



PUBLIC
SIMULTANEOUS DISCLOSURE

DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-CII-GU-2018-0136
ELIGIBILITY DETERMINATION MEMORANDUM

GENERADORA SAN MATEO S.A. AND GENERADORA SAN ANDRÉS S.A.
PROJECTS

(GU3794A-01 AND GU3798A-01)

This document was prepared by Victoria Márquez Mees, MICI Director, with support from Esteban Tovar, Registration Specialist.

This document is being made publicly available simultaneously with its distribution to the Board for information.

NOTE

On the MICI Registration Process, Eligibility Determination Analysis, and Public Registry

The registration process begins when the Independent Consultation and Investigation Mechanism (MICI) receives a Request from Requesters alleging that they have suffered, or may suffer, harm due to actions or omissions of the Inter-American Development Bank Group (IDB Group) that may constitute a failure to comply with one or more of its Relevant Operational Policies within the context of a Bank-financed Operation.

In the Registration Phase, which lasts five business days, the MICI verifies that the Request contains all information required for processing and that it is not clearly linked with any of the exclusions that restrict the MICI's actions. After a Request is registered, Management has the opportunity to provide its perspective on the allegations made in the Request, which must be sent to the MICI within 21 business days after Registration in the form of a document known as "Management's Response."

Once it has received the Response, the MICI initiates the eligibility determination analysis process, which involves reviewing the Request against the eligibility criteria established in its Policy to determine whether or not the Request is eligible and whether it can be accepted for processing. This determination of eligibility is neither an assessment of the merits of the Request and/or the issues raised therein, nor is it a determination of the IDB Group's compliance or noncompliance with its Relevant Operational Policies.

If the Request is declared eligible, the Request will be sent for the phase selected by the Requesters; otherwise, the process will be deemed concluded.

All Requests received by the MICI and the processing thereof will be recorded in its online [Public Registry](#). All public information generated in the processing of a case is disclosed in the case files.

The MICI does not award compensation, damages, or any other similar benefits. It does not have the power to suspend disbursements or halt operations.

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LINKS

1. Request MICI-CII-GU-2018-0136 in MICI-IDB Invest's Public Registry
<https://www.iadb.org/en/mici/request-detail-iic%2C19959.html?ID=MICI-CII-GU-2018-0136&nid=23508>
2. IDB Invest Management's Response to Request MICI-CII-GU-2018-0136 in reference to the Generadora San Mateo S.A. and Generadora San Andrés S.A. Projects – (GU3794A-01 and GU3798A-01) and Annex
<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-275>
<http://www.iadb.org/document.cfm?id=EZSHARE-1567711961-245>
3. IDB Invest website for the Generadora San Mateo S.A. and Generadora San Andrés S.A. Projects – (GU3794A-01 and GU3798A-01)
<https://www.idbinvest.org/en/Projects/generadora-san-mateo-sa>
<https://www.idbinvest.org/en/Projects/generadora-san-andres-sa>
4. Environmental Impact Assessment for the Generadora San Mateo S.A. and Generadora San Andrés S.A. Projects – (GU3794A-01 and GU3798A-01)
<https://www.idbinvest.org/es/download/6175>
<https://www.idbinvest.org/es/download/6176>
<https://www.idbinvest.org/es/download/6177>
<https://www.idbinvest.org/es/download/6178>
<https://www.idbinvest.org/es/download/6179>
<https://www.idbinvest.org/es/download/6180>

EXECUTIVE SUMMARY

The Generadora San Mateo S.A. (GSM or Pojom II) and Generadora San Andrés S.A. (GSA or Yahuiltz) Projects are two hydroelectric plants currently under construction in the vicinity of Ixquisis, a small town in the municipio of San Mateo Ixtatán in the northwestern department of Huehuetenango, Guatemala, at approximately 3 km from the Mexican border and 438 km from Guatemala City.

IDB Invest supports the Projects through two loan operations approved by the Board of Executive Directors of the Inter-American Investment Corporation (IIC) on 25 September 2013. The first is a loan operation for US\$7 million to Generadora San Mateo S.A. to finance the construction of a run-of-river hydroelectric plant with an installed capacity of 20 MW that will use the waters of the Negro and Pojom rivers; the second is a loan operation for US\$6 million to Generadora San Andrés S.A. to finance the construction of a run-of-river hydroelectric plant with an installed capacity of 10.65 MW that will use the waters of the Primavera, Varsovia, and Palmira rivers. Both Projects are in areas adjacent to the Ixquisis community. The Projects will conduct the energy that is generated to the national grid by constructing an associated transmission line and substations; these include a 6-km underground line between the communities of Ixquisis and Nuevo San Mateo, and a 26.14-km aerial transmission line to San Mateo Ixtatán. Their construction began in July 2013; however, due to the sabotage of facilities and equipment that has taken place since 2014, the work on both Projects has been suspended.

