developed in response to the physical and economic displacement generated by construction of the Project; and the identification and assessment of disaster risks and the approval and supervision of the plan to manage those risks, including regarding the availability, access, and management of related information.**
- 6.8 However, **the MICI believes that there are insufficient elements to propose a Compliance Review process regarding potential noncompliance with IDB Invest's Disclosure of Information Policy.**³⁰ According to this Policy, IDB Invest must make available to the public: (i) an investment summary, 30 days prior to approval by the Board; and (ii) an environmental review summary and an environmental impact assessment, at least 120 days prior to approval by the Board. The MICI notes that these documents subject to mandatory disclosure were made available to the public on the IDB Invest website in June 2016. Therefore, it believes that it is not necessary to analyze compliance with this policy through a Compliance Review.

²⁹ IDB Invest press release reaffirming its commitment to human rights, available at <https://www.idbinvest.org/en/download/6635>.

³⁰ The Requesters also alleged noncompliance with IDB Operational Policy OP-102. However, the access to information policy applicable to IDB Invest is its Disclosure of Information Policy.

- 6.9 The MICI cautions that the rationale provided below is based on a preliminary review of the body of documents that are publicly available on the Project, as well as the main Project documents. The considerations contained in this rationale do not constitute a determination by the MICI as to compliance or noncompliance by IDB Invest with the Relevant Operational Policies nor are they intended to prejudice the actions taken by IDB Invest in this regard. It would be the purpose of the investigation that is being recommended in this document to determine, based on the findings, compliance and offer factual information on IDB Invest's actions with respect to each of the allegations made by the Requesters. The investigation is the right mechanism for MICI to be able to examine all the documents and additional information proposed for review by IDB Invest in its Comments (see *annexes*).

A. Rationale for the Recommendation

Regarding compliance with the Environment and Safeguards Compliance Policy (OP-703) and with Performance Standard 1, Assessment and Management of Environmental and Social Risks and Impacts; Performance Standard 3, Resource Efficiency and Pollution Prevention; Performance Standard 6, Biodiversity Conservation and Sustainable Management of Living Natural Resources; and Performance Standard 8, Cultural Heritage

- 6.10 The Requesters allege that an adequate, complete environmental and social impact assessment that included an evaluation of cumulative effects was never performed. With respect to environmental impacts, they indicated that these shortcomings in the assessment were demonstrated by the emergency that began in April 2018, arguing that there is still a possibility of collapse, a potential for a mountain landslide, and possible fluctuations in the river flow. Specifically, they stated that: (i) the Project involves a risk for flooding, deteriorating water quality, and diminished storage capacity, and sedimentation has occurred downstream on the riverbed and marshes along the Caucasia River, causing species loss; (ii) soil quality is degrading due to loss of fertility; (iii) landslides are continuous in the Canyon, posing a risk to the communities and the environment, and threatening the displacement of species and the destruction of the forest; and (iv) air quality is also being affected by the construction activities, which generate particulate matter, gas emissions, and noise pollution.
- 6.11 They also allege that the construction has had serious impacts on the area's natural resources, contributing to the disappearance of the habitats of endemic and endangered species, as well as forest depletion. Hidroituango requires destroying a large part of the tropical dry forest, impacting the area's biodiversity.³¹ In addition, they indicated that the Project jeopardizes the quality and availability of drinking water, aggravating the contamination of surface and groundwater flows, which are already being polluted by domestic and industrial wastewater. They also stated that 26 archaeological sites would be significantly affected and five would be partially affected by the flooding of the reservoir area.
- 6.12 Moreover, they believe that the crisis the Project is experiencing is the result of the lack of an adequate, participatory, and cumulative environmental impact study. They stated that EPM's alleged ignorance of the risk posed by the "geological situation" that caused the landslides and blockages is evidence of serious flaws in its environmental impact

³¹ According to the Requesters, the construction of the hydroelectric plant endangered 2,600 hectares of tropical dry forest, which they consider a highly threatened and fragmented ecosystem, with only 8% of its original coverage remaining. This will affect different aspects of the area's environment, without having a plan in place to protect species that are being affected.

assessment process. They highlighted that the process did not adequately involve the communities who, based on their knowledge of the area, tried to warn about the risks.

- 6.13 With respect to social impacts, the Requesters allege that there was no adequate census that identified all of the affected people and adequately described the population. They stated that since the entire population affected was not identified, not all social impacts were assessed and management measures were not established, particularly regarding cumulative impacts, including the effects on the livelihoods of those dedicated to small-scale mining, fishing, and agriculture.
- 6.14 In addition, they indicate that a proper analysis of Hidroituango's social impacts was not done and there has been a lack of information from the beginning of the Project, as demonstrated by: (i) fragmentation of the communities and a strong sense of uprootedness created by the loss of the spaces they use and occupy on a daily basis;³² (ii) lack of adequate representation for certain sectors, such as the indigenous community of the Nutabe People of Orobajo; and (iii) effects on communities and families in the population centers scattered throughout the Cauca River Canyon that depend on the dynamics of the canyon for their livelihoods. In addition, they reported that the migratory flows caused by Hidroituango, including the flow of workers into the area, have altered the socioeconomic and cultural environment, giving rise to trauma and social conflicts. From their perspective, this is exacerbating the social crisis in an area historically impacted by violence and armed conflict.
- 6.15 With respect to the public consultation process and methods for citizen participation, the Requesters allege that access to information about the Project and its risks has been difficult, complex, and in some cases nonexistent. The environmental impact assessment (EIA) documents have not been available to the public in their entirety, and updates about the emergency situation have not been accurate or timely. They add that the communities' ability to obtain access to public information is constrained by cost, geographical location, limited Internet access, and lack of adequate availability, and that a large part of the affected population either struggles with literacy or is unable to read or write.
- 6.16 They also indicate that there have been no proper participatory processes prior to the start of the Project in 2009 or during its execution. They believe that most of those affected were not involved because: (i) the Project outreach strategies failed to take into account the local political and social context of this area affected by the armed conflict and insecurity;³³ (ii) many of those affected were not counted because they had been displaced by the violence; and (iii) the censuses were conducted based on participatory processes developed in 2006 and were not updated in 2009.
- 6.17 Management stated that it has complied with the Environmental and Social Sustainability Policy. Management undertook a particularly rigorous environmental and social due diligence (ESDD) process between July and October 2016, for which it: (i) reviewed the Project's environmental, social, cultural, and occupational safety and health information, including numerous technical studies, some of which were prepared for the technical cooperation operation with the IDB; (ii) conducted interviews and technical meetings with EPM and multiple actors; (iii) evaluated the Project's compliance with IDB Invest's

³² For example, they stated that several beaches and roads have been closed by security forces as private property of the Project and that this has affected the mining and panning activities they engaged in, since no alternatives have been offered.

³³ They indicated that the census takers did not go to all the places where people who are affected by the Project reside, on the grounds that it was dangerous in view of the armed conflict. In addition, given the situation of armed conflict in the area, it has been difficult for the communities to organize and attend all of the Project's informational meetings.

Sustainability Policy; and (iv) prepared an environmental and social action plan (ESAP) to close gaps.

- 6.18 In addition, Management indicated that during the ESDD process, it ensured that socioeconomic information was collected on the affected families to identify those families considered to be vulnerable, to offer them certain guarantees such as priority in the selection of properties or houses. On the effects of worker migration, it stated that the ESDD also assessed the potential impacts of the presence of approximately 8,000 Project workers in the region during the peak season. However, these impacts were considered low, since all workers would be housed in Hidroituango camps and would leave the Project area during their time off, limiting interaction with the community.
- 6.19 In addition, Management indicated that the public consultation process for the Project began in 2006 and included the communities in its area of direct and indirect influence. According to Management, there were hundreds of workshops, talks, and meetings involving several thousand people. At these events, a description of the Project and associated works was given in simple language, with an explanation of the likely impacts; the proposed measures to eliminate, mitigate, or offset possible adverse effects, or stimulate possible positive effects; the social management plan (SMP), which is an involuntary resettlement plan; the mechanism for complaints and claims; and the job prospects that the Project could generate. Management stated that these served as forums to receive feedback from the community as to their concerns.
- 6.20 Management also pointed out that the Project has: (i) a Communication and Participation Program; (ii) specific communication mechanisms for individuals who will be physically or economically displaced; and (iii) an Employment Oversight Committee, which provides information on employment with the Project, among other programs. In addition, Management stated that it is initiating prior consultation processes with respect to the indigenous community of the Nutabe People of Orobajo, which was recently recognized under domestic law.
- 6.21 For category “A” operations, Operational Policy OP-703 requires an environmental impact assessment (EIA) that, as a minimum, includes an analysis of alternatives to the Project and a screening and scoping for impacts, giving due consideration to direct, indirect, regional, or cumulative impacts, using adequate baseline data as necessary; and impact management and mitigation plans presented in an environmental and social management plan, and measures for the effective monitoring of its implementation. For operations that are already under construction, the IDB Group may provide financing for them only if the borrower complies with the relevant provisions of the policy. If noncompliance is identified, an action plan needs to be submitted prior to Board approval of the operation. Likewise, the IDB Group will identify and manage other risk factors that may affect the environmental sustainability of its operations, including risks associated with highly sensitive environmental and social concerns.
- 6.22 Performance Standard 1 underscores the need for an integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects. It calls for the client to manage environmental and social performance throughout the project with an environmental and social management system that uses a methodological approach to managing risks and impacts. It also indicates that, in projects like this one, risks and impacts need to be identified in the context of the area of influence, which should encompass the area likely to be affected, associated facilities, and cumulative impacts. This standard also calls for individuals and groups that may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status to be identified,

and to include differentiated measures for these population groups. Meanwhile, Performance Standards 2 to 8 describe the potential environmental and social risks and impacts that require special attention.

- 6.23 Moreover, according to Operational Policy OP-703, affected parties in category “A” operations will be consulted at least twice during project preparation, through processes in which appropriate information is provided in location(s), format(s), and language(s) to allow for affected parties to be meaningfully consulted, to form an opinion, and to comment on the proposed course of action. EIAs or other relevant analyses will be made available to the public. During execution, affected parties should be kept informed of those Project-related environmental and social mitigation measures affecting them. Likewise, for projects with significant adverse impacts on affected communities, Performance Standard 1 requires effective community engagement through disclosure of Project-related information and consultation with local communities on matters that directly affect them. It calls for the client to conduct an informed consultation and participation process that involves a more in-depth exchange of views and information, and an organized and iterative consultation.
- 6.24 Lastly, Operational Policy OP-703 indicates that the IDB Group will not support operations that, in its opinion, significantly convert or degrade critical natural habitats, unless: (i) there are no feasible alternatives that are acceptable; (ii) comprehensive analysis demonstrates that overall benefits from the operation substantially outweigh the environmental costs; and (iii) acceptable mitigation and compensation measures are adequately funded, implemented, and monitored. In addition, the IDB Group will take measures to prevent, reduce, or eliminate pollution resulting from its activities.
- 6.25 The Requesters have also made certain allegations with respect to specific risks and impacts covered by Performance Standards 3, 6, and 8. Standard 3 calls for promoting a more sustainable use of resources and avoiding or minimizing pollution from project activities. Standard 6 calls for direct and indirect Project-related impacts on biodiversity and ecosystem services to be considered; the differing values attached to biodiversity and ecosystem services by affected communities to be taken into account; and natural habitats not to be significantly converted or degraded, unless there are no other viable alternatives; consultations to be held to establish the views of stakeholders, including affected communities, with respect to the extent of conversion and degradation; and any conversion or degradation to be mitigated. Lastly, Standard 8 calls for projects to be located and designed to avoid significant adverse impacts to cultural heritage, and where this heritage is affected, to consult with affected communities and enable access to previously accessible cultural heritage sites.
- 6.26 The MICI observes that the allegations made by the Requesters regarding these Relevant Operational Policies focus, overall, on the lack of proper identification of the area of influence and impacted population, and of the social and environmental impacts, particularly cumulative impacts, and their mitigation measures. They also focus on the lack of meaningful consultations with the affected communities and effective participation mechanisms. A specific analysis of each of these three issues is below.
- 6.27 With respect to the identification of the Project's impact area and determination of the affected population, in the body of documents reviewed to date, the MICI found that the Project identified as areas of direct influence³⁴ the *veredas* and *corregimientos* where there

³⁴ The Project's EIA defines an area of direct influence as that in which “primary or first-order impacts that may occur in the Project location predominate or are relevant.” EIA, chapter 3.1.2, page 3.3.

was direct intervention through Project works (local area of direct influence)³⁵ and the locales to which there was involuntary displacement (specific area of direct influence).³⁶ Moreover, areas of indirect influence are those “where there are second-order impacts that involve both a local and regional context.” This includes the municipios of Briceño, Buriticá, Ituango, Liborina, Olaya, Peque, Sabanalarga, San Andrés de Cuerquia, Santa Fe de Antioquia, Toledo, Valdivia, and Yarumal.³⁷ Based on the documents presented by the Requesters, most are in areas determined to be of indirect impact, except for residents of Caucasia and Sopetrán, communities that are not in the Project’s direct or indirect areas of influence.

- 6.28 In this regard, the MICI notes that the Project’s identified areas of influence, both direct and indirect, would not include most of the municipios affected by the emergency that began in April 2018. Of the municipios impacted by the emergency that were placed under various alert levels, only Briceño, Ituango, and Valdivia are part of the Project’s area of influence.³⁸ Meanwhile, others such as Caucasia were not included in the area of influence.³⁹ Likewise, national authorities determined that the Project’s physical, social, and environmental impacts and effects reach further than expected, “and could even impact the departments of Sucre and Bolívar.”⁴⁰
- 6.29 Based on the foregoing and taking into account the requirements of the Relevant Operational Policies to determine a Project’s area of influence, the MICI found that a Compliance Review would be relevant to help clarify whether the process to identify the area of influence of this Project was conducted in accordance with the Relevant Operational Policies and whether the Project’s impacts on the communities located downstream from the dam were considered.

³⁵ According to the EIA, the local area of influence includes areas where there will be interventions through works related to the reservoir, camps, access routes, transmission line, power line for construction, and collection sites for the Project. EIA, chapter 3.1.2.2.1, page 3.4.

³⁶ This encompasses the population center of the *corregimiento* of Barbacoas; the population center of the *vereda* of Orobajo; some scattered homes that will be flooded due to the creation of the reservoir; the urban area of the municipio of San Andrés de Cuerquia; some rural areas of the San Andrés de Cuerquia - El Valle corridor (municipio of Toledo); and rural areas of the Puerto Valdivia - dam area corridor. In addition, due to their proximity to the main works, the population centers of the *corregimiento* of El Valle in the municipio of Toledo and the *corregimiento* of Puerto Valdivia are expected to experience impacts due to migratory pressure. See also environmental and social review summary (ESRS), page 3.

³⁷ ESRS, page 3. Also, EIA, page 3.3.

³⁸ According to information from the UCP, areas of the municipios of Briceño, Ituango, and Valdivia were preventively permanently evacuated and placed under a red alert; towns along the river in the municipios of Cáceres and Tarazá were placed under an orange alert, ready for immediate evacuation; and areas of the municipios of Caucasia, Nechí, Ayapel, San Jacinto del Cauca, Guaranda, Majagual, Achí, San Marcos, San Benito Abad, Sucre, and Magangué were placed under a yellow alert, ready for an evacuation order and as a notice to prepare for evacuation.

³⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Update to the Board of Executive Directors of IDB Invest, Ituango Hydroelectric Project, 9 July 2018, page 2.

⁴⁰ Comptroller’s Office report, available in the links section of this document. Similarly, according to the Comptroller’s Office report, the lack of proper identification and description of the population groups and communities at risk became evident during the emergency. Also, during meetings to address the emergency in May 2018, “it was found that there was no concrete or actual information about the families affected and displaced, the families who after the emergency had to go to shelters, self-shelters, displaced to the urban centers of Yarumal, Valdivia, and farms located in unthreatened areas.” Report from the Office of the Comptroller General of the Republic, August 2018, pages 20 and 36.

- 6.30 With respect to the identification of the population affected by the Project, the environmental and social review summary (ESRS) of 2016 established that 474 families would be affected directly—262 families would be physically displaced and 212 families would be economically displaced (miners who reach the river from upstream areas)—, as well as 13 families of gold buyers and 10 families of boatmen whose economic activities would be affected and who will receive assistance from the Project.⁴¹ Previously, the SMP of 2011 established that the beneficiary population of the restitution program for economic conditions included 652 mining families living on drainage areas in *veredas* around the reservoir, with various degrees of economic reliance on the river and partial impact on their mining activities; 19 families living in the road corridors; and river transporters, mine holders, and groups of small miners who extract alluvial deposits, who will be unable to continue their mining activities.⁴²
- 6.31 Moreover, the EIA recognizes that 10,399 people (about 2,433 families) live in the 52 *veredas* that make up the local area of direct influence (mainly those adjacent to the river),⁴³ whereas 4,425 people (nearly 1,135 families) would comprise the specific area of direct influence (paragraph 6.26 above), owing to their total dependence on the Cauca River and their location in the heart of the river canyon.⁴⁴ This assessment also estimated that the population whose economic activities would be impacted without having an impact on property⁴⁵ would be approximately 1,396 miners, including residents and nonresidents;⁴⁶ 13 people working on mining-related activities; 4 individuals who are occasionally hired by gold-buying businesses (some of whom live in the Project's areas of direct influence);⁴⁷ as well as 11 people who work on river transportation and 3 people who are occasionally hired for this transportation service.⁴⁸ In addition, based on the information that the MICI reviewed about the Project's area, there are 17,386 registered gold panners in the Norte, Occidente, and Bajo Cauca subregions; 2,054 are located in 12 municipios in the area of influence.⁴⁹ This number excludes those panners who perform this work informally.
- 6.32 Notwithstanding the considerations that have already been made about the identification of the area of influence, the MICI found that there are inconsistencies between the number of residents of the area who depend on the river and associated activities, and the determination of the population affected by the Project established in Project documents. As far as that determination of the affected population, the MICI found that population censuses took place between 2009 and 2010 to establish the beneficiaries of the Project's socioeconomic programs. However, in this stage, the MICI has not identified any

⁴¹ ESRS, pages 2 and 19-20.

⁴² SMP, page 8.40.

⁴³ EIA, chapter 3.4, Description of area of influence, Social environment, pages 1, 53, 66, and 67.

⁴⁴ EIA, chapter 3.4, Description of area of influence, Social environment, pages 1, 66, 67, 76-83, 128, 134, 141, 146, and 151.

⁴⁵ With respect to the impact on economic activities, the EIA takes into account both impacts resulting from the damming of the Cauca River, which would suspend gold extraction activities from its hillsides, a situation that would directly impact the mining population (including gold buyers), and the construction of the route from Puerto Valdivia to the dam area, which would have an impact in the form of decreased demand for river transportation along the river itself. EIA, chapter 3.4, page 97.

⁴⁶ EIA, chapter 3.4, Description of area of influence, Social environment, page 99.

⁴⁷ EIA, chapter 3.4, Description of area of influence, Social environment, page 117.

⁴⁸ EIA, chapter 3.4, Description of area of influence, Social environment, page 122.

⁴⁹ Open Data Portal. Colombia Digital Government. <https://www.datos.gov.co/Econom-a-y-Finanzas/BAREQUEROS-LEGALIZADOS-EN-EL-PA-S/y26x-cdjt/data>.

subsequent updates between that time and November 2016, when the Project was approved. This is particularly relevant, given the specific context of the area, which is characterized by the itinerant nature of certain population groups.

- 6.33 In this regard, [REDACTED]⁵⁰ and others were denied recognition because their requests were not submitted before certain dates.⁵¹ Likewise, based on information the MICI received, in considering the compensation measures for the affected population, the time they had spent settled in that area was taken into account.⁵²
- 6.34 While the MICI understands that both parameters are common practice in these types of land procurement procedures or other measures in response to physical and economic displacement,⁵³ it would like to highlight the characteristics of the area's geographic and social context. There are itinerant residents who move throughout the area mainly to carry out subsistence activities, as well as persons affected by the armed conflict and subsequent displacements or restrictions on the freedom of movement and transit through the territory. Therefore, at an internal level, it has been mentioned that the issue of including the population in the census is "one of the most problematic aspects of the process with the communities, in the case of Hidroituango," since "there are reiterated complaints from residents who say they have been affected by the Project and were not included in the census," partly because "there are problems with the way in which they identify and describe the affected population, involving, for example, residents who perform itinerant or temporary activities, not permanent ones, and who may or may not be included in the description prepared depending on the time and way in which that activity was conducted." They may also be victims of forced displacement due to the armed conflict.⁵⁴ [REDACTED]
- [REDACTED]
- [REDACTED]⁵⁵ For its part, IDB Invest, in its Response to this case, indicated that the census may include persons who were displaced by the armed conflict in Colombia, pursuant to current legislation.
- 6.35 Based on this preliminary review, no information has been found that would indicate how these factors or characteristics of the population might have been considered in determining the affected population or conducting the censuses, nor whether there are procedures for inclusion after the census and the ways in which individuals could

⁵⁰ For example, see the EPM environmental and social compliance report, first quarter 2018, page 179.

⁵¹ In the ESRS, IDB Invest stated that there are approximately 611 families of miners who arrived in the area after the census and the public utility declaration in 2008, who "will not be assisted by the Project." ESRS, page 19. Subsequently, in its Response to the Request, Management indicated that the process of drawing up the final list of displaced persons took almost a year after the census cut-off date to allow for adjustments, and that this final list may still include families or individuals who, having been displaced by the armed conflict in Colombia, were not accounted for in the census. It may also be adjusted to include any individual who, after presenting the appropriate supporting evidence, is eligible to be part of the Comprehensive Program for Restoring Living Conditions.

⁵² SMP, page 8.24; and presentation about the social component of the environmental management plan for the Ituango Hydropower Project, made to the MICI, 1 August 2018.

⁵³ In this regard, Performance Standard 5 calls for a census to be carried out to identify the persons who will be affected by the project. One of its purposes will be "to discourage ineligible persons, such as opportunistic settlers, from claiming benefits." While the Client is not required to compensate or assist those who encroach on the Project area after the cut-off date for eligibility, it must include persons who were not resident during the registration process but who can legitimately demonstrate that they belong to the affected community.

⁵⁴ Report from the Office of the Comptroller General of the Republic, page 18.

⁵⁵ IESC report, March 2018, pages 5 and 80.

demonstrate these circumstances and be recognized as part of the population that is currently affected by the Project.

- 6.36 Based on the above considerations, the MICI believes that a Compliance Review would enable clarification of whether the actions and measures carried out by or required from IDB Invest were adequate to ensure the complete determination and identification of the Project's area of influence, and an identification and description of the affected population that took into account its characteristics, history, and traditions, including the possibility that indigenous communities may be present, as required by the Relevant Operational Policies.
- 6.37 Separately, with respect to the allegation of the lack of adequate and complete identification and assessment of the social and environmental impacts, the MICI observes that this is directly connected to the questions regarding the identification of the Project's area of influence and affected population, particularly regarding social impacts. An investigation of these issues was proposed above. Considering that the definition of an area of influence and description of the affected population for a Project are factors that directly influence the identification and assessment of its social and environmental impacts and the determination of the measures to manage them, the MICI also recommends an investigation on whether, as part of the Project, there was a complete identification of the environmental and social impacts, pursuant to the requirements of Operational Policy OP-703 and Performance Standard 1. Notwithstanding the foregoing, a specific rationale of some issues set out in the Request regarding the lack of impact identification is presented below.
- 6.38 The Requesters allege noncompliance related to the identification and assessment of cumulative impacts and impacts on the tropical dry forest, water, and ecological flow, as well as social impacts as a result of violence in the area and migratory flows of population in general and of workers into the Project area specifically. In this regard, the MICI notes that the Project identified a number of environmental and social impacts as well as management and mitigation measures.⁵⁶ In addition, IDB Invest points out that, as part of the technical cooperation operation, EPM carried out a water quality modeling study in the future reservoir and downstream from the dam; an assessment of the cumulative effects of a future chain of reservoirs in Cañafisto-Ituango-Espíritu Santo; and updates of the fish baseline and the SMP for the flora and fauna.⁵⁷
- 6.39 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁵⁸ Therefore, the environmental and social action plan

⁵⁶ In the ESRS, the "highly significant" environmental and social impacts and risks identified included: (i) irreversible loss of vegetative cover (approximately 3,800 hectares); (ii) increased risk of spills and soil contamination during construction; (iii) changes in air quality due to emissions caused by equipment and machinery operation; (iv) increased noise levels; (v) an impact on land use and exploitation of natural resources (artisanal or informal fishing); (vi) increased health and safety risks for neighboring communities; (vii) a direct impact on 474 families, due to physical and economic displacement; (viii) potential lifestyle changes for the local population; and (ix) increased social or employment expectations. The Project is also located in an area with medium seismic activity and high rainfall, which exacerbates the hazards present in the region. In addition, the following environmental impacts were identified as significant: (i) changes in benthic communities; (ii) possible habitat loss or fragmentation; (iii) landscape modification; (iv) transformation of river environments into lake environments; (v) modification of soil quality; (vi) changes in the abundance of fish in the Cauca River basin; and (vii) changes in land ownership. ESRS, pages 2 and 4.

⁵⁷ ESRS, page 5.

⁵⁸ ESS, section 2.2.

(ESAP)⁵⁹ required an update of the cumulative impacts study to align the methodology, which was to have been ready by 4 November 2016.⁶⁰ [REDACTED]

[REDACTED]⁶¹

6.40

[REDACTED]⁶²

[REDACTED]⁶³

[REDACTED]⁶⁴

[REDACTED]⁶⁵

6.41

[REDACTED]⁶⁶

6.42 Therefore, the MICI believes that it is relevant to conduct an investigation regarding the various actions and/or studies undertaken as part of the Project to comply with the cumulative impact assessment requirements of Operational Policy OP-703 and Performance Standard 1.

6.43 With respect to allegations of specific environmental impacts, the MICI notes that IDB Invest conducted an ESDD process to identify gaps regarding compliance with its Environmental

⁵⁹ The MICI noticed that, for this operation, it has two versions of the ESAP: one that was attached to the ESRS and is public, and another that is in the loan contract and is confidential. There are some differences in actions and dates between the versions. In this Recommendation, the MICI will refer to the ESAP as the document attached to the ESRS and will specifically indicate any reference to the document accompanying the loan contract.

⁶⁰ ESAP, paragraph 1.16.

⁶¹ Back-to-the-office report from a visit from 3 to 7 October 2016, pages 1 and 2.

⁶² Complementary analysis of cumulative impacts, November 2016, EPM.

⁶³ Loan contract, 29 December 2017, Annex 2, Environmental and Social Provisions; and environmental supervision reports of 31 July 2017 and 23 April 2018.

⁶⁴ Environmental supervision report of 31 July 2017.

⁶⁵ Environmental supervision report of 23 April 2018; ESAP action 1.17.

⁶⁶ IESC report, March 2018.

and Social Sustainability Policy.⁶⁷ [REDACTED]

[REDACTED]⁶⁸
In this regard, the ESAP sets forth a number of actions for conservation of biodiversity and sustainable use of natural resources, including: (i) provide confirmation of the presence of protected areas, and if applicable, generate a strategic baseline for biodiversity; (ii) determine and submit a land compensation plan; (iii) provide an identification and characterization study of ecosystem services, including consultation with affected communities; and (iv) provide a study of identification, mapping, and characterization of potential critical habitats that may be affected, and its compensation plan.⁶⁹

6.44 Moreover, the MICI notes that the ESRS mentioned that the Project “is not planning to leave an ecological flow.”⁷⁰ Therefore, among other reasons, it was estimated that “the river will never be dewatered and even at times of maximum generation and zero relief, only a small stretch of the river measuring a couple of hundred meters would be affected by a flow decrease.” However, due to the emergency situation, information has been received from Management, the Requesters, and the media, according to which, after the closing of the powerhouse gates, the river’s flow downstream from the Project decreased significantly, with a subsequent impact on the fish population, as described in the section regarding the emergency (see section on the emergency above).

6.45 In addition, according to the ESRS, among other impacts, the Project would cause the irreversible loss of approximately 3,800 hectares of vegetative cover, representing a large part of the dry forest, an ecoregion that is considered threatened, as well as possible habitat loss or fragmentation.⁷¹ Likewise, according to the EIA, the Project’s area of indirect influence includes three protected areas.⁷² Therefore, as part of the Project, EPM prepared several management plans, including a Land Habitat Compensation Plan for all EPM projects under the jurisdiction of Corantioquia, which uses an Integrated Management System for Biodiversity.⁷³ [REDACTED]

[REDACTED]⁷⁴ However, the MICI does not have information about whether these measures were fulfilled. [REDACTED]

⁶⁷ [REDACTED]

[REDACTED] ESS, paragraph 2.1.

⁶⁸ ESS, paragraph 2.2.

⁶⁹ ESAP, actions 6.1 to 6.6.

⁷⁰ ESRS, page 25.

⁷¹ ESRS, pages 3 and 5.

⁷² EIA, page 3.3.

⁷³ ESRS, pages 24 and 25; and action plan for integrated management of biodiversity and ecosystem services, 13 June 2016, page 5.

⁷⁴ ESAP attached to the Loan Contract, actions 6.2 to 6.5.

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- 6.46 Based on the foregoing considerations, the MICI finds that a Compliance Review would be relevant to help investigate issues related to the conservation of biodiversity and impacts on the river and its flow.
- 6.47 Moreover, regarding the protection of cultural heritage, the MICI observes that 54 archaeological sites were identified in the Project's area of influence in 2006, of which 24 were in the reservoir area or works area. Therefore, archaeological interventions were proposed for 13 of these sites through an archaeological management plan.⁷⁶ According to the ESRS, the Project conducts ongoing archaeological monitoring in intervened areas.⁷⁷ Based on the ESAP, there were plans to relocate two cemeteries that would be flooded by the reservoir.⁷⁸ Regarding this, the MICI observes that the number of impacted archaeological sites included in the EIA does not seem to agree with the number of sites or degree of impact that the Requesters alleged. Moreover, the Requesters have alleged a series of impacts on the traditional activity of panning as a result of the Project and a failure to adopt measures for its preservation, despite the activity's recognition by the Ministry of Culture as a technique with intangible cultural value. At this stage, the MICI does not have precise or detailed information available about the measures adopted with respect to reproducible or intangible cultural heritage or about implementation of the archaeological management plan proposed in the EIA. Therefore, it is relevant to investigate this through a Compliance Review.
- 6.48 With respect to social impacts, according to IDB Invest's Environmental and Social Sustainability Policy, the institution is committed to international good practices in the context of all social aspects of the projects it finances, including human rights. Separately, Performance Standard 1 sets forth that "[i]n limited high risk circumstances, it may be appropriate for the [C]lient to complement its environmental and social risks and impacts identification process with specific human rights due diligence as relevant to the particular business." This provision is complemented by Performance Standard 4, which calls for evaluating the safety risks that the Client's operations may have or generate for the communities. Similarly, Operational Policy OP-703 requires the evaluation of all the direct, indirect, or cumulative impacts of a Project, as well as the identification and management of other risk factors that may affect its environmental sustainability, including risks associated with highly sensitive environmental and social concerns.
- 6.49 In this case, the complexity of the social context and conflict-prone nature of the area was an issue of which IDB Invest was aware. Therefore, several Project documents mentioned

⁷⁵ IESC report, September 2018, page 61.

IESC report, September 2018, page 3.

⁷⁶ EIA, Annex 3.4.K, Archaeological recovery and monitoring report, page 1.5. Available in the links section.

⁷⁷ ESRS, pages 27 and 28.

