



SIEPAC Assessment Report CR MICI001/2011



PROJECT OMBUDSPERSON

August 2011

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SIEPAC La Alfombra Project

Costa Rica

Assessment Report

A. Background

1.1. The request

On 2 February 2011, the SIEPAC-La Alfombra Committee submitted a Request to the Independent Consultation and Investigation Mechanism (ICIM) in connection with the environmental and social impacts that a section of the Central American Electric Interconnection System (SIEPAC) could cause as it runs through the community of La Alfombra, Costa Rica. This section of the SIEPAC project is known as Tramo 17.

The Requesters propose an alternative site for this section instead of the route currently being considered by Empresa Propietaria de la Red (EPR) / Instituto Costarricense de Electricidad [Costa Rican Electricity Authority] (ICE).

On 8 April 2011, ICIM declared the Request eligible for the Consultation Phase.¹ The purpose of the Consultation Phase is to provide an opportunity for the parties involved to properly address the concerns of the party that considers itself, or reasonably expects to be, directly and materially adversely affected by the IDB's failure to comply with its own operational policies and environmental and social safeguards in the context of an IDB-Financed Operation.

This document summarizes the main findings of the ICIM team during the Assessment. The objective of the Assessment was to identify and clarify the issues raised in the Request; compile information from the interested parties, potentially including other parties in an analogous situation to the that of the Requesters; learn and gather the opinions and motivations of all interested parties; and help to determine whether the issues raised can be resolved and how best to resolve them.

Requesters. The Request was submitted by Mrs. Ymileth Román Segura, President of the SIEPAC-La Alfombra Committee. This Committee was created at the request of SIEPAC's execution unit, Empresa Propietaria de la Red (EPR), for the purpose of representing the population of La Alfombra in discussions with the EPR and reviewing the proposed project routes.

Impacts alleged. The Requesters claim that the power transmission line running through the vicinity of the La Alfombra community could cause "irreversible damage to people and ecosystems in the area." The potential impacts alleged in the Request are summarized below:

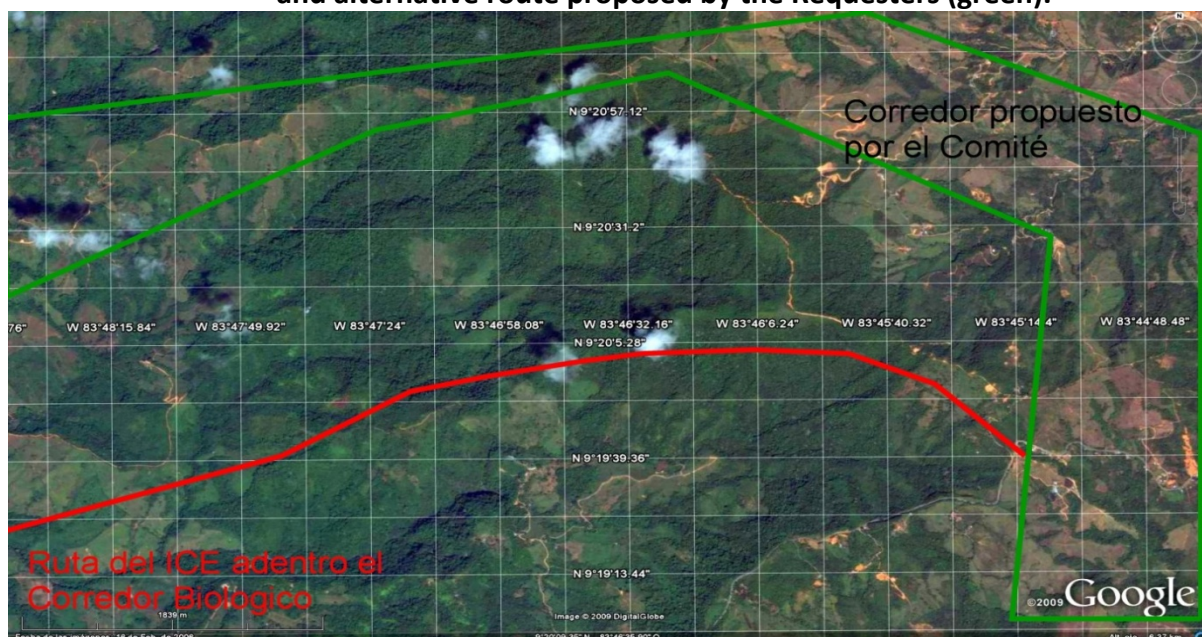
¹ The Eligibility Memorandum is available for consultation at <http://www.iadb.org/es/mici/detalle-de-reclamo,1804.html?id=CR%20MICI001/2011>