On 6 August 2018, the MICI received a Request related to the IIC loan operation for the abovementioned Projects from local authorities and individuals from Ixquisis, Bella Linda, Yulchen Frontera, Nuevo San Mateo, and Pojom. They have asked that their identities remain confidential due to fear of retaliation. The Interamerican Association for Environmental Defense and the International Platform against Impunity are acting as the Requesters' Representatives before the MICI.

According to the Requesters, IDB Invest Management has not complied with its Operational Policies, nor with the International Finance Corporation Performance Standards. They allege that, as a result, they have suffered harm in connection with the design, construction, and future operation of the Projects.

The Requesters allege that the Projects have had social, environmental, and gender-based impacts on the residents of the area of influence, especially on the indigenous population. They maintain that the prior consultation procedures that are required for Projects affecting the interests and territory of indigenous peoples have not been followed.

Regarding allegations of harm, the Request describes several impacts on the Requesters' living conditions, mainly due to the possible contamination of water sources on which the area's residents rely for agricultural and human use. In terms of possible environmental impacts, they outline risks to the region's fragile ecosystem and the impact on its flora and fauna. Furthermore, the Requesters express concern about how several sites of great social and cultural importance will be affected.

According to the Requesters, these harms disproportionately impact women due the Projects' lack of gender perspective. Lastly, the Request describes the context of high risk and insecurity that is affecting the area, as well as the erosion of the fabric of family and community life, and it recounts instances of violence between people who support the Projects and those who are opposed.

The Requesters express their interest in having their case processed through the Compliance Review Phase, if it is deemed eligible.

During the registration-eligibility stage, in addition to reviewing the relevant documentation, the MICI held conference calls and meetings with IDB Invest Management, the Requesters' Representatives, civil society organizations, and officials from international agencies to better understand the context of the Projects and the allegations presented in the Request. The MICI conducted a mission in Guatemala from 20 to 26 January 2019 to meet with different stakeholders and visit the Projects' area. The MICI team was able to gather first-hand information during their visit to Guatemala City, the city of Huehuetenango, and the town of Ixquisis.

After analyzing the relevant information, the MICI Director, in accordance with Section G of the MICI-IIC Policy (document [CII/MI-1-1](#)), concludes that this Request **is eligible** as it meets the Policy's eligibility criteria.

The allegations relating to the lack of a prior, free, and informed consultation process, pursuant to the International Labour Organization's Convention 169 for projects impacting indigenous communities, will be excluded from the Compliance Review Process because this matter is currently under judicial review.

This determination of eligibility is neither an assessment of the merits of the Request and the issues raised therein, nor is it a determination of IDB Invest's compliance or noncompliance with its Relevant Operational Policies. The activation of the MICI process does not halt the Project or its disbursements.

In accordance with the Requesters' petition, the MICI Director will refer the case to the Compliance Review Phase so that processing can begin thereunder.

This Memorandum is being sent directly to the Requesters and Management, for their information, on 31 January 2019. It will be distributed for the same purpose to the Board of Executive Directors of the IIC, and it will be made public to interested third parties on the [Public Registry](#) as soon as the English version is available.

I. THE PROJECTS¹

A. Geographic and social context

- 1.1 The Generadora San Mateo S.A. (GSM or Pojom II) and Generadora San Andrés S.A. (GSA or Yahuiltz) Hydroelectric Projects (the “Projects”) are located in the vicinity of Ixquisis, a small town in the municipio of San Mateo Ixtatán in the northwestern department of Huehuetenango, Guatemala, approximately 3 km from the Mexican border and 438 km from Guatemala City. The distance between Guatemala City and the municipal capital is 387 km along routes CA-1 and 9N, and the town of Ixquisis is separated from the municipal capital by 36 km of unpaved road.

Figure 1
Map of departments of Guatemala



Source: National Statistics Institute of Guatemala and Gifex.com

¹ Information taken from the Bank's website and from public documents on related operations. These documents are available in the links section of this Memorandum.