⁷⁸ ESAP, action 7.1.

the presence of armed groups such as the FARC, paramilitary groups, and other forms of organized crime in the Project area.⁷⁹

- 6.50 This is particularly relevant, because according to the Requesters, since they began their campaign opposing the Project, they have experienced multiple incidents of violence, including murders, kidnappings, and threats, which they believe to be related to it. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]⁸⁰ (see the section on Performance Standard 4 below for more information).

- 6.51 Despite this situation, based on a preliminary review of available documentation, there is no evidence, beyond an initial identification of this risk in the environmental and social assessment prepared by IDB Invest, of a comprehensive assessment of the potential social impacts of the Project in an area with these conflict characteristics and history [REDACTED]

[REDACTED]

[REDACTED] There is also no evidence that specific mitigation measures aimed at addressing this situation were requested, as should happen with these types of risks, pursuant to Performance Standards 1 and 4 and Operational Policy OP-703.⁸¹ At this preliminary stage, no specific measures have been found that are intended to prevent or mitigate potential impacts that the Project may have on the conflict and violence situation in communities, neither in the ESAP [REDACTED]

[REDACTED]⁸² (see the section on Performance Standard 4 below for more information).

- 6.52 In addition, the MICI points out, [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]⁸³ [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

⁷⁹ ESRS, page 3; and EIA, pages 5.105 to 5.107. [REDACTED]

[REDACTED]
[REDACTED]
Environmental and social supervision report, 23 April 2018, finding 22 and paragraph D.8.

⁸⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Environmental supervision report, 23 April 2018, paragraph C.22; and IDB Invest back-to-the-office report, 22 June 2018, paragraph 16.

⁸¹ Performance Standard 1 calls for business to respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to. Meanwhile, Performance Standard 4 indicates that the level of risks and impacts may be greater in conflict and post-conflict areas, and that the risks that a project could exacerbate an already sensitive local situation should not be overlooked. Also, the Implementation Guidelines for Operational Policy OP-703 indicate that projects may be of higher risk due to controversial social issues, such as projects that may result in human rights violations.

⁸² The ESAP only required the submission of several Client policies, including those on human rights, without establishing the objective of the action or demonstrating whether this translated into the implementation of specific prevention or mitigation measures. [REDACTED]
[REDACTED] EPM environmental and social compliance report, third quarter 2018, paragraph 3.15, page 193.

⁸³ IESC report, March 2018, page 80.

84 [REDACTED]
[REDACTED] Therefore, the MICI believes it is relevant to investigate the actions of IDB Invest in order to ensure that the risks associated with potential human rights violations and with a deteriorated conflict and violence situation have been properly identified and assessed, and that the measures necessary to prevent and mitigate them have been implemented.

- 6.53 With respect to impacts caused by migratory pressure, the documents reviewed indicated that development projects are driving migratory flows between the locations that comprise the Project's area of influence, which is generating changes in the economic, social, and community environments of the locations these population groups migrate to, as well as vulnerabilities in municipios. The documents note that the Project's area of influence will experience migratory pressure, which will become evident in the decrease of operational capacity for service delivery, emergence of new social conflicts, increases in purchasing power and cost of living, and changes in social behavior due to the emergence of new paradigms that could end up replacing dominant paradigms. The main management measure to discourage the arrival of outside populations is the establishment of camps with all the necessary infrastructure to meet the basic needs of workers.⁸⁵ However, the ESRS did not include a specific analysis of these types of impacts, beyond including as one of the Project's highly significant impacts the potential lifestyle changes for the local population. Also, due to their proximity to the main works, migratory pressure was predicted to impact only population centers in the *corregimientos* of El Valle and Puerto Valdivia.⁸⁶ (The SMP included as areas impacted by migratory flows Ituango, San Andrés de Cuerquia, Toledo, the *corregimiento* of El Valle-Toledo, and the *corregimiento* of Puerto Valdivia-Valdivia.) Nevertheless, the ESAP included as a condition precedent to the first disbursement the submission of the results from monitoring migratory pressure and details regarding how the plan to manage the impacts of migratory pressure is being implemented.⁸⁷ In addition, Management referred to the presence of approximately 8,000 workers in the region during the peak season. However, the ESRS mentioned that as of that summary's preparation, the over 8,700 people had been hired.⁸⁸
- 6.54 Therefore, the MICI deems it relevant to analyze whether the impacts from the migratory flows generated by the Project and the impact management measures comply with the provisions of Operational Policy OP-703 and Performance Standard 1.
- 6.55 In addition, the MICI notes the allegations made by the Requesters regarding the differentiated impacts that the Project has had or may have on women (see section on Operational Policy OP-761 below). In its preliminary review, the MICI was unable to verify whether IDB Invest required the Client to conduct a thorough assessment of these social impacts or whether actions were taken to customize mitigation measures based on the migratory dynamics at play.

84 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] EPM environmental and social compliance report, third quarter 2018, page 193; and EPM environmental and social compliance report, fourth quarter 2018, page 180.

85 SMP, pages 8.63 and 64.

86 ESRS page 3.

87 ESAP, action 4.6.

88 Specifically, 8,767 people. ESRS, pages 13 and 21.

- 6.56 The MICI conducted a preliminary review of the documents available on the environmental and social identification and assessment required by IDB Invest starting with its involvement in this Project. However, the MICI believes that it is necessary for this Mechanism to perform a thorough and independent analysis to clarify the actions taken by IDB Invest and whether they met the provisions of Directives B.1, B.3, B.4, B.5, B.9, B.11, and B.12 of Operational Policy OP-703 and of Performance Standards 1, 3, 6, and 8, as well as whether the Project's environmental and social impacts were identified in due time and manner, and whether the design and implementation of effective measures to avoid, minimize, offset, and/or mitigate the key impacts and risks of the Project were validated.
- 6.57 Lastly, with respect to public consultation and participation processes, the MICI found that prior to approval of the loan by IDB Invest, the Client had implemented various ways to engage with communities in the 12 municipios affected by the Project, through community consultations and projects, as well as by adopting several information disclosure mechanisms.⁸⁹ Specifically, regarding public consultations as part of the environmental and social assessment, IDB Invest found that the Client "has been implementing a public consultation process with communities in its area of influence since 2006," through hundreds of workshops, talks, and meetings.⁹⁰
- 6.58 Based on a preliminary review of the available documentation, the MICI did not find precise and detailed information to be able to corroborate for this stage of the process whether the consultations and participation mechanisms implemented as part of the Project fully complied with the requirements established in IDB Invest's safeguards. The Project documentation does include a list of procedures and plans for communication and citizen participation, for purposes such as getting communities involved and keeping them informed about the Project. However, there is no verification from IDB Invest that public consultations were conducted with the affected communities using a formal process to ensure the provision of adequate and accessible information to the entire population affected directly and indirectly on the impacts and the course of action to manage them, and that they enabled the Client to include in its decision-making the points of view expressed by the affected population.
- 6.59 In this regard, the ESRS indicated that, during the workshops, talks, and meetings, time was set aside for the community to express itself regarding the Project and to analyze how community requests from past events have been taken into account in the planning process. Nevertheless, a preliminary review of the documents did not show evidence of how these processes were conducted or how the concerns of the various groups affected were addressed or handled. On the contrary, the documents reviewed showed the implementation of informational processes to, among other things, enable the Client to establish relationships of trust with interest groups.⁹¹ While these are important, they are not sufficient to comply with the standards of the Relevant Operational Policies on this matter. However, through a Compliance Review, the MICI would be able to determine the degree of compliance or noncompliance.
- 6.60 With respect to access to information, the MICI found that in the Project's supervision, there have been times in which complete information about some of its elements has not been provided, or it has been stated that the community perceives the information provided by the Client to be technical and difficult to understand. [REDACTED]

⁸⁹ ESRS, pages 8-10.

⁹⁰ ESRS, pages 9 and 10.

⁹¹ SMP, page 8.5.

[REDACTED]

[REDACTED]

[REDACTED] ⁹² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ⁹³

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ⁹⁴ [REDACTED]

[REDACTED]

[REDACTED] ⁹⁵

6.61 Moreover, in the event that failures with respect to identification of the impacted population are confirmed, failures in the consultation processes could also be detected. Recently, domestic authorities concluded that residents affected by the Project had limited participation, partly because of errors and difficulties involving the censuses used to determine the affected population.⁹⁶ Other documents analyzed showed that, while the Client did organize accountability events and environmental public hearings to provide information on the Project's development, these did not include all the groups.

6.62 Based on the foregoing, the MICI believes that a Compliance Review would help analyze whether the disclosure, consultation, and participation processes have followed the provisions of Directive B.6 of Operational Policy OP-703 and of Performance Standard 1, as well as how IDB Invest has supervised and ensured compliance with these provisions. Specifically, a Compliance Review could determine whether IDB Invest ensured that these processes complied with the access features set forth in its safeguards and whether processes to ensure the proper presentation of Project information to the entirety of the affected population were effectively carried out, as part of a constructive dialogue that took into account their points of view on matters that directly affect them, so that the Client could incorporate them into its decision-making process. This review would also enable verification of compliance with the requirements of Directive B.6 for category "A" operations.

Regarding compliance with Performance Standard 4, Community Health, Safety, and Security, and with Directives B.4 and B.5 of Operational Policy OP-703

6.63 The Requesters claim that the communities are in an unsafe and unprotected situation that has been exacerbated by the Project, because: (i) the leaders of the movement against the hydropower dam are being criminalized and subjected to death threats; (ii) the presence of different armed actors in the area has also intensified, endangering the lives of members of the movement; and (iii) the farming, gold-panning, fishing, and herding communities have

⁹² Supervision report, 31 July 2017, Environmental and social performance table, section 1.7; and Supervision report, 23 April 2018, Environmental and social performance table, section 1.7.

⁹³ IESC report, March 2018, page 3. [REDACTED]

⁹⁴ Aide-mémoire, 25 June 2018, pages 6 and 7.

⁹⁵ Supervision report, 22 June 2018.

⁹⁶ Report from the Office of the Comptroller General of the Republic.

suffered various forms of violence from the time they began to organize themselves into the Movimiento Ríos Vivos Antioquia.

- 6.64 Separately, IDB Invest indicated that the escalation of violence in the region has not discriminated between interest groups, and its victims include opponents of the Project, supporters of the Project, police, members of the military, state officials, and sadly, children. It expressed regret for the killings of the persons mentioned in the Request and said that EPM immediately asked the Attorney General's Office to investigate these deaths. Also, it pointed out the Project's area of influence is an area of violence where illegal crops are grown and unlawful armed groups operate.
- 6.65 Performance Standard 4 calls for the Client to evaluate the risks and impacts to the health and safety of the affected communities throughout the project lifecycle and to establish preventive and control measures consistent with international good practices.⁹⁷ This standard includes requirements for retaining contracted workers to provide security or using government security personnel. These include assessing and documenting risks arising from the use of both types of security arrangements. Also, the Client will consider and, where appropriate, investigate all allegations of unlawful or abusive acts of security personnel, take action to prevent recurrence, and report unlawful and abusive acts to public authorities.⁹⁸ Likewise, as mentioned above, Directives B.4 and B.5 of Operational Policy OP-703 call for the identification and management of risks associated with controversial social issues, such as "projects that may result in human rights violations or security risks."⁹⁹
- 6.66 Regarding compliance with this provision, the ESRS indicated that the entire region has been considered a guerilla zone and the FARC has had a presence there in the past.¹⁰⁰ Also, Project documents showed that IDB Invest is aware of the presence of other armed groups in the area, such as paramilitary groups and other forms of organized crime.¹⁰¹
- 6.67 Moreover, with respect to compliance with the security aspect of Performance Standard 4, IDB Invest indicates in its ESRS that the Project engaged private security services to be provided by a company and there are no plans to use security forces provided by the

⁹⁷ In this regard, it makes reference to the World Bank Group Environmental, Health and Safety Guidelines and other internationally recognized sources.

⁹⁸ For contracted security personnel, the Client should: (i) assess risks posed by its security arrangements to those within and outside the Project site; (ii) be guided by the principles of proportionality and good international practice in relation to rules of conduct, training, equipping, and monitoring of such workers; (iii) make reasonable inquiries to ensure that those providing security are not implicated in past abuses; and (iv) train them adequately in the use of force and appropriate conduct toward affected communities. For the use of government security personnel, the Client will assess and document associated risks, and seek to ensure that security personnel will act in a manner consistent with the principles of proportionality and proper rules of conduct.

⁹⁹ Implementation Guidelines for the Environment and Safeguards Compliance Policy, Directive B.4.

¹⁰⁰ ESRS, page 3.

¹⁰¹ The EIA mentioned that "public-sector actors, counterinsurgents, and criminals dedicated to activities related to the armed conflict in Colombia (illegal crops, gun trafficking, troop movements, etc.) have converged in the Project's area of influence, and this has been enabled by the historical lack of presence of the State, whether through law enforcement or with social investment or infrastructure programs that determined the region's social and economic system. [...] In the social-community field, the presence of the Project—with each of its activities—as a new actor in the study area could lead to the emergence or exacerbation of social conflicts." Therefore, prevention and mitigation measures are being proposed, including plans for communication and citizen participation, integration of the Project into the region, and capacity-building. EIA, chapter 5, pages 5.105 to 5.107.

109 [REDACTED]
[REDACTED] 110
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
111 [REDACTED]
[REDACTED] Therefore, the MICI believes it is relevant to conduct an investigation to clarify the actions taken by IDB Invest to comply with this performance standard.

6.70 This is particularly relevant, because according to the Requesters, since they began their campaign opposing the Project, they have experienced multiple incidents of violence that they associate with this operation. Specifically, they stated that between 2009 and 2017, there have been: (i) 3 murders, 2 of them in the Ituango and Toledo region,¹¹² and 55 threats (both individual and collective); (ii) 14 persons for whom the National Protection Unit has issued protective measures; (iii) an attempted kidnapping for which the main suspect is the private security force working for EPM; (iv) reports of torture perpetrated by the security forces; and (v) ongoing stigmatization by the Company and the Project's investors, as well as by the mass media.¹¹³ In addition, they stated that in 2018, they suffered the highest number of attacks against opponents of Hidroituango organized into the Movimiento Ríos Vivos, including: (i) 27 threats; (ii) 2 murders of movement members and 6 murders of family members of movement members; (iii) 4 cases of harassment by Antioquia State authorities; (iv) 20 cases of being followed and surveillance; (v) 10 incidents of discrimination for belonging to the movement; and (vi) 1 case of unlawful detention by EPM.

6.71 Likewise, the MICI observes that IDB Invest indicated that the violence and security situation in the area had deteriorated. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 114 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

109 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

110 [REDACTED]
[REDACTED]

111 IDB Invest back-to-the-office report, 3 October 2018, paragraphs B.2 and C.1.

112 They reported that on 2 May 2018, Hugo Albeiro George Pérez, a member of Movimiento Ríos Vivos, and his nephew, Domar Egidio Zapata George, were killed during a public demonstration against the environmental and social risks of damming the Cauca River. They reported that those killed "were people affected by the Project," even though "the Company had not recognized them as such." Original Request and Annex K.

113 Annex H, Infographic on security incidents for Movimiento Ríos Vivos, 2009-2017; and Infographic on security incidents for Movimiento Ríos Vivos, 2018.

114 IDB Invest back-to-the-office report, 22 June 2018, paragraph 16. See also environmental supervision report, 23 April 2018, paragraph C.22; and back-to-the-office report, 3 October 2018, paragraph B.2.

- 6.72 Therefore, based on the foregoing considerations, the MICI finds that a Compliance Review would help to clarify the actions taken by IDB Invest regarding the assessment of risks and impacts to the security of the communities, particularly given the context of the area. It would also help establish prevention and control measures in fulfillment of the requirements of Performance Standard 4 and Directives B.4 and B.5 of Operational Policy OP-703.

Regarding compliance with the Operational Policy on Involuntary Resettlement (OP-710) and with Performance Standard 5, Land Acquisition and Involuntary Resettlement

- 6.73 The Requesters allege that many communities were evicted from their homes without prior notice, consultation, or explanation. They also stated that the evictions have involved the use of violence, a disproportionate use of force, and the presence of the armed forces and the Mobile Anti-Riot Squad of the Colombian Police. They also indicated that adequate compensation has not been provided for the forced evictions.
- 6.74 In addition, they indicate that there were a number of failures in the resettlement process, such as: (i) a study of alternatives in order to avoid involuntary resettlement to the extent possible was not conducted; (ii) no involuntary resettlement plan was put in place prior to the start of construction; (iii) the number of people identified does not reflect the total number of people affected; (iv) the censuses did not consider those who would be affected economically, and therefore a study on the economic activities of the affected communities was not conducted, particularly given that these communities depend on the river and the area that will be flooded to carry out their small-scale mining, agriculture, and fishing activities; and (v) no adequate compensation or rehabilitation has been provided, and communities have not been resettled in places that ensure minimum standards of living in decent conditions, or access to land and natural resources, such that displaced communities have not been able to recover the losses caused by resettlement and lack socioeconomic development opportunities.
- 6.75 For its part, Management indicated that this Project has a social management plan (SMP) that constitutes an involuntary resettlement plan, which is comprised of five components.¹¹⁷ The objectives of this plan are to compensate families who are being physically and economically displaced, to ensure that their economic conditions are at least equal to what they had prior to displacement, and to assist the displaced in reconstituting their social networks. Management indicated that one of the plan's components, the Comprehensive Program for Restoring Living Conditions, was structured on the basis of a census of families, which identified both those who would be physically displaced and those who would be economically displaced. It also stated that the process of drawing up the final list of displaced persons took almost a year after the census cut-off date to allow for adjustments. Under current legislation, this final list may still include families or individuals who, having been

¹¹⁵ IDB Invest back-to-the-office report, 22 June 2018, paragraphs 15 and 17.

¹¹⁶ IDB Invest back-to-the-office report, 22 June 2018, paragraph 18.

¹¹⁷ (i) the Communication and Participation Program; (ii) the Comprehensive Program for Restoring Living Conditions; (iii) the Project-Region Integration Program; (iv) the Follow-up and Reading the Surroundings Program; and (v) the Environmental Education Program.

displaced by the armed conflict in Colombia, were not accounted for in the census. The resettlement process was accompanied by a consultation process that included having affected families visit the sites where displaced families from other projects were relocated; holding workshops and gatherings among the families of Ituango and Porce to share experiences; and conducting public outreach about the compensation alternatives that EPM was offering, which included the comprehensive restoration of living conditions and the direct purchase of land.

- 6.76 Operational Policy OP-710 calls for avoiding or minimizing the need for involuntary resettlement. Therefore, a thorough analysis of project alternatives must be carried out, with particular attention given to sociocultural considerations and the vulnerability of the affected population. Performance Standard 5 calls for avoiding or minimizing physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits, paying particular attention to impacts on the poor and vulnerable. When displacement is unavoidable, OP-710 establishes that a resettlement plan must be prepared to ensure that the affected people receive fair and adequate compensation and rehabilitation. Performance Standard 5 states that displaced communities and persons should be offered compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods. Operational Policy OP-710 requires a preliminary resettlement plan that must undergo a process of meaningful consultation with the affected population and must be available as part of the EIA prior to the analysis mission. In addition, it sets forth that a final resettlement plan should be presented prior to distribution of the operation documents for consideration by the Board of Executive Directors.
- 6.77 With respect to the design of resettlement plans, Operational Policy OP-710 and Performance Standard 5 require the collection of baseline socioeconomic information to determine the people to be resettled, define compensation and assistance measures, determine the risks, and design preventive measures, taking into account ethnicity, gender, income, and other factors. According to OP-710, the resettlement plan will include the results of consultations carried out in a timely and socioculturally appropriate manner with a representative cross-section of the displaced and host communities, while Performance Standard 5 requires engagement with affected communities through the process of stakeholder engagement described in Performance Standard 1. In addition, OP-710 requires the definition of the final package of compensation and rehabilitation options, and a reasonably accurate estimate of the number of people that will receive each option or combination. It also calls for the preparation of an impoverishment risk analysis when a significant number of the persons to be resettled belong to marginal or low-income groups, and their situation could be exacerbated for reasons including a loss of employment, a loss of access to education, and disintegration of social networks. Lastly, in relation to the Requesters' allegations, Performance Standard 5 states that forced evictions¹¹⁸ will not be carried out except in accordance with law and the requirements of this standard.
- 6.78 The MICI observes that the Requesters made four allegations with respect to involuntary resettlement: (i) the practice of forced evictions, with violence, without information or participation by the communities in satisfactory consultation process; (ii) the failure to conduct a study of alternatives in order to avoid involuntary resettlement to the extent possible; (iii) errors or oversights in the census to determine the families or individuals who

¹¹⁸ Standard 5 defines forced evictions as: "The permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or lands which they occupy without the provision of, and access to, appropriate forms of legal and other protection."

would be subject to physical and economic displacement; and (iv) alleged noncompliance with other requirements regarding the compensation or rehabilitation offered.

- 6.79 With respect to forced evictions and subject to confirmation of these allegations, the MICI acknowledges the information submitted by the Representatives,¹¹⁹ which described the following seven episodes of forced eviction: (i) 22 families from Playa Tenche in the municipio of Ituango in December 2010; (ii) 150 families from Playa La Cola de Ituango in the municipio of Briceño in May 2011; (iii) 120 families from Playa Icura at El Limón in the municipio of Briceño; (iv) 30 families from the *vereda* of Orejón and the *vereda* of Chiri in the municipio of Briceño in August 2014; (v) 81 families from Playa La Arenera in the municipio of Toledo in March 2015; (vi) 4 families from Playa La Arenera in the municipio of Toledo in February 2017; and (vii) 6 families from Playa Angurro in the municipio of Ituango in March 2017. According to the Requesters, these evictions were carried out by government security forces, either police or military, accompanied by civil authorities as inspectors, and in some cases, also by EPM personnel and members of its private security team. In all cases, the Requesters described the use of violence involving weapons, destruction of people's homes, and threats and insults.
- 6.80 IDB Invest Management did not make reference to these allegations by the Requesters. However, the MICI observes that one of these incidents, which occurred in Playa La Arenera in February 2017, was featured in news articles. According to statements made by EPM and Toledo's authorities, included in news reports, they confirmed that these evictions took place, but "legally and peacefully" and "accompanied by the authorities," and that the persons were "illegally occupying land that was property of the Ituango Project."¹²⁰ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]¹²¹ Moreover, these types of situations have been reported to human rights organizations such as the Inter-American Commission on Human Rights. Those affected said that in 2013, "more than 400 families were displaced by Hidroituango" and took refuge for seven months at the University of Antioquia arena because of the "threats and violations they suffered." They stated that they were evicted because they resisted, among others, the "burning and destruction of shacks on the banks of the Cauca River [...] which forcefully cleared the beaches to make way for development."¹²²
- 6.81 In this regard, the MICI notes that Performance Standard 5 applies to physical and/or economic displacement resulting from restriction on access to natural resources such as marine and aquatic resources. Also, this applies to evictions of people occupying land without formal, traditional, or recognizable usage rights, in which case, even though some

¹¹⁹ Chart of Evictions. Annex to original Request.

¹²⁰ News article: "Comunidades denuncian desalojos forzados por Hidroituango." El Espectador, 5 February 2017, available at: <https://www.elespectador.com/noticias/nacional/comunidades-denuncian-desalojos-forzados-hidroituango-articulo-678377>.

¹²¹ EPM environmental and social compliance report, third quarter 2018, page 250.

¹²² See hearing before the Inter-American Commission on Human Rights, "Colombia: Desplazamiento forzado y proyectos de desarrollo," available at: https://www.youtube.com/watch?v=j7OU4_m9pb8; also, press release from the Office of the Ombudsman, "Inicia retorno de 350 campesinos que abandonaron sus tierras por la construcción de Hidroituango," 4 October 2014, available at: <http://www.defensoria.gov.co/es/nube/regiones/629/Inicia-retorno-de-350-campesinos-que-abandonaron-sus-tierras-por-la-construccion-de-Hidroituango-Hidroituango-campesinos-gobernacion-de-Antioquia.htm>; and Press Agency of the Popular Training Institute, article entitled "Iniciará retorno de desplazados de Hidroituango, refugiados en la UdeA," 24 October 2013, available at: <http://www.ipc.org.co/agenciadeprensa/index.php/2013/10/24/iniciara-retorno-de-desplazados-de-hidroituango-refugiados-en-la-udea/>.

people may not have rights over the land they occupy, Performance Standard 5 requires that non-land assets be retained, replaced, or compensated. The MICI observes that the Requesters and EPM have different accounts with respect to the rights of persons who, according to the Requesters, were evicted from several areas on the banks of the Cauca River and unable to continue their economic activities. Based on the foregoing and taking into account the requirements of Performance Standard 5, the MICI believes that a Compliance Review will be relevant to help clarify these situations that the Requesters are alleging. It will also be relevant to analyze whether in determining the population that would be subject to physical and economic displacement, restrictions on access to natural resources and occupations, and de facto uses or uses without property titles, were taken into account.

- 6.82 With respect to the determination of the population to be resettled, the MICI notes that Performance Standard 5 requires the collection of appropriate socioeconomic baseline data to identify the persons who will be displaced by the Project. As shown in the section on identifying the affected population, the last censuses to determine the population affected by physical or economic displacement were conducted in 2009-2010. In this regard, Guidance Note 5 (corresponding to Performance Standard 5) establishes that when “there is a significant time lag between the completion of the census and implementation of the resettlement or livelihood restoration plan,” that “population movements as well as natural population increase” should be considered, and that “a repeat census may be required to allow for these natural changes.” Also, the Client should account for people who, among other circumstances, were internally displaced by civil conflict. The section herein about the identification of the affected population indicated that, based on the preliminary review, no information has been found on the processes or ways in which individuals who were potentially affected by the Project could demonstrate these circumstances after the verification and validation process conducted by EPM. Also, there is no record that these censuses were significantly updated between 2010 and 2016, when IDB Invest approved the Project. Therefore, the MICI believes it would be relevant to conduct an investigation to verify the processes used to determine and identify the population that would be subject to physical and economic displacement as a result of the Project.
- 6.83 Moreover, with respect to the unavoidability requirement, the ESRS indicated that the Project’s design tried to minimize land acquisition and the resettlement of persons. That summary also explained that “given its size, these two issues could not be avoided.” Therefore, EPM has implemented an SMP that corresponds to an involuntary resettlement plan, to address the needs of families who will be physically or economically displaced by the execution of the planned works. In this regard, the MICI found that the Client was exempted from the obligation to present an environmental diagnostic of alternatives, as part of the environmental licensing process.¹²³ However, the MICI found that publicly available documents about the Project’s environmental and social management include two analyses of alternatives prepared in 1974 and 1999 as part of the Project’s feasibility studies.¹²⁴ Although it would seem that IDB Invest took into account these studies in the analysis of environmental and social safeguards, it would also seem that it did not request or require that the Client submit an updated diagnostic of alternatives prior to Project approval. Therefore, the MICI believes it is appropriate to clarify through an investigation whether

¹²³ Order 432 of 6 June 2001 from the Environmental Licensing Department, establishing that an environmental diagnostic of alternatives was not required for the Ituango Hydropower Project, Annex A of the Request; and Resolution 0155 of 30 January 2009, issuing the environmental license for Hidroituango, Annex D of the Request.

¹²⁴ Ituango Hydropower Project. Analysis of alternatives. Feasibility in 1974 and Feasibility in 1999. Document available in the links section.

these studies were requested or whether studies conducted in the past were taken into consideration, and if so, whether those studies meet the requirements of Operational Policy OP-710 and Performance Standard 5 with respect to considering alternatives to the Project that would reduce the need for involuntary resettlement.

- 6.84 With respect to allegations of supposed noncompliance with other requirements for the compensation or rehabilitation offered, the MICI finds that a Compliance Review would help clarify whether the parameters used to determine the compensation and the alternative measures offered comply with the applicable requirements of Operational Policy OP-710 and Performance Standard 5.
- 6.85 Therefore, based on this preliminary review, the MICI believes that it would be relevant to clarify through an investigation the allegations made by the Requesters regarding supposed forced evictions and the processes to identify and determine the population that would be subject to physical and economic displacement. The MICI finds that a Compliance Review would help to clearly establish the actions taken by IDB Invest regarding the issues mentioned, and to analyze how these actions have or have not complied with the requirements of Operational Policy OP-710 and Performance Standard 5, as far as the allegations that were made.

Regarding compliance with the Disaster Risk Management Policy (OP-704), paragraph 20 of Performance Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts, and paragraph 11 of Performance Standard 4 on Community Health, Safety, and Security

- 6.86 The Requesters allege that the risk that an emergency situation would arise, particularly from a geological perspective, was not adequately analyzed during the Project's environmental impact assessment (EIA). They pointed out that IDB Invest should not have financed this Project given the shortcomings in this analysis and stated that these shortcomings are the cause of the emergency that is currently underway. In addition, they allege that access to information about the emergency situation has not been real, timely, or reliable; that increasingly there is less data available; that access to information has been irregular and has been neither fully available nor available at all times; and that communities have not been properly informed about the Project's status. They indicated that this includes the dissemination of bulletins on the risks of avalanche and dam failure—a situation about which accurate and timely updates have not been provided.
- 6.87 For its part, Management said that the state of emergency in the area where the major works are being carried out (dam and powerhouse) happened as a result of several force majeure events (heavy rains and landslides). It also indicated that, in addition to all the technical actions to manage the contingency, which were previously agreed upon as part of the environmental and social due diligence (ESDD), EPM activated a traffic management plan to keep the flow of passengers and cargo to the municipality of Ituango from being cut off, as well as a contingency plan to prevent impacts on human lives in communities located downstream from the dam.
- 6.88 Also, after the contingency occurred, the management of the situation was transferred to the Unified Command Post (UCP), which is comprised of delegates from various state authorities and EPM.¹²⁵ Management stated that, since the declaration of the "high alert" status for the Project, IDB Invest has been in daily contact with the Client and with the

¹²⁵ The UCP has been responsible for managing the situation in general, for declaring the alert levels in the area downstream from the reservoir, and for ordering the preventive evacuation of the population on the basis of the alert levels.

regional and national authorities involved, and that there was a mission in June 2018 to verify that the general conditions of the evacuees were reasonable and that the ongoing efforts to manage the emergency have been appropriate.

- 6.89 Operational Policy OP-704 calls for IDB Group-financed Projects to include the necessary measures to reduce disaster risk to acceptable levels as determined by the IDB Group on the basis of generally accepted standards and practices. It also requires that during the preparation process, Project teams evaluate the risk of natural hazards in the case of projects that are regarded as having high exposure to them or show increased potential to exacerbate risk, with special care 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 and infrastructure. Also, when significant risks due to natural hazards are identified during the Project preparation process, appropriate measures should be taken to establish the viability of the Project. Alternative measures that decrease vulnerability and protect human health and economic assets should be included in Project design and implementation.
- 6.90 Moreover, paragraph 20 of Performance Standard 1 establishes a series of requirements to ensure emergency preparedness and response. In accordance with the standard, as part of its assessment and management of environmental and social risks, IDB Invest should have guaranteed that the Company was prepared to respond appropriately to accidents and emergencies associated with the Project, in order to prevent and mitigate any harm to people and/or the environment.¹²⁶ Similarly, paragraph 11 of Performance Standard 4 sets forth that, in emergency situations, the Client will document its emergency preparedness and response activities, resources, and responsibilities, and will disclose appropriate information to affected communities, relevant government agencies, or other relevant parties.
- 6.91 According to the Project's environmental and social review summary (ESRS), the Project area is "prone to large landslides due to high precipitation, the steep slopes along the Cauca Canyon, and the relative geological instability of some areas of land adjacent to the planned works."¹²⁷ In addition, this review found that the Project had "a solid contingency plan based on an analysis of the most significant risk scenarios caused by both the most relevant natural hazards (heavy rainfall, landslides, and seismic movements) as well as manmade risk factors."¹²⁸ Also, the plan details a series of measures and actions for evacuation and coordination with the competent authorities that will be triggered should a structural failure of the dam or any of its components occur, which may pose a risk to communities downstream from the reservoir.¹²⁹
- 6.92 Despite this, the MICI notes that, in a recent report, the Office of the Comptroller General of Colombia found that:

there was no contingency plan to address a situation like what occurred in April 2018, in which the Client lost hydraulic control of the Project due to an inability to handle a serious incident [and] did not take immediate action to attend to the residents of communities

¹²⁶ This preparation will include the identification of areas where accidents and emergency situations may occur, communities and individuals that may be impacted, response procedures, provision of equipment and resources, designation of responsibilities, communication, including that with potentially Affected Communities and periodic training to ensure effective response. The emergency preparedness and response activities will be periodically reviewed and revised, as necessary, to reflect changing conditions.

