

CONSULTATION PHASE
ELIGIBILITY DETERMINATION

TO: Victoria Márquez-Mees, Executive Secretary
FROM: Isabel Lavadenz Paccieri, Project Ombudsperson
CC: Independent Consultation and Investigation Mechanism
REFERENCE: Sistema de Interconexión Eléctrica para los Países de América Central (SIEPAC); Aumento de Financiamiento por Sobrecostos NI-L1055 y Reorientación de Recursos de los Préstamos 1908/OC-CR y 2016/BL-HO
COUNTRY: Costa Rica
DATE: April 8th, 2011
ELIGIBILITY:
DETERMINATION: The Request is **Eligible** for the Consultation Phase

I. Summary of the Request and Eligibility Determination

1.1 Ms. Yamileth Román Segura, President of the SIEPAC-La Alfombra Committee representing the community of La Alfombra (the Requester), submitted on February 2nd, 2011 before the Independent Consultation and Investigation Mechanism (ICIM)¹ a request concerning the environmental and social impacts that a section of the SIEPAC will likely have on the community she represents (the Request).

1.2 The Requester claims that the projected construction of a power transmission line between sub-stations Parrita and Palmar (aka Tramo 17 of the SIEPAC) could cause *“irreversible damages to people and ecosystems in the area”*. The alleged impacts are summarized below:

1. Forestry and water resources: The SIEPAC is expected to cut down more the 1,600 trees, some of them primary rainforest, in the head of the Cana Blanca River. Deforestation in this area together with a prone-to-erosion soil and a steeped

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



terrain has the potential to significantly impact water quality and water users downstream.

2. Biodiversity: The planned transmission line will pass through the Paso de la Danta Biological Corridor, which is part of the Mesoamerican Biological Corridor, producing significant damage to biodiversity.
3. Local livelihoods: The construction of the transmission line could also directly affect local business, mostly eco-tourism. The projected construction of a power tower by the Rio Magnolia Lodge, an eco-hotel, could modify considerably the surrounded landscape, producing a visual impact that could discourage eco-tourism in the area and negatively affect the local economy.

- 1.3 The Requester claims that there has been a violation on the Inter-American Development Bank's Environmental and Safeguards Compliance Policy given that SIEPAC has not considered the less environmental and socially damaging site when defining Tramo 17's location. The allegation concurs with the Precautionary Approach of OP -703 which favors first avoiding negative impacts and then, when impacts are unavoidable, applying mitigation measures.



Project Ombudsperson

Mecanismo Independiente de Consulta e Investigación - Banco Interamericano de Desarrollo
1300 New York Ave. NW. Washington, D.C. 20577 USA

Tel: (202) 623 3952 Fax: (202) 312 4057 Email: mecanismo@iadb.org | www.iadb.org/icim

- 1.4 The Requester proposed an alternative project site which they claim will be less environmental and socially damaging (see Picture 1 below).