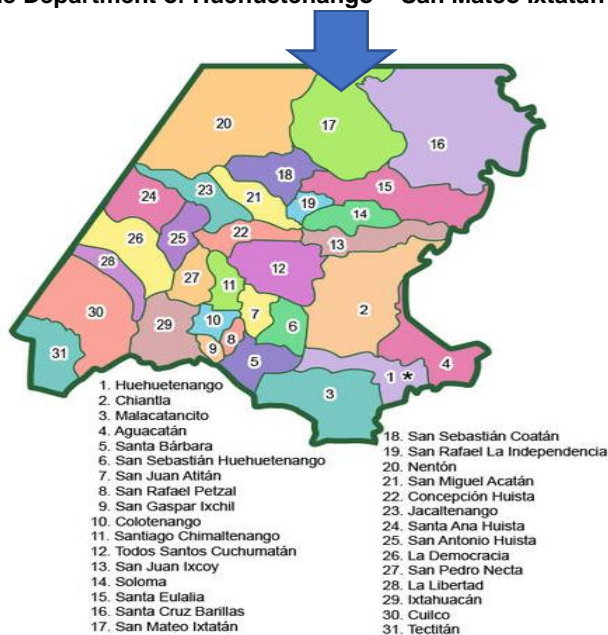
- 1.2 This region's river system forms a drainage basin that empties into the Gulf of Mexico. The system includes the Negro (also known as the Chixoy),² Pojom, Primavera, Varsovia, and Palmira rivers; the largest are the Negro and Pojom rivers, which cover an area of 12,150 km² and 813 km², respectively.
- 1.3 According to data from the Municipal Development Plan (2010), the municipio of San Mateo Ixtatán has more than 42,000 residents distributed throughout villages, homesteads, and cantons in high mountain areas within the Sierra de los Cuchumatanes mountain range. This area is well suited for crops such as maize, beans, cardamom, coffee, and sugar cane, among others, as well as forestry development for economic and sustenance purposes. Table 1 includes indicators from the municipio of San Mateo Ixtatán.

Table 1
San Mateo Ixtatán indicators

Indicator	Percentage of the Total Pop.
Rural population	69%
Urban population	31%
Indigenous population	96% (Chuj) ³
Women	52.5%
Men	47.5%

Source: San Mateo Ixtatán Municipal Development Plan (2010).

Figure 2
Map of the Department of Huehuetenango – San Mateo Ixtatán Municipio



Source: Gifex.com

² In the 1980s the IDB and World Bank financed the construction of the Chixoy hydroelectric plant on this same river, displacing several communities. The resettlement process led to multiple protests that were repressed using excessive force and culminating in what is now known as the Río Negro Massacres.

³ The *Q'anjob'al* and *Atiteco* peoples also have a significant presence in the municipio of San Mateo Ixtatán.

- 1.4 San Mateo Ixtatán has highly marginalized economic indicators that fall below the extreme poverty line, high infant mortality and malnutrition rates, poor educational coverage, low electrification rates, and limited access to health programs (Source: United Nations Development Programme).
- 1.5 Historically the municipio has been afflicted by several types of conflict, especially the internal armed conflict (1960-1996) that hit the area hard and directly impacted its people as a result of disappearances and the forced migration of many families. The region is also characterized by a high level of insecurity due to the presence of criminal organizations operating near the Mexican border.
- 1.6 Many traditional organizations and authorities have disappeared as a result of the displacement of the area's inhabitants during the internal armed conflict, and this has eroded the region's social fabric. In addition, the area's different religious sects, organizational forms, and ancestral practices hold significant influence. Furthermore, the communities have adopted other organizational forms when managing projects that, to an extent, respond to the logic of the State or development agencies operating in the region. There are countless sectoral (water, education, women) and general development committees that play an important role in managing support to improve families' living standards and creating spaces in which to discuss issues that are relevant to the community. Currently, in compliance with the Peace Accords, institutions and communities are undertaking special activities that promote traditional organizations and authorities; as a result, some initiatives are emerging that are helping to reclaim and revitalize Mayan culture through cultural activities, fora, legal processes, and the restoration of the credibility of ancestral knowledge. The new Development Council Law is facilitating social and citizen participation and, in this context, the Municipality of San Mateo Ixtatán has created first- and second-level Community Development Councils to work with other civil society actors (productive, political, indigenous and women's organizations, and development agencies).

B. The GSM and GSA Projects and Loan Operations

- 1.7 On 25 September 2013 the Board of Executive Directors of the IIC⁴ approved the following two loan operations in support of the Projects:

Table 2
Loan operations

Project	Project Number	Amount of the A-loan
Generadora San Mateo S.A.	GU3794A-01	US\$7 million
Generadora San Andrés S.A.	GU3798A-01	US\$6 million

- 1.8 The Generadora San Mateo S.A. loan operation finances the construction of a run-of-river hydroelectric plant with an installed capacity of 20 MW located in the municipality of Ixquisis. The GSM Project will use the waters of the Negro⁵ and Pojom rivers and will have annual generation capacity of 120,087 MWh with two Peltron turbines of 10 MW each.
- 1.9 The Generadora San Andrés S.A. loan operation finances the construction of a run-of-river hydroelectric plant with an installed capacity of 10.65 MW located in the municipality of Ixquisis. The GSA Project will use the waters of the Primavera, Varsovia, and Palmira rivers

⁴ The Boards of Governors of the IDB Group decided, at their March 2015 Annual Meeting, to merge the IDB's and IIC's private sector operations into a "new" IIC. The merge-out took effect on 1 January 2016. In 2018, the IIC was rebranded as IDB Invest.