¹²⁷ ESRS, page 3.

¹²⁸ ESRS, page 7.

¹²⁹ ESRS, page 7.

downstream on the Cauca River, affected by the Cauca River's water flow. This affected seven municipios in an uncontrolled manner, causing the evacuation of thousands of persons. It became necessary for the National Disaster Risk Management System to address the situation, at substantial economic cost, which has still not been calculated and which the national Government and territorial authorities, as well as the Project's owner, have borne. The contingency plan for the Ituango Hydropower Project was designed and formulated without taking into account the maximum risks. It can be said that the studies and designs were submitted more to comply with an environmental licensing requirement than for proper development of the Project.¹³⁰

- 6.93 The MICI observes that the Requesters' allegations refer both to the measures required by the IDB Group regarding risk evaluation for emergency situations and to a determination of the causes of the emergency that began in April 2018. In this regard, the MICI believes that it is important to clarify that the investigation proposed in this document would not include an analysis or determination of the possible technical or natural reasons or causes that led to the emergency situation. An analysis of that kind is beyond the scope of the mandate and functions of the MICI.
- 6.94 It is, however, a key function of the MICI to address allegations related to possible noncompliance with the Relevant Operational Policies in the context of projects financed by IDB Invest. Along these lines, the MICI notes that several of the claims made by the Requesters with respect to the emergency that began in April 2018 are related to Operational Policy OP-704, paragraph 20 of Performance Standard 1, and paragraph 11 of Performance Standard 4, which were described above (paragraphs 6.89 and 6.90). The purpose of Operational Policy OP-704 is to ensure that there is an appropriate risk assessment of the potential occurrence of disasters and that disaster mitigation and management measures are designed and implemented. In this case, IDB Invest stated that the Project had a solid plan, based on an analysis of the most significant risk scenarios from the most relevant natural hazards, such as heavy rainfall and landslides and also indicated to the MICI that the emergency situation was the result of force majeure events consisting of heavy rainfall and landslides. The MICI believes that the seriousness of the existing emergency situation and the importance of mitigating the risk of future events to the fullest extent possible make it relevant to conduct a Compliance Review. This review could clarify whether IDB Invest required the Client to evaluate the Project risks posed by natural hazards, as well as to include in Project design and execution alternative measures that would decrease vulnerability and protect human health and economic assets, pursuant to the provisions of OP-704.
- 6.95 Moreover, the Relevant Operational Policies require appropriate emergency preparedness and response measures, such as contingency plans, for the purpose of preventing and avoiding harm to people and the environment. Following the emergency that began in April 2018, various allegations and complaints have been made that the Project did not have an adequate contingency plan in place and that it had not adequately assessed all the risks that the Project entailed. In this regard, the MICI notes that as a result of the emergency, 17,184 people were evacuated from their place of residence,¹³¹

¹³⁰ Report from the Office of the Comptroller General of the Republic, August 2018, page 10.

¹³¹ UCP-EPM: Bulletin of 25 February 2019. [REDACTED]

[REDACTED] ¹³²
In addition, the Requesters have complained of conditions in the shelters and the economic support received by people displaced as a result of the emergency, [REDACTED]

[REDACTED] ¹³³ Accordingly, the MICI believes that it is relevant to verify with an investigation whether IDB Invest took measures to ensure that the Client had adequate contingency or response plans in place for emergency situations.

- 6.96 The MICI also points out that, in accordance with Performance Standard 4, part of an adequate response to emergency situations is to provide appropriate information to the affected communities and the appropriate authorities. In this regard, the MICI notes that the Requesters emphasized the lack of sufficient and appropriate information with respect to the Project's status; the alert system, which they indicated has been intermittent, and therefore, inefficient; and the high-vulnerability situation of displaced persons. In addition, the MICI observes that the Requesters are not the only ones who have expressed their dissatisfaction with how EPM has managed information. Various local offices have stated that they did not receive training or that they only received partial training on addressing possible emergencies arising from the Project, and that they are unfamiliar with the Project's early warning system and its contingency plan.¹³⁴ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED] ¹³⁵
- 6.97 Based on this evidence and the foregoing considerations, the MICI believes it is relevant to conduct a Compliance Review to: (i) determine the actions taken by IDB Invest to ensure that the Client appropriately assessed the risks posed by natural hazards and included in the Project's design and execution and its contingency plans prevention and mitigation measures to decrease vulnerability and protect the communities; and (ii) analyze whether IDB Invest ensured that the contingency plan met the requirements of the Relevant Operational Policies and included relevant mechanisms for the Client to provide adequate information on the management of emergencies to affected communities, pursuant to the requirements of Operational Policy OP-704, paragraph 20 of Performance Standard 1, and paragraph 11 of Performance Standard 4.

¹³² IDB Invest back-to-the-office report, 3 October 2018, paragraph B.5; and IDB Invest back-to-the-office report, 22 June 2018, paragraph 13.

¹³³ Aide-mémoire, pages 4 and 5, and supervision report, 22 June 2018, findings 13 and 14.

¹³⁴ Some municipal administrations told the Comptroller's Office that Hidroituango "never warned about the existence of possible risks or threats associated with a possible dam failure." Report from the Office of the Comptroller General of the Republic, August 2018, page 35.

¹³⁵ IESC report, September 2018, pages 3 and 61.

Regarding compliance with the Operational Policy on Gender Equality in Development (OP-761)

- 6.98 The Requesters stated that, since the start of construction on the Project, social dynamics have deteriorated, with a differentiated impact on women. In this regard, they specified that the Hidroituango investment approval process did not incorporate a gender perspective, since: (i) women have been particularly affected by this Project insofar as many of them pan for gold, fish, or farm, and they have conducted these activities for generations and also rely on these activities for their own subsistence and that of their families. The only job opportunities that the Company has offered to them have been to cook or wash clothes; (ii) their property rights are also exercised and affected differently; and (iii) since construction work began, incidents of gender-based violence against women have increased, including street harassment, prostitution, and rape.¹³⁶
- 6.99 Management did not directly refer to the allegations made by the Requesters regarding noncompliance with Operational Policy OP-761. However, it reported that, during the ESDD process, it ensured that necessary information was collected to identify vulnerable families, including families with single mothers and families with a single woman as head of household, to offer them certain priorities.
- 6.100 The objective of Operational Policy OP-761 is to promote gender equality and the empowerment of women and for the IDB Group to contribute to compliance with international agreements on gender equality.¹³⁷ The policy also recognizes that inequality has a larger impact on women and that gender inequalities interact with other inequalities that are based on socioeconomic, ethnic, and racial factors, exacerbating barriers and vulnerabilities for some groups of women.
- 6.101 The policy establishes that in designing its operations, the IDB Group will introduce measures to prevent, avoid, or mitigate any adverse impacts and/or risks of gender-based exclusion identified in the project risk analysis. In addition, in the public consultation processes that it promotes, the IDB Group will seek the equitable participation of women and men, and in Project-related consultations, it will seek the inclusion of the women and men affected in a gender-sensitive manner.
- 6.102 In this case, the MICI observes that the ESRS did not show that IDB Invest had required the Client to produce a comprehensive, differentiated analysis to identify and address the adverse impacts that the Project could have on the women in the area of influence. This notwithstanding, [REDACTED]

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¹³⁶ The information was elaborated in statements from the community obtained by the MICI during the eligibility mission in 2018.

¹³⁷ The policy mentions international instruments such as the Universal Declaration of Human Rights (1948); the Convention on the Elimination of All Forms of Discrimination against Women or CEDAW (1979); the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994); the Programme of Action of the International Conference on Population and Development (1994); the Platform for Action of the Fourth World Conference on Women (1995); and the Millennium Development Goals (2000).

¹³⁸ Loan contract for Ituango Hydropower Project, Annex 2, Environmental and Social Provisions, section 3.1(v).

¹³⁹ ESAP attached to the loan contract, action 1.16.

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- 6.103 In addition, the social management programs and projects in the social management plan (SMP) include a regional development bridging project featuring a development component with a gender perspective. This program includes objectives such as to prevent gender-based violence, to create jobs for women, and to provide education about sexual and reproductive health rights. The target population for this program are women's groups and leaders representing social organizations, who are engaged in the policy agenda of women for each municipio in the Project's area of direct influence.¹⁴²
- 6.104 The foregoing information does not show that there was a specific assessment of the differentiated impacts that the Project could have on women, particularly those engaged in fishing, informal mining, and agricultural activities. However, the information refers to Project benefit participation programs and the management of gender considerations by the Company through a gender policy. In this regard, the MICI does not have at this stage of the process reports on whether IDB Invest complied with its obligations pursuant to Operational Policy OP-761, particularly the need to evaluate and supervise completion by the Client of the agreed-upon actions to fulfill that policy. It should be noted that, during the eligibility mission, the MICI received information about some examples of unequal treatment for women in the Project area, incidents of harassment or violence against women, and disregard of the differentiated impacts that certain actions and participation mechanisms could have on women.
- 6.105 Based on the foregoing, the MICI finds that a Compliance Review will help determine the actions taken by IDB Invest on this issue and whether they complied with the provisions of Operational Policy OP-761 to prevent, avoid, and mitigate any adverse impacts and/or risks of gender-based exclusion for women in the Ituango Hydropower Project's area of influence.

VII. TERMS OF REFERENCE FOR A COMPLIANCE REVIEW

- 7.1 As mentioned previously, this document consists of two main sections: (i) the MICI Recommendation and the corresponding rationale (section VI *supra*); and insofar as a Compliance Review is recommended, (ii) the Terms of Reference for an investigation into this Operation, which are provided below. The Terms of Reference cover the scope of the investigation and the proposed methodology, timeline, team, and budget.

A. Scope

- 7.2 This document makes a recommendation to the Board of Executive Directors for an investigation of the operation to determine whether IDB Invest complied with its Environmental and Social Sustainability Policy, and specifically, with IDB Operational Policies OP-703, OP-704, OP-710, and OP-761, and with IFC Performance Standards 1, 3, 4, 5, 6, and 8, with respect to the allegations made by the Requesters.
- 7.3 The product of this investigation will be a Compliance Review Report on the operation, presenting the findings of the investigation and the conclusions based on the evidence of compliance or noncompliance with the Relevant Operational Policies. Moreover, if

¹⁴⁰ IESC report, March 2018, page 57.

¹⁴¹ Supervision report, 22 June 2018.

¹⁴² SMP, pages 8.68-8.77.

noncompliance is found, the report will seek to determine whether it is associated with the Harm alleged by the Requesters. The report will include details on the methodology used by the investigation team and could include case-specific recommendations and general recommendations on relevant systemic issues.

7.4 Considering the information that Management has already provided to the MICI, the investigation will focus on answering the following questions:¹⁴³

7.5 In relation to the requirements of Operational Policy OP-703 and Performance Standards 1, 3, 6, and 8:

- Did IDB Invest ensure that the Client conducted a complete and adequate determination and identification of the Project's area of influence?
- Did IDB Invest ensure that the Client conducted a complete and adequate identification and description of the affected population, taking into account the socioeconomic characteristics, history, and traditions of the population in the Project area?
- Did IDB Invest ensure that the Client assessed and described of the Project's potential direct, indirect, and cumulative environmental and social impacts?
- Did IDB Invest ensure that the Client carried out adequate and timely information, consultation, and participation processes with the entire affected population, taking into account their particular circumstances and characteristics?
- Did IDB Invest require the implementation of effective social and environmental measures to avoid, minimize, offset, and/or mitigate the Project's direct, indirect, and cumulative environmental and social impacts?
- Did IDB Invest ensure that management and mitigation plans were established for the impacts mentioned, as well as measures for the effective monitoring of their implementation?
- If the requirements of OP-703 and Performance Standards 1, 3, 6, and 8 were not met, did Harm to the Requesters occur?

7.6 In relation to the requirements of Performance Standard 4:

- Did IDB Invest ensure that the Client assessed the risks to the safety of the communities affected by the project and established preventive and control measures in accordance with the requirements of Performance Standard 4?
- Did IDB Invest require from the Client that the security services used for the Project comply with the requirements established in this standard?
- Did IDB Invest ensure that the Client established management and mitigation plans for the impacts mentioned, as well as measures for the effective monitoring of their implementation?
- If the requirements of Performance Standard 4 were not met, did Harm to the Requesters occur?

¹⁴³ The purpose of the investigative questions is to guide the process of investigating and gathering relevant data that may apply to the case in question. With these questions, the team will be able to determine how or why an IDB Invest act or omission could have resulted in noncompliance with the operational policies in question, and if so, whether this caused or may cause Harm.

7.7 In relation to the requirements of Operational Policy OP-710 and Performance Standard 5:

- Did IDB Invest ensure that the Client complied with the procedures established in Performance Standard 5 and OP-710 on land acquisition and involuntary resettlement, particularly with regard to forced evictions?
- Did IDB Invest require that the Client conduct a study of alternatives in order to avoid involuntary resettlement to the extent possible?
- Did IDB Invest require that the Client conduct a census to collect appropriate socioeconomic baseline data to identify the persons who would be physically and economically displaced by the Project?
- Did IDB Invest require that the Client evaluate and adopt the necessary measures to adequately address the needs of all the persons who were physically and economically displaced as a result of the Project?
- If the requirements of OP-710 and Performance Standard 5 were not met, did Harm to the Requesters occur?

7.8 In relation to the requirements of Operational Policy OP-704, paragraph 20 of Performance Standard 1, and paragraph 11 of Performance Standard 4:

- Did IDB Invest require the Client to evaluate the risks posed by natural hazards, due to the propensity for landslides and the geological instability in some areas adjacent to the works?
- If so, did IDB Invest require the Client to include in Project design and execution alternative measures that decrease vulnerability and protect human health and economic assets?
- Did IDB Invest ensure that the contingency plan prepared by the Client for emergencies met the requirements of the Relevant Operational Policies?
- Did IDB Invest require the Client to establish management and information plans for emergency situations to keep the affected communities duly informed, and did it verify that these plans met its standards?
- If the requirements of OP-704, paragraph 20 of Performance Standard 1, and paragraph 11 of Performance Standard 4 were not met, did Harm to the Requesters occur?

7.9 In relation to the requirements of Operational Policy OP-761:

- Did IDB Invest take steps to “conduct [the operation] so as to identify and address adverse impacts and the risk of gender-based exclusion,”¹⁴⁴ in accordance with the requirements of OP-761?

B. Proposed methodology

- 7.10 The proposed investigation would review the documentary record and conduct targeted interviews as the primary method of inquiry regarding IDB Invest’s actions from the beginning of its involvement in the Project until the investigation’s completion date. The findings would be compared against the Relevant Operational Policies to make a determination of compliance or noncompliance. Lastly, in the case of a finding of

¹⁴⁴ Operational Policy on Gender Equality in Development (OP-761), paragraph 4.14.

noncompliance, a causal analysis would be conducted to determine whether there were any links between the noncompliance and the alleged Harm.

7.11 Based on this, the MICI would conduct the following activities:

- (i) **Engage the experts who will constitute the Investigation Panel, along with the MICI's Compliance Review Phase Coordinator, as well as other necessary experts.**¹⁴⁵
- (ii) **Conduct one-on-one interviews with the following stakeholders:**
 - IDB Invest staff involved in the operation at Headquarters and the Country Office in Colombia.
 - Responsible staff at the Company.
 - Expert consultants and organizations engaged by the Project.
 - Requesters and other community members.
 - National and municipal authorities in Colombia.
 - Former staff of the IDB Group and the Company who are relevant to the investigation.
 - Any other individuals identified as relevant during the investigation.
- (iii) **Review documentation.**
 - IDB Group documents related to the operation that are relevant to the scope of the investigation, both public and confidential.
 - Documents prepared by the Client and other third parties pursuant to their contract requirements with IDB Invest.
 - Other relevant third-party reports and studies.
- (iv) **Send the Investigation Panel on a mission to Colombia for purposes of context and contact with the Requesters, the Client, IDB Group staff in the Country Office, authorities, and others.**
- (v) **Review reports prepared by experts.**
- (vi) **Perform a comparative analysis and determine the main findings.**
- (vii) **Prepare the preliminary report.**

C. Timeline and team

7.12 In accordance with the provisions of the MICI Policy, and given the complexity and scope of this operation, the proposed investigation would be completed within nine calendar months from the creation of the Compliance Review Panel.

¹⁴⁵ In addition to the two experts specified in its Policy, the MICI believes it will be necessary to have other experts on specific issues that arise during a possible Compliance Review.

Table 2.
Proposed schedule of activities for the Compliance Review of case MICI-CII-CO-2018-0133

Compliance Review for MICI-CII-CO-2018-0133					MONTH 0				MONTH 1				MONTH 2				MONTH 3				MONTH 4				MONTH 5				MONTH 6				MONTH 7				MONTH 8				MONTH 9						
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	35	36	37	38	39	40	41	42	43
1	Contracting of experts																																														
2	Preparatory meeting and preliminary desk review																																														
3	Interviews of IDB Group personnel and other relevant stakeholders																																														
4	Fact-finding mission in Project area																																														
5	Targeted desk review - verification of findings																																														
6	Preparation of reports on findings by experts and corroboration of information																																														
7	Preparation of preliminary report																																														
8	Final verification of data																																														
9	Release of preliminary report																																														

- 7.13 The Investigation Panel would consist of the Compliance Review Phase Coordinator, two experts selected based on the technical subjects to be analyzed, and two Case Officers. The names of the experts will be communicated to the Board of Executive Directors, Management, and the Requesters through a direct notification after they have been retained.

D. Estimated budget

[REDACTED]	
[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

- 7.14 Due to the level of risk in the Project area and its location in a conflict zone, this mission may require engaging transportation and security services at a higher cost than what is generally planned for Compliance Review missions. This consideration is included in the budget.

ANNEX I

MANAGEMENT'S COMMENTS ON THE PRELIMINARY VERSION OF THE RECOMMENDATION FOR A COMPLIANCE REVIEW

Response of IDB Invest Management to the Terms of Reference and Recommendation for a Compliance Review for the Ituango Hydropower Project in Colombia (Request MICI-CII-CO-2018-0133)

I. INTRODUCTION

- 1.1 IDB Invest Management ("Management") appreciates the opportunity to provide comments on the draft terms of reference ("TORs") for the Request registered as MICI-CII-CO-2018-0133 ("the Request"), which originated with the Ituango Hydropower Project in Colombia ("the Project" or "Ituango"). As has been mentioned before, Management supports any investigations that are focused, well defined, technically solid, based on valid evidence, and above all, that could add value to the quality of the work that IDB Invest does to fulfill its development mission. That being said and in the spirit of constructively contributing to the efforts of the Independent Consultation and Investigation Mechanism ("the MICI" or "the Mechanism"), Management would like to make the following comments:

II. GENERAL COMMENTS FROM MANAGEMENT ABOUT THE TORs

A. Objectives of the TORs

- 2.1 According to the provisions of section I.39 of the Policy of the Independent Consultation and Investigation Mechanism ("the MICI Policy"), the TORs include the objectives of the investigation and the items to be investigated. Both of these should align with the guiding principles¹ (section C.6), which include being objective, impartial, and efficient.
- 2.2 The TORs lack clear, concise objectives regarding the items to be investigated and do not provide clarity for the stakeholders as to what can be expected. Several items in the TORs are too broad and vague in their scope, making it difficult for Management to identify the item being investigated or the requirement of the Relevant Operational Policy² being analyzed.
- 2.3 The TORs are incompatible with the nature (based on objective facts) of an investigation for a Compliance Review process. They offer conclusions about the long-term impacts of the actions taken during the contingency;³ forecast damages to river ecosystems and community relations; and make judgments about the

¹ Section C.6 of the Policy of the Independent Consultation and Investigation Mechanism.

² According to section E, paragraph 11 of the Policy of the Independent Consultation and Investigation Mechanism, the Relevant Operational Policies include the Environmental and Social Sustainability Policy and the Disclosure of Information Policy.

³ "The contingency" refers to a series of events that occurred in late April 2018 due to obstructions of Ituango's auxiliary diversion tunnel, which resulted in the uncontrolled filling of the reservoir.

reasons for increased violence in the region. Other sections include statements regarding insufficient information provided by the Client, inadequate monitoring by IDB Invest, and noncompliance by the Client with the environmental and social action plan (“the ESAP”). These conclusions, which are of a speculative and premature nature, require that the TORs be modified to ensure their impartiality and clearly formulate the scope of the proposed investigation.

B. Focus on compliance by IDB Invest with the Relevant Operational Policies

- 2.4 The objective of the MICI Policy and the purpose of the Compliance Review Phase is to impartially and objectively investigate allegations made by Requesters of possible Harm because IDB Invest, for the operations it finances, has failed to comply with the Relevant Operational Policies.⁴ However, given that Clients are responsible for making decisions and executing projects in accordance with these policies, it is important for the TORs to show a clear distinction between the roles and responsibilities of the Clients and of Management.
- 2.5 Moreover, the Relevant Operational Policies do not include adopting best practices or other policies or guidelines in addition to those specifically mentioned above. However, the TORs combine requirements from the Relevant Operational Policies with best practices, which is beyond the scope of action of the MICI Policy. Therefore, at the same time that IDB Invest focuses on requiring its Clients to comply with the Relevant Operational Policies, it also endeavors, although this is not necessary and at times not always possible, to ensure the adoption of best practices for the projects it finances.
- 2.6 Looking toward the future, the proposed investigation should focus on whether IDB Invest complied with the policies, instead of focusing on aspirational actions mentioned in the TORs. The focus on assessing the Client’s performance and the decisions made by local authorities regarding the Project’s implementation should also be eliminated. The TORs should focus on matters that are clearly associated with the Project and not use broader issues to justify an investigation. For example, the document combines historical trends of social unrest in the region (Antioquia) with an alleged failure by IDB Invest to apply its policies to assess potential social impacts.

⁴ The Operational Policies include the Environmental and Social Sustainability Policy and the Disclosure of Information Policy. They also include other environmental and social policies approved following entry into effect of the MICI Policy, as well as others explicitly designated by the Board as “Relevant Operational Policies.”

C. Exclusion of the contingency from the investigation

2.7 It would be premature for the MICI to investigate reports of alleged noncompliance by IDB Invest with its Relevant Operational Policies with respect to the contingency and its impact. An important principle of a compliance investigation is that it be efficient in terms of costs and avoids duplication. Multiple independent reviews have already been commissioned from third parties to evaluate the event, including those requested by IDB Invest and co-lenders. In addition, this situation is still being addressed. Therefore, there is not yet sufficient information available to perform a fair and meaningful evaluation of the Client's environmental and social remediation and planning, as well as its response to the contingency, or of IDB Invest's actions in this regard. For example, the Client is currently working with insurance companies and several advisors on these matters, and complete environmental and social technical reports and the findings for an insurance claim are not yet available. In this regard, if at this time the scope of a MICI investigation would include matters related to the contingency, the information available to the public may not precisely reflect the events that occurred. This may in turn impact other investigations, processes, and evaluations that are in progress.

2.8

[REDACTED]

Therefore, Management would like to request from the MICI Director's Office that, according to the provisions of section F.19(d) of the MICI Policy, the contingency be excluded from the proposed investigation, given that certain allegations made by the Requesters (for example, allegations of Harm as a result of the contingency, such as the displacement of communities) are also under judicial review. [REDACTED]

[REDACTED]

2.9 The TORs combine the assessment of potential impacts conducted during due diligence with the supervision of the alleged consequences of the contingency. Therefore, for example, the proposed investigation to redefine the Project's areas of direct and indirect influence is being justified, as shown in the TORs, by the consequences of the contingency. That being said, a revision of the TORs that eliminates the contingency should also revise the scope of the proposed investigation.

D. Confidentiality considerations

2.10 Pursuant to section 58 of the MICI Policy: "The disclosure of all information produced and received by the MICI Office will be subject to the Disclosure of Information Policy." In the same paragraph, the policy establishes that: "All information provided by any of the Parties to the MICI Office as confidential will be maintained confidential at all times and may not be disclosed without the written authorization of the Party who provided the information, in accordance with the Disclosure of Information Policy."

- 2.11 [REDACTED]
- 2.12 IDB Invest acknowledges and appreciates the efforts made by the MICI to preserve the confidentiality of the information and urges the Mechanism to continue coordinating with Management and to take the proper precautions to ensure that, during the course of the investigation, confidential information is not disclosed.
- 2.13 In summary, the investigation should be limited to compliance by IDB Invest with its Environmental and Social Sustainability Policy. It should not focus on assessing the Client's performance or its decisions, and the decisions of local authorities regarding the Project's implementation. In addition, in order to contribute value to the IDB Invest development mission, the process should be objective and focused, producing lessons learned for future projects.
- 2.14 Management acknowledges the complexity and magnitude of the events associated with this important Project and is willing to work with the MICI on a compliance investigation based on improved TORs that enable a more focused and clear process.
- 2.15 In the following sections, Management includes specific considerations regarding the Recommendation for a Compliance Review and terms of reference.

III. SPECIFIC COMMENTS FROM MANAGEMENT ABOUT THE TORs

- 3.1 The Sustainability Policy refers to the environmental and social policies of the Inter-American Development Bank⁵ ("the IDB"), the Performance Standards⁶ of the International Finance Corporation ("the IFC"), and the World Bank Group Environmental Health and Safety Guidelines.⁷
- 3.2 The Request presents several allegations "arising from the following IDB Operational Policies: Environment and Safeguards Compliance Policy (OP-703), Disaster Risk Management Policy (OP-704), Operational Policy on Involuntary Resettlement (OP-710), and Operational Policy on Gender Equality in

⁵ These include the following Operational Policies: (i) Environment and Safeguards Compliance Policy (OP-703); (ii) Disaster Risk Management Policy (OP-704); (iii) Indigenous Peoples Policy (OP-765); (iv) Operational Policy on Gender Equality in Development (OP-761); and (v) Operational Policy on Involuntary Resettlement (OP-710). See <https://www.iadb.org/es/acerca-del-bid/acerca-del-bid-0>

⁶ Performance Standard 1, Assessment and Management of Environmental and Social Risks and Impacts; Performance Standard 2, Labor and Working Conditions; Performance Standard 3, Resource Efficiency and Pollution Prevention; Performance Standard 4, Community Health, Safety, and Security; Performance Standard 5, Land Acquisition and Involuntary Resettlement; Performance Standard 6, Biodiversity Conservation and Sustainable Management of Living Natural Resources; Performance Standard 7, Indigenous Peoples; and Performance Standard 8, Cultural Heritage. See https://www.ifc.org/wps/wcm/connect/55d37e804a5b586a908b9f8969adcc27/PS_Spanish_2012_Full-Documents.pdf?MOD=AJPERES

⁷ See https://www.iic.org/sites/default/files/pdf/iicdocs-359064-v4-politica_de_sostenibilidad_spanish_.pdf

Development (OP-761). They also involve obligations arising from these IFC Environmental and Social Performance Standards: Assessment and Management of Environmental and Social Risks and Impacts (Performance Standard 1); Resource Efficiency and Pollution Prevention (Performance Standard 3); Community Health, Safety, and Security (Performance Standard 4); Land Acquisition and Involuntary Resettlement (Performance Standard 5); Biodiversity Conservation and Sustainable Management of Living Natural Resources (Performance Standard 6); and Cultural Heritage (Performance Standard 8).⁸

- 3.3 According to the MICI, the allegations made by the Requesters focus, overall, on the following: (i) the lack of proper identification of the area of influence and affected population; (ii) the lack of proper identification of the social and environmental impacts, particularly cumulative impacts, and their mitigation measures; and (iii) the lack of meaningful consultations with the affected communities and effective citizen participation procedures.⁹
- 3.4 The MICI, as a result of the analysis performed, “recommends focusing the scope of a possible investigation on determining whether IDB Invest has complied with the provisions of its Environmental and Social Sustainability Policy regarding IDB Operational Policies OP-703, OP-710, OP-704, and OP-761, and IFC Performance Standards 1, 3, 4, 5, 6, and 8, with respect to the assessment and identification of the area of influence and affected population, and of the social and environmental impacts, including the alleged increase in conflicts and insecurity in the Project area and gender-differentiated impacts; public consultations and other forms of participation for the affected communities; the resettlement or compensation methods and plans to address physical and economic displacement; and the management of the emergency that began in April 2018.”¹⁰
- 3.5 Therefore, Management would like to analyze some of the elements based upon which the MICI recommends an investigation of compliance with IDB Invest’s Environmental and Social Sustainability Policy.

A. Purpose of the environmental and social review summary (ESRS)

- 3.6 Management would like to clarify that the environmental and social review summary (“the ESRS”), as its name indicates, is a document that condenses the most prominent aspects of the environmental and social conditions of a Project and compares them with the requirements of the Sustainability Policy. This document, being a summary, by no means replaces the environmental and social reports and studies conducted for a particular Project, which were used for its preparation during the analysis process. In this regard, beyond mentioning the most relevant characteristics of the management plans for a Project’s environmental and social impacts, due to the structure of the ESRS, it is often the case that these documents do not include specific details.

⁸ Paragraph 6.2 of the Recommendation for a Compliance Review and Terms of Reference for the Ituango Hydropower Plant (“the Recommendation”).

⁹ Paragraph 6.25 of the Recommendation.

¹⁰ Paragraph 6.7 of the Recommendation.

B. Area of influence of Ituango (Performance Standards 1, 3, 4, 5, 6, and 8; Operational Policies OP-763, OP-710, OP-704, and OP-761)

3.7 With respect to the allegation that refers to a supposed “lack of proper identification of the area of influence and affected population,”¹¹ and taking into account that, as the MICI stated, most of the Requesters are in areas determined to be of indirect impact, and the Project’s areas of influence do not include most of the municipios affected by the emergency that began in April 2018,¹² Management would like to specify the following:

- (i) The areas of direct and indirect influence that comprise the area of influence of a Project are determined through an iterative process to identify, first, both activities that may generate impacts and elements of the environment prone to being impacted by the applicable actions. A space variable is added for every iteration, on the basis of: (a) the type of impact expected; (b) the impact significance thresholds that are established; (c) the degree of cause-effect connectivity that is defined; and (d) the probability that the applicable impacts will occur. This process is conducted under the assumption that both the construction and operation phases of the Project will take place under normal performance conditions for the environment.
- (ii) By contrast, the areas affected by emergency situations are determined from the viewpoint of a disruption in normal environmental conditions, and various risk scenarios with different probabilities of occurrence are analyzed for this purpose. These areas should not be confused with the areas of influence of a Project under normal conditions.
- (iii) To eliminate, mitigate, or offset the most likely adverse impacts that a Project could generate in its area of influence, environmental impact assessments (“EIAs”) include as an essential part what is known as an environmental and social management plan (“ESMP”).
- (iv) With the understanding that emergency situations occur, in most cases, without prior notice, risk management programs—which are also part of the EIAs—include a number of prevention measures, but especially preparation and response measures in case an emergency situation arises.