Picture 1: Planned (red) and proposed (green) Project site

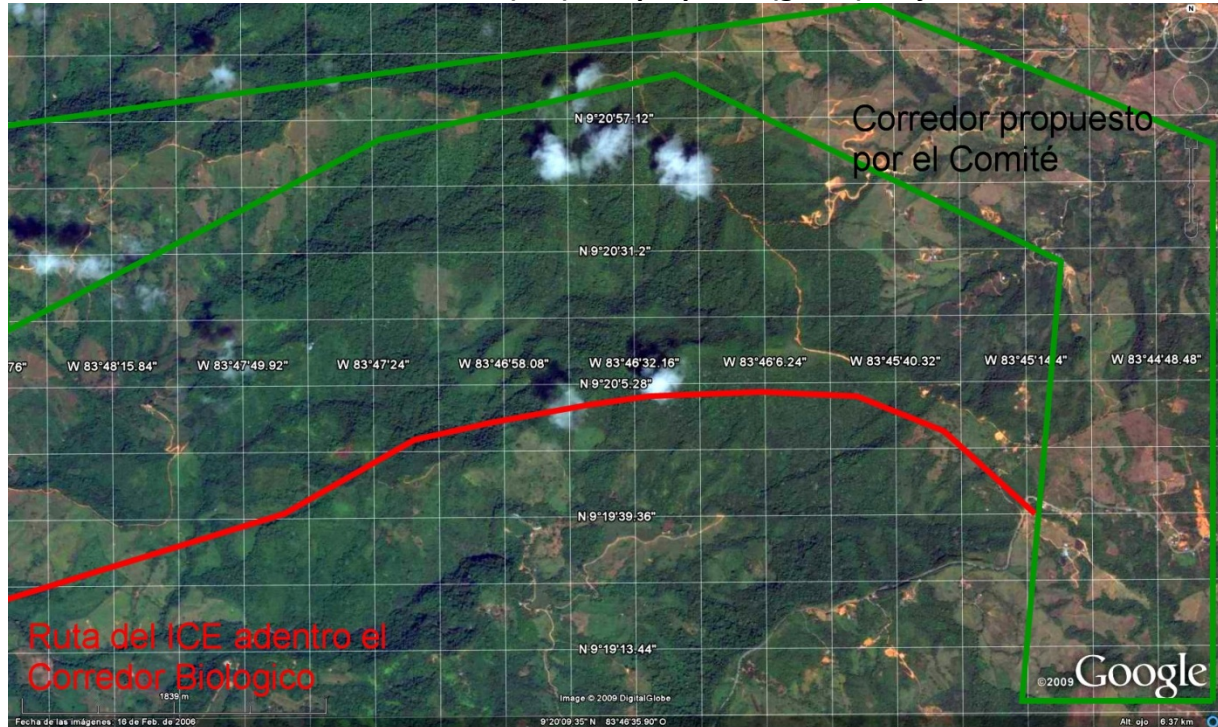
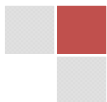


Image provided by the Requester as supporting documentation.

- 1.5 A number of international and local Environmental Non-Governmental Organizations and Research Institutions support the SIEPAC-La Alfombra Committee's claims including The Nature Conservancy, Conservation International, San Diego Audubon Society, Ohio Ornithological Society, Asociación de Amigos de la Naturaleza del Pacífico Central y Sur, Unión de Ornitológicos de Costa Rica, y Fundación Neotrópica.
- 1.6 Prior to sending a Request to the ICIM, the SIEPAC-La Alfombra Committee contacted the Project Team and the Executing Agency, the ICE (*Instituto Costarricense de Electricidad*), expressing their concerns about the environmental and social impacts of the SIEPAC's Tramo 17 in a attempt to find a better location than the currently proposed.



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II. Project Background

- 2.1 The operation subject of this Request is the Budget Reallocation NI-L1055 approved by the Board of Executive Directors on September 29th, 2010. The Budget Reallocation NI-L1055 also includes an additional financing for Costa Rica and Honduras. The initial Loan is CA-0035 SIEPAC, originally approved in 1997 and amended on 2001 with a new financing scheme. SIEPAC is one single operation on six different countries, namely Costa Rica, El Salvador, Guatemala, Panama, Honduras, and Nicaragua. The contested project site, financed under NI-L1055, is known as Tramo 17, from sub-station Parrita to Palmar Norte, estimated to be 126 km long per 30 m wide.
- 2.2 SIEPAC's overall objectives are: (i) progressive formation and consolidation of a Regional Electric Market, through the creation and establishment the legal, institutional and technical means, which facilitate the participation of sector private, particularly in the development of generation additions, and (ii) the establishing electrical interconnection infrastructure (lines and substations) to facilitate the exchange of electricity among market participants.

III. Eligibility Analysis

- 3.1 According to Policy Establishing the ICIM (the Policy), specifically Article 38, the purpose of the Consultation Phase is to provide an opportunity for applying consensual and flexible approaches to address the concerns of a party that believes it has been adversely affected by an action or omission of an IDB funded operation, in violation of *"Relevant Operational Policies"*².
- 3.2 As part of the process of determining whether any request is eligible for the Consultation Phase, Requests must comply with the Policy, in particular Articles 40 and 37 thereof.
- 3.3 When contacted by the Ombudsperson, the Project Team requested to make use of the 45 days extension of the Eligibility deadline, included in Article 40.h of the Policy, in an attempt to address specific concerns raised in the Request and to further a technical discussion with ESG.