⁵

and will have annual generation capacity of 44,300 MWh with two Francis turbines of 5 MW each.

- 1.10 The Project will conduct the energy that is generated to the national grid by constructing a transmission line and substations connecting the power plants, located near the Yahuiltz river, to the switching station in the town of San Mateo Ixtatán. Electricity will be conducted from the plants along approximately 6 km of underground line to an elevating substation that will be built between Ixquisis and Nuevo San Mateo, and then along a 26.14-km aerial transmission line to the national grid connection in the municipal capital.
- 1.11 The Projects are adjacent to each other and are being developed by Energía y Renovación S.A. (the “Client”). Their construction was planned simultaneously.
- 1.12 The IIC classified the Projects, including the transmission line, as category B operations because they could produce “certain effects that may be avoided or mitigated by following generally recognized performance standards, guidelines, or design criteria. The main environmental and labor considerations related to the Project are: labor and working conditions; occupational health and safety and emergency response; pollution prevention; biodiversity/flora and fauna; and social and community issues.”⁶
- 1.13 Construction of the Projects began in July 2013. However, in May 2014 the GSM Project’s facilities were set on fire and several other acts of sabotage ensued; therefore, both Projects are currently suspended.

II. THE REQUEST⁷

- 2.1 On 6 August 2018, the MICI received a Request related to the aforementioned IIC loan operations for implementing the Projects from local authorities and individuals from Ixquisis, Bella Linda, Yulchen Frontera, Nuevo San Mateo, and Pojom. They have asked that their identities remain confidential due to fear of retaliation.
- 2.2 The Interamerican Association for Environmental Defense and the International Platform against Impunity are serving as their authorized Representatives.
- 2.3 Below is a summary of the content of the Request, as well as additional information that was gathered during the analysis period. Public information is available in the MICI’s Public Registry (case file [MICI-CII-GU-2018-0136](#)).
- 2.4 According to the Requesters, IDB Invest Management has not complied with its Operational Policies, nor with the International Finance Corporation (IFC) Performance Standards. They allege that, as a result, they have suffered harm in connection with the design, construction, and future operation of the Projects.
- 2.5 The Requesters allege that the Projects have generated social, environmental, and gender-related impacts that have adversely affected the residents in the area of influence, especially its indigenous peoples. They specifically allege that the prior consultation procedures required for projects affecting indigenous peoples’ interests and territory were not followed.

⁶ <https://www.iic.org/en/Projects/guatemala/gu3798a-01/generadora-san-andres-sa>

⁷ The Request and Annexes are available in the links section of this Memorandum.

- 2.6 In terms of allegations of harm, the Request outlines several impacts on the Requesters' living conditions, mainly due to the potential contamination of water sources by machinery, construction activities, and the Projects' eventual operation. The region's inhabitants rely on these water sources for agriculture and human consumption.
- 2.7 The Request also describes impacts on several sites that are of great social and cultural importance in light of the close relationship that exists between the area's natural resources and communities. Specifically, it is alleged that the indigenous peoples' culture and traditional ways of life have been impacted and that sacred and archeological sites located near the Projects have been harmed.
- 2.8 Regarding environmental impacts, the Requesters allege that an adequate and complete environmental assessment for a fragile ecosystem was not completed. Specifically, they affirm that the inadequate treatment of waste from machinery and sanitary facilities during the Projects' construction stage and future operation will negatively impact flora and fauna species in the Ixquisis microregion.
- 2.9 The Requesters describe the high level of risk and insecurity that characterize the area and that they link to the Projects' development. They describe the erosion of the fabric of family and community life, and they also recount instances of violence between residents who support the Projects and those who are opposed, including a series of homicides, death threats, and violent evictions that have taken place since 2014. Furthermore, the Requesters describe the criminalization of communities that have openly opposed the GSM and GSA. In terms of violent incidents, they state that they have alerted the Inter-American Commission on Human Rights whose staff carries out a site visit to Ixquisis in 2017 as part of preparing a report on the human rights situation in Guatemala.⁸
- 2.10 The Requesters further allege that the abovementioned impacts have been greater for women due to the erosion of the region's social fabric and the violence and high level of insecurity directly affecting their daily activities and preventing them from freely moving around the area. They state that the negative impacts on water sources have also had a differentiated impact on women because they use the rivers to meet the economic and dietary needs of their families.
- 2.11 The Requesters also repeatedly assert that information relating to the Projects is not adequately available in formats and languages that are appropriate for the region's population.
- 2.12 In terms of contact with Management, the Requesters note that their Representatives communicated with IDB Invest in July and September of 2016 via emails, telephone calls, and meetings, at which time they made Management aware of the situation in the Project area and their concerns about social and environmental impacts. They point out that in their last communication they invited Management to visit the area to speak with opposing communities and Management indicated that it would respond. As of the date the Request was received, there had been no response to that invitation.
- 2.13 The Requesters state that they have not initiated legal proceedings in response to the IDB Group's alleged noncompliance with its Operational Policies, but that they have filed Requests for Amparo with the Supreme Court of Guatemala (Amparo 1031-2017, Amparo 1044-2017, and Amparo 1265-2017). They add that the Amparos filed by members of Ixquisis's indigenous communities allege violations of their basic rights by the Ministry of Environment and Natural Resources and the Ministry of Energy and Mines as a result of the