- Water and forest resources: The construction of the transmission line along its current route will require felling more than 1,600 trees, some of them primary rainforest, at the head of the Cana Blanca River. Deforestation in this area, which has erosion-prone soil, could significantly impact water supply and quality both for the La Alfombra community and for other users downstream.
- Biodiversity: The planned transmission line will run through the Paso de la Danta Biological Corridor, which is part of the Mesoamerican Biological Corridor, producing significant damage to biodiversity by unnecessarily fragmenting the corridor.
- Local livelihoods: The construction of power transmission lines and towers in the community's visual basin could affect local business, particularly those engaged in ecotourism, such as the Río Magnolia Lodge. The Project's visual impact could discourage ecotourism in the area and negatively affect the local economy.

Operational policies. The Requesters claim that there has been a violation of the IDB's operational policies, given that the EPR has failed to consider the less environmentally and socially damaging site when determining the placement of Tramo 17. This claim is consistent with the precautionary approach of the Bank's Environment and Safeguards Compliance Policy (Operational Policy OP-703), which favors first avoiding negative impacts in IDB-financed projects and then, when impacts are unavoidable, applying the appropriate mitigation measures.

Alternative Project site. In addition, instead of the SIEPAC route that crosses La Alfombra, the Requesters propose an alternative route which they claim would produce a lesser environmental and social impact.

**Figure 1: Route planned by the EPR (red)
and alternative route proposed by the Requesters (green).**



Source: Requesters.

National and international support. In support of their claims, the Requesters attached to their ICIM Request a number of letters signed by international and local institutions and nongovernmental organizations.²

Contact with the project team. Prior to sending a Request to the ICIM, the SIEPAC-La Alfombra Committee contacted the project team and the executing agency, EPR, in an effort to convey the Committee's concerns regarding the environmental and social impacts of SIEPAC's Tramo 17 and reach agreement on a better project site. The Requesters have also been in contact with ICE (the Costa Rican electricity authority, financial guarantor of EPR, and IDB counterpart) as part of their continuing search for answers regarding the possibility of changing the path of the portion that runs through La Alfombra.

1.2. The project

SIEPAC financing. Energy integration of Central American countries has been a constant concern for the region's energy authorities since the 1960s, and the IDB is the multilateral financial institution that has continuously supported this process. SIEPAC is a regional project executed with the participation of multiple stakeholders in the six Central American countries.³ Financing for the SIEPAC project was originally approved by the IDB in 1997, and a reformulation of the project was approved in 2001 with a new financing structure (CA-0035). The new financing structure is both for construction of the power transmission line, with 12 national investment loans totaling US\$240 million, and for the technical cooperation program to create a wholesale electricity market, with US\$15.6 million in technical assistance resources from six loans and three nonreimbursable technical cooperation operations. Empresa Propietaria de la Red (EPR) was created for purposes of executing the SIEPAC project, and the six borrowing countries signed agreements transferring the proceeds to the EPR, which is obligated to repay the borrowers for the loans under the terms agreed upon by the IDB.

Execution unit. The SIEPAC project is executed by Empresa Propietaria de la Red (EPR), created by the electricity utilities responsible for national power transmission in each Central American country as well as by nonregional shareholders: Spain's ENDESA, Colombia's ISA, and Mexico's CFE. In the case of Costa Rica, the power company is Instituto Costarricense de Electricidad [Costa Rican Electricity Authority] (ICE). The Government of Costa Rica, acting through the Ministry of Environment and Energy, issued Resolution R-004-2005-MINAE-DSE, pursuant to Law 7848, granting the EPR a power transmission concession for a period of 30 years to build and operate the first regional electric interconnection system.