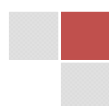
² See Article 26, "Relevant Operational Policies" in ICIM Policy.



3.4 The Requester also asked for an extension aimed at providing more information and further completing the Request, in accordance with Article 41 of the Policy. In order to address both petitions, the Project Ombudsperson extended the original Eligibility deadline from February 23rd, 2011 to April 8th, 2011.

a. Summary of the Eligibility Analysis

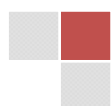
ELIGIBILITY CRITERIA	OMBUDS DETERMINATION	COMMENTS
Names and contact information available	YES	Contact information for Ms. Yamileth Román Segura (the “Requester”) and the SIEPAC-La Alfombra Committee are on file
Bank-financed Operation identified	YES	NI-L1055
Requesters reside in Project Area	YES	Ms. Román is the president of the SIEPAC-La Alfombra Committee, representing the community of La Alfombra located in the project site.
None of the exclusions of the Policy applies	NONE Art. 37.i. <i>“Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies”</i>	The SIEPAC-La Alfombra Committee is currently contesting the Environmental Permit granted to the SIEPAC in Costa Rica. The Request before the ICIM does not refer to the administrative act of granting an environmental permit. The Request is focused on the potential harm caused by the violation of OP-703 when deciding the project site in a specific section of the SIEPAC



ELIGIBILITY CRITERIA	OMBUDS DETERMINATION	COMMENTS
		(see analysis of the Request in light of Article 37.i of the Policy below).
Requesters have asserted that they have been or could be directly, materially affected by the Project, and they have described the direct and material harm by an act carried out or omitted to be carried out by the Borrower in relation to the Project <u>in violation of a Relevant Operational Policy</u>	YES	The Relevant Operational Policy that could be applicable to this Request is the Environmental and Safeguards Compliance Policy OP-703.
Parties are amenable to a Consultation Phase and dialogue	YES	Project Team and Requester are open to dialogue.
Requester have taken steps to bring the issue to the attention of Management and/or project team	YES	The Requester has exchanged e-mails, letters and studies with the Country Official.

b. Analysis of the Request in light of Article 37.i of the Policy

- 3.6 The La Alfombra-SIEPAC Committee is currently contesting in court the environmental permit granted to the SIEPAC in Costa Rica based on a number of technical and administrative arguments.
- 3.7 According to Article 37 i. of the Policy neither the Consultation Phase nor the Compliance Review Phase will be possible if the Request raises similar issues under arbitral or judicial review. In this particular case open by the Requester in the Costa Rican judicial system, the matter and the objective of such ongoing judicial process fundamentally differs from the objective and rationale of the Request before the ICIM.
- 3.8 The judicial process is focused on the validity of the administrative act of granting an Environmental Permit due to some technical and administrative arguments. While the



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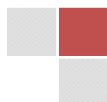
two have similar arguments, the Request sent to ICIM is focused on the harm caused by the apparent violation of OP-703 when deciding the project site in a specific section of the SIEPAC. In order to support this argument, the Requester proposes a project site which she claims would be less environmentally and socially damaging.

- 3.9 According to Art. 41 of the Policy, the Ombudsperson has to provide the Requester a reasonable opportunity to complete or correct a Request before declaring it ineligible. As a result, on April 1st, the Ombudsperson received copy of the judicial processes and clarifications from the Requester, who reiterated their petition for the ICIM to lead a mediation process between the communities and the ICE in order to *“reach an timely agreement on a project of National importance [as well as] avoiding that the violation of IDB’s Operational Policies in a Bank-financed Operation will ultimately produce a irreparable harm”*.

IV. Conclusion

- 4.1 The Project Ombudsperson has determined that the Request described herein is **Eligible** for the Consultation Phase.
- 4.2 Although a Request may meet the ICIM eligibility criteria for the Consultation Phase, this determination does not imply any judgment on the part of the Mechanism of the merit of the issues raised in the Request.
- 4.3 Within the next three (3) business days, the Executive Secretary will post the notice of registration on the Registry and notify the Requester, the Board, the President, Management and the Project Executing Agency of this determination.

Isabel Lavadenz Paccieri
Project Ombudsperson



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