3.8 The area of influence of Ituango was determined, as is customary for all environmental assessment processes, under the assumption that the natural trend of the changes in environmental conditions found when the baseline was established would remain constant over time. That is why the Project’s area of direct influence only includes the areas adjacent to those that would be affected by planned activities, which are located in the surroundings of the reservoir and the dam. Therefore, this area only covers the municipios of Buriticá, Ituango, Liborina, Olaya, Peque, Sabanalarga, San Andrés de Cuerquia, Santa Fe de Antioquia, and

¹¹ Paragraph 2.3 of this document.

¹² Paragraphs 6.26 and 6.27 of the Recommendation.

- Toledo (upstream from the dam); and Valdivia, Yarumal, and Briceño (downstream from the Project). Based on technical criteria, it was assumed that in these areas, some secondary effects originating from the Project's direct impacts could be verified.
- 3.9 It is undeniable that the areas affected by emergency situations are not necessarily the same as those evaluated under normal conditions, just as with the population that may be affected. For Ituango, the areas affected by emergency situations are different from its areas of influence. Under a scenario of a total collapse of the main works (dam, spillway, and generation, transformation, and surge tanks), the emergency areas cover from downstream from the dam to the municipios of Valdivia, Briceño, Yarumal, Tarazá, Cáceres, Caucasia, and Nechí—all of them affected by the likely flood plain that would result from a total Project failure.
- 3.10 As explained above, while Ituango's areas of influence do not include some of the municipios that were affected by the emergency that occurred in April 2018,¹³ the areas affected by emergency situations do include them.¹⁴ It was in this context that the Client, as part of the Risk Management Program¹⁵ and long before the contingency of April 2018 occurred, began coordinating with the authorities and populations of these municipios to prepare them and strengthen their ability to respond to a possible emergency. As a result of this preventive work, there were no bodily injuries or deaths among the population due to the contingency that began in April 2018. Also, response measures were implemented in an extremely short time frame.
- 3.11 [REDACTED]
- 3.12 Based on the above, Management believes that opening an investigation to verify why the Project's areas of influence did not include the municipios affected by the contingency that occurred in April 2018 is technically incorrect. In this regard and as indicated above, combining a contingency situation with a Compliance Review for a Sustainability Policy is not the best course of action for the proposed investigation.

¹³ See paragraph 6.27 of the Recommendation.

¹⁴ See chapter 9 of the EIA.

¹⁵ The Risk Management Program is one of the instruments required by IDB Invest to comply with the provisions of Operational Policy OP-704 and Performance Standards 1 and 4.

¹⁶ See [EZSHARE-1500004654-84](https://ezshare-1500004654-84).

¹⁷ These models were developed as part of action 3.8 of the ESAP.

C. Process of identification and assessment of environmental impacts (Performance Standards 1 and 3; Operational Policy OP-703)

- 3.13 The environmental and social assessment process for Ituango identified the Project's most relevant potential environmental and social impacts, as indicated by the requirements of Operational Policy OP-703 and Performance Standard 1. Nevertheless, it is important to keep in mind that the methodologies and international best practices for the identification and assessment of environmental impacts are based on assumptions (for example, what occurred in the past will occur again in the future) that do not always reflect environmental conditions. Also, at best, they focus on determining the most likely and most significant impacts, always from a viewpoint of probabilistic occurrence.
- 3.14 Given this, Performance Standard 1, unlike Operational Policy OP-703, requires the establishment of an environmental, social, health, and safety management system. The objectives of this system include identifying in advance potential impacts that were not identified through the EIA. That is the case with Ituango, since in addition to having a quite well prepared EIA, also has a solid environmental, social, health, and safety management system, on which work began before the start of Project construction.

D. Analysis of alternatives (general approach of Performance Standards; Performance Standards 1 and 5; Operational Policies OP-703 and OP-704)

- 3.15 The siting of a mountain hydropower project is basically restricted by the simultaneous verification of factors such as: (i) the presence of a natural channel that enables the construction of the closing structure; (ii) the existence of rocks in good conditions on the abutments of what could be the dam location; (iii) sufficient hydraulic head; (iv) availability of materials for construction of the proposed works; (v) the presence of adequate sites for disposal of excess material; (vi) availability of access roads; and (vii) availability of services (particularly electricity). These factors also take into account the minimization of undesirable impacts (for example, reducing the transportation distance for materials, infrastructure safety, etc.).
- 3.16 Once a potential dam site is identified, the project planner generally begins analyzing other parameters (for example, related to construction) and determining overall characteristics of the future project, such as: dam height, which will determine the shape and volume (total, useful, and dead) of the reservoir, and accordingly, of the area to be flooded and number of families to be displaced; the type of material used to build the dam; the location of the powerhouse; and the shape and location of the diversion tunnels.
- 3.17 When IDB Invest began the environmental and social analysis of the Project, the works had already been approximately 40% completed. However, IDB Invest, in compliance with its Sustainability Policy, asked the Client for its analysis of alternatives. The Client submitted a study of the various options considered during the Project's feasibility phase. After evaluating the studies submitted, IDB Invest believed that there had been a consistent assessment of alternatives based on evaluating multiple criteria.

- 3.18 With the final characteristics of the most technically favorable option already determined, the Client, based on experience from working on two prior hydropower projects with the IDB Group,¹⁸ prepared a social management plan (“SMP”) for the Project. As the ESRS mentioned, the SMP is an involuntary resettlement plan that fulfills the requirements of both Performance Standard 5 and Operational Policy OP-710. With the designs approved and the number of people to be displaced calculated, based on a census of families potentially affected by the Project, implementation of the SMP began several years before the start of Project execution. When the contingency occurred in April 2018, all of the population that needed to be relocated in order to establish the reservoir and build or improve access roads had already been relocated.

E. Cumulative impacts (Performance Standards 1 and 3; Operational Policy OP-703)

- 3.19 With respect to the availability of a cumulative impacts study, Management would like to clarify that the Project does have one.¹⁹ This is demonstrated by the ESAP that was agreed upon with the Client, containing actions to supervise and monitor these impacts.²⁰ Moreover and as the MICI itself stated, Management has been asking the Client to account for these actions, and since they had not been performed, has agreed upon corrective plans that are and will continue to be monitored in the future. In this regard, it is not clear to Management what type of investigation it wishes to conduct. If it is about whether or not information exists, the MICI should simply request it from Management.

F. Ecological flow (Performance Standards 1 and 3; Operational Policy OP-703)

- 3.20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED],²¹ [REDACTED] However, as stated in the ESRS, “filling the reservoir includes operating the diverter gates and the bottom and middle discharges to always maintain a minimum water flow of 450 cubic meters per second, promoting, during this process, a controlled filling of the reservoir until the relief height is reached and preventing the dewatering of the river.” [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]²²

¹⁸ Force II and Force III.

¹⁹ Prepared by the companies Servicios Ambientales y Geográfica S.A. and HMV Ingenieros under nonreimbursable technical-cooperation funding ATN/OC-13351-CO and supplemented by the Client as part of the environmental and social due diligence.

²⁰ See section 4.1.c of the ESRS and action 1.16 of the ESAP.

²¹ The power station would always be generating energy, and accordingly, releasing water into the Cauca River through its outlet tunnels. At times of high water levels, in addition to the flows released through outlet tunnels, there would be an additional flow released through the spillway.

²² Article 9, section 1.1.1 of Resolution 0155 by the Ministry of Environment, Housing, and Land Development.

.²³

- 3.21 The contingency in April 2018 resulted in the uncontrolled filling of the Project's reservoir under circumstances in which, at that time, the crest of the dam (elevation 385) was below the crest of the spillway structure (elevation 401). This represented a considerable risk, since the rapid increase in the reservoir's water level threatened to overflow the dam and cause an unprecedented catastrophe. Making one of its toughest decisions, the Client chose to divert the reservoir's water through the Project's powerhouse—which, at that time, already had a large portion of its electromechanical equipment installed. In the opinion of the independent advisory panel²⁴ retained by IDB Invest to provide support for the Project during the contingency, this was the best decision.
- 3.22 The water continued to be diverted through the powerhouse until early 2019, when the water flows from the Cauca River into the reservoir were approximately 200 cubic meters per second; the discharges through the powerhouse were 650 cubic meters per second; and there was no relief through the spillway (the elevation of the reservoir was below 401). The amount of water that was entering the reservoir was less than what was leaving, so level decreased, at a rate of almost one meter per day.
- 3.23 In January 2019, during regular surveys to determine the stability of the mountain where the Project's underground structures are located, a gully was detected between transport tunnels 1 and 2 (which transport water from the intake in the reservoir to the future power generators). This gully was more than 40 meters high, united the two tunnels, and threatened to cause deeper perforations in the cave. This made it necessary to close one of the two intake gates²⁵ between the reservoir and the powerhouse, which had remained open. The closing of this gate meant a decrease in the water flowing through the powerhouse to approximately 420 cubic meters per second.
- 3.24 The excess pressure that the closing of the first gate generated on the gate that remained open was so high that it compromised the integrity of the intake structure and created an imminent failure situation.²⁶ As a result, on 5 February 2019, seeking to prevent a potential catastrophe downstream, the Client deemed it necessary to close the last gate that remained open. At that point, the level of the reservoir had not yet reached the spillway crest. The closing of this gate generated a drastic decrease in the Cauca River's flow downstream from the Project for a period of 60 hours.²⁷ The levels decreased below historical levels, with flows of approximately 50 cubic meters per second in the Cauca River just after its

²³ Source: Client's Hydrology Department.

²⁴ This panel is comprised of Alessandro Palmieri, a hydraulic works expert; Federico Cimipitti, an electromechanical equipment expert; and Paul Marinos, a soil science expert.

²⁵ The first gate was closed on 16 January 2019.

²⁶ A failure of the gate in the intake works would have created an unplanned obstruction in the transport channel, produced by the excess pressure, which would have destabilized the cave complex and caused a total Project collapse and a catastrophe downstream.

²⁷ This was the period required for the reservoir level to reach the spillway crest and begin discharging.

confluence with the Ituango River. This flow began increasing downstream due to additional water supplied by tributaries. It also began to recover on 8 February, when the level of water in the reservoir reached the spillway crest. Significantly, in previous days, the Client had reached an agreement with the Salvajina project, located upstream from Ituango, so that it would release more water than usual in order to shorten the time for the reservoir level to reach the spillway.

- 3.25 Management does not question the fact that, during the period between the closing of the last gate and the water being released through the spillway, the Project did not have the capacity to provide the minimum water flow established administratively. However, this is a clear example of the MICI proposing to investigate a Project and not the compliance with the Sustainability Policy. IDB Invest, complying with the policy's provisions, verified that the minimum water flow established administratively by local authorities was higher than the minimum historical water flows of the Cauca River. The sudden, short reduction of this minimum required water flow due to the need to safeguard the infrastructure and prevent a possible catastrophe downstream was the result of an operational Project decision related to the contingency, and not a failure by Management to comply with the provisions of Performance Standards 1 and 3 and Operational Policy OP-703. Therefore, this point should be excluded from the investigation.

G. Controlled deforestation (Performance Standards 1 and 3; Operational Policy OP-703)

- 3.26 One of the activities required by the National Environmental Licensing Authority ("ANLA") through the applicable environmental license was the controlled deforestation of the basin to be flooded by the reservoir. For this activity, the Client retained two companies²⁸ that would be responsible for cutting, removal, and final disposal of the biomass to be eliminated. Due to the topographic and physical characteristics of the future reservoir (steep slopes and few access points), the selective removal process of the vegetation was to take place as follows: (i) felling of vegetation with trunks larger than 10 centimeters; (ii) collection of the felled vegetation in temporary sites (many inside the area to be flooded); (iii) removal of the vegetation from temporary sites to central collection sites above the flooding elevation; and (iv) final disposal of the biomass.
- 3.27 The uncontrolled filling of the reservoir that resulted from the events of April 2018 interrupted this cycle. Despite the contractors' efforts, a good amount of the biomass collected in temporary sites was unable to be removed before the water reached it and it was transported—uncontrolled—to the dam site. Again, this was a result of the contingency, given that the original plans were fully aligned with the provisions of Performance Standards 1 and 3, and Operational Policy OP-703. However, any additional impact resulting from the uncontrolled filling of the reservoir will be evaluated, and any management measures required to address the impact will be agreed upon with the Client.

²⁸ Refocosta and Plantar.

H. Offset area (Performance Standards 1 and 3; Operational Policy OP-703)

3.28 As acknowledged in the Recommendation, Management reported that the Project would flood approximately 3,800 hectares, representing a large part of the dry forest in the Cauca valley, an ecoregion that is considered threatened due to the significant historical loss of forest cover that it has undergone.²⁹ Nevertheless, the Recommendation does not mention the actions being performed in executing the Land Habitat Compensation Plan³⁰ to mitigate and offset the loss of biodiversity in this area to be flooded. This plan, conceived as an adaptable instrument to be able to include the management of any species not identified during the establishment of the baseline, has the purpose (as specified in Performance Standard 6 and Directive B.9 of Operational Policy OP-703) of generating a net gain of biodiversity through the management of an offset area of almost 19,000 hectares.³¹ The Compensation Plan is supplemented by an Integrated Management System for Biodiversity and Ecosystem Services, which is based on the protection and management of areas that, among the most important factors: (i) are required by emblematic or threatened species;³² (ii) are located near national and regional protected areas; (iii) have forest cover (particularly tropical dry forest); (iv) are a priority for conservation; (v) are required to reestablish ecological connectivity; (vi) have soils in good agrological condition; (vii) are necessary for the conservation of the watersheds that provide drinking water to the population; (viii) are located in areas protecting aqueduct intakes³³ that currently supply water to the population; (ix) are necessary to protect drainage headwaters and withdrawals; and (x) are located at summits and watershed divides.

3.29 While section 4.6 of the ESRS indicates that the Project's area of influence includes some isolated areas that can be considered critical habitats, it also states that these would not be affected by the works in execution. In addition, it notes that the isolated areas would be managed in order to improve their forest cover or restore their ecological connectivity.³⁴

3.30 [REDACTED]

²⁹ Section 4.6 of the ESRS.

³⁰ This plan is adaptable so that the management of any species that were not identified during the establishment of the baseline used to develop the original plan can be included.

³¹ The management area includes 2,250 hectares of reservoir buffer zone plus 16,800 hectares of an additional management area that were purchased by the Client for this purpose.

³² These include: military macaw (*Ara militaris*), silvery-brown tamarin (*Saguinus leucopus*), Colombian cane mouse (*Zygodontomys brunneus*), Antioquia wren (*Thryophilus serna*), Spanish cedar (*Cedrela odorata*), glassfrog (*Sachatamia punctulata*), and Fuhrmann's backpack frog (*Cryptobatrachus fuhmanni*).

³³ One hundred and eighty-seven intakes have been inventoried.

³⁴ See the environmental and social compliance report prepared by the Client ([EZSHARE-1500004654-89](#))

³⁵ Prepared in September 2018 by the company HDR, as commissioned by Management.

- 3.31 That being said, Management does not see that a MICI investigation of issues related to the impact of Ituango on critical habitats located downstream from the dam could generate value added, given that to date, a possible dam failure has an increasingly low probability.
- I. Environmental, social, and occupational safety and health supervision (general approach of Performance Standards; Operational Policy OP-703)**
- 3.32 With respect to the MICI's remarks regarding the classification of the Project's performance as "partially satisfactory" in terms of information disclosure,³⁶ it is important to indicate that, in faithful compliance with the provisions of chapter III of the Sustainability Policy and Directive B.7 of Operational Policy OP-703, Management is conducting monitoring and supervision of Ituango. For this, Management uses an assessment template that rates the Project's environmental and social performance based on the requirements of the Performance Standards, as follows: (i) satisfactory performance, when the element being analyzed complies with the Performance Standard's requirements; (ii) partially satisfactory performance, when the element complies with the standard's requirements, but there is room for improvement; (iii) partially unsatisfactory performance, when there is a failure to comply, but it has not caused noncompliance; and (iv) unsatisfactory performance, when there has been noncompliance or there is a high risk of its occurrence. In all cases in which performance is determined to be either partially unsatisfactory or unsatisfactory, corrective actions are prepared and included in an action plan. Fulfillment of this action is evaluated until the next supervision visit takes place. Partially satisfactory performances do not always require an action plan. However, when an action is agreed upon to change its status to satisfactory, it is considered as an opportunity for improvement.
- 3.33 In addition, the environmental, social, and occupational safety and health supervision process for the Project is conducted by a number of redundant internal groups (environmental, social, and occupational safety and health teams for the

³⁶ See second-to-last paragraph in the introduction section of this document.

³⁷ Chapter 7, Recommendations.

³⁸ Paragraph 6.62 of the Recommendation.

contractor, the auditor, and the Client) and external bodies (the independent environmental and social consultant or “IESC” and Colombian control agencies such as the Autonomous Development Corporation of Antioquia/Corantioquia and the ANLA). Above these two layers of supervision is the expert panel³⁹ retained by the Client, which has monitored the Project since its implementation began. Ever since the contingency, as set forth in the Sustainability Policy, IDB Invest has increased supervision and is providing additional support to monitor and evaluate a complex situation. None of these organizations has issued a noncompliance regarding the information disclosure process.

- 3.34 As shown in paragraph 3.32 below, the hypothesis presented in the TORs to the effect that a partially satisfactory classification means that there has been noncompliance is incorrect and in itself does not justify an investigation of the supervision effort. This must be corrected in the TORs.

J. Security personnel retained by the Client (Performance Standard 4)

- 3.35 With respect to allegations of excessive use of force by private security companies retained by the Project, Performance Standard 4 clearly indicates that the Client should “where appropriate, investigate all allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities.”⁴⁰

- 3.36 The ESDD process evaluated the allegations of improper use of force supposedly engaged in by the companies that provided, and one that currently provides, security services for the Project’s facilities. However, given that these allegations were made through social networks and without providing any support or evidence to be able to begin an investigation, they were not considered valid. [REDACTED]

[REDACTED]

[REDACTED] 41 [REDACTED]

[REDACTED] 42 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

K. Presence of workers (Performance Standard 4)

- 3.37 With respect to the number of workers providing services to the Project, indeed, preliminary estimates for the peak season were approximately 8,000. However, currently about 8,700 workers are being employed by the Project. The reason for

³⁹ The panel is comprised of: (i) Gabriel Fernandez, a geotechnical expert; (ii) Bayardo Materón, a large dams expert; (iii) Nelson Pinto, a hydraulic works expert; (iv) Helmut Friedrich Miller, an electromechanical equipment expert; and (v) Juan David Quintero, an expert in environmental and social management systems for large dams.

⁴⁰ Paragraph 15 of Performance Standard 4.

⁴¹ [REDACTED] was retained in September 2018 by IDB Invest to prepare an analysis of the situation of violence in the region where Ituango is located and assess the performance of the security services company retained by the Client, pursuant to the provisions of Performance Standard 4.

⁴² [REDACTED]

this variation, less than 10% and not substantial for projects of this magnitude, is basically due to the contingency and the efforts the Client is making to control it. In terms of impact on neighboring communities, this increase is relatively immaterial. The workers have almost no contact with the community, since they stay in camps located away from any population center (the closest is more than 30 kilometers away). Also, the Client and its contractors provide round-trip transportation services to the Project area for outside workers from Medellín and its surroundings. In reality, the only workers who have contact with the population are local workers.

L. Migratory flows (Performance Standards 1 and 4)

- 3.38 The environmental and social management plan for the Project includes the execution of a Migratory Pressure Management and Monitoring Program, which features measures such as: (i) building the camps with the necessary logistical arrangements to reduce (or eliminate) contact between workers and the neighboring communities; (ii) implementing a code of conduct to avoid friction among workers; and (iii) building recreation areas for workers so that, through sports, they can let off steam. This program, since migration management should include local and regional authorities, also includes the creation of citizen committees for this management. These plans, which were evaluated by IDB Invest, are aligned with the requirements of Performance Standards 1 and 4.
- 3.39 These committees were created and are operating. Indeed, as the Recommendation indicated, there are several impact management measures to address migratory pressure that were already executed, others are in execution, and others were discontinued due to the contingency. So far, there has not been an evaluation of the measures that were already implemented because that process, according to the execution plan, should happen on a future date.⁴³

M. Acts of violence (Operational Policy OP-703)

- 3.40 The allegations made by the Requesters stating that “since they began their campaign opposing the Project, they have experienced multiple incidents of violence, including murders, kidnappings, and threats, which they associate with this operation” are more related to public security issues. As the report prepared by FFP mentioned, these issues are the result of an increase in violence in the Bajo and Medio Cauca subregions, which is completely unrelated to the presence of the Project. It has to do with the activities of several armed groups in the region (including dissidents from the FARC and the ELN, and paramilitary groups such as Clan del Golfo). It is public knowledge that the escalation of violence in the region, unfortunately, has not discriminated between interest groups, and its victims include opponents of the Project, supporters of the Project, police, members of the military, state officials, and sadly, children.
- 3.41 Management deeply regrets the killings of the people mentioned in the Request. However, as soon as the incidents happened, IDB Invest urged the Client to request an investigation from competent authorities. The Client immediately requested from the Attorney General’s Office, the Inspector General’s Office, and

⁴³ There are plans to revisit this issue once the contingency has been resolved.

the Ombudsman's Office⁴⁴ “the activation of all State entities to conduct a serious, effective, and impartial investigation that establishes the facts, finds those responsible, and protects the population.” The investigations are continuing, and to date, the reasons and the people responsible for the incidents have not been determined.

- 3.42 Management is of the opinion that, with respect to this issue, the TORs should clarify and determine: (i) what would be the objective of an investigation; (ii) how the proposed investigation would evaluate compliance by IDB Invest with the Sustainability Policy in this context; and (iii) what would be the criteria for such an evaluation. The TORs, as presented, confuse the function of Management regarding the application of the Sustainability Policy with the unfortunate and undeniable acts of violence that have occurred in the region. Management believes that the MICI should abstain from making statements that could suggest a connection between the Project and the violent acts that are being investigated by Colombia’s judicial and police authorities.

N. Involuntary resettlement (Performance Standard 5; Operational Policy OP-710)

- 3.43 Management notes that the Requesters had a serious lack of information when they stated that: (i) a study of alternatives in order to avoid involuntary resettlement to the extent possible was not conducted; (ii) no involuntary resettlement plan was put in place prior to the start of construction; (iii) the number of people identified does not reflect the total number of people affected; (iv) the censuses did not consider those who would be affected economically, and therefore a study on the economic activities of the affected communities was not conducted, particularly given that these communities depend on the river and the area that would be flooded to carry out their small-scale mining, agriculture, and fishing activities; and (v) no adequate compensation or rehabilitation has been provided, and communities have not been resettled in places that ensure minimum standards of living in decent conditions, or access to land and natural resources, such that displaced communities have not been able to recover the losses caused by resettlement and lack socioeconomic development opportunities.⁴⁵
- 3.44 The procedures associated with the application of both Performance Standard 5 and Operational Policy OP-710 state the need to carry out “a census [...] to collect appropriate socioeconomic baseline data to identify the people who will be displaced by the Project, determine who will be eligible for compensation and assistance, and discourage ineligible persons,”⁴⁶ and that this process should be documented and the relevant information about the cut-off date should be disseminated throughout the Project area.

⁴⁴ Official notices 20180130054592 and 201801300557462.

⁴⁵ Paragraph 6.76 of the Recommendation.

⁴⁶ Paragraph 11 of the general requirements to implement Performance Standard 5.

- 3.45 As required by Performance Standard 5 and Operational Policy OP-710, the Project carried out a population and socioeconomic census⁴⁷ of the people to be potentially affected by Project activities. While this process had a cut-off date, people who were unable to be present on the days when the survey was conducted could go to any of the offices that the Client still has in the 12 municipios of the Project's area of influence and provide documentation that demonstrates their continuous presence in the region. They would then be added to the list of beneficiaries. In addition, due to the characteristics of the area⁴⁸ and in order to include on the list of beneficiaries anyone displaced by the armed conflict, it is currently still possible for every person who complies with the provisions of Law 387 of 1997 and its regulations and of Law 1448 of 2011 and its regulations to be recognized as a beneficiary of the Program for Restoring Living Conditions ("PRCV"). As required under the Sustainability Policy, the census results (based on socioeconomic files collected for every family unit or individual included in the census) were used to structure the Project's SMP.⁴⁹ These results were also used to determine whether the works, in addition to physical displacement, could create some type of economic displacement.
- 3.46 While the ESRS prepared in 2016 established that 474 families would be affected directly (262 families would be physically displaced and 212 families would be economically displaced), in addition to 13 families of gold buyers and 10 families of boatmen, whose economic activities would be affected and who would receive assistance from the Project, to date these numbers have changed. This is precisely because additional people have been able to demonstrate their presence in the area. Therefore, the PRCV currently includes 1,298 families (278 families with impact on property; 849 miners' families without impact on property; and 171 families without impact on property but with impact on other economic activities) and two river transportation companies.⁵⁰
- 3.47 The Project's SMP, as one of the lessons learned from the execution of resettlement plans for Porce II and Porce III,⁵¹ provided its beneficiaries the possibility to choose between two compensation options: (i) comprehensive restoration of living conditions, which in turn provided options for nucleated resettlement⁵² and suggested lands;⁵³ and (ii) direct purchase of the lands. The

⁴⁷ During February 2008.

⁴⁸ The high level of armed violence in the past, due to the presence of the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and other armed groups connected to drug trafficking.

⁴⁹ The SMP, strictly speaking, is an involuntary resettlement plan, according to the requirements of the Sustainability Policy.

⁵⁰

⁵¹ IDB Group-financed projects executed by the Client.

⁵² This option refers to the resettlement of families on lots that the Client acquired for that purpose and where construction had begun on housing and community infrastructure similar to what would be lost due to the flooding of the reservoir. Families participate in designing their own homes.

⁵³ This option allows displaced families to suggest the location where they wish to be resettled. The Project, to the extent possible, tends to accommodate these wishes. The lots chosen have previously been productive (coffee, rubber, pasture, various crops) and if they contain housing, it is improved. If the lot does not contain housing, new housing is built, always trying to meet the requirements of the displaced family.

latter option was less encouraged, given that often, the money that the affected people receive is spent in activities that in the medium term end up impoverishing families.⁵⁴ In addition, the SMP enabled visits by many families who would be resettled by the Project to the places where families affected by the Porce II and Porce III projects were relocated. It also included workshops and meetings for the families from Porce and Ituango, for the latter to better understand the process of resettlement and the advantages and disadvantages of the options mentioned above.

- 3.48 The foregoing description simply makes moot the allegation made by the Requesters that for the Project, “no adequate compensation or rehabilitation has been provided, and communities have not been resettled in places that ensure minimum standards of living in decent conditions, or access to land and natural resources, such that displaced communities have not been able to recover the losses caused by resettlement and lack socioeconomic development opportunities.” In addition, as can be verified in the ESAP,⁵⁵ there are two activities that the Client must perform to evaluate the effectiveness of the SMP and to ensure that the conditions of resettled people are at least equal to (or better than) what they had prior to resettlement.
- 3.49 With respect to the allegations made by the Requesters regarding the involuntary resettlement process and an alleged practice of forced evictions, Management would like to make the following comments:
 - (i) Except for reports made through the social networks that did not provide any information supporting the accusations, the ESDD conducted between July and October 2018 was unable to find evidence that there indeed had been forced evictions of: “(i) 22 families from Playa Tenche in the municipio of Ituango in December 2010; (ii) 150 families from Playa La Cola de Ituango in the municipio of Briceño in May 2011; (iii) 120 families from Playa Icura at El Limón in the municipio of Briceño; (iv) 30 families from the *vereda* of Orejón and the *vereda* of Chiri in the municipio of Briceño in August 2014; and (v) 81 families from Playa La Arenera in the municipio of Toledo in March 2015.”⁵⁶
 - (ii) With respect to the evictions in 2017 of four families from Playa La Arenera in the municipio of Toledo and six families from Playa Angurro in the municipio of Ituango, this fact is completely unrelated to the implementation of the SMP. It is instead related to an illegal takeover of private property, due to which the owner of the lot in question exercised the legal right to safeguard it with support from the appropriate authorities. Unfortunately, illegal occupations are not unknown in the region. For example, almost a year ago, a group of

⁵⁴ Families often spend the money on consumer goods.

⁵⁵ Actions 5.1.7 and 5.1.8.

⁵⁶ Paragraph 6.82 of the Recommendation.

the Requesters unilaterally took over the arena of the town of Ituango.⁵⁷

O. Participation and consultations (General approach of Performance Standards; Performance Standards 1, 4, 5, 7, and 8; Operational Policy OP-703)

- 3.50 With respect to consultations and citizen participation and compliance thereof with the requirements of Operational Policy OP-703 and the frame of reference of the Performance Standards, the ESRS, the supervision reports prepared by IDB Invest, the monitoring reports prepared by the IESC, and the environmental compliance reports prepared periodically by the Client substantiate the Project's constant consultation and citizen participation activities.
- 3.51 Specifically, because there has been a public consultation process for the Project⁵⁸ since 2006 with communities in its area of influence, including hundreds of workshops, talks, and meetings, it is clear that there was compliance with the provisions of Directive B.6 of Operational Policy OP-703 regarding consultations. According to this directive: "As part of the environmental assessment process, Category 'A' and 'B' operations will require consultations with affected parties [individuals, group of individuals, or communities who may be directly impacted by a Bank-financed operation] and consideration of their views. Consultations with other interested parties [individuals or groups who have expressed support or concern regarding a proposed or existing Bank-financed operation] may also be undertaken in order to consider a broader range of expertise and perspectives. Category 'A' operations will be consulted at least twice during project preparation, during the scoping phase of the environmental assessment or due diligence processes, and during the review of the assessment reports."⁵⁹ This consultation and citizen participation process, which is still in progress, is in accordance with the frame of reference of the Performance Standards.
- 3.52 With respect to the disclosure of information by the Client during the contingency, IDB Invest's supervision did not find a failure or noncompliance. However, an opportunity for improvement was suggested in the form of a recommendation to make the language used for these purposes more colloquial so that it is better understood by the population.

P. Indigenous Peoples (Performance Standard 7; Operational Policy OP-765)

- 3.53 With respect to the presence of the Nutabe Indigenous Cabildo, or Community, chapter 4.7 of the ESRS explained in detail the situation found at that time, which can be summarized as follows: (i) the Project obtained certifications in 2008 and 2010 from the Colombian Institute of Rural Development ("INCODER") that no indigenous, ethnic, or Afro-descendant communities were present in the Project's area of influence;⁶⁰ (ii) in early 2014, the Cabildo indicated to the municipal mayor's

⁵⁷ <https://www.elcolombiano.com/antioquia/coliseo-de-ituango-cerrado-por-protesta-de-rios-vivos-contr-Ciente-EF10401173>

⁵⁸ See section 4.1.h.iii of the ESRS.

⁵⁹ Directive B.6 of Operational Policy OP-703.

⁶⁰ INCODER certifications from 18 March 2008 and 11 August 2010. These certificates are currently issued by the Ministry of the Interior.

3.54 Under Resolution 071 of 19 May 2017 issued by the Ministry of the Interior, the indigenous community of the Nutabe People of Orobajo became part of the Indigenous Communities Registry. However, this administrative act recognized the community in the sites where the 57 families (176 people) comprising it had already been resettled by the Project,⁶⁵ obviating the connection to territory that is established in the Sustainability Policy. This resolution did not indicate whether, based on the decision, the Project should initiate a prior consultation process according to the provisions of Convention 169 of the International Labour Organization.

3.55 As instructed by Management, the Client, throughout 2017, urged the Ministry of the Interior to determine whether it was necessary to conduct a prior consultation as part of the Project. In parallel, Management retained an independent consultant to determine whether the public consultation process that the Project had conducted with the population of Orobajo was equivalent to a prior consultation.