² These organizations include The Nature Conservancy, Conservation International, San Diego Audubon Society, New York Ornithological Society, Asociación de Amigos de la Naturaleza del Pacífico Central y Sur, Unión de Ornitólogos de Costa Rica, ASANA, and Fundación Neotrópica, as well as others.

³ Panama, Costa Rica, Honduras, Nicaragua, El Salvador, and Guatemala.

SIEPAC cost. The SIEPAC project has a total cost of US\$494 million, of which the IDB originally financed US\$240 million in 2001, adding US\$13.5 million in 2006, for a total of US\$253.5 million or 51.3% of the project. The balance of US\$240.5 million is covered by other loans (the Central American Bank for Economic Integration (CABEI) and Andean Development Corporation (CAF)) and contributions from the EPR shareholders.

SIEPAC objectives. The SIEPAC's objectives are to: (i) support the formation and continuous strengthening of a regional electricity market by creating and establishing appropriate legal, institutional, and technical mechanisms to facilitate private-sector participation, particularly in the development of additional power generation; and (ii) establish electric interconnection infrastructure (transmission lines and substations) that facilitates electricity exchanges between market participants.

Technical characteristics of the line. The 1,820-km, 230-kV SIEPAC line is an indivisible trunk transmission system that will interconnect 16 substations, from the Veladero substation in Panama to the Aguacapa substation in Guatemala, and, in a second section, from the Guate Norte substation in Guatemala to the El Cajón substation in Honduras. The transmission line thus interconnects Panama, Costa Rica, Honduras, Nicaragua, El Salvador, and Guatemala. The SIEPAC line will raise firm intercountry transmission capacity to 300 MW.

Construction status. The SIEPAC line is currently under construction in the six countries. The section covering El Salvador, Guatemala, and Honduras is 96.3% complete, while the section covering Nicaragua, Costa Rica, and Panama is 89% complete. In Costa Rica, the foundations are 74% complete, installation is 72% complete, and the laying of electrical lines is 50.4% complete. Construction of the transmission line is divided into 20 sections, four of which run through Costa Rica. Construction work has not started on Tramo 17, the section that runs along the periphery of the community of La Alfombra.

Responsibilities for SIEPAC execution. The SIEPAC's execution unit is EPR. EPR has engaged the consulting firm Groupe-Conseil Dessau-Soprin (GCDS) to provide technical supervision of all civil, electrical, mechanical, and structural works, as well as environmental supervision, from the start of construction until the entry into service of the SIEPAC transmission lines. Environmental supervision must be conducted in accordance with each country's legislation and includes ensuring compliance with the environmental mitigation and compensation measures provided in the environmental impact assessment (EIA), as well as indicating any additional compensation measures arising during project execution.

Supervision was conducted by GCDS from the start of construction until mid-2010, when EPR assumed direct environmental management responsibility and the GCDS supervision professionals were incorporated into the EPR team. The construction firm responsible for the Nicaragua and Costa Rica portions is the Spanish consortium APCA-ABENGOA-INBENSA.

Project cost overruns. In 2009, ICE requested that the IDB reallocate resources of up to US\$4.5 million from the First Electric Power Development Program 2008-2011 (1908/OC-CR), approved in 2007, to finance cost overruns encountered by EPR in implementing SIEPAC and to achieve the project's objectives. The resources were reallocated under Additional Financing of Cost Overruns for the SIEPAC

Project (NI-L1055) in Nicaragua, which included the reallocation of resources from 1908/OC-CR in Costa Rica and 2016/BL-HO in Honduras. The other three SEIPAC participant countries also secured additional financing but with own resources.

Framework for application of environmental and social safeguards. An EIA and an environmental and social management plan (ESMP) were prepared in connection with all SIEPAC activities in Costa Rica as part of the 2001 SIEPAC regional project (CA-0035). Since the approval of this initial regional project, the IDB has extended other loans and technical cooperation financing to every SIEPAC member country without any changes in the baseline terms or in the ESMP for this initial operation. However, in the course of reallocating the 2009 resources (NI-L1055) and in accordance with Environment and Safeguards Compliance Policy Directive B.12, “Project under construction,” SIEPAC’s environmental and social compliance and supervision systems were reviewed when preparing the additional financing to confirm that they comply with the Bank’s environmental and social safeguards (approved between 2006 and 2008).⁴ The Bank’s Environmental Safeguards Unit conducted an environmental audit for Costa Rica, Honduras, and Nicaragua, proposing a series of recommendations and remediation measures aimed at strengthening SIEPAC’s environmental management system in these countries and ensuring compliance with the IDB’s environmental and social safeguards when implementing the remainder of the SIEPAC project.