⁸ Inter-American Commission on Human Rights (2017a). Human Rights Situation in Guatemala <http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.pdf>

Environmental License and Authorization Contract that these ministries issued for the Pojom II Hydroelectric Project.

- 2.14 Lastly, the Requesters express their interest in having the MICI process the case through the Compliance Review Phase, if it is deemed eligible.

III. MANAGEMENT'S RESPONSE⁹

- 3.1 On 13 August 2018, IDB Invest Management was notified of the registration of Request MICI-CII-GU-2018-0136. On 19 September¹⁰ IDB Invest Management submitted a Response outlining their perspective in regard to the issues raised in the Request. The Response is summarized below, and the full text can also be accessed in the links section of this Memorandum.
- 3.2 Management states that, in spite of the insecurity, lack of infrastructure, and history of conflict in the Project area, it has taken the necessary steps to comply with the relevant policies and performance standards, including additional measures for the Environmental and Social Due Diligence process. They note that despite the shutdown of the Projects' construction for more than 20 months, since January 2017, due to several violent attacks against the Projects that included the burning of equipment, Management has continued to closely monitor the social and environmental aspects of the Projects through quarterly visits to the Project sites with the support of officials from the Bank's Country Office in Guatemala. It also asserts that, with the assistance of several units within the Bank, it has mobilized nonreimbursable technical assistance funds to assist with various aspects of the Projects including security, the conservation of biodiversity, and actions to improve the quality of life of the communities.
- 3.3 Regarding the alleged lack of consultation and information, Management responds that it ensured that the consultation process was carried out in a manner consistent with IDB Invest's Policies. It describes the analysis of the social situation and community support that was conducted by IDB Invest staff with the support of the IDB and three independent social experts who were hired for this purpose. The analysis included a review of the 2009 public consultation process and written agreements with the communities and it concluded that there was broad community support for the Projects. The Response also affirms that the Client activated a grievance mechanism and developed a community engagement and participation plan. Furthermore, it highlights the active role of Management and the Client in the peace roundtable "*Mesa de Diálogo por la Paz y el Desarrollo de San Mateo Ixtatán*" established to promote understanding among the different stakeholders.
- 3.4 Management reports that on 16 August 2018 it received a letter from 23 communities in the Project area advising that they do not agree with the claims presented to the MICI and that they are not represented by the community groups and organizations that submitted the Request.
- 3.5 Regarding the impacts on indigenous peoples, Management highlights that it has worked with several experts to assess and monitor the Projects and their relationship with indigenous communities. In coordination with the IDB's Gender and Diversity Division, it has

⁹ IDB Invest Management's Response to Request MICI-CII-GU-2018-0136 in regard to the Generadora San Mateo S.A. and Generadora San Andrés S.A. Projects (GU3794A-01 and GU3798A-01) is available in the links section of this Memorandum.

¹⁰ Once notified, IDB Invest Management requested an extension of five working days to submit its Response, as more time was needed to review additional information.

mobilized technical cooperation funds ([GU-T1270](#))¹¹ to create a strategy to address social conflicts in indigenous communities. The measures outlined include support for agriculture and electrification through public-private partnerships in the Department of Huehuetenango, including the municipio of San Mateo Ixtatán, and assistance for the “*Mesa de Diálogo*” dialogue process.