[REDACTED] 66 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁶⁶ Clara Mejía: ITUANGO HYDROPOWER PROJECT. Establishment of Indigenous Peoples Free Prior Informed Consent and Good Faith Negotiations, August 2018.

- 3.56 It was not until early April 2018 that the Ministry of the Interior declared that there was a need to initiate a prior consultation process. While preparations were being made to fulfill this request, the contingency occurred, and therefore the process was suspended. To date, the Client and the Ministry of the Interior have not resumed preparations to continue with the prior consultation process.
- 3.57 Based on the above paragraphs, it is clear that Management followed the due process to determine whether the Cabildo should be considered as an indigenous community, and accordingly and if applicable, activate Operational Policy OP-765 and Performance Standard 5. Therefore, Management believes that the investigation proposed by the MICI regarding this issue does not add value.
- Q. Archaeological heritage (Performance Standard 8; Operational Policy OP-703)**
- 3.58 The Project area included 24 likely sites that were within the reservoir's flood zone. Of these, there was some type of intervention⁶⁷ in only 13, as part of the Archaeological Management Plan approved by the Colombian Institute of Anthropology and History of the Ministry of Culture. This was basically because in other sites, survey activities indicated a very low probability of finding any significant remains. It is important to point out that the environmental license⁶⁸ issued for the Project requires, prior to any activity involving earthworks, that a duly accredited archaeologist "release" that area before moving forward.
- 3.59 The creation of the Ituango reservoir required the relocation of two cemeteries in Orobajo and Barbacoas, and also of other places that either provided a community service or were considered to have intangible value for these communities:⁶⁹ a school, a communal hall, a cemetery, a sports venue, and a monument to the Virgin of Mercy in Orobajo; and a rural school, a multi-sports venue, a cemetery, a monument to the Virgin, a water fountain, a children's playground, and a mango tree (used as a meeting point by inhabitants to play dominoes in the afternoons) in Barbacoas. For the cemeteries in both towns, in coordination with the Attorney General's Office and the Inspector General's Office, there was a process to exhume the bodies⁷⁰ and identify them before relocating them to locations agreed upon with the population. The other structures were relocated and replaced with new facilities. Symbolic structures (monuments to the Virgin, the water fountain, and the children's playground) were relocated to sites previously agreed upon with the community.
- 3.60 Based on the foregoing, Management has not been able to identify in the Request any evidence that justifies an investigation of compliance with Performance Standard 8 and Operational Policy OP-703.

⁶⁷ An "intervention" is understood as an action for prospecting, identification, recovery, or classification.

⁶⁸ See Resolution 0155 of 30 January 2009 by the Ministry of Environment, Housing, and Land Development.

⁶⁹ A school, a communal hall, a sports venue, and a monument to the Virgin of Mercy in Orobajo; and a rural school, a multi-sports venue, a monument to the Virgin, a water fountain, a children's playground, and a mango tree (used as a meeting point by inhabitants to play dominoes in the afternoons) in Barbacoas.

⁷⁰ With support from the University of Antioquia.

R. Management of the contingency (Performance Standards 1, 2, 3, and 4; Operational Policy OP-704)

- 3.61 As is public knowledge, in April 2018 there was a landslide that obstructed the auxiliary diversion tunnel and caused the uncontrolled filling of the Project's reservoir. After a sudden unblocking of the right-side diversion tunnel of the Project on 12 May 2018, there was a substantial increase for four hours in the Cauca River's flow,⁷¹ which reached up to 8,000 cubic meters per second. This affected 235 homes downstream from the Project, of which 162 had partial losses and 73 total losses. Given that these families were not included in the Project's PRCV, since under a normal development scenario for the Project they were not going to be impacted by the planned works, IDB Invest agreed with the Client that there was a need to implement a resettlement plan for them, under the provisions of Operational Policy OP-710 and Performance Standard 5. This plan, which is in execution, did not require a specific census since these families were identified using two sources: (i) records of damages collected by municipal authorities; and (ii) physical inspections by the Client.
- 3.62 The guidelines for this new resettlement (which are the same as for the Project's PRCV) are fully aligned with the requirements of Performance Standard 5 and Operational Policy OP-710. However, since this process is in execution, Management believes that opening an investigation to verify compliance with the Sustainability Policy for these elements that resulted from the contingency would not be very advisable.

S. Preventive evacuation for the contingency (general approach of Performance Standards; Performance Standard 3; Operational Policy OP-704)

- 3.63 The preventive evacuation of families downstream from the dam due to the contingency caused by the obstruction of the Project's diversion tunnels was a decision that, pursuant to Colombian law regulating the manner in which the State must operate during contingency or emergency situations, was not up to the Client. It was a decision for the lead agency, in this case the National Unit for Disaster Risk Management ("the UNGRD"), led by the Office of the President of the Republic.⁷² The UNGRD, exercising its powers, ordered the preventive evacuation of approximately 25,000 people living downstream from the dam in areas of flood risk.
- 3.64 In accordance with the provisions of applicable laws, the UNGRD is also responsible for managing all contingencies and providing assistance⁷³ to the displaced. Nevertheless, for Ituango, the Client, aware that the situation had been caused by the Ituango Project, helped evacuees by providing food, provisions, medical supplies, and monetary compensation ranging between Col\$1 million and Col\$1.3 million per family.

⁷¹ The average flow of the Cauca River is approximately 1,000 cubic meters per second.

⁷² See Decree Law 4147 of 2011.

⁷³ Shelter, food, household goods, etc.

- 3.65 The allegation made by the Requesters that “the risk that an emergency situation would arise, particularly from a geological perspective, was not adequately analyzed during the Project’s environmental impact assessment (EIA),”⁷⁴ seems to ignore the entirety of chapter 3 of the EIA. In fact, this chapter evaluates the geology, the morphological conditions, the potential for mass movements, the morphodynamic processes, the seismology, the analysis of maximum acceleration caused by earthquakes, the seismic activity brought on by the reservoir, etc.
- 3.66 The analysis of the seismic, morphological, and geotectonic conditions of the dam site were inputs in the detailed designs of the structures.⁷⁵ However, these designs, while they make the structures more resilient to the most common threats, do not make risks disappear; they reduce risks to levels deemed as acceptable. Therefore, designs are prepared for likely scenarios, with defined periods of return and seismic accelerations calculated based on their probability of occurrence.
- 3.67 All these conditions were analyzed by the Project’s designer, the company Integral; the auditor, the Ingetec-Sedic consortium; the Client; the contractor, the CCCI consortium;⁷⁶ and the independent advisory panel⁷⁷ established by the Client based on one of the lessons learned from the execution of the Porce II and Porce III Projects, pursuant to Operational Policies OP-703 and OP-704. When the ESDD was conducted, IDB Invest verified that the measures adopted by the Project to reduce or transfer⁷⁸ disaster risk fulfilled the requirements of the Sustainability Policy.
- 3.68 After the contingency, the Client commissioned independent evaluations from two internationally recognized companies: (i) the company SKAVA, to identify the root cause of the auxiliary diversion tunnel collapse, with the results made public as soon as the Client received them;⁷⁹ and (ii) the company POYRY, to evaluate the safety of the major works (dam and underground structures) and the plans for the Project’s completion.
- 3.69 Also, the group of independent expert advisors for the Project retained by the Client conducted five visits, preparing five technical reports. The expert panel retained by IDB Invest has visited the Project twice and issued two technical reports. In addition, Colombian authorities have several evaluations in progress for the Project.

⁷⁴ Paragraph 6.92 of the Recommendation.

⁷⁵ See calculation reports prepared by the company Integral.

⁷⁶ Made up of the companies Coninsa Ramón H S.A., Concocreto S.A., and Construções e Comércio Camargo Corrêa.

⁷⁷ Made up of: (i) Gabriel Fernandez, a geotechnical expert; (ii) Bayardo Materón, a large dams expert; (iii) Nelson Pinto, a hydraulic works expert; (iv) Helmut Friedrich Miller, an electromechanical equipment expert; and (v) Juan David Quintero, an expert in environmental and social management systems for large dams.

⁷⁸ It is a customary practice, for large works, to transfer residual risk to third parties by purchasing insurance. In this case, Ituango purchased several insurance policies that cover the most likely risks.

⁷⁹ <https://www.epm.com.co/site/estudio-causa-raiz-proyecto-ituango>

3.70 As can be seen, this is a highly technical issue [REDACTED]
[REDACTED]
[REDACTED] In this regard, it is not clear to Management how the MICI, in the context of a possible investigation, could evaluate or even judge the quality of these studies and determine whether they are sufficient to comply with the requirements of the Sustainability Policy.

T. Management of information during the contingency (general approach of Performance Standards; Performance Standard 3; Operational Policy OP-704)

3.71 The allegations made by the Requesters about “the lack of sufficient and adequate information with respect to the Project’s status; the alert system, which they indicated has been intermittent, and therefore, inefficient; and the high-vulnerability situation of displaced persons”⁸⁰ are unsupported and disregard all the information that the Client has made available to the public from the very beginning of the contingency. To demonstrate this, it is merely necessary to view the website that the Client maintains to provide information about the Project’s status (in real time).⁸¹ Some of the most important information includes: (i) press releases;⁸² (ii) risk monitoring; (iii) status of environmental and social management for the contingency; (iv) situation of the contingent mobility plan; (v) videos; (vi) photo gallery; (vii) infographics; (viii) access to the Project’s dashboard; (ix) infographics; (x) opening of the spillway; (xi) status of gate closings; and (xii) root cause study of the origin of the internal erosion process that resulted in the failure of the auxiliary diversion tunnel. The same materials have been distributed in a printed format to the affected populations.

3.72 In addition, the client has an online record⁸³ of all the press conferences it has held since 2016, which is when the ESDD conducted by IDB Invest began. Based on the foregoing, Management does not see the value added that an investigation of this issue could provide.

U. Gender issues (general approach of Performance Standards; Operational Policy OP-761)

3.73 The allegations made by the Requesters that “the Hidroituango investment approval process did not include a gender perspective, since: (i) women have been particularly affected by this Project insofar as many of them pan for gold, fish, or farm, and they have conducted these activities for generations and also rely on these activities for their own subsistence and that of their families. The only job opportunities that the Company has offered to them have been to cook or wash clothes; (ii) their property rights are also exercised and affected differently; and (iii) since construction work on Hidroituango began, incidents of gender-based violence against women have increased, including street harassment, prostitution,

⁸⁰ Paragraph 6.100 of the Recommendation.

⁸¹ <https://www.Cliente.com.co/site/home/sala-de-prensa/noticias-y-novedades/comunicado-proyecto-hidroelectrico-ituango/preguntas-y-repuestas-ituango>.

⁸² More than 120 to date.

⁸³ <https://www.pscp.tv/Clienteestamosahi/1YqJDyArvWExV>.

and rape”⁸⁴ would seem to be undermined by the fact that the MICI itself acknowledged that: (i) “in the loan contract, the Client was required to submit its gender policy as a condition precedent to the first disbursement of the loan”; (ii) “the environmental and social action plan (ESAP) determined that, for the purposes of community participation in the benefits generated by the Project, a gender equity policy should be developed and implemented, and its effectiveness should be evaluated, including indicators to measure the results, through periodic reports”; (iii) “in June 2018, ... the Client met the requirement of submitting its gender policy”; and (iv) “the social management plan (SMP) include[s] a regional development bridging project featuring a development component with a gender perspective.”⁸⁵

- 3.74 It is important to point out that the PRCV recognizes gender-based differentiation, because it is based on the socioeconomic data that was collected through the census. There is good reason, for example, for the fact that some of the deeds for lots offered as compensation to families that had to be relocated are being issued in the name of female heads of households.

IV. MANAGEMENT’S POSITION REGARDING THE SCOPE OF THE INVESTIGATION OF COMPLIANCE WITH IDB INVEST’S ENVIRONMENTAL AND SOCIAL SUSTAINABILITY POLICY⁸⁶

- 4.1 It is important to highlight that IDB Invest’s responsibility is to require that its Clients comply with the provisions of local laws and the Sustainability Policy, and if they do not, to reach an agreement with them on the preparation and execution of action plans to achieve this compliance.
- 4.2 Management is not opposed to an investigation by the MICI into the allegations made by the Requesters and in relation to the environmental and social due diligence process and the regular supervision of the Project. However, with respect to the questions that would define the possible investigation proposed by the Mechanism, Management deems it relevant to point out the following:
- A. Question: “Did IDB Invest ensure the complete and adequate determination and identification of the Project’s area of influence?”**
- 4.3 After reading the Recommendation provided by the MICI, there seems to be confusion with respect to what is the area of influence of a Project from the standpoint of an EIA and what is an area affected by an emergency situation. Given this, Management disagrees with opening an investigation for this purpose (see more details in Section III of this document).

⁸⁴ Paragraph 6.102 of the Recommendation.

⁸⁵ Paragraphs 6.106 and 6.107 of the Recommendation.

⁸⁶ Section III of this document contains more details of the arguments based upon which Management justified its decision of whether to support each part of the investigation.

- B. Question: “Did IDB Invest ensure the complete and adequate identification and description of the affected population, taking into account the socioeconomic characteristics, history, and traditions of the population in the Project area?”**
- 4.4 Management perceives that there is a lack of definition in the information that the MICI requested from Management to evaluate the merits of the Request, and based on that information, prepare the Recommendation. Given this, Management believes that, instead of launching an investigation in this regard, the MICI should request more focused information on the issues about which it has concerns. Nevertheless, if the MICI insists on the need to open an investigation about this, Management has no objection, as long as the investigation uses as a reference the natural trend of the environmental and social conditions evaluated for the Project’s EIA, and not the condition that led to the contingency.
- C. Question: “Did IDB Invest ensure the assessment and description of the Project’s potential direct, indirect, and cumulative environmental and social impacts?”**
- 4.5 Management, through its ESDD process, evaluated the Project based on the provisions of the Sustainability Policy and established an action plan to close the gaps identified. Performance Standard 1 requires the establishment of an environmental, social, health, and safety management system. The objectives of this system include identifying in advance potential impacts that were not considered in the environmental and social assessment process, and which arise due to the changing dynamics of the environmental and social components being analyzed. Ituango has an environmental, social, health, and safety management system that the ESDD process deemed to be solid.
- 4.6 That being said, the question to be answered through a possible investigation conducted by the MICI loses validity. This is because evaluating the Project’s risks and impacts is a task for the Client to undertake, using its own environmental and social management system. Meanwhile, IDB Invest is responsible for reviewing the compliance of the environmental, social, health, and safety management system with Performance Standard 1; this was completed. Nevertheless, if the MICI insists on the need to open an investigation about this, Management has no objection, as long as the investigation uses as a reference the natural trend of the environmental and social conditions evaluated for the Project’s EIA, and not the condition that led to the contingency.
- D. Question: “Did IDB Invest ensure that adequate and timely information, consultation, and participation processes were conducted with the entire affected population, taking into account their particular circumstances and characteristics?”**
- 4.7 As with the prior question, it is the Client’s responsibility to conduct the required information and consultation processes. IDB Invest’s role is to verify that these processes align with its Sustainability Policy. The Performance Standards indicate that the purpose of an ESDD process is to “analyze the documentation from the Client regarding the participation process to ensure that it involves free, prior, and

- informed consultation as well as informed participation for the affected communities.”⁸⁷ In addition, Operational Policy OP-703 indicates that “Category ‘A’ and ‘B’ operations will require consultations with affected parties and consideration of their views. Consultations with other interested parties may also be undertaken in order to consider a broader range of expertise and perspectives.”⁸⁸ Also, that “preparation of environmental assessments and associated management plans ... are the responsibility of the borrower,”⁸⁹ as well as the environmental and social management plans that describe the responsibilities for public consultation and dissemination.
- 4.8 That being said, what IDB Invest did during the ESDD process was to review both the documentation detailing the events that the Project had held in the past as part of the public consultation process, as well as the consultation plans to be executed in the future. This was done to ensure that the process had been and is free, prior, and informed, and that it had enabled and enables more informed participation for the affected communities. In this regard, first it was determined that the notifications for past consultation events did not include restrictions on participation, were disseminated correctly and in advance to the communities potentially affected by the Project, and that basic information was available with plenty of notice. Also, that these guidelines will be followed for future events. It is also important to indicate that the “environmental awareness”⁹⁰ process is regulated by Colombian law⁹¹ and that Ituango is in full compliance.
- 4.9 That being said, if the MICI insists on the need to open an investigation about this, Management has no objection, as long as the investigation uses as a reference the natural trend of the environmental and social conditions evaluated for the Project’s EIA, and not the condition that led to the contingency.
- E. Questions: “Did IDB Invest require the implementation of effective social and environmental measures to avoid, minimize, offset, and/or mitigate the Project’s direct, indirect, and cumulative environmental and social impacts? Did IDB Invest ensure that management and mitigation plans were established for the impacts mentioned, as well as measures for the effective monitoring of their implementation?”**
- 4.10 Management believes, given the Project’s complexity and taking into account the allegations made by the Requesters, that the central issues of a possible MICI investigation should focus on reviewing the implementation of the Program for Restoring Living Conditions and the Program for Community Participation that are included in the EIAs.

⁸⁷ Paragraph 20 of the general approach of the Performance Standards.

⁸⁸ Directive B.6.

⁸⁹ Directive B.5.

⁹⁰ In Colombia, the term “awareness” is used, since the term “consultation” is legally associated with “prior consultation,” a process that is conducted in accordance with the provisions of Convention 169 of the International Labour Organization.

⁹¹ See http://portal.anla.gov.co/sites/default/files/comunicaciones/permisos/metodologia_estudios_ambientales_2018.pdf

- F. [REDACTED]
- 4.11 The role of IDB Invest during the ESDD process was to review the risk assessment and the suggested management measures that the Client had prepared, to compare these with the requirements of the Sustainability Policy, and to propose corrective actions to close any gap that was identified. Therefore, Management acted in accordance with Performance Standard 4, reviewing whether the Project's EIA identified the most significant potential risks, leaving the EIA's execution to the Client's environmental and social management system, and conducting the applicable monitoring either directly (through supervision missions already carried out) or indirectly (through the IESC).
- 4.12 Management wishes to highlight that the allegations that the Requesters made regarding risks to the community are more related to the situation, both historical and ongoing, of social conflict in the Bajo and Medio Cauca subregions, whose origin is completely unrelated to the presence of the Project. Therefore, Management sees no value added from conducting a possible investigation. Nevertheless, if the MICI insists on the need to open an investigation about this, Management has no objection, as long as the investigation uses as a reference the natural trend of the environmental and social conditions evaluated for the Project's EIA, and not the condition that led to the contingency.
- G. **Questions: "Did IDB Invest require from the Client that the security services used for the Project comply with the requirements established in this standard? Did IDB Invest ensure that management and mitigation plans were established for the impacts mentioned, as well as measures for the effective monitoring of their implementation?"**
- 4.13 The ESDD process analyzed, taking as a starting point the date when the build-own-operate-maintain-transfer contract was signed with the Client,⁹² the way in which private security services were operating and had been retained for the Project. It also compared them with the requirements of Performance Standard 4. The results of that analysis showed that, on that date, there was substantial compliance with the standard. [REDACTED]
- 4.14 That being said, Management finds no value added in a possible investigation by the MICI, since there is an evaluation conducted by an independent third party that shows substantial compliance with Performance Standard 4. Nevertheless, if the MICI insists on the need to open an investigation about this, Management has no objection, as long as the investigation is conducted as of the date when the security company evaluated under the ESDD process began providing the applicable services.

⁹² The build-own-operate-maintain-transfer contract was signed on 10 September 2010.

- [REDACTED]
- [REDACTED]
- 4.16 In the case of the allegations made by the Requesters, these correspond to acts carried out on a date prior to when IDB Invest became involved in the Project. The ESDD process, as indicated in Performance Standard 4, urged the Client to investigate them. Nevertheless, the only thing reported about these acts was that there were claims without any support that had become public through social networks. With respect to the last two incidents that occurred when IDB Invest was already participating in the Project, they are evictions of squatters on private lands, with the owners exercising their legal rights to safeguard their private property. These two cases are completely unrelated to the involuntary resettlement process that resulted from the Project.
- 4.17 Management has no objection to the MICI investigating whether there was a breach of compliance with the Sustainability Policy regarding allegations of forced evictions. However, before doing so, it would be very important to confirm (with the competent Colombian authorities) whether these evictions indeed occurred, and if they did, whether they were related to the involuntary resettlement process that the Project fostered for normal operating conditions, without taking into account the condition that led to the contingency.
- I. **Question: “Did IDB Invest require that the Client conduct a study of alternatives in order to avoid involuntary resettlement to the extent possible?”**
- 4.18 Pursuant to the Sustainability Policy, IDB Invest reviewed the study to analyze alternatives that the Client prepared. This study showed how the site for the works was selected, based on several criteria.⁹³ Taking into account the foregoing, Management does not see any reason for the MICI to investigate what is proposed.
- J. **Question: “Did IDB Invest require the preparation of a census to collect appropriate socioeconomic baseline data to identify the people who will be physically and economically displaced by the Project?”**
- 4.19 Based on the prior analysis summarized in this document and the allegations made by the Requesters complaining that they were not included, it is clear that the Project did conduct a census of the population who would be potentially affected by its construction. Therefore, it is unclear to Management why the MICI wants to conduct an investigation to answer a question that the Requesters themselves have implicitly answered.
- 4.20 Nevertheless, if the MICI insists on the need to open an investigation about this, Management has no objection, as long as the investigation uses as a reference the natural trend of the social conditions based upon which the PRCV was structured, and not the conditions that led to the contingency.

⁹³ See section III.D of this document.

- K. Question: “Did IDB Invest require the evaluation and implementation of the necessary measures to adequately address the needs of all the people who were physically and economically displaced as a result of the emergency in the Project area that began in April 2018?”**
- 4.21 The Sustainability Policy calls for IDB Invest to require its Clients to prepare a management plan for contingencies and emergencies when the characteristics of the Project or its location could create situations that may endanger workers, communities, or the environment. This is what IDB Invest required from its Client.
- 4.22 In addition, IDB Invest asked the Client to disseminate the plan to all the most relevant actors (community and authorities) and to execute a campaign for public preparation and response to emergencies. Thanks to these activities (which included the implementation of a communication plan), when the contingency occurred, there was no loss of human life to regret, and the impacts to mobility in the area were minimal.
- 4.23 As mentioned above, the management of an emergency situation in Colombia is the responsibility of the UNGRD (Law 4147 of 2011). This entity, among its most important powers, coordinates the entire management of the situation and is empowered to order preventive evacuations of the population, establish alert levels, build or dismantle all types of shelters, and use State funds to cover necessary expenses for the emergency. Therefore, it is not up to IDB Invest to demand that the authorities handle the contingency in any particular manner.
- 4.24 However, and despite the lack of an explicit provision in Colombian law, the Client, at its own expense and initiative, provided those who were preventively evacuated with water, food, clothes, housing, medications, and a monthly stipend as compensation due to the lack of economic activity. In addition and upon the request of IDB Invest, the Client began execution of a resettlement plan (aligned with the provisions of Performance Standard 5 and Operational Policy OP-710) for the 235 families displaced by the rise in the level of the Cauca River.
- 4.25 Based on the above, it is unclear to Management what the MICI’s intentions are in proposing that question, or what would be the value added of a possible investigation. This is because, while the contingency arose in the Project due to situations beyond the Client’s control, the management of the contingency downstream was neither up to the Client nor to IDB Invest.
- 4.26 The Client is currently working with insurance companies and several advisors on these matters. Complete environmental and social technical reports and the findings for an insurance claim are not yet [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 4.27 In this regard, if at this time the scope of a MICI investigation would include matters related to the contingency, the information available to the public may not precisely reflect the events, and it is very likely that the findings would be premature. This may in turn impact other investigations, proceedings, and evaluations that are in

progress. That being said, Management is not in a position to support an investigation related to the contingency.

- L. Questions: “Did IDB Invest require the Client to evaluate the risks posed by natural hazards, due to the propensity for landslides and the geological instability in some areas adjacent to the works? If so, did IDB Invest require the Client to include in Project design and execution alternative measures that decrease vulnerability and protect human health and economic assets?”**
- 4.28 Chapter 3 of the Project’s EIA analyzes the geological, morphological, morphodynamic, and seismological conditions of the Project site. These were all taken into account for the detailed designs of the structures, which were reviewed by several redundant groups, including: (i) the designer, the company Integral; (ii) the auditor, the Ingetec-Sedic consortium; (iii) the Client; (iv) the contractor, the CCCI consortium; and (v) the independent advisory panel established by the Client. The ESDD verified that the measures adopted in the Project to reduce or transfer disaster risk complied with the requirements of the Sustainability Policy.
- 4.29 Management wishes to point out that implementing safety features in the design of any Project to make it less vulnerable to the threats it faces does not make risks disappear; it reduces risks to levels deemed as acceptable. Therefore, these designs are prepared for likely scenarios, with defined periods of return and seismic accelerations calculated based on their probability of occurrence.
- 4.30 That being said, Management is not in a position to support a possible investigation by the MICI, particularly when the design of the Project’s main structures was reviewed by several specialized international engineering companies.⁹⁴ To date, except for a failure in an anchor in an unlined section of the auxiliary diversion tunnel, which would have been the cause of the bowl-shaped landslide that obstructed the tunnel,⁹⁵ no other failure in the design or the manner in which the works were executed has been detected.
- 4.31 The effort needed to conduct the analysis proposed by the MICI would involve an enormous allocation of time and resources, since this is a highly technical issue and one for which the Sustainability Policy does not establish criteria to determine the necessary safety features. These features are subject to compliance with applicable international and local technical standards.
- 4.32 In this case, the TORs, as presented, propose an investigation of the Project and the Client, not of compliance by IDB Invest with its Sustainability Policy. It is clear to Management that the MICI has not yet estimated, in its actual magnitude, the effort necessary to conduct such an evaluation. This is particularly so given that to date, the completed evaluations have taken longer than customary for a MICI investigation process and have required human, technical, and financial resources that greatly surpass those that the Mechanism has available.

⁹⁴ The companies were retained by the Client, the government, or the insurance companies that covered the Project’s works and equipment with comprehensive policies. See paragraph 3.67 of this document for more details.

⁹⁵ Root cause report prepared by SKAVA.

M. Question: “Did IDB Invest require the Client to establish management and information plans for emergency situations to keep the affected communities duly informed, and did it verify that these plans met its standards? If the requirements of OP-704 and paragraph 11 of Performance Standard 4 were not met, did Harm to the Requesters occur?”

4.33 Management believes that an investigation is not required to answer these questions. The existence of a management and information plan to keep the affected communities informed during the contingency has been sufficiently documented, as well as the existence of an efficient dissemination process for this plan and coordination with the appropriate authorities before and after the event.

4.34 However, as indicated in this document, an ex post analysis of the manner in which this plan was executed shows some opportunities for improvement. This was reflected in the supervision reports prepared by IDB Invest.

4.35 That being said, Management is not in a position to support an investigation that includes issues created by the contingency.

N. [REDACTED]

4.36 In accordance with the provisions of Performance Standard 2 and Operational Policy OP-761, IDB Invest, from the beginning of its involvement in the Project, has required from the Client a gender-based nondiscrimination policy, to provide equal opportunity to the population for participation in its programs, jobs, and other activities. In this context, for example, in some cases, it has been deemed more advisable to issue the deeds of the properties provided as compensation to PRCV beneficiaries in the name of female heads of households.

4.37 It is unclear to Management what the MICI intends to investigate regarding this issue, to be able to provide it with the relevant information. Nevertheless, if the MICI insists on the need to open an investigation about this, Management has no objection, as long as the Mechanism better defines the subjects to be reviewed and the period that this analysis would cover, taking into account the date when the Client became responsible for Project construction, as well as the date when IDB Invest began participating in the transaction.

ITUANGO HYDROPOWER PROJECT: JUDICIAL PROCEEDINGS REPORT

[illegible]

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ANNEX II

REQUESTERS' COMMENTS ON THE PRELIMINARY VERSION OF THE RECOMMENDATION FOR A COMPLIANCE REVIEW

Antioquia, 12 April 2019



Ms.

Arantxa Villanueva

Coordinator
Compliance Review Phase
Independent Consultation and Investigation Mechanism
Inter-American Development Bank

Washington, D.C.

Subject: Comments on the Draft Recommendation for a Compliance Review and Terms of Reference. MICI-CII-CO-2018-0133. (11794-04) (11794-04, 3818C/OC-CO-1, 3818C/OC-CO-2, 3818/CH-CO)

Dear Ms. Villanueva:

We would like to submit our comments on the draft Recommendation for a Compliance Review indicated in this document's subject heading, as requested by your office.

This document is structured in the same order as the draft document. We only added some comments about the Mechanism itself and included details about context-related aspects following the section numbering from the draft we received. We will also refer to the content of the complaint and the MICI's prior information gathering. Then, we will refer to the scope of the investigation in relation to the Relevant Operational Policies. Lastly, we will close with some suggestions as to how the questions are formulated, as well as several conclusions.

We believe that the MICI's Recommendation to conduct a Compliance Review with its respective terms of reference, included in section V, is justified. We would like to expand upon some issues in order to make the MICI's work even more specific.

It should be noted that the fact that entire paragraphs of the document were redacted not only makes reading difficult, but also hinders the understanding of the text and the arguments included in the document. This works against a complete analysis, and is an incomprehensible measure in terms of transparency and the balance of access to information by the parties.

We reiterate our disagreement with the MICI's decision not to recommend a Compliance Review investigation regarding technical cooperation operation CO-T1250, financed by the IDB. This separates one phase in the creation of the Ituango Hydropower Project that is essential to be able to conduct a full investigation of the Project and excludes from the analysis a crucial decision-maker for the early stage of development.

Lastly, we appreciate the interest expressed in contributing valuable information to the Board in terms of compliance with the Relevant Operational Policies for major development projects, with respect to issues such as affected communities, involuntary resettlement, project execution in conflict zones, respect for human rights, management of emergency situations, respect for gender equity, conservation of biodiversity and the river's flow, identification and assessment with a cumulative approach, and the corresponding adoption of consistent measures, among other aspects of crucial importance for the communities affected by megaprojects.

We would like to express in advance that we feel welcomed and agree with the majority of the proposals made by the MICI in the Recommendation of the investigation. We appreciate its valuable work and the importance of the Mechanism that we hope helps us, the victims of Hidroituango, to clarify whether in this serious situation that we are experiencing, IDB Invest complied with its internal policies. This is of great significance in terms of the transparency and trust that a Bank such as this should engender with the public. Again, we regret that an investigation about the public resources that the IDB invested in Hidroituango was not recommended. It would have been a valuable opportunity for us to have peace of mind to know that they are not responsible whatsoever for the Harm that we are suffering. Despite this, we value as very positive the possibility of an internal investigation proposed by the MICI and believe it will be a benchmark for the entire hemisphere due to the magnitude of the events that we are suffering on a daily basis with Hidroituango.

A few prior remarks about the Mechanism

The Mechanism is unclear as to how it will establish whether these comments are relevant. It even stated that it will "objectively and impartially reflect the comments that the MICI deemed relevant," but it does not provide the criteria for relevance. We are making this comment so that the Mechanism is improved in the future.

Impartiality is important for us. When we submitted the complaint, we did not know how the Board decides whether to conduct a self-investigation of a Project that they themselves approved. In understanding that it is in its interest to know whether they comply with their own policies, it is important for the MICI to be able to act more independently and impartially. It is evident that not requesting an evaluation in the case of the IDB's financial operation is more a response to political rather than technical criteria, which does not inspire confidence in this Mechanism. This situation had already been confirmed by the unjustified exclusion from the approval of the complaint's eligibility our claim due to the impacts on the truth and on the potential to rescue the bodies that currently lie below the waters of the dam financed with this financial institution's studies and project execution. Lastly, in terms of prevention regarding high-risk investments like this, it is important to heed the calls that civil society organizations made prior to the investments, and for the IDB and IDB Invest to establish a mechanism for prior dialogue, not just for dialogue after the investment.

To be honest, we must point out that the MICI did not visit the Project area as it states in the draft document and as the Requesters had asked. This was because of the red alert situation, as the officials explained. Therefore, the meetings with us took place in the city of Medellín, which is not an affected municipio and is located far from them. The document should not include these types of inaccuracies. It is extremely important that the activation of the Mechanism enables it to make field visits, even more so at times of crisis and disasters, to be able to verify in the field what the Client is reporting to the IDB and IDB Invest.

Geographical and social context of the Project

There is uncertainty even on the part of Colombian authorities as well as of the Project itself about the area and the municipios that were actually affected. The red, yellow, and orange alerts demonstrate that the area currently includes the municipios indicated below, and not others. The municipios affected by Hidroituango are located in four Colombian departments: Bolívar, Sucre, Córdoba, and Antioquia. There are 27 municipios: 1. Magangué; 2. Pinillos; 3. Sucre; 4. Achí; 5. San Jacinto Abad; 6. Caimito; 7. San Marcos; 8. Majagual; 9. Guaranda; 10. Ayapel; 11. San Jacinto del Cauca; 12. Nechí; 13. Caucasia; 14. Cáceres; 15. Tarazá; 16. Valdivia; 17. Yarumal; 18. Ituango; 19. Briceño; 20. Toledo; 21. San Andrés de Cuerquia; 22. Peque; 23. Sabanalarga; 24. Buriticá; 25. Liborina; 26. Olaya; 27. Santa Fe de Antioquia. The map below was put together based on five different sources that were retained, four of them of an official nature:



We would like to sincerely bring to the MICI's attention that the Project's area of influence is beyond what is described as such in the document, because the latter is limited to the department of Antioquia. The possibility of a dam collapse, a scenario that should not be ruled out, means in turn that the territory influenced by Hidroituango would include, in addition to Antioquia, other departments located on the Atlantic Coast. Indeed, the governors of Córdoba, Sucre, and Bolívar have requested the suspension of the dam's environmental license, since they believe that the dam and the decisions associated with its implementation have serious impacts on the regions under their jurisdiction.¹

We believe that the review of the social and environmental performance of Hidroituango should be based on a proper assessment of the dam's territorial context. Otherwise, the conclusions that could be reached would be missing important elements of the Project's environment. A possible spatial fragmentation of the analysis would not positively contribute to addressing the seriousness that the case deserves.

We believe that it is important for the Recommendation's context to properly take into account the scope of the violence in the Project's area of influence. While the matter is introduced in paragraph 2.6, it would be relevant to describe in more detail the complexity of the public security situation in the area. This would enable a better understanding of the implications of this situation for the Project's development, and therefore for the communities who have been affected by the Project. It will also provide the recipients of the draft a sense of the urgency of reviewing the Project's social and environmental performance.

In this regard, it is noteworthy that for years, the Colombia Office of the United Nations High Commissioner for Human Rights and the UN Refugee Agency have expressed concerns about the persistence of forced displacements and other forms of human rights violations in the Bajo Cauca subregion.² Territorial clashes between armed actors continue in 2019,³ and homicides and other forms of violence⁴ continue to be significant. An increase of more than 200% was reported at year-end 2018, prompting the governor of Antioquia to ask Colombia's president to intervene.⁵ Coca-growing remains on the rise in the area.⁶

¹ El Tiempo newspaper. "Gobernadores del Caribe piden suspender licencia a Hidroituango." <https://www.eltiempo.com/colombia/otras-ciudades/gobernadores-de-la-costa-piden-suspender-licencia-a-hidroituango-326354> 2019. 13 February 2019.

² "La Oficina en Colombia del Alto Comisionado de la ONU para los Derechos Humanos y la Agencia de la ONU para los Refugiados manifiestan su preocupación por la persistencia de desplazamientos masivos y violaciones de derechos humanos en el Bajo Cauca." <https://www.acnur.org/noticias/press/2018/2/5b0be86e2/la-oficina-en-colombia-del-alto-comisionado-de-la-onu-para-los-derechos-humanos-y-la-agencia-de-la-onu-para-los-refugiados-manifiestan-su-preocupacion.html>. 18 February 2018.

³ Caracol news. "Disputa territorial entre estructuras criminales tiene en jaque al Bajo Cauca por homicidios." <https://noticias.caracoltv.com/antioquia/disputa-territorial-entre-estructuras-criminales-tiene-en-jaque-al-bajo-cauca-por-homicidios>. 21 January 2019.

⁴ "Desplazamiento forzado, sin freno en el Bajo Cauca." <https://verdadabierta.com/desplazamiento-forzado-sin-freno-en-el-bajo-cauca-antioqueno/>. 9 December 2018.

⁵ El Tiempo newspaper. "Homicidios en el Bajo Cauca antioqueño subieron 200 por ciento." <https://www.eltiempo.com/colombia/medellin/aumento-de-200-por-ciento-de-homicidios-en-el-bajo-cauca-antioqueno-276062>. 2 October 2018.

⁶ "Con la coca disparada, el Bajo Cauca apunta a ser un nuevo Catatumbo." <https://lasillavacia.com/silla-paisa/con-la-coca-disparada-el-bajo-cauca-apunta-ser-un-nuevo-catatumbo-68045>.

As key background for us that has shaped the region's context, we would like to point out the large number of massacres that have taken place. The latest was in 2017 in the municipio of Yarumal. Before that, there was one in 2016, in which members of the communities affected by Hidroituango in the municipio of Valdivia died. Five people from the same family were murdered, one of them the secretary of the Association of Small Miners and Fishermen of Puerto Valdivia. These massacres have special significance regarding the Hidroituango project because they were a determining factor in the mass exodus in which at least 60% of the population in the Project's area of influence was displaced. The Project benefits from this situation, given that fewer members of the communities will be claiming their rights due to involuntary displacement for resettlement and compensation than before this humanitarian tragedy. Moreover, the massacres have led to a weakening of the social fabric. Together with factors such as the large number of hectares sown with anti-personnel mines, selective assassinations of social leaders, ongoing clashes between armed groups, bombings, spraying of illegal crops, and territorial control by law enforcement and groups operating outside the law, it has become very difficult, almost impossible, to oppose a Project like this and to organize to advocate for the rights of the affected communities. Movimiento has achieved this advocacy with much effort and perseverance and the support of many other national and international organizations.



As we stated in the written complaint before the MICI, a crucial factor in terms of international human rights are the forced disappearances. We reiterate our disagreement with this having been excluded from eligibility in the complaint for reasons that we still do not understand, since it is a crime against humanity. All the banks in the world should be committed to ensuring that no business or financial operation can affect or prevent victims

from being able to have access to the truth, justice, and reparations. Colombia has shocking figures when it comes to forced disappearances. The rivers have become cemeteries for bodies intended to be hidden from those of us seeking justice. That is the case for the Cauca River and particularly the area affected by Hidroituango, where, following ethical and spiritual precepts, the communities of gold panners and fishermen would gather the bodies that were flowing downstream and bury them on the riverbanks or in the communities. When there was a massacre, they would do mass burials to prevent decomposing bodies from spreading diseases. This was also based on their religious beliefs that the dead should be in the ground, not in the water. Therefore, since 2010 Movimiento has demanded that works should not proceed in sites with mass graves and has called for respect for victims' rights. It has also demanded that the State exhume all bodies in the area. The Attorney General's Office has made progress on this but was far from certain before the flooding and even today that there were no more bodies remaining in the entire affected area.



We draw attention to this point in this comments document, because these are essential aspects to describe and understand the area where the Project is located. The fact that they were not deemed eligible for the complaint does not mean that they are absent from the region's context.



The Ituango Hydropower Project

The works associated with the Project, planned with its resources, including the expansion and paving of access roads and construction of camps, began in 2009. Proof of this is the discovery of a mass grave with 10 bodies in the Cuní Camp in 2010 upon the start of its construction, as well as damage to homes and property of communities due to the expansion and paving of the road between San José de la Montaña and San Andrés de Cuerquia, and between the latter and the *corregimiento* El Valle de Toledo.

Also, in 2010 the forced evictions of communities living on the banks of the Cauca River began. The first mass eviction was from Playa Tenche in the municipio of Ituango, with the justification of the startup of works and that the communities were obstructing that startup.

Therefore, on 20 July 2012, when the IDB approved the contingent technical-cooperation operation “Support for Structuring the Ituango Hydropower Project” (CO-T1250) for the Project’s initial financial, economic, technical, social, and socioenvironmental evaluations, the Project had already started and was having impacts on the communities. This should have been verified and anticipated by the IDB before its decision to approve. Despite this and knowing the magnitude of the Project and its intricacies, the IDB classified the risk as category “C” under its environmental and social sustainability policies.

The lack of chronological precision about the startup of works is extremely important for the affected communities, as having 2011 as the startup date means that Harm prior to that date is erased from the Project's records and also from its responsibility. This means, for example, that the evictions from Teche Ituango were not done for the Project. This brings into question the foundations of the policing procedure carried out at the time against the population.

Time pressures due to the emergency

In January 2018, concerned by the filling of the dam without having had a proper search plan implemented for the bodies of the people buried throughout the Canyon, we conducted an urgent international mission to verify the complaints. This concluded with a report that was made public,⁷ in which the Attorney General's Office was asked to: "Develop a participatory, respectful,⁸ and guaranteed regional search plan that determines the universe of people disappeared, recovers the bodies, and conducts processes for the identification and respectful delivery of the victims, who are presumed to be on the Cauca River's bed, banks, and adjacent areas, in the department of Antioquia."⁹

This request was not fulfilled, and therefore a motion for protection was filed to prevent the dam's filling while a search was conducted for the body of José de Jesús Barrera, the brother of a Movimiento member. Barrera was murdered and thrown into the river from the El Pescadero Bridge in 2002, and it is thought that his body could be buried on the riverbanks, which was the humanitarian practice of the area's fishermen, or could be in the riverbed. This motion was denied. One of the most interesting elements of this decision is that its writers kept highlighting the public interest nature of the works as one of the central arguments to deny the motion for protection of the rights of the family members of victims.

This is not a small issue. The universe of victims could reach 2,000 people to be searched for and identified in the area.¹⁰ Therefore, in April 2018, members of the European Parliament sent a letter to the Colombian government asking them to stop the dam's filling

⁷ Available at: <https://riosvivosantioquia.org/wp-content/uploads/2019/04/Informe-Misio%CC%81n-Desaparecidos-R%C3%ADo-Cauca.pdf>. Multiple similar requests had been made to the Company and national authorities, without being heard. For this reason, the victims' relatives organized several demonstrations, of which we wish to highlight the one held in September 2017, "Memory and resistance in the Cauca Canyon." A news video about this is available at: <https://www.contagioradio.com/memoria-y-resistencia-en-el-canon-del-rio-cauca/>. This shows the painful steps taken by the relatives.

⁸ Even though with support from the Company, the Attorney General's Office exhumed 159 bodies throughout the riverbed, these activities were not conducted within a relationship of trust and respect for the communities. The moving of skeletal remains from cemeteries in the site was characterized by unfortunate actions. For example, in March 2018, the high governor of the Nutabe indigenous community reported that the moving of the bodies "was not an exhumation, but a desecration of the graves of our loved ones." See: El mundo.com. "Indígenas aseguran que EPM profanó sus tumbas por Hidroituango." <http://www.elmundo.com/noticia/Indigenas-aseguran-que-EPM-profano-sus-tumbas-por-Hidroituango/367849>

⁹ The Attorney General's Office had already exhumed 159 bodies from throughout the riverbed and from cemeteries. Some were exhumed upon request from the Company, which always knew that the area was historically used to bury the bodies of victims of the armed conflict and of the sociopolitical violence that took place in the region.

¹⁰ See the 2018 report on this issue: "Hidroituango, desaparecer dos veces a los desaparecidos," by Human Rights Everywhere, at <https://colombia.desaparicionforzada.com/wp-content/uploads/2018/05/Hidroituango-desaparecer-a-los-desaparecidos.pdf>

until the bodies of the disappeared were recovered.¹¹ The local government was upset about this letter.¹² On 9 May 2018, the honorable Inter-American Commission on Human Rights heard the complaint regarding these facts and the government's response in a public hearing held in the Dominican Republic, during its 168th session.¹³

The Attorney General's Office has opened investigations into the Project's executing parties. In January 2018, it opened an investigation for "alleged irregularities with criminal consequences in the precontract phase of project allocation and entering into contracts, as well as the design, construction, and execution processes of the works and its additions through contract schedules."¹⁴ Then, another line of investigation was opened due to the humanitarian disaster arising from a potential dam failure, specifically the construction of the diversion tunnels.¹⁵

In this context of criminal investigations, opposition to the Project due to the neglect of the rights of family members of people disappeared in the river canyon, and a potential order to suspend the filling of the dam until there was a search for the people buried (which would delay the works and mean the loss of the reliability charge granted by the Energy and Gas Regulatory Commission),¹⁶ we suppose that their rush overwhelmed those responsible for the Project and they obstructed the river's diversion tunnels, despite the fact that this activity was only supposed to happen once the dam was built, as can be seen in the screenshot from the Project's official website:¹⁷

¹¹ The letter is available at: <https://www.contagioradio.com/autoridades-de-antioquia-descalificaron-llamado-de-atencion-de-europa-sobre-hidroituango/>

¹² El Espectador. "Alcalde de Medellín rechaza críticas europeas al proyecto Hidroituango," 22 April 2018. <https://www.elespectador.com/noticias/nacional/alcalde-de-medellin-rechaza-criticas-europeas-al-proyecto-hidroituango-articulo-751507>

¹³ The record is available at: <https://www.youtube.com/watch?v=VIXvxohUei4>

¹⁴ El País. "Fiscalía investiga contratación y construcción de Hidroituango," 17 May 2018. <https://www.elpais.com.co/colombia/fiscalia-investiga-contratacion-y-construccion-de-hidroituango.html>

¹⁵ The Ministry of the Environment already began sanction proceedings regarding this against the Company due to the removal of vegetation cover from the area (Resolution 0835 of 3 May 2017), which was then filed under Resolution 2433 of 24 November 2017. ²² See: Office of the Attorney General, "Fiscalía trabaja tres líneas de investigación por contratación y construcción de Hidroituango," 17 May 2018. <https://www.fiscalia.gov.co/colombia/seccionales/fiscalia-trabaja-tres-lineas-de-investigacion-por-contratacion-y-construccion-de-hidroituango/>

¹⁶ Caracol.com. "Piden a la Fiscalía trasladar procesos de Hidroituango," 3 June 2017. https://caracol.com.co/radio/2018/06/03/judicial/1528049156_228279.html

¹⁷ El Tiempo. "Siete impactos económicos de la emergencia de Hidroituango," 17 May 2018. <https://www.eltiempo.com/economia/empresas/impactos-economicos-por-problema-hidroituango-218564>



According to the news media, MAPFRE, the Project's reinsurer from which a US\$2.5 billion policy was purchased, has reasons to believe that what occurred was not due to "an act of God, but rather a management decision driven by the schedule and the urgency of having to meet sales of energy futures contracts."¹⁸

On 28 April, the only diversion tunnel they left in operation became obstructed, because of a significant landslide due to a "geological fault"—whose occurrence was predictable since this is an unstable area—precisely on the construction site of the retaining wall that led to the water reservoir. The following photographs, from before and after the damming, show the scope of the impressive volume of water dammed:¹⁹



¹⁸ Las2orillas "Constructoras, interventores de Hidroituango y EPM en vilo por la póliza de seguros," 29 May 2018. <https://www.las2orillas.co/constructoras-interventores-de-hidroituango-y-epm-en-vilo-por-la-poliza-de-seguros/>

¹⁹ Taken from: Corrupciónaldía.com, "Hidroituango: corrupción empresarial produciendo desastres ambientales," 15 May 2018. <http://corrupcionaldia.com/2018/05/15/hidroituango-corrupcion-empresarial-produciendo-desastres-ambientales/>

The single tunnel that remained in operation has been obstructed and unobstructed several times due to the force of the water pressure ever since. However, the surge upstream from the wall destroyed bridges, roads, and homes in Ituango, Toledo, Peque, Buriticá, Liborina, and Sabanalarga. Downstream from the wall, it created a torrential flood that also destroyed bridges, hundreds of homes, roads, and community spaces, as well as causing families to lose everything. It endangered the lives of thousands of people. A sizable part of the territory of the indigenous community of the Nutabe People of Orobajo was left underwater, as can be seen in the image.²⁰

Faced with the emergency, on 10 May Empresas Públicas de Medellín (EPM) decided to flood the dam's powerhouse.²¹

The information published about the events tended to present what occurred as if it were a natural emergency due to the winter and the landslides. However, it is clear to us that it is an environmental, social, and economic disaster of a manmade nature, and the management of the information regarding it was poor and not truthful. The ongoing state of uncertainty for the population about the actual risk situation arising from the emergency and the Company's statements endanger the lives of thousands of people.

The MICI will verify through the Review that the lives of the communities impacted by the Project depend, even now, on having access to information about what is really happening and in real time. This is some of the evidence that shows that the population has not been adequately informed or treated:

- On 5 May, the inhabitants of Sabanalarga (upstream, in the reservoir) noticed an unusual high level in the river and requested the activation of alerts. However, they were not heard: "When the water started rising, we were talking to the representative of Sabanalarga so that the prevention alarm would be activated, but the gentleman never believed us. There are still people in their homes who have been unable to come out. The hanging bridge of La Garruncha, which connects Sabanalarga with Peque, is flooded, as are the roads, which were covered by water. So these people are waiting for someone to take them across."²²
- On 7 May, there was another landslide that obstructed the tunnel through which water was being diverted, increasing the reservoir water level once again. By then, there was evidence of growing risk to the municipios of Toledo, Liborina, Santa Fe de Antioquia, Buriticá, Sabanalarga, Yarumal, San Andrés de Cuerquia, Olaya, Ituango, Valdivia, and Caucasia, due to the potential for torrential flooding due to a failure in the reservoir and the dam. Two days later, EPM issued a press release stating: "At this time, the situation does not pose any risk for the communities of the municipios located downstream: Ituango; Briceño; Valdivia and its *corregimiento* of

²⁰ About this situation, see from ONIC: "Comunicado público de la comunidad indígena Nutabe de Orobajo ante desastre ambiental y cultural producido por Hidroituango." 4 May 2018. <http://www.onic.org.co/comunicados-de-otros-sectores/2364-comunicado-publico-de-la-comunidad-indigena-nutabe-de-orobajo-ante-desastre-ambiental-y-cultural-producido-por-hidroituango>

²¹ The disaster's timeline has been published in several news media. For example: El País.com, "Video: cronología para entender la emergencia de Hidroituango que tiene en alerta a Antioquia," 16 May 2018. <http://https://www.elpais.com.co/multimedia/videos/video-cronologia-para-entender-la-emergencia-de-hidroituango-que-tiene-en-alerta-a-antioquia.html>

²² According to a story from Colombia Plural, "Hidroituango: las voces de la crisis provocada por EPM," 17 May 2018. <https://colombiaplural.com/hidroituango-las-vozes-de-la-crisis-provocada-por-epm/>

Puerto Valdivia; Cáceres; Tarazá; Caucasia; and Nechí. However, since the river's flow will gradually increase, as during an intense winter..."²³ Then, it provided a few general recommendations.

- That was exactly the date when the public hearing before the Inter-American Commission on Human Rights was held in the Dominican Republic. There, a representative of the Colombian government told the commissioners that the filling occurred **"due to a natural phenomenon, an issue related to a strong winter, and that there is a damming in the reservoir area, an unplanned damming."**
- On 11 May, the governor of the department, who presides over the Project Board, told the news media: "Many soap operas are being created and a large number of ideas that make this sound like something out of a movie...",²⁴ downplaying the risk and mocking the concerns of affected communities. The next day, it was stated that the emergency was a minor impasse and that the department has "good engineers ... there is no risk, either for the municipios or the inhabitants upstream or downstream."²⁵ However, that day, given the seriousness of the situation, the Inspector General's Office requested that "the National Committee for Disaster Management immediately put into operation two Unified Command Posts to address the emergency due to the damming of waters in Hidroituango, and to provide technical advice on the actions undertaken to progressively and gradually empty the flow tunnels."²⁶

On 12 May, an unblocking of the tunnel in operation released an enormous amount of water downstream (as shown in the photograph),²⁷ destroying bridges in the affected towns. Apparently, from that time, the focus shifted from unblocking the tunnels to filling the reservoir: "the plan to eliminate the prior obstructions of the three tunnels involved, which remain out of service, has been suspended, and all efforts have focused on filling the reservoir."²⁸ Regarding the infrastructure damage due to the force of the water, specifically to the El Pescadero Bridge, EPM downplayed the issue, stating that "although it reached its level ahead of schedule because of the

²³ Hidroituango. Press release 2 on the contingency. 9 May 2018. <https://www.hidroituango.com.co/articulo/comunicado-2-contingencia/110>

²⁴ As shown in the interview: Teleantioquia. "Es lamentable pero se puede solucionar situación en Hidroeléctrica": Luis Pérez Gutiérrez," 11 May 2018. <http://www.teleantioquia.co/featured/es-lamentable-pero-se-puede-solucionar-situacion-en-hidroelectrica-luis-perez-gutierrez/>

²⁵ Semana magazine. "Un pequeño impase: el trino del Gobernador Luis Pérez sobre emergencia en Hidroituango," 13 May 2018. <https://www.semana.com/confidenciales-semanacom/articulo/criticas-al-gobernador-luis-perez-por-decir-que-emergencia-en-hidroituango-es-un-pequeno-impase/567040>

²⁶ Eje21.com. "Procuraduría pidió al Comité de Desastres plan de acción inmediato para evitar tragedia por Hidroituango," 11 May 2018. <https://www.eje21.com.co/2018/05/procuraduria-pidio-al-comite-de-desastres-plan-de-accion-inmediato-para-evitar-tragedia-por-hidroituango/>. A Unified Command Post (UCP) is a temporary gathering of agencies that facilitates interagency coordination in response to emergencies and is comprised of representatives from institutions participating in addressing emergencies who are authorized to make decisions.

²⁷ Screenshot from El Espectador newspaper. "Emergencia de Hidroituango tiene en alerta a 7 municipios," 14 May 2018. At: <https://www.elespectador.com/node/755726>

²⁸ HSBNoticias. "Este es el balance de los graves daños causados por la emergencia en Hidroituango," 13 May 2018. <http://hsbnoticias.com/noticias/nacional/este-es-el-balance-de-los-graves-danos-causados-por-la-emerg-419437>

emergency, EPM clarifies that the flooding of the bridge was within the operational timeframe.”²⁹

A local media outlet described lack of information in the communities as follows: “‘Here, in Puerto Valdivia, the situation is serious,’ said a resident who did not want to be identified. ‘The rising of the river level destroyed the so-called Viejo Bridge.’ The resident added that the environment has not been peaceful during this week that is ending. And this Saturday it became much more tense, from the time when the spokespersons for Hidroituango issued the alert that the Cauca would rise due to the opening of an additional tunnel besides what flowed through the powerhouse, where water was already coming out. ‘First, seeing the river dry, we got really scared. Then, they said it would go up, but nothing. And now this! Many people have evacuated from their houses.’”³⁰

- On 14 May, the governor of Antioquia issued a public disaster declaration for the area, and to date, the language from the authorities sends the message to the population that the authorities have the ability to avoid new risks.³¹
- On 15 May, there was an evacuation from the municipios of Puerto Valdivia, Tarazá, Cáceres, Caucaasia, and Nechí, because the drainage through the powerhouse decreased. However, the Minister of Mines and Energy denied that the dam was at risk of collapse.³² That day, the Project’s leaders diverted attention from their responsibility, saying they “commissioned an audit to determine whether there was sabotage from a group of people who had left a bunch of sticks and trunks on the banks of the Cauca River, so that they would be picked up by the river and eventually obstruct the tunnel.”³³
- On 16 May, an evacuation order was issued for several towns: “We are on high alert, EPM has been working during these days with support from Dapard, the UNGRD, and the Red Cross. The community must be told to remain very alert. An

²⁹ RCN. Hidroituango: el agua del río Cauca represada ya empezó a ser evacuada 1 May 2018. <https://www.noticiasrcn.com/nacional-pais/hidroituango-el-agua-del-rio-cauca-represada-empezo-ser-evacuada>.

³⁰ <http://www.eluniversal.com.co/colombia/hidroituango-la-emergencia-llego-puerto-valdivia-278219>

³¹ El Tiempo. “Antioquia declararía Calamidad Pública por emergencia en Hidroituango,” 14 May 2018. <http://www.eltiempo.com/colombia/medellin/antioquia-declararia-calamidad-publica-por-emergencia-en-hidroituango-217258>

³² El País.com. “Elevan a doce la cifra de municipios que evacuarán por emergencia en Hidroituango,” 16 May 2018. <http://www.elpais.com.co/colombia/elevan-a-doce-la-cifra-de-municipios-que-evacuaran-por-emergencia-en-hidroituango.html>

³³ W Radio. “Declaran calamidad pública por 30 días, tras emergencia originada por Hidroituango,” 14 May 2018. <http://www.wradio.com.co/noticias/regionales/declaran-calamidad-publica-por-30-dias-tras-emergencia-originada-por-hidroituango/20180514/nota/3749574.aspx>. The interesting thing is that in February of this year, the police, as requested by the Company, had started forced evictions of the population in Sabanalarga, of precisely those who had denounced the felling of trees and the danger this entailed for the tropical forest’s equilibrium. A review of this situation is available at: Contagioradio: “ESMAD desaloja a campesinos de Sabanalarga en Antioquia,” 12 February 2018. <http://www.contagioradio.com/esmad-desaloja-a-campesinos-de-sabanalarga-en-antioquia-articulo-51420/>

evacuation was ordered downstream and for now we don't know if the phenomenon will happen again in the next few hours or the next few days.”³⁴

That was when the governor of Antioquia and the EPM manager wrote a letter to the Colombian president, warning that “a critical situation has broken out. The Project has very unfavorable scenarios and a tragedy could be caused downstream”³⁵ due to the problem in the powerhouse, and it is necessary for the central government to support the necessary measures to “prevent regrettable situations.”³⁶

On 17 May, there was news of several injured workers. The director of the National Unit for Disaster Risk Management reported that there were at least 900 disaster responders. However, due to the lack of information from the Company, a public call went out: “We have asked EPM’s manager to give us reports of what has been happening internally. Since yesterday, he has told us that this is a high-risk situation. We are expecting them, as the responsible parties with access to the operations, to keep us informed.”³⁷

- By 18 May, it became clear that a possible collapse in the construction would affect not only the riverside communities in the department of Antioquia, but also in five other departments.³⁸ The Inspector General called for “maintaining active the departmental emergency committees in Antioquia, Córdoba, Sucre, and Bolívar, and activating them for Cesar, Magdalena, and Santander.”³⁹

³⁴ El Colombiano. “Hidroituango: persiste máxima alerta por emergencia,” 16 May 2018. <http://www.elcolombiano.com/antioquia/incidente-en-hidroituango-evacuacion-en-el-bajo-cauca-NX8707861>. That day, several workers were injured due to water leaks. See: El País.com. “Video: las impactantes imágenes de la nueva emergencia en Hidroituango.” <http://www.elpais.com.co/multimedia/videos/video-las-impactantes-imagenes-de-la-nueva-emergencia-en-hidroituango.html>. The photograph is from the evacuation of the population of Valdivia. An article from 17 May in Semana magazine, “La primera noche de los 2.194 habitantes que lo dejaron todo en Puerto Valdivia,” available at <http://www.elpais.com.co/multimedia/videos/video-las-impactantes-imagenes-de-la-nueva-emergencia-en-hidroituango.html>, clearly shows the impact of the emergency on the population, their helplessness, and the way it affected vulnerable populations such as women, children, and seniors. The honorable Board can also find terrible stories in Semana magazine, “Hidroituango: Así ha sido huir y dejarlo todo en Puerto Valdivia,” 16 May 2018. <https://www.semana.com/nacion/articulo/evacuacion-total-en-puerto-valdivia-por-riesgo-de-desastre-en-hidroituango/567352>

³⁵ The letter is available at: El País.com. “Autoridades de Antioquia reconocen situación crítica en Hidroituango y piden ayuda a Santos,” 16 May 2018. <https://www.elpais.com.co/colombia/autoridades-de-antioquia-reconocen-situacion-critica-en-hidroituango-y-piden-ayuda-a-santos.html>

³⁶ Las2orillas. “Angustioso mensaje a Santos por la emergencia en Hidroituango,” 16 May 2018. <https://www.las2orillas.co/aungustioso-mensaje-santos-de-gobernador-de-antioquia-y-el-alcalde-de-medellin-sobre-la-emergencia/>

³⁷ Portafolio. “Listo plan de contingencia por si hay emergencia en Hidroituango,” 17 May 2018. <http://www.portafolio.co/economia/hay-un-riesgo-alto-en-la-zona-de-hidroituango-517197>

³⁸ For example, the Regional Autonomous Corporation of the Sinú and San Jorge Valleys asked the Company to expand emergency plans to the department of Córdoba, in which the ecosystem behavior depends on the Cauca River. See: El Heraldo. “Córdoba pide ser incluido en emergencia por Hidroituango,” 15 May 2018. At: <https://www.elheraldo.co/colombia/cordoba-pide-ser-incluido-en-emergencia-por-hidroituango-495002>

³⁹ Redmas. “Procuraduría hace llamado a mantener activos comités de emergencia por Hidroituango.” <http://www.redmas.com.co/colombia/181693/>

On 19 May, the news headlines were terrifying for the communities impacted by the Project, because they suggested that there was no technical solution for the disaster. One even said: “Hidroituango, it’s up to nature” (see image). At that time, EPM was sending information that said the emergency was due to the problems it had faced during construction, such as environmental licensing and the demonstrations by the communities, a clear reference to Movimiento.⁴⁰

- Since 20 May, EPM focused on raising the level of the reservoir so that the water in the reservoir could flow through the spillway that was still unfinished. The news media then focused on the work of thousands of dam workers and their heroic efforts to finish the construction. Meanwhile, however, they failed to cover the critical situation of people in shelters, the economic crisis of the inhabitants, the food crisis in the region, the situation being a true forced displacement, and all sorts of adverse impacts on the life of at least 17 communities along the river.
- By 23 May, the riverside communities of the *corregimientos* of Puerto Valdivia in Valdivia, Puerto Antioquia in Tarazá, and Cáceres remained under a red alert; Tarazá was under an orange alert; and the communities in Nechí, Cauca, and municipios in the departments of Bolívar, Sucre, and Córdoba that are impacted by the river were under a yellow alert. On 25 May, EPM announced that all risks would be resolved by the end of June.⁴¹ However, new landslides forced the evacuation of workers on 26 May and the red alert was activated again in neighboring municipios. On 28 May, because of new movements in the mountain and the verification of cracks in the structure, the workers were evacuated again.