- 3.6 In regard to the consultation process and its conformity with Convention 169 of the International Labour Organization (ILO), IDB Invest states that it required the Client to carry out a consultation process that was consistent with its Policy, which is aligned with the Convention’s principles.
- 3.7 Regarding cultural and archeological heritage, Management notes that it required the Client to analyze the presence of cultural heritage sites in 2012 and to develop a Chance Finds Procedure to deal with any unexpected findings of archeological remains during the Projects’ construction stage. Furthermore, it had requested that the Client modify the San Mateo Project’s initial design to avoid impacting areas where archeological remains had been identified in the past.
- 3.8 Regarding the allegations of environmental impacts, Management states that the actions taken by Client to prevent the contamination of bodies of water meet the Policies’ requirements. Furthermore, with respect to potential impacts on biodiversity, it required the Client to create a Biodiversity Action Plan that includes the Projects’ mitigation and monitoring strategy in order to protect biodiversity; however, it notes that due to prior human intervention in the area, the impacts are considered minimal. The document also highlights the Projects’ positive impacts, once they are operating, in terms of climate change.
- 3.9 In regard to the differentiated impacts on women, the Response outlines that, as part of the Environmental and Social Due Diligence process, the potential impacts on women were assessed and a Gender Equity Plan was required to ensure that women participate in the consultation process and that they have access to social investments. Management reports that no differentiated impacts based on gender were observed during supervision visits.
- 3.10 Regarding the violent incidents described in the Request, Management reiterates its commitment to respecting human rights and law and order and expresses concern over continued acts of violence and homicides. In response to this heightened risk, from the outset it sought assistance from The Fund for Peace, a non-profit organization that specializes in preventing violent conflict. This organization visited the Project area in 2015 and again in March 2018 to advise the Client on preparing a Security Management Plan that is consistent with international good practices and especially with the Voluntary Principles on Security and Human Rights that are part of Performance Standard 4 which, in turn, is part of IDB Invest’s Sustainability Policy. It reports that this organization assisted IDB Invest in monitoring the Project’s compliance with the requirements related to the Client’s security forces to eliminate the risk of human rights violations.
- 3.11 Management highlights three active judicial processes related to the Projects and analyzes these to determine the applicability of the eligibility requirements established in the MICI-IIC Policy. These processes are outlined in the Table 3 below.

¹¹ The IDB’s Board of Executive Directors approved technical cooperation funds on 8 December 2017 in the amount of US\$3 million for the Republic of Guatemala. The operation is currently being implemented.

Table 3
Summary of proceedings

Proceeding	Authority	Issue	Plaintiff / Respondent
Amparo 1031-2017	Supreme Court of Guatemala	<ul style="list-style-type: none"> • Lack of prior, free, and informed consultation. • Violation of the right to life, justice, and full development. • Violation of the right to due process. • Violation of the right to a healthy environment and ecological equilibrium. • Violation of the principle of legality. 	Representative of the Yulchen Frontera, Pojom, Ixquisis, Bella Linda, and Nuevo San Mateo communities, <i>et al.</i> / Ministry of Energy and Mines; and Environmental Management and Natural Resources Department of the Ministry of Environment and Natural Resources
Amparo 1044-2017	Supreme Court of Guatemala	<ul style="list-style-type: none"> • Violation of Articles 66 and 67 of the Constitution of the Republic of Guatemala. • Violation of the right to consultation pursuant to ILO Convention 169. • Violation of the right to land and territory pursuant to ILO Convention 169. • Violation of the right to free determination pursuant to ILO Convention 169. • Violation of the right to one's own customs and customary law pursuant to the ILO Convention. 	Individuals from the <i>Maya-Chuj</i> community / Ministry of Energy and Mines
Amparo 1265-2017	Supreme Court of Guatemala	<ul style="list-style-type: none"> • Lack of prior, free, and informed consultation in accordance with ILO Convention 169. • Noncompliance with the legal requirements and procedures for granting final authorizations to use public domain assets. 	Representative of the San Mateo Ixtatán, Yulchen Frontera, Yocutla, Ucuya, Captzin, Pojom, Ixquisis, Bella Linda, and Nuevo San Mateo communities, <i>et al.</i> / Ministry of Energy and Mines

3.12 Lastly, Management considers that it has fulfilled the requirements established in IDB Invest's Operational Policies and the IFC's Performance Standards, and it reiterates its willingness to constructively support the MICI throughout this process.

IV. THE MICI'S ACTIONS

4.1 In accordance with Section G of the MICI Policy and the eligibility criteria outlined in paragraph 22, the registration and determination of eligibility process of the Request followed the timeline below:

Table 4
Timeline of MICI actions

Date	Actions
2018	
6 August	Receipt of Request
13 August	Registration of Request and notification of Requesters and IDB Invest Management
17 August	Conference call with Representatives of the Requesters and civil society organizations supporting the Request
1 September – 15 December	Document review and desk work
10 September	Meeting with IDB Invest Management
19 September	Receipt of Management's Response
3 October	Submission of a "Request for Extension for the Determination of Eligibility" to the Board of Executive Directors
4 October	Meeting with the chair for Guatemala on the Board of Executive Directors
11 October	Approval of the "Request for Extension for the Determination of Eligibility"
19 October	Conference call with Representatives of the Requesters and civil society organizations supporting the Request
22 and 24 October	Meetings with the Inter-American Commission on Human Rights and other human rights organizations
28 November	Submission of second "Request for Extension for the Determination of Eligibility" to the Board of Executive Directors
5 December	Approval of second "Request for Extension for the Determination of Eligibility"
2019	
7 - 18 January	Conference calls with representatives of various agencies in Guatemala
20 - 26 January	Determination of Eligibility Mission to Guatemala City, Ixquisis, and Huehuetenango
31 January	Eligibility Determination Memorandum issued