By then, the time it would take for a torrential flood to reach the hamlets of the Cauca River had already been estimated, further increasing the anxiety⁴² among the population.⁴³

- By 30 May, approximately 15,000 people had been evacuated, with immense anxiety. Given the magnitude of the threat, there were increasing calls from official and nonofficial bodies for EPM to provide true explanations: (i) engineers and geologists publicly called for EPM to publish an official report with the technical details regarding the emergency’s reality and for “the spokesperson who gives the explanations not to be Manager Jorge Londoño de la Cuesta, but the engineers who are working in that construction and responding to the emergency,”⁴⁴ since the

⁴⁰ Semana magazine. “Hidroituango: en manos de la naturaleza.” 19 May 2018. <https://www.semana.com/nacion/articulo/emergencia-de-hidroituango-en-manos-de-la-naturaleza/567695>

⁴¹ Caracol noticias. “A finales de junio superaríamos cualquier riesgo en Hidroituango: EPM,” 25 May 2018. https://caracol.com.co/programa/2018/05/25/6am_hoy_por_hoy/1527252860_687769.html

⁴² There are many articles about this, such as: Noticias RCN. “Más de 15.000 personas evacuadas por emergencia en Hidroituango,” 31 May 2018. <https://noticias.canalrcn.com/videos/mas-15000-personas-evacuadas-emergencia-hidroituango>

⁴³ This is an infographic prepared by the Administrative Department for Disaster Prevention. Noticias Caracol. “Movimientos en la montaña tienen en vilo a Hidroituango,” 30 May 2018. <https://noticias.caracoltv.com/hidroituango-en-emergencia/movimientos-en-la-montana-tienen-en-vilo-hidroituango-ie27972>

⁴⁴ El Nuevo Siglo. “Hidroituango, entre rumores y derrumbes,” 30 May 2018. <https://www.elnuevosiglo.com.co/articulos/05-2018-hidroituango-entre-rumores-y-derrumbes>

Company never talked about the technical details of the disaster and was ambiguous in the responses to the departments of Antioquia, Bolívar, Sucre, and Córdoba, who asked the Company “to tell the entire truth about the level of risk that our communities face of a possible rise in the Cauca River’s water level and to join the effort to safeguard lives”;⁴⁵ and (ii) the Colombian Society of Engineers, which publicly disclosed a request to the Company that increased suspicions regarding the information being provided about the containment of the disaster:

“The Colombian Society of Engineers is deeply concerned about the seriousness of the emergency in the Hidroituango Project, which could lead to an unprecedented catastrophe in the history of Colombia. As the advisory body for engineering matters, the society feels the obligation to distance itself from the press releases issued by the Project’s authorities to the public, which in our opinion underestimate the seriousness of the existing situation. Therefore, we recommend the following course of action to the national government:

1. Immediately conduct a full evacuation of the towns at risk, relocating their inhabitants to locations far from the Cauca River Canyon (the Colombian Society of Engineers believes that there are no safe locations within the urban perimeter of these towns), in case there is a flood.
2. Require the engineering companies that have managed the designs, construction, and auditing of the Project, with a direct and truthful communication, to reveal the following:

The actual status of the works, since official press releases cannot be considered as engineering reports.

The actual status of the threat of a dam failure, including the possibility of a failure in its fill, particularly the part that has been built during the emergency.

The possibility of a failure in the right abutment, affected by the collapse of the Project’s tunnels and caves, the access tunnels, and the overall instability of the saturated pillar, which is manifested through the successive landslides, obstructions, and unblockings that have occurred since the emergency began.

The possibility of a Project failure due to the continuing and uncontrolled operation of the dam’s spillway based on its actual construction status.

⁴⁵ El Tiempo. “Gobernadores sienten temor por poca información sobre Hidroituango,” 31 May 2018. <https://www.eltiempo.com/colombia/otras-ciudades/gobernadores-critican-a-epm-por-emergencia-en-hidroituango-224740>. The calls were repeated in the following days. For example, during a visit by governors of other affected departments: “The governor of Atlántico, Eduardo Verano, said he will request ‘the truth’ about the impact of this disaster in the south of Atlántico. ‘We want to understand everything related to the works and among all of us seek solutions, to be able to prepare the riverside municipios,’ he said.” From El Heraldo, 6 June 2018. <https://www.elheraldo.co/region-caribe/gobernadores-costenos-se-reunen-con-epm-por-hidroituango-503494>; Also: “‘The Cauca River doesn’t belong to EPM, it is the property of Colombians, that’s why we demand they tell us what is really happening, the truth about the situation,’ said Dumek Turbay Paz, governor of Bolívar.” From El Tiempo. “Simulacro en el sur de Bolívar por alertas en Hidroituango,” 4 June 2018. <http://www.eltiempo.com/colombia/otras-ciudades/simulacro-en-el-sur-de-bolivar-por-alertas-en-hidroituango-225764>

The potential for a dam failure due to other possible contingencies such as earthquakes, the possible earth tremors caused by the reservoir, and the potential settling of the dam fill.

3. Provide information about the calculations related to flows and levels expected in the event of a dam breach in the various populated locations that are threatened, as well as the longitudinal scope of the flood wave that would be produced.
 4. For the mentioned engineering companies to clearly establish whether there is a way to repair the Project or if the emergency should continue until it is possible to remove the dam in a controlled manner.”⁴⁶
- The governor of Antioquia—who presides over the Project Board—in a statement on 31 May, confirmed that he received a report from international experts saying that the dam’s construction did not meet international standards and that it was clear that “there is manipulation of the information and the population doesn’t know who is right or who to believe.”⁴⁷ Given this statement, EPM reacted with a press release warning that the governor’s statement “seriously affects the credibility and reputation of EPM with national and international commercial banks, multilateral banks, development and promotion banks, risk classification companies, and institutional investors.”⁴⁸
 - On 1 June, the Colombian president, during a press conference, said that the situation in Hidroituango is worsening.⁴⁹ The Minister of Mines acknowledged that there is a risk that a significant landslide could generate a wave that would overflow the dam and cause a breach in the structures and said that “the Project should be monitored as a threat, the same way volcanoes are monitored.”⁵⁰ These statements were issued after a panel of international experts on the dam’s situation submitted its report to the government. The report included the remark, revealed a few days later, that “EPM’s public communications have not clearly estimated the danger to which the population is exposed after the landslide.”⁵¹

⁴⁶ In Política Heroica. “Sociedad Colombiana de Ingenieros preocupada por emergencia en Hidroituango,” 30 May 2018. <http://politicaheroica.co/sociedad-colombiana-de-ingenieros-preocupada-por-emergencia-en-hidroituango/>.

⁴⁷ Noticias Caracol. “La presa de Hidroituango no cumple con los estándares internacionales, denuncia Luis Pérez,” 31 May 2018. <https://noticias.caracol.tv.com/hidroituango-en-emergencia/la-presa-de-hidroituango-no-cumple-con-los-estandares-internacionales-denuncia-luis-perez-ie27972>.

⁴⁸ Dinero magazine. “EPM le pide al gobernador de Antioquia no afectar su imagen,” 31 May 2018. <https://www.dinero.com/pais/articulo/epm-pide-al-gobernador-de-antioquia-moderar-su-declaraciones/258974>.

⁴⁹ See: Canal1. “Presidente Santos dice que la emergencia en Hidroituango se está agravando,” 2 June 2018. <https://canal1.com.co/noticias/presidente-santos-dice-la-emergencia-hidroituango-se-esta-agravando/>.

⁵⁰ Ibid.

⁵¹ Noticias RCN. “Este es el informe de expertos de Naciones Unidas y la Unión Europea tras visitar proyecto de Hidroituango.” <https://noticias.canalrcn.com/nacional-regiones-centro/este-el-informe-expertos-naciones-unidas-y-union-europea-tras-visitar>

- On 2 June, videos of water leaks in the dam structure that workers recorded were made public. EPM only publicly acknowledged this two days later.⁵² That same day, the Foundation for Freedom of the Press issued a press release stating that there was a climate of censorship regarding information on the disaster:

“Since 20 May 2018, multiple journalists and individuals have complained that information about sensor 302 that used to be shown on the website of the Siata⁵³ had been hidden. This instrument measures the water level of the Cauca River at Hidroituango. As has been reported, the sensor was disabled for display to the public at around 10 a.m. on 20 May,” said the foundation.

According to the foundation, in response to the public’s complaints, the Siata confirmed this disablement, stating that the sensors installed by the Siata continue to operate and that information is being submitted to the UCP to have a proper and comprehensive interpretation of the information.

The foundation also said that it heard complaints regarding the removal of public documents related to the Hidroituango Project that used to be available on EPM’s website.⁵⁴

- On 4 June, after the authorities had access to the international report, the governor of Antioquia told EPM that several times, the Company had submitted inaccurate information about the landslides, which could involve 40 million cubic meters of soil: “What the EPM Board of Directors said is not true, when it stated that the report from the committee from the United States told EPM that it did everything right. On the contrary, the report is tough on the builders and EPM. The Americans said that there could be a landslide of between 10 and 40 million cubic meters and create the worst torrential flood in history.”⁵⁵

Given these statements, EPM’s manager denied that the international missions had stated that the dam was built with inadequate materials or without knowledge of construction standards.⁵⁶ However, on 5 June, there were reactions to a report from an expert panel from the United Nations, who between 23 and 31 May verified the Project’s conditions. None of the reports from technical experts has been fully published. The only information available is from the news media, which said about the UN report:

⁵² Noticias Caracol. “EPM confirma que hay filtraciones de agua en la presa de Hidroituango,” 4 June 2018. <https://noticias.caracoltv.com/hidroituango-en-emergencia/epm-confirma-que-hay-filtraciones-de-agua-en-la-presa-de-hidroituango-ie137>

⁵³ Early warning system for Medellín and Aburrá Valley.

⁵⁴ La Patria.com. “Flip alerta sobre posible censura de información de Hidroituango,” 2 June 2018. <http://www.lapatria.com/nacional/flip-alerta-sobre-posible-censura-de-informacion-de-hidroituango-417207>

⁵⁵ Caracol. “Dura respuesta de Luis Pérez a la Junta de EPM,” 4 June 2018. https://caracol.com.co/emisora/2018/06/05/medellin/1528163594_880923.html

⁵⁶ El Colombiano. “‘El informe no dice que se usaron materiales inadecuados’, gerente de EPM,” 5 June 2018. <http://www.elcolombiano.com/antioquia/hidroituango-epm-entrega-informe-de-los-ingenieros-IG8811497>

“According to this report, the design of the priority fill does not comply with standard practices, since the hydraulic gradient, with a clay core of 385 meters, exceeds the recommended limits. This situation would increase the risk of hydraulic fracturing of the clay core.

Separately, the preliminary evaluation also indicated that although some design calculations are still in progress, there is uncertainty regarding the dam’s stability with respect to sliding on the interface between the core and the slope upstream.

It was also noted that there is pollution in the dam and spillway filters, and that the way the contact between the clay core and the abutment was treated is inadequate (the rock is untrimmed, the layer of sprayed concrete is cracked, etc.).”

This situation would be critical if it is taken into account that the dam is stable if the clay core is effective. But, as the report from experts commissioned by the UN stated, there are few safety features. “‘If the clay core does not work correctly and the fill is saturated, the dam is not stable,’ stated the study.”⁵⁷

In response to this information, EPM’s manager defended himself, stating: “There are no international technical standards that define how a priority fill can be built.”⁵⁸ However, the governor of Antioquia said that the Company had lacked truthfulness and that it had lied at other times, such as when “EPM informed the governor, and separately, the Hidroituango Board, that in nine days the crisis would be solved by unblocking the two remaining tunnels, because the auxiliary diversion tunnel had become obstructed. They were NEVER unblocked, and the problem worsened without explanation.”⁵⁹ Also, the Company downplayed the information and the risk from the landslides that occurred.

The mayor of Medellín also joined the debate, defending the Company and urging the governor to provide the public “a single information channel ... in this situation, there are two ways to deal with the problem: the hard way is to go ahead and eliminate the risk, taking responsibility, and the other way, the easy one, is to not take responsibility.”⁶⁰ Given this public argument, the Colombian president urged both officials to avoid public debate, because “the assigning of responsibilities that has to happen will be done later.”⁶¹

⁵⁷ El Tiempo. “Estudio de la ONU advierte de fallas en estructura de Hidroituango,” 7 June 2018. <http://www.eltiempo.com/colombia/medellin/onu-advierte-que-presa-de-hidroituango-esta-en-riesgo-de-desplomarse-227758>.

⁵⁸ El Colombiano. “¿Qué dijo la ONU sobre Hidroituango?,” 8 June 2018. <http://www.elcolombiano.com/antioquia/que-dijo-la-onu-sobre-hidroituango-BH8832605>

⁵⁹ El Colombiano. “Luis Pérez reitera que información de Hidroituango es una ‘melcocha’,” 5 June 2018. <http://www.elcolombiano.com/antioquia/hidroituango-declaraciones-del-gobernador-luis-perez-MH8810493>

⁶⁰ El Tiempo. “EPM siempre ha dicho la verdad sobre Hidroituango: Federico Gutiérrez,” 5 June 2018. <http://www.eltiempo.com/colombia/medellin/alcade-de-medellin-responde-a-gobernador-de-antioquia-por-crisis-en-hidroituango-226674>; El Tiempo. “Las versiones encontradas sobre la calidad de la presa de Hidroituango,” 6 June 2018. <https://www.eltiempo.com/colombia/medellin/choque-de-versiones-sobre-llenado-de-presa-de-hidroituango-227194>

⁶¹ La W. “Santos ‘jaló las orejas’ del gobernador de Antioquia y del alcalde de Medellín,” 6 June 2018. <http://www.wradio.com.co/noticias/actualidad/santos-jalo-las-orejas-del-gobernador-de-antioquia-y-del-alcade-de-medellin/20180606/nota/3758755.aspx>

In the meanwhile, the inhabitants of the communities under red alert are in a deplorable humanitarian situation. This is worse for members of Movimiento Ríos Vivos, whose lives have been threatened and who need protection that has yet to be provided. These are headlines that can be seen in newspapers on a daily basis:



The information barrier is so high that in the newscast of Noticias 1 for 4 July, journalists reported that the displaced inhabitants of Puerto Valdivia were not allowed to speak to journalists or denounce the conditions that they were experiencing in shelters.⁶² Not to

⁶² A video about this is in the YouTube channel for Noticias 1 at: <https://www.youtube.com/watch?v=-9gsmZELkGc&t=28s>

mention that workers are not allowed to give statements. Indeed, it is only because of these workers that images of what is happening at the dam have been obtained.⁶³

The only place where measures that should be taken to prevent the loss of human lives from a possible torrential flood are being discussed is at the Unified Command Post (UCP). No civil society organizations participate in this. The only participants are EPM; the Ministry of Mines and Energy; the Ministry of Environment and Sustainable Development; the Administrative Department for Disaster Prevention of the Antioquia Departmental Government; the Hydrology, Meteorology, and Environmental Studies Institute; the National Army; and the National Police.

In a meeting held with the governor on 25 May 2018 in the facilities of a shelter where Movimiento members were staying, the governor agreed that we would be welcome at the UCP in Valdivia. However, even though we went there, this did not happen. Since Monday, 21 May, and every day at 7:00 a.m., Movimiento members stood outside the UCP facilities in Valdivia, waiting to be seen to obtain answers to the affected population's questions. On 22 May, a letter of alert was sent to all the organizations participating in the UCP so that they would respond to us as a community. On 24 May, we tried through the Ombudsman's Office, but neither we were heard nor did we receive information directly from the authorities. The excessive secrecy, censorship, and resulting anxiety continue, worsening the situation for the inhabitants of the impacted municipios. Faced with gaps, inconsistencies, and contradictory information, they are unable to make informed decisions about what to do and whether to stay or abandon everything.

Update on the situation

Currently, the situation has not been resolved. As communities, we have lost our ways of life and livelihoods, and some have lost their homes and crops. We have lost community infrastructure, as well as sites of remembrance and collective sorrow where massacres occurred. For example, the El Pescadero Bridge, which connected the municipios of Briceño and Toledo with Ituango and provided roundtrip access between the municipio and the city of Medellín, was flooded. The La Garrucha Bridge, which connected the municipios of Peque and Buriticá with Sabanalarga, enabled commerce for the furthest *veredas* of Peque and Buriticá with Sabanalarga and was the quickest route to health care and other services, was flooded. The Palestina Bridge, which connected the *corregimiento* of El Aro in Ituango with Briceño, enabling commercial trade and faster access to health care services, was destroyed by the sudden rising water. So were the Viejo Bridge in Puerto Valdivia, the health care center, the high school, and the elementary school. Now, despite it being almost a year since the events, none of this has been remediated. The justification they gave at the public meeting between EPM and the communities in Puerto Valdivia was because it is not known whether the Project will continue.

The issues that resulted in the red alert, such as the lack of control over the tunnels, have not been resolved. Today, there is no exit for the water from the reservoir other than the

⁶³ For example, videos of problems in the tunnels and leaks. *Semana* magazine. "En video: Tensionantes momentos vivieron trabajadores de EPM en Hidroituango." <https://www.semana.com/on-line/multimedia/tensionantes-momentos-vivieron-trabajadores-de-epm-en-hidroituango/567300>; Caracol. "Emergencia en Hidroituango: angustioso relato de un trabajador," 18 May. <https://www.youtube.com/watch?v=iMnNVN45wdU>; Noticias Caracol. "Denuncian filtración de agua en la presa de Hidroituango", 3 June 2018. <https://noticias.caracoltv.com/hidroituango-en-emergencia/denuncian-filtracion-de-agua-en-la-presa-de-hidroituango-ie137>

spillway. When the gates were closed, the riverbed mostly dried out, killing more than 100,000 fish and river microorganisms. As if that were not enough, during the drought, the Company extracted materials from the river, such as sand and vegetation, making it even more difficult for the ecosystem to recover. During the emergency, they left 30 neighborhoods in the municipio of Caucasia without water service, and the tanker trucks with water did not reach everyone. Also, rural areas in the municipio of Cáceres had their water supply cut off, and EPM's tanker trucks never got there. The water arriving downstream from the dam lacks sediment that transports the nutrients necessary for the ecosystem's life and that maintains the riverbanks, which are already undergoing erosion. The water quality in the reservoir is terrible. Water hyacinths, which according to a report from the Attorney General's Office occupy 8.5 kilometers, are growing rapidly.

On 10 April, the Attorney General's Office published its decision to request provisional remedies from a due process judge because of the serious environmental Harm that the Hidroituango Project is causing to the ecosystem.⁶⁴ This is based on three elements. The first has to do with the quality of water in the reservoir and downstream, with the subsequent implications for food safety for the population and impacts on gold panning as one of the main economic activities in the region. Gold panning completely disappeared, after the flooding for upstream communities and after the gate closings for the downstream communities, because the sediment also transports gold particles. The second element is the risk posed by the improper disposal of material, which could cause damage to the Cauca River and risk the collapse of a collection site estimated to contain more than three million tons of improperly handled solid waste. The third element is the pollution of the San Andrés River, which flows into the reservoir with contaminated material generated by an abandoned asphalt plant, and the risk that this entails for the area's population, particularly children.

Moreover, the Comptroller General's Office, in a public statement issued on 2 April expressing concern that EPM and Hidroituango did not really know who or how many had been affected by the megaproject, also conveyed its concern about the inadequate response to the emergency. "It was reported that there is a lack of clarity about the affected population and there are no specific economic reactivation programs. ... In this respect, the delegated comptroller highlighted that other issues subject to complaints are the irregular handling of risk management, possible shortcomings in the return plan for the affected population, and oversights in the census and the Master Registry of Victims."⁶⁵ The office also expressed concern about the serious impacts on the La Mojana ecoregion.

The Inspector General's Office, as requested by Movimiento Ríos Vivos, held a public hearing on 27 February 2019. The affected communities, experts on various subjects, and relevant authorities spoke at this hearing. As a result, the inspector general filed a public

⁶⁴ "Fiscal General de la Nación pide medidas cautelares urgentes por daños ambientales." <https://www.elcolombiano.com/antioquia/hidroituango-fiscal-general-pide-medidas-cautelares-urgentes-por-danos-ambientales-IG10523902>

⁶⁵ "Contraloría General de la Nación recibió más de 300 denuncias de comunidades afectadas por Hidroituango." <http://www.elcolombiano.com/antioquia/contraloria-recibio-denuncias-por-hidroituango-IC10479010>

interest action to defend the communities affected by Hidroituango.⁶⁶ During the hearing, the inspector general said that there is a need for Ríos Vivos to participate in the UCP and for a social dialogue between Hidroituango and Movimiento's members, a request that was supported and promoted by the ombudsman. He also called for settling the debt that the Project owes to the communities in terms of taking care of them. The majority of these statements are on record, through videos and articles.⁶⁷

One of the determining factors causing anxiety and anguish among the population is that there are no reliable independent studies about whether Hidroituango is viable. This has affected property values in the Norte and Bajo Cauca subregions, restricted access to credit, and affected the ability of families to plan for the future.

With respect to corruption related to the Project, we would like to bring two issues to the Board's attention through the MICI. The first is the fact that the Attorney General's Office filed charges for the probable commission of crimes in contracting and awarding the works for the Hidroituango Project.⁶⁸ Also, since in Antioquia there has been no progress in the investigations of corruption issues that were rather evident in Hidroituango, as part of an organizing process under which we are also a citizens' watchdog formally established to monitor the Project, we requested exceptional oversight so that the Comptroller General's Office would conduct fiscal oversight investigations directly and remove jurisdiction from the regional comptroller and the local comptroller in Medellín. As a result, the deputy comptroller took over the investigation. One of the first findings was that the Company had filed a claim for the Project with an insurance company in London. This made the communities more fearful, since in Colombia the Company had insisted that there was no risk and that everything was normal, but abroad they filed a claim to collect a large sum of money.⁶⁹

Consultation Phase

The Mechanism gives Requesters the option of a poorly named phase known as Consultation, which is really a mediation. In this case, we as Requesters expressed our wish that that this process be conducted, before there was a Compliance Review through an investigation. The objective was to find ways of resolving the conflict with the best intentions to improve our conditions as affected communities. We spent a lot of valuable time in that process. We regret the fact that it did not work out, but even more that the response from EPM to the request made by the MICI was not made transparent. That response should be publicly disclosed so that the transparency that the Bank says it has becomes real and effective. The Company not only took a while to respond, but based on its response, a document that we do not have, the MICI concluded that conditions were

⁶⁶ "Procuraduría presenta acción popular en defensa de los derechos de las comunidades afectadas por Hidroituango." <https://www.procuraduria.gov.co/portal/Procuraduria-presentara-accion-popular-en-defensa-de-los-derechos-de-las-comunidades-afectadas-por-Hidroituango.news>

⁶⁷ <https://www.eltiempo.com/colombia/medellin/procuraduria-hizo-audiencia-preventiva-sobre-hidroituango-en-medellin-332042>

⁶⁸ <https://www.elcolombiano.com/antioquia/fiscalia-imputa-cargos-por-contratacion-de-hidroituango-KC10305618>

⁶⁹ "Revisión de 200 contratos." https://www.youtube.com/watch?v=c5zFk73jTWM&feature=youtu.be&fbclid=IwAR2q4R5AxI5vf09XOtHG51CF2lxT7vP_oWgadp9OROzruJmtxJengQ4W_o

not right for a dialogue. We do not know what the Company alleged, which prevents us from disputing it. What is certain is that they refused to have a dialogue and this reveals a lack of interest not only in addressing and resolving the complaints of the affected population but also, and more so, in addressing the suggestions of the IDB and its internal mechanisms. This should be a key consideration for the Compliance Review. Also, the collection of information, interviews, and other activities undertaken during this Consultation Phase should help provide answers to the questions posed.

RECOMMENDATION FOR A COMPLIANCE REVIEW

The way in which the draft addresses the noncompliance with the Relevant Operational Policies that we allege features elements that we view favorably and others that need improvement.

The fact that the Project was classified as category “A” should have entailed that for the Hidroituango Project, the financing from the IDB Group should not have taken place until the relevant requirements were fulfilled. Likewise, the noncompliance should have been identified in a timely manner and an action plan should have been prepared to address it. This frame of reference should be substantially taken into account in the Review.

We request that there be a systematic interpretation of the Relevant Operational Policies, so that no relevant issues are overlooked. We believe that if all the elements that must be considered are included, the Review will be more complete and able to offer a better outlook of the social and environmental performance of the investments associated with the Project. The MICI has recommended to focus the scope of an investigation on determining whether IDB Invest has complied with the provisions of its Environmental and Social Sustainability Policy regarding IDB Operational Policies OP-703, OP-710, OP-704, and OP-761, and IFC Performance Standards 1, 3, 4, 5, 6, and 8. Our comments regarding some relevant elements are below.

It is important to specify that as Requesters, we allege actual and potential Harms in connection with potential noncompliance by the IDB and IDB Invest with its Environmental and Social Sustainability Policy. It is evident from the narrative of the compliance that the MICI intends to exonerate the IDB from the responsibilities it may have due to possible noncompliance with its policy.

With respect to our arguments, we clarify that we are linking the exacerbation of the armed conflict in the area generated by the Project, among other reasons, to the military control exercised by the Project. In itself, Hidroituango has become one more actor in the armed conflict, with its own private security army and military agreements with law enforcement, including the construction of military bases with money from Hidroituango, meaning possibly from IDB Invest. Being one more armed actor on the territorial dispute stage, it is part of that fight and raises the levels of armed conflict and sociopolitical violence that affect the population.

As detailed in the context section and shown with a map of the area of influence, this is perhaps one of the Project’s most vital elements, which determines the social impacts, affected communities, and affected environments and ecosystems. About this, it is relevant to mention that the possibly affected parties are located both downstream and upstream from the dam. While downstream the impacts tend to be more obvious, because the river flows in that direction, the territorial dynamics not only include the path of water resources but also social and public security phenomena. These are related to elements including safety, human rights violations, displacement as a result of Project impacts, lack of a proper census, increased organized crime, shortcomings in shelters, the way in which the communities moved around the territory prior to the Project, the loss of access to lots over which the communities held property rights, and possession or ownership.

Separately, it is important for the assessment terms to clarify, with a larger scope, that the affected parties will not just be the inhabitants but also those who, despite not living in the area on a full-time basis, were impacted because their livelihoods were based on activities in the area that were interrupted by the Project or by the dynamics of the armed conflict.

About the latter aspect, we would like to point out that there is no match, as mentioned by IDB Invest, between the inclusion of people in the Company's census and the registry of victims of the armed conflict, pursuant to national law. This is an aspect that, in the opinion of the Requesters, should be included in the Review.

It is relevant to mention that the problem with the censuses is not only the fact that those that were prepared were not updated but also their substantive flaws in terms of methodology, coverage, scope, inclusion criteria, notification methods, and recourse for affected parties whose requests for inclusion were rejected. The latter is particularly true, taking into account that because EPM is a government-owned company, its decisions are regulated by Colombian administrative law, under the concept of government channels.⁷⁰

It is positive that in paragraph 6.63 the MICI brought up that the lack of proper identification of the universe of affected people resulted in oversights in the consultation processes that were conducted.

Paragraph 6.15 did not include the fact that we indicated that one of the main oversights in the census of those affected was that they did not visit each and every beach and sector impacted by the Project. Also, there was no method to take into account the migratory nature of large parts of the population and therefore the high probability of not finding the people in their few visits to the area, and then only in the most accessible areas. Neither did it include our indication regarding the improper notification method for the censuses, which did not take into account the area's characteristics, the organizational patterns of a widely dispersed population, or the nonexistent organization of the communities.

With respect to the statements by Management referenced in paragraphs 6.16, 6.17, 6.18, 6.19, 6.59, 6.60, 6.61, 6.62, 6.63, and 6.64, it is important to clarify that:

1. If the study undertaken between July and October 2016 had been sufficiently rigorous, as IDB Invest alleged, they would have noticed an aspect related to human health that is now particularly relevant. In 2015, the company EPM made a *"forest exploitation" contract to build its main camp in the municipio of Sabanalarga, because it was the area with the largest number of lands affected. "According to the guidelines of the environmental license issued to Hidroituango, 78% of the vegetation to be removed (1,816 hectares) was to be felled in the tropical dry and humid forests of Sabanalarga and the neighboring municipio of Liborina. But in 2017, EPM asked the National Environmental Licensing Authority (ANLA) to approve a reduction of the area to 1,129 hectares, 48.5% of what had been initially agreed upon. Of these, 676 were in rural areas of Sabanalarga and neighboring municipios."* Since that same year, the rate of people with leishmaniasis varied according to official statistics from the National Health Institute ("INS") and the Antioquia Health Department. Compared to 2015, when there were 3 cases of leishmaniasis in Sabanalarga (there was 1 case in 2014), the disease increased by 1,466% in 2016 (44 cases); 2,500% in 2017 (75 cases); and almost 3,000% in 2018 (88 cases), according to official records from the Antioquia Health Department. The most recent report from the Pan American Health Organization showed that the rate of leishmaniasis in Colombia

⁷⁰ Congress of the Republic of Colombia. Law 1437 of 2011, issuing the Code for Administrative Procedure and Administrative Disputes.

between 2015 and 2017 was 29.4 per 100,000 inhabitants. In Sabanalarga, according to the INS, as of 2017 that rate was 495 per 100,000 inhabitants. This exponential spread went unnoticed by the country's epidemiological monitoring authorities at both the central and regional levels. That was despite the fact that the INS rated this municipio as having the third-highest frequency of occurrence of the disease in the country for the first quarter of 2018. Due to the inattentiveness to this problem, four people have died and the sick have not received proper health care. And this does not even take into account underreporting, which taking the communities organized into Movimiento Ríos Vivos as a representative sample of Sabanalarga's population could be at least 50% of those who got sick. We warned about the seriousness of this situation several times without a response. We even submitted our concerns in writing regarding the improper disposal of the plant material that resulted from the felling of trees. See: "Investigación realizada por el Equipo Nizkor" [Investigation by the Nizkor Team].⁷¹ After this report was published, the Company made a statement, agreeing that leishmaniasis vectors "grow in decomposing organic matter" and that the area contains dozens of collection sites with tons of decomposing matter.

2. None of the members of Movimiento Ríos Vivos have met with investigators or staff from the IDB or IDB Invest. This is at least strange or suspicious, because we are a group of almost 1,200 families in the three Antioquia subregions affected: Occidente, Norte, and Bajo Cauca. We have been the only movement opposing the Project in its entire history and have submitted multiple complaints due to the Project's impacts. It is possible that Management conducted those consultations with actors, as the document mentioned, and has on purpose avoided communicating with the affected communities who oppose the megaproject. This would demonstrate bias in the information obtained and lack of thoroughness in its studies. It would be very important to determine this through a Compliance Review. Although the policies do not expressly indicate that it is mandatory to meet with opponents, this is necessary to provide transparency and balance to the investigations.
3. The socioeconomic and cultural environment of the communities changed not only because of migratory pressure from the Project's direct workers, but also as a result of indirect workers and the expectations generated. For example, there were reports that workers of contractor companies and private security companies who were not living in the camps but were on the roads, the lots, and the riverbanks attempted to murder or forcibly disappear Movimiento members. Also, there were reports that workers such as topographers or Refocosta employees, who travel through the areas, made threats against members of Ríos Vivos. Workers who were felling trees endangered the lives of gold panners and fishermen by cutting above the locations where they live and work. Changes in the surroundings did not only happen due to the presence of workers, but also their work in the Project. Interactions were not limited, because they happened as part of the contracted tasks. The analysis focused on the interactions in urban centers and not in rural areas. Likewise, it

⁷¹ <http://www.derechos.org/nizkor/colombia/doc/hidroituango10.html>

set aside the migratory pressure that the Project originated through economic expectations. The Project caused a surge of new hotels, food businesses, brothels, and more. These people who increased the demand for services in the population centers also created strong pressure on local economies, because they arrived with additional capital to change the conditions of the local markets for food, services, etc.

4. The following facts demonstrate the lack of an adequate and ongoing public consultation process: (a) the number of inhabitants in the affected area is more than 180,000 people. In the record for the environmental public hearing to grant the Project's environmental license, held in 2008 in the municipio of Liborina (which can be verified through file 2233 of the ANLA, SIR-19220008), 79 people from the communities registered to speak, and 55 did not speak because they did not attend. Therefore, we can state with certainty that the participation of civil society in this consultation venue, which under Colombian law is one of the most important, was of 24 registered and 7 nonregistered people, for a total of 31 people. This is the opposite of what happened during the public hearing requested by Movimiento Rios Vivos and conducted on 25 January 2018 in the municipio of Santa Fe de Antioquia. There, we presented all the arguments included in this complaint. But the main point of the hearing was to oppose the modification of the license regarding not removing the vegetation cover to be flooded with the reservoir. This hearing had 1,200 attendees and 700 who registered to speak; only approximately 100 people were able to speak because of the lack of logistical arrangements made by the Company EPM; (b) the Inspector General's Office recommended that the hearing prior to issuing the license be conducted in the three subregions affected (Occidente, Norte, and Bajo Cauca), because of the differences between them and the long distances and connection difficulties. The Company did not consider this recommendation; (c) because of the characteristics of violence in the area, it was not possible for the communities to move around freely to participate in the venues, and their attendance was determined by lawfully and unlawfully armed actors, the existence of anti-personnel mines, armed clashes, and other situations; (d) the majority of the population WAS NOT CONSULTED and still does not know about the Project's impacts and particularly the measures, and the workshops conducted were mostly in urban centers or *veredas*, not on the beaches of the Cauca River and the communities along the river where part of the affected population was located; (e) there is no evidence that there were dissemination venues for each of the environmental license modifications, and even less, evidence of the two consultations of the entire population affected before the start of the Project; (f) in some cases, there is evidence of fraud in the demonstration methods for the dissemination venues, such as the records. In venues such as municipal councils, the records provided by EPM to the ANLA do not include the disagreements, questions, and statements from the communities, and these were reflected in the councils' records. This is suspicious, since the records collected by the Company in other venues with communities may not have provided opportunities for feedback from the communities, and the ANLA was the one who was deceived. This could have also happened to IDB Invest and should be investigated; (g) for municipios such as Caucasia, there is no dissemination process, because they are not

recognized as impacted; (h) the Company has systematically refused to meet, ask questions of, and inform members of Movimiento, and we are also affected communities; and (i) even now, the majority of the affected population is unfamiliar with the EIA and other vital documents to understand the sweeping changes that have occurred in the area and in our lives.

5. The communication program is publicity for the Project and the Company and does not really inform anyone about what is occurring. It is a program dedicated to promoting social approval for the Project. Communities that were included in the census and displaced physically and economically are also part of Movimiento, and they mentioned that there was a lack of information and that compensation terms were imposed upon them, since a real agreement process did not take place. Also, there were multiple cases of undue pressure to accept the Company's terms. As an organizing process, we are formally established as a citizens' watchdog for Hidroituango under Colombian law, to monitor everything related to the Project.
6. The Hidroituango Project always knew of the existence of the Nutabe community. Some of that was recorded in the EIA. The questions to the Ministry regarding this were slanted, because they knew about the community's conditions. The way in which they asked the questions, indicating other areas, calls the Company's good faith into question. Also, by not including Cáceres, Tarazá, and Caucasia in the affected area for the megaproject, with the Senú community being strongly affected now by the megaproject, the failure to observe due diligence in this regard is evident. The Project moved forward without conducting prior consultations with several indigenous communities, and today it is destroying their territory and endangering their existence.

It is necessary to clarify that the statement made by the MICI in paragraph 6.26 is not true, since we were not asked for precise information about the *veredas* of the Requesters. Therefore, the statement that "most of the Requesters are in areas determined to be of indirect impact" lacks truthfulness. Because of this, only when someone wanted to add more pressure to what was coming from their municipio of origin was the name provided.

The following elements are of crucial importance with respect to the large number of affected people who were not included in the census. The reasons are below, and we wish to specify them to provide more arguments about the need for a Compliance Review.

1. **The locations** where the census took place. During the census, they did not visit each and every beach and sector where the population was located. This element has been mentioned several times by the communities in the various municipios. In other cases, the process was conducted in the wrong places, such as urban centers, and even people who were not directly affected were included in the census, while others who were affected were excluded. Likewise, we witnessed censuses that were conducted in pool halls and bars, in the households of families located along the road, and in farms far from work sites.
2. **The times** when the census was conducted. When some people found out and got to the urban centers or other locations, the Project's employees decided that from a specific time in the afternoon, they would not help any

more people. In some cases, they said they would return and never did. It is also important to point out that 2009 and 2010 saw some of the highest murder rates in the area. At that time, heavy armed clashes made the population flee from the armed conflict.

3. **The notification** to participate was conducted in an incomplete manner and through inadequate means. Municipal administrations made the announcements through community action committees in some cases. But the majority of the dispersed and migratory population is not part of these organizations. We also know that they would get to one place and from there ask that an announcement be made by word of mouth of when they would get to locations near the river. But because of the large distances in the Cauca Canyon, even if people knew each other as part of the community, for many it was impossible to notify others. We know, for example, that in November 2009, they were conducting the census in Hacienda El Líbano, an entry point for several beaches along the river but very far from them. Also, at the home of Martha Florez, located next to El Pescadero Bridge, during that same month. But when people found out, some of them arriving in the afternoon, tired after a long journey, the officials told them that they would come back because they were tired, and they never returned. Another factor regarding the notification is that it was made in urban centers through gold buyers and the administrations, to provide information and conduct the census. This method was not very appropriate, since the dynamics of gold sales depend on the price, the work location, the group of gold panners, the risk of the journey, etc. There are gold panners who never sold the gold directly, because due to the risk there were other gold panners on the beaches that were in charge of that task. Therefore, not only were not all the communities reached, but the most appropriate ways to notify them so they would participate were not sought.
4. **Areas not recognized as affected.** In areas from the dam site downwards, the census was not conducted. Long after the approval of the modifications and its effects on the lives of those between Puerto Valdivia and the dam area, the census was conducted only in the hamlet of the *corregimiento*, not in the rural area, such as kilometers 14 and 15, and also not in areas such as El Aro de Ituango or Espíritu Santo de Briceño. In these sites, they conducted censuses for the EPM hydropower project known as Espíritu Santo hydroelectric plant. The communities were told not to worry about not being included in Hidroituango, that they would be compensated through the other dam. These areas were recognized within the area, but not their people, even the municipios from Tarazá to La Mojana, which are currently being impacted. In this regard, in 2012, El Jardín Hidrobotánico called for a meeting in Caucasia with leaders and authorities from La Mojana and representatives of EPM. There, they stated that under no circumstances would La Mojana be affected by Hidroituango.
5. **Discrimination** against women has been a constant throughout the megaproject, particularly with respect to the censuses. We have several cases in Movimiento, in which census takers refused to include women in the census until their husbands got there. In other cases, single mothers did not include their children in the census because they were unmarried. This is the opposite

of what happened with the men, who included their family groups. However, at any rate, the census takers refused to compensate the women included in these family groups, alleging that the work of cooking at the beach sites was not a job. Likewise, women were excluded from compensation processes. In several cases, the husband, after receiving compensation, separated from the family, leaving them to their own devices.

6. **The census takers** were not suitable to conduct the census of affected people. As mentioned before, multiple shortcomings in the census may have been due to structural issues related to its design or to methodology. However, it is important to know whether the census takers who described the population were suitable for this task and could have been a determining factor in the current exclusion of thousands of affected parties.
7. **The misinformation of municipal administrations about the Project's development.** A review of a file held by the ANLA revealed that municipios that were not included in the area of influence were notified of administrative acts. Hidroituango was even mixed up with Porce. Also, there is a record that information related to Hidroituango was provided to these municipios and not to those that were actually impacted.

Paragraphs 6.33 and 6.77 show that IDB Invest stated that families or individuals who have been displaced by the armed conflict could have been included in the census of those affected by the Project. This is not true, since hundreds of members of Movimiento have tried to do so and been denied inclusion, despite providing the proof needed for this. In addition, for one of the forced eviction cases from 2015, of 81 families from Playa La Arenera on 27 March, we asked various entities to verify our status as victims. This was confirmed by the Ombudsman's Office and other organizations such as the Unit for Victim Assistance and Comprehensive Reparation. The large majority of us had due recognition under the standards of Colombian law. However, not only were we forcefully evicted, but our homes and sites of remembrance were burned, some of our belongings were stolen, and we were abandoned on the road leading to Ituango along El Pescadero Bridge. Once we got to Ituango, we filed affidavits about forced displacement by Hidroituango with the municipal Ombudsman's Office.

With respect to the lack of identification of social and environmental impacts, this is based first on not clearly defining the impact area and the affected communities and having an inadequate consultation with all the actors who are familiar with the region.

The focus of the investigation should deepen the Project's analysis of ecosystem services and the values attached to them by the communities, pursuant to Performance Standard 6. With respect to the former, we suggest completing the focus on ecosystem services with soil retention,⁷² carbon capture, and climate change mitigation,⁷³ provided by the dry forest that was affected by the Project's development. This was due not only to the felling

⁷² The issue of soil retention is important due to the presence of landslides and loss of stability near the Project, which in turn represents a risk factor for communities in the area of influence.

⁷³ Instituto Humboldt. "Bosques secos tropicales en Colombia." <http://www.humboldt.org.co/es/investigacion/proyectos/en-desarrollo/item/158-bosques-secos-tropicales-en-colombia>.

of that cover but also to the biomass that was not adequately removed from the reservoir and contributes to methane emissions.⁷⁴

According to our interpretation of the Relevant Operational Policies, the identification of the social and environmental impacts, with a cumulative approach, should not only take into account the generic preparation of studies and environmental and social action plans but also their actual effectiveness to clarify these impacts and particularly to monitor management and mitigation measures, based on due diligence. The matter should be addressed in the Review from this viewpoint.

The lack of a cumulative approach in the identification, assessment, and especially the determination of measures is one of the Project's major shortcomings. Social and environmental elements may seem to be mostly specific impacts, but they actually unleash other impacts. In other words, cumulative impacts are not only a matter of accumulation of time, impact, or ongoing harm but also a matter of identifying and understanding, in order to resolve, the sequence of impacts generated, which, regardless of whether the first one disappears, accumulate as harms to ecosystems and communities. For example, one of the factors that cause displacement of fauna is the loss of flora species or reproduction sites. The chain of interdependence of an ecosystem should be clearly established in an EIA, so that this assessment is not an isolated inventory unbound by reality. The specific impact related to the felling of trees does not account for this chain of related impacts, nor does the response or generation of measures that are neither comprehensive or complex to address cumulative impacts. Moreover, cumulative impacts refer to the pressure and seriousness generated by other interventions in the region, such as other hydroelectric plants and micro power stations in the same impacted municipios. As an example, currently five micro power stations are being built in the municipio of San Andrés de Cuerquia, on the tributaries of the Cauca River in the dam area and San Andrés River. The municipios of Ituango, Briceño, and Toledo have advanced studies for the construction of micro power stations on the tributaries of the Cauca River. Also, all the municipios in the Canyon have granted concessions and mining exploitation deeds to multinational Continental Gold. The Buriticá Mine is currently being exploited in the municipio of Buriticá. Even though the Project itself is not responsible for the impacts caused by other projects, a cumulative approach identifies the overlapping impacts to assess them in their fair dimension. For example, it establishes the difference between an impact generated by Hidroituango without the Buriticá Mine and the same impact with the mine.

With respect to the cited water quality modeling study, it is important to indicate that as communities, we have requested information about the changes in water quality resulting from the closing of gates, both upstream and downstream, but have not yet received a response. We are currently under alert due to the proliferation of water hyacinths (*Eichhornia crassipes*), which according to the Attorney General's Office are taking up 8.5 kilometers of the reservoir. The expert tests commissioned by that office are now under review and will be presented to a federal judge. We ask that these be taken into account as a source for the Review.

⁷⁴ Deemer, Bridget et al. Greenhouse Gas Emissions from Reservoir Water Surfaces: A New Global Synthesis. <https://academic.oup.com/bioscience/article/66/11/949/2754271>. *BioScience*, Volume 66, Issue 11, 1 November 2016, Pages 949–964.

Likewise, the unusual increase of leishmaniasis in the municipio of Sabanalarga. Since the felling of the tropical dry forest began, the number of cases has skyrocketed there. According to data from the Antioquia District Health Directorate, on an annual basis, two cases were reported in 2014, three cases in 2015, 44 cases in 2016, 75 cases in 2017, and 88 cases in 2018. This is a terrifying prospect that does not even take into account that the underreporting could be 50%, as mentioned above. Several people have died from this disease, and proper health care has not been provided in the communities, particularly for the most vulnerable, the children and seniors, who require specialized care. This is a particularly unusual situation, since Sabanalarga is not near any jungles and this has not been a frequent occurrence among the population. Because of the loss of ways of life and livelihood, the communities lack resources to seek better medical care, making this a ***cumulative impact due to an indirect causal relationship***. Moreover, our fellow member Ovidio Zabala died when he was crushed by a rock on 1 August 2016, at Playa Mote in the municipio of Ituango. That was after they began what they called the forest exploitation pilot in this area, with the subsequent instability caused by the felling of trees on such a steep terrain. They disregarded the calls we made as communities about the risk this created for the community located below. Given that health issues are part of the IDB policy, an in-depth investigation of these impacts on the population is needed (paragraphs 6.65 and 6.67).

Taking into account the policies of the IDB and IDB Invest about conservation of biodiversity, it is important to mention some critical examples in this regard, such as the fact that preserved species and nationally protected species were felled without authorization or permits from Colombian authorities.

“During the visit conducted between 19 and 21 April 2017, the technical team evaluating the request to lift the national preservation status related to file ATV-534 verified that, below the maximum planned elevation for the reservoir basin, toward the northern sector, there was forest exploitation of a strip approximately 60 meters wide, between the coordinates X:824.866 - Y:1.278.938 and X:824.865 - Y:1.278.915, in which the trees felled and pieces of wood included lichen species under national protection. The intervened associated covers are part of gallery forest and fragmented forest, according to the Company study, in which lichens were determined to be from the Arthoniaceae, Chrysothricaceae, Coccocarpiaceae, Collembataceae, Lecanoraceae, Parmeliaceae, Pertusariaceae, Physciaceae, Pyrenulaceae, Ramalinaceae, and Thelotremaaceae families. The exploitation activities that the Company is conducting are associated with the removal of vegetation that demarcates the maximum elevation of the area to be intervened in the execution of the hydropower Project. These forest species are in turn fortuitous hosts for vascular and nonvascular species subject to national preservation. Pursuant to the foregoing and taking into account that the Directorate of Forests, Biodiversity, and Ecosystem Services is an environmental authority regarding extraction of resources, lifting of preservation status, access to genetic resources, and the international trade in endangered species of wild fauna and flora, the recommendation is to suspend, within the area of the reservoir for the hydropower Project, all interventions of vascular and nonvascular species subject to protection by this Ministry.”⁷⁵

⁷⁵ Colombian Ministry of Environment and Sustainable Development. Resolution 2433 of 24 November 2017.

At this time, we are unfamiliar with the studies referred to in the document regarding cumulative impacts.

The issue of the interruption of the Cauca River's ecological flow due to successive Project emergencies is of particular attention. This is a very significant environmental impact that will have deep effects on water dynamics, flora and fauna populations, and overall, the health of the watershed. This is being investigated by Colombian environmental authorities. We ask that their findings be taken into account as a source for the Review.

Despite the documents identified in paragraph 6.87, the analysis of environmental alternatives was not properly prepared. Likewise, we request that the analysis of environmental impacts be completed by including the loss of connectivity between protected areas affected by the Project and its effects on the flora and fauna.

We appreciate the reference to IDB Invest's Environmental and Social Sustainability Policy with respect to "in the context of all social aspects of the projects it finances, including human rights," as well as to Performance Standard 1, which sets forth that "[i]n limited high risk circumstances, it may be appropriate for the [C]lient to complement its environmental and social risks and impacts identification process with specific human rights due diligence."

As paragraph 6.55 indicated, we consider it relevant to investigate the acts or omissions of IDB Invest "in order to ensure that the risks associated with potential human rights violations and with a deteriorated conflict and violence situation have been properly mitigated and assessed, and that the measures necessary to prevent and mitigate them have been implemented." We agree that it is important to highlight human rights considerations in the Review, and ask that this be done comprehensively, in accordance with the elements that we as Requesters provided in the complaint and later on.

Paragraph 6.47 mentions the loss of 3,800 hectares of mostly tropical dry forest. One of the many Project modifications expanded the affected area to 4,500 hectares, a significantly large difference of 800 hectares.

Regarding paragraph 6.49 on cultural heritage, in our Request we emphasized gold panning in the Cauca River Canyon as a nonmaterial cultural heritage for the nation. This is not reflected in the draft document, and we request that it be included.

Increase in conflicts and insecurity in the Project area

In paragraph 6.69, IDB Invest indicated that the private security forces retained for the Project do not use weapons. That is completely false. Not only do we have photographs of this and dozens of witness statements, we also declared this before the competent authorities in the cases in which we suspected they were responsible for forced disappearance attempts, such as against Isabel Cristina Zuleta. During this incident, a safe-conduct document was found, which in Colombia is the document that allows civilians to carry weapons. This type of evidence and others can be provided for the investigation if it gets approved by the Board and the latter wishes to know the reality of the consequences of its investments in Colombia. The statement that "there are no plans to use security forces provided by the government" lacks truthfulness, since there is evidence of military agreements since 2010 to date, meaning, long before the investment by IDB Invest.

The distinction that the Company makes between private security contractors and law enforcement does not exempt it from complying with the standards of proper behavior and

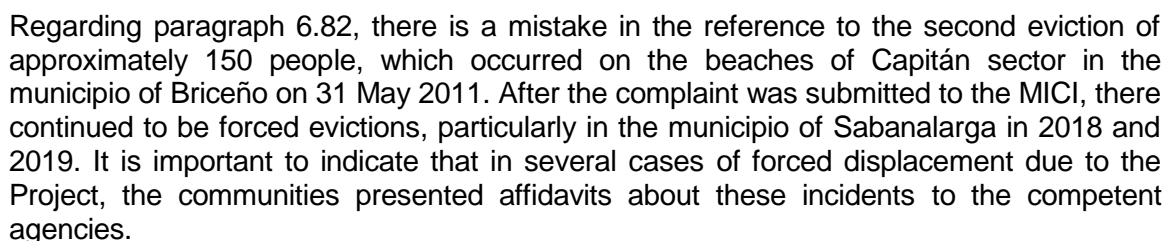
due diligence with respect to security issues and violations of human rights. While these standards could have some differences in terms of the position as guarantor and the national responsibility regimes, the Client, in any case, has the duty to document the risks, internally investigate complaints of abuse, and submit to public authorities the applicable complaint. Significantly, this is a duty pursuant to Colombian law.

In this case, the allegations should be taken even more seriously because of complaints of collusion between the Company's private security and law enforcement to commit abuses that, pursuant to national and international law, are equivalent to violations of human rights.

In this regard, we request that the new dynamics of violence in the region be taken into account. This includes considering the changes in actors and variables in the armed conflict after the peace process with the FARC-EP; the persistence of drug trafficking and the mobility corridors controlled by interested parties; the emergence of new forms of repression of social movements, particularly those opposing the Project; and the added impact that the emergency caused by Hidroituango has had on these contexts.

We also request that the Review of this issue take into account independent and direct sources, not just the national government and the Company. This information can also be provided by national and international organizations, the news media, and the communities themselves. We also reiterate the importance of having the Requesters' security considerations be taken into account when the Review is conducted.

Regarding paragraph 6.72, as an update on the attacks against members of Movimiento Ríos Vivos, which opposes Hidroituango, we submit the following infographic that details the rapid increase in attacks, including many that occurred after the complaint was filed with the MICI. During 2018: 27 threats; 2 murders of Movimiento members; 6 murders of family members of Movimiento members; 1 attack with explosives; 1 case of mass unlawful detention of more than 300 people by EPM; 6 cases of attacks against life and physical safety by Hidroituango, resulting in 2 dead and 6 injured; 10 cases of discrimination for belonging to Ríos Vivos; more than 600 Movimiento members displaced by the Project; 20 cases of being followed and surveillance; 18 cases of stigmatization and singling out; 4 cases of harassment; etc. See infographic:



Regarding paragraph 6.93 about what caused the emergency. For us as Requesters, it is clear that the cause was inadequate Project management and the acceleration of the works without technical criteria for the sole purpose of trying to finish them as quickly as possible, not only the geological elements related to choosing the site where the works would be executed. It was actions such as obstructing the tunnels with cement before finishing the wall without any authorization from Colombia's environmental authorities and without weighing the consequences, the construction of an intermediate outlet tunnel without finishing the related studies, that is, without studies, and, above all, the lack of ethics and the intention of preventing delays in the works due to the complaints we filed regarding the effects that flooding the locations of mass graves and bodies buried in the area would have on the rights of victims. The Inspector General's Office made statements about this situation during a hearing regarding forced disappearances in the Hidroituango case held on 8 and 9 May by the Inter-American Commission on Human Rights <https://www.youtube.com/watch?v=VIXvxohUei4>. At this hearing, the honorable commissioners insisted that it was important for the schedule of the works to be coordinated with the search for the disappeared. By then, a total of 159 bodies had been found as a result of that search in the area affected by the Project. See map in the context chapter.

Regarding paragraph 6.94, at no time did the communities see a visit from the IDB to the region, much less to the formal and informal shelters where there are families who are part of Movimiento. The description as "decent conditions" is insulting given the overcrowding, lack of sanitary conditions, abuses of privacy rights, conditions in which food is rotting, lack of food in informal shelters like those in Ituango and Sabanalarga, lack of health and mental care services for the population, and many other situations that continue to unfold.

Regarding paragraph 6.95, as of June 2018, Colombia's environmental authorities ordered that work be suspended in Hidroituango and that a determination be made on whether the megaproject is viable. So far, a response has not been obtained for the communities or the authorities. EPM tried to distort the study required by the ANLA and paid an enormous amount of money for a study that it called Cauca - physical root, to allegedly establish the cause of the tragedy caused in April 2018. This study does not inspire confidence, not even from the Board of Directors of Hidroituango. The contractor was not really independent and responded to the interests of EPM. Among the victims, this does not inspire confidence, not just because of the lack of independence but because it is being called a "physical" study in which they stated that they were unable to conduct physical tests. The conclusions are based on documentation provided by EPM and calculations from the contractor. The reason for not taking samples or making direct observations was the flooding created by the damming. Our conclusion is that, as the previous environmental minister stated during the emergency, EPM should have built the works necessary to empty the reservoir and therefore conduct all the independent studies needed to once again instill confidence and security in the area—that there would be no mountain landslides, a dam breach, a dried-up river, torrential floods, floods, or any other type of disaster. However, none of this has happened, and uncertainty and anxiety have the economy of a great region at a standstill. The banks are not lending, property values have fallen to zero, and the worst part is that we, the communities, have lost our way of life.

Regarding paragraphs 6.96 and 6.100 on access to information related to the emergency, Movimiento Ríos Vivos asked the Inter-American Commission on Human Rights for

provisional remedies regarding information about Hidroituango. Not only is it not being provided truthfully and in a timely manner to victims, but it has also been censored, as the Foundation for Freedom of the Press in Colombia warned in an alert.

Regarding paragraph 6.99, the Company lied to IDB Invest, and the latter did not make the necessary inquiries, allowing EPM to lie by stating that the emergency was the result of “force majeure events” consisting of heavy rainfall and landslides. This has been sufficiently demonstrated in Colombia at the time this document is being written. But the seriousness of the lie is that it means that IDB Invest does not have benchmarks to compare against its own studies the statements of the Company and passes them on, in this case to the MICI, as alleged truths. This makes us think that if it happened with something as serious as the risk to thousands of people, it has also occurred with other issues. The Attorney General's Office just requested provisional remedies for 60,000 people who face serious environmental risks. The Comptroller General's Office, in the report mentioned in the draft document, stated that there were at least 26,000 people affected by the emergency. We, at Movimiento, declare that more than 300,000 people have been affected by Hidroituango in one way or another.

With respect to management of the emergency, given the seriousness and urgency of this component of the Review, we kindly request that this element be analyzed separately and according to all the Relevant Operational Policies alleged in the complaint and included in this draft. The emergency is a chronic feature of the Project's design and implementation, and should be considered comprehensively to develop a set of relevant and timely recommendations.

The emergency and its management summarize a good portion of the Project's performance defects: insufficient assessment and mitigation of environmental impacts; poor due diligence on human rights issues; lack of participation, consultation, and access to information; a limited approach for cumulative impacts; and poor description of the area of influence and universe of affected individuals.

Specifically, access to timely information about risk management and disaster prevention threatens the lives of many people, including hundreds of the Requesters, and constitutes the issue in the complaint that needs to be addressed most urgently.

About the causes or “technical reasons” that created the emergency situation, first, we would like to reiterate that this is not a natural disaster. On the contrary, this is a situation that resulted from a process of decisions made by the Client and other parties. The Company itself has detailed information from specialized studies. Not all of these have been made public, despite requests by the Inspector General's Office.⁷⁶ This includes the study prepared by the U.S. Army Corps of Engineers.⁷⁷ Therefore, we encourage the MICI to request these documents from the Company, as part of its investigation methodology, and to assess them as a source.

⁷⁶ El Tiempo newspaper. “Procuraduría pide a Hidroituango revelar todos los informes reservados.” <https://www.eltiempo.com/justicia/investigacion/la-procuraduria-pide-a-hidroituango-revelar-todos-los-informes-reservados-327726>.

⁷⁷ Noticias Caracol. “Expertos de EE. UU. habrían recomendado parar Hidroituango, ¿por qué no se les hizo caso?” <https://noticias.caracoltv.com/codigo-caracol/expertos-de-ee-uu-habrian-recomendado-parar-hidroituango-por-que-no-se-les-hizo-caso>.

We also reiterate that it is essential for the MICI to take into account in its analysis of this element the technical studies that the Company has in its possession. We also request a specific review of the elements related to access to information and participation in the Unified Command Post (UCP), because they are related to the Relevant Operational Policies on risk management and management of the contingency.

Regarding paragraph 6.113: In relation to the requirements of Operational Policy OP-703 and Performance Standards 1, 3, 6, and 8

OTHER QUESTIONS TO BE INCLUDED

- Did IDB Invest ensure that the population censuses were updated after 2010?
- Did IDB Invest ensure that the environmental and social measures taken were applicable, sufficient, effective, and efficient to mitigate, offset, and repair the Harm caused to the population or to differentiate their characteristics and vulnerability levels?
- Did IDB Invest ensure that the cumulative impact studies were updated in accordance with international best practices?
- Did IDB Invest ensure that the affected parties were consulted at least twice during Project preparation?
- Did IDB Invest ensure that the investigation of environmental and social risks was supplemented with a due diligence process for human rights?
- Did IDB Invest require the implementation of additional measures to avoid, minimize, and/or mitigate direct or indirect social risks, having identified the complexity of the social context and conflict-prone nature of the area?
- On the issue of water quality and access to water for communities, did IDB Invest monitor, independently from the Client, the quality of water in the reservoir since its damming to date, and did it monitor the supply or shortage that the Project could have generated for the population?
- What have been the measures taken by IDB Invest to avoid water pollution due to the discharge of excavation material, wastewater, and other pollutants?
- What type of independent assessment has the IDB conducted regarding the impacts on human health due to vectors for the area's population, particularly because it is a tropical area and endemic for multiple diseases?

Regarding paragraph 6.114: In relation to the requirements of Performance Standard 4

QUESTIONS TO BE INCLUDED

- Did IDB Invest ensure that the Project did not result in retaliation against the population that declared its opposition to the work?
- Did IDB Invest ensure that the Project did not have any relationship with illegal groups that operated or operate in the region?
- Did IDB Invest ensure that the development of the works would not exacerbate armed conflicts in the region?
- Did IDB Invest ensure that the Project's implementation would not cause violations of human rights in the communities?

- Did IDB Invest conduct any type of monitoring regarding whether the population that declared themselves to be affected and to oppose the Project received care and treatment?
- Did IDB Invest require the implementation of additional measures to avoid, minimize, and/or mitigate direct or indirect social risks, having identified the complexity of the social context and conflict-prone nature of the area?
- Was money from IDB Invest used to build military bases, establish agreements with law enforcement, and/or retain private security companies? Did IDB Invest verify the characteristics of this contracting and agreements in terms of respect for human rights?

Regarding paragraph 6.115: In relation to the requirements of Operational Policy OP-710 and Performance Standard 5

- Did IDB Invest ensure that there were no forced evictions, even when people did not have rights over the land?
- Did IDB Invest require the Client to conduct or update analyses of alternatives during Project preparation?
- Did IDB Invest ensure the repetition of the census due to the significant time that had lapsed between completion of the census and implementation of the resettlement plan?
- Did IDB Invest ensure the satisfaction of the affected communities with the resettlement and compensation measures executed by the Client?
- Did IDB Invest ensure that there were no affected communities excluded from the census, and that they were duly described? Did it verify the identity of census takers, ensure that the methodologies were the most appropriate, and ensure that the communities that were victims of the armed conflict were included?
- Did IDB Invest ensure that the methodology for community notifications regarding consultations and the census was the most appropriate and responded to the dynamics of the context?
- Did IDB Invest verify the information provided by the Company against other sources of information to determine its veracity?

Regarding paragraph 6.116: In relation to the requirements of Operational Policy OP-704 and paragraph 11 of Performance Standard 4

QUESTIONS TO BE INCLUDED

- Did IDB Invest require from the Client a contingency plan in accordance with the magnitude of the Project and the possible maximum risks?
- Did IDB Invest know about EPM's request to file an insurance claim in the case of Hidroituango, and did it take any action in this regard?
- Did IDB Invest conduct independent investigations to determine the veracity of the information provided by the Company regarding the disaster risks?

- Does IDB Invest know for certain the short-, medium- and long-term risks associated with the construction of Hidroituango and the population that could be affected?
- Did IDB Invest verify, on its own, compliance with the risk management protocols, the plans, and the care for the communities in fulfillment of its internal policy?
- Did IDB Invest ensure that all the works that were being built had reliable and qualified studies before they were started?

Regarding paragraph 6.117: In relation to the requirements of Operational Policy OP-761

QUESTIONS TO BE INCLUDED

- Did IDB Invest ensure that measures were established to prevent, avoid, and mitigate adverse impacts and risks of gender-based discrimination for women in the Project's area of influence?
- Did IDB Invest ensure that all impacts generated by the Project would be addressed in a differentiated manner?
- Does IDB Invest know the particular concerns of women in relation to social and environmental impacts?

Methodology

To respond to these questions, the period of time for analysis should be prior to the involvement, because it is prior to the approval of the financing that the substantial elements indicated above should be verified. To verify whether IDB Invest took certain steps, it is necessary to analyze the entire period of the Project, including its prior phases during which, for example, the census of affected parties was determined.

With respect to the proposal for a causal analysis if noncompliance is found, it is necessary to use a complex noncausal direct analysis methodology, to establish underlying links that are not necessarily evident, with long timeframes and multidimensional relationships.

For the one-on-one interviews, it is necessary to indicate that in Colombia, there are an increasing number of independent academics conducting research on each of the elements included in the questions to be answered. Also, national, regional, and departmental State and government officials have various positions on the issues, including the governor of Antioquia.

The documentary review should include the documents from the Requesters or the ones they submit to the MICI.

It is crucial that the experts to be selected be independent and not have any relationships with the IDB or IDB Invest, and much less with EPM, the Antioquia Departmental Government, the Colombian government, or its State institutions. The Requesters should be consulted about the experts.

Sincerely,

Communities affected by Hidroituango organized as Movimiento Ríos Vivos