- 4.2 Upon receiving the Request, in addition to reviewing the relevant documentation, the MICI held several conference calls and meetings with the Requesters and their Representatives, IDB Invest Management, civil society organizations, and officials from international agencies, with the goal of better understanding the Projects, the situation in the area, and the allegations presented in the Request.
- 4.3 The MICI conducted a mission to Guatemala from 20 to 26 January 2019 to meet with the different stakeholders and visit the Project area.
- 4.4 Meetings were held with company officials from Energía y Renovación S.A., the dialogue facilitators, ecclesiastical authorities, United Nations officials, representatives from communities supporting the Project, civil society organizations, and the Requesters.
- 4.5 The MICI team visited the town of Ixquisis to meet with the communities filing the Request, gather first-hand information relating to the impacts outlined in the Request, and get to know the Projects' direct area of influence.
- 4.6 The MICI thanks all parties for their willingness to meet with and provide information to the mission team. In particular, it thanks the IDB Group's Security Office for their support and the organizations and people who facilitated transportation to the Projects' remote location.
- 4.7 The MICI highlights that, in addition to the information contained in the Request, additional information has been received by the Requesters, IDB Invest, the Inter-American Commission on Human Rights, and the Client describing multiple violent events that have occurred from 2014 to the date of this Memorandum in the Projects' area of influence.

- 4.8 Residents who support the Projects and those who are opposed all expressed in meetings that they live with fear and anxiety, and they emphasized that they are unable to freely and safely move about the area. In this divisive context, people are accusing one another of violent acts and criminal activities. Women stressed that they are subjected to harassment and lack a safe environment in which to carry out their daily activities.
- 4.9 The MICI condemns all violent actions, no matter by whom or for what motive. It believes that conflicts must be resolved peacefully and in a framework of respect for the human rights of all.

View of the Community of Ixquisis and the GSM Project Area
Photographs are the property of the MICI







V. ELIGIBILITY DETERMINATION ANALYSIS

- 5.1 As part of the eligibility determination process, the MICI considered the information presented in the Request, the Response from Management, several Project-related documents that are attached to the Request, and other relevant documents.¹² Also considered were inputs received from different stakeholders during the eligibility mission and other information relevant to the eligibility criteria established in the MICI-IIC Policy.
- 5.2 In accordance with paragraph 22 of the Policy, the MICI will consider a request eligible if it meets all of the following criteria:
- a. The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the IIC-financed Operation is implemented. If the Request is filed by a Representative, the identity of the Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.
 - b. The Request clearly identifies an IIC-financed Operation that has been approved by the Board or the General Manager.
 - c. The Request describes the harm that could result from potential noncompliance with one or more Relevant Operational Policies.
 - d. The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
 - e. None of the exclusions set forth in paragraph 19 of this Policy apply.
- 5.3 The analysis of Request **MICI-CII-GU-2018-0136** with respect to the eligibility criteria established in the Policy is as follows:
- 5.4 The Request is filed by local authorities and individuals from Ixquisis, Bella Linda, Yulchen Frontera, Nuevo San Mateo, and Pojom who, due to fear of retaliation, have asked that their identities remain confidential. Their authorized Representatives before the MICI are the Interamerican Association for Environmental Defense (AIDA) and the International Platform

¹² These documents are available in the links section of this Memorandum.

against Impunity, and the MICI has written proof of their authorization. Therefore, **criterion 22(a) has been met.**

- 5.5 The Request identifies two loan operations: “Generadora San Mateo S.A.” (GU3794A-01) and “Generadora San Andrés S.A.” (GU3798A-01) approved by the IIC’s Board of Executive Directors on 25 September 2013. Therefore, **criterion 22(b) has been met.**
- 5.6 The Request presents **allegations of harm** that could be linked to potential noncompliance with IDB Invest’s Environmental and Social Sustainability Policy and its Disclosure of Information Policy, as well as IFC Performance Standards 1 through 8, the application of which is required under IDB Invest’s Environmental and Social Sustainability Policy. Therefore, **criterion 22(c) has been met.**

Table 5
Allegations of noncompliance and harm

Allegations of noncompliance	Allegations of harm
Lack of effective processes for prior, free, and informed consultation, in violation of ILO Convention 169	Impacts on family and social fabric in indigenous communities in the Project area
Lack of access to relevant information on the Projects in formats that are appropriate for the communities	Increase in violence and insecurity in the Ixquisis microregion, criminalization, homicides, and displacements
Lack of consideration for indigenous populations’ uses and customs	Impact on the area’s cultural and archeological heritage
Lack of adequate evaluation of social and environmental impacts preventing the complete identification of affected people and the characterization of the impacted population	Impact on the economy and food of the communities that depend on the rivers
Lack of integration of a gender perspective in the Project and of consideration of differentiated impacts on women	Impact on the area’s flora and fauna
No anticipation of the impacts in terms of security	Contamination of the Negro, Pojom Primavera, Varsovia, and Palmira rivers
	Economic displacement and differentiated social impact on women
	Inability to participate effectively and marginalization of some segments of the population

- 5.7 In terms of previous contact with Management, the Request describes several communications that took place in 2016 between the Representatives of the Requesters and IDB Invest officials. During the mission, the MICI received a copy of the communications and was informed that Management had said it would respond to an invitation to visit the GSM area and speak with the communities. To date the Requesters have not received a response to this invitation, nor to the concerns that they expressed. Management, in its Response, does not address these communications. **The MICI concludes, based on the documents received, that criterion 22(d) has been met.**
- 5.8 Regarding the exclusions provided in paragraph 19, **the MICI concludes that none of the exclusions contained in subparagraphs 19(a), 19(b), 19(c), 19(e), or 19(f) apply** since the Request does not raise issues that are outside the purview of the MICI; it does include the Requesters’ names and contact information; none of the issues included in the Request have already been reviewed by the MICI; and the operations in question were approved in 2013 and their disbursements have not yet been finalized.
- 5.9 Regarding **exclusion 19(d)** that neither the Consultation Phase nor the Compliance Review Phase would apply to particular issues or matters raised in a Request that are under arbitral

or judicial review in an IDB Invest member country, the MICI was informed by the Requesters and IDB Invest Management of three Requests for Amparo, and the available information was analyzed in order to determine the applicability of this exclusion.

Table 6
Judicial proceedings

Proceeding	Authority
Amparo 1031-2017	Supreme Court of Guatemala
Amparo 1044-2017	Supreme Court of Guatemala
Amparo 1265-2017	Supreme Court of Guatemala

- 5.10 It is important to mention that, in the case of Guatemala, online access to judicial proceedings is limited to those before the Constitutional Court. The documentation relating to the proceedings was provided by the Requesters and verified by the MICI through the [Portal del Sistema de Amparo y Antejuicio](#).
- 5.11 The three Requests for Amparo were merged by the Supreme Court into one proceeding against the Environmental Management and Natural Resources Department of the Ministry of the Environment and Natural Resources (motion to nullify the environmental license granted to Generadora San Mateo) and against the Ministry of Energy and Mines (motion to nullify the ministerial agreements granting the use and domain of land to Generadora San Mateo for the construction of the Pojom II hydroelectric plant). Subsequently, the Constitutional Court separated the Amparo against the Environmental Management and Natural Resources Department from the Amparo against the Ministry of Energy and Mines for reasons relating to the jurisdiction of the Courts charged with resolving these cases.
- 5.12 As a result, there are currently two active judicial proceedings awaiting a ruling: (i) a Request for Amparo against the Environmental Management and Natural Resources Department seeking to nullify the environmental license authorizing the company to build and develop the hydroelectric plant, which is before an Administrative Tribunal, and (ii) a Request for Amparo against the Ministry of Energy and Mines seeking to nullify the ministerial agreements authorizing the company to build and develop the hydroelectric plant, which is before the Supreme Court.
- 5.13 Both Amparos are fundamentally for the same motive: it is alleged that State authorities have violated the rights of indigenous communities living in the area because they did not carry out a prior, free, and informed consultation process in accordance with ILO Convention 169 for the Pojom II Project. The lack of a prior, free, and informed consultation process in accordance with ILO Convention 169 for the Pojom II Project is one of the issues contained in the Request. Therefore, the MICI concludes that **exclusion 19(d) applies to this particular issue**. For this reason, the MICI will not apply the Consultation Phase or the Compliance Review Phase to the issue of prior, free, and informed consultation required by ILO Convention 169 for projects impacting indigenous communities.

VI. CONCLUSION

- 6.1 The MICI Director, in accordance with Section G of the MICI Policy (document CII/MI-1-1), concludes that this Request **is eligible** because it meets the eligibility criteria established in the MICI-IIC Policy. The issue of prior, free, and informed consultation required by ILO Convention 169 for projects impacting indigenous communities **is excluded from the MICI process**.

- 6.2 This determination of eligibility is neither an assessment of the merits of the Request and the issues raised therein, nor is it a determination of IDB Invest's compliance or noncompliance with its Relevant Operational Policies. It only marks the initiation of the MICI process and does not halt the Project or suspend its disbursements.
- 6.3 This Memorandum is being sent directly to the Requesters and Management for information on 31 January 2019. It will be sent for the same purpose to the Board of Executive Directors of the IIC and will be made public to interested third parties on the [Public Registry](#) as soon as the English version is available.
- 6.4 After notifying the Board of Executive Directors, the MICI Director will transfer the case to the Compliance Review Phase, as selected by the Requesters and stipulated in the Policy, in order to begin processing the Request under that phase.