Although, as indicated above, the SIEPAC is being financed primarily (51%) by the IDB, it is also supported by other donors, such as CAF and CABEL. Nevertheless, the responsibilities assumed by the IDB and ICE regarding SIEPAC activities in Costa Rica include compliance with the Bank’s environmental and social safeguards. This commitment applies to SIEPAC as a whole rather than to the 51% of the project financed by the IDB. The IDB is likewise responsible for ensuring compliance with its safeguards throughout the project.⁵

Environmental and social safeguards applied. In the context of applying the IDB Environment and Safeguards Compliance Policy (OP-703), SIEPAC has been classified as category A due to its potential environmental and social impacts, whether direct, indirect, or cumulative. The following directives are relevant to the project: B.4: Screening and classification; B.5: Environmental assessment requirements; B.6: Consultations; B.7: Supervision and compliance; B.9: Natural habitats and cultural sites; B.11: Pollution prevention and abatement; B.12: Project under construction; and B.14: Multiple phase and repeat loans. Other policies applicable to the project include: Access to Information (OP-102); Natural Disasters (OP-704); Involuntary Resettlement (OP-710); and Indigenous Peoples Policy (OP-765).

Implementation arrangements. Responsibilities for SIEPAC implementation in Costa Rica are as follows: (i) EPR, execution unit and environmental supervision; (ii) ICE, rights of way acquisition; (iii) APCA-ABENGOA-INBENSA consortium, contractor in charge of construction.

⁴ With the exception of the Involuntary Resettlement Policy, which has not been amended since 1998.

⁵ For example, under Policy Directive B.3, the applicability of the safeguards in the context of an environmental assessment extends to the project’s “associated facilities,” without regard to the source of financing. These associated facilities are defined as new or additional works and/or infrastructure, including power transmission lines, which are essential for the functioning of a Bank-Financed Operation.

SIEPAC's path through Costa Rica and prior modifications. As indicated above, the SIEPAC project has been declared of national and regional interest. It consists of, among other components, the construction of 1,820 km of power transmission lines, divided into 20 subsections. SIEPAC's path through Costa Rica involves the construction of 462 km of transmission lines divided into four sections.

The SIEPAC route has undergone a series of modifications aimed at limiting both its vulnerability to natural risks (earthquakes, floods, landslides, etc.) and its environmental and social impacts. In general terms, the first portion of the line's route through Costa Rica runs parallel to Inter-American Highway CA1, avoiding places with the environmental and social features described in the preceding section. It continues on a line parallel to the coast and the coastal highway and enters the Fila Costeña mountain range past the Parrita Valley, tracing a mountainside path to the Panamanian border. This route allows the line to connect the three substations included in the Costa Rican portion of the SIEPAC project. The EIA was performed on the basis of this route.

EIA background. Two environmental impact assessments were performed for the SIEPAC project: one in 1997 for the entire Central American region, and another between 2001 and 2005 for each of the countries. In the case of Costa Rica, the consortium selected to perform the second EIS was composed of ECOTEC, PROAMBIENTE, and RPI Inc., the first two being Costa Rican and the third a U.S. company.

According to information gleaned by ICIM, the EIS included two phases. The first was labeled "determination of an ecological route", while the second was a "comprehensive environmental study" to assess the environmental impacts. The first phase, carried out using mapping at a scale of 1:200,000, realigned the route on the basis of four restrictive variables:

- (i) Protected wild areas;
- (ii) Settlements;
- (iii) Indigenous lands; and
- (iv) Sites characterized by natural threats and environmental vulnerability.

As a result of this initial phase, two major changes were made in the plotting of the inflection points originally provided by EPR, to avoid passing through the Guanacaste National Park and to determine the lowest-impact route along the Carara National Park.

The second phase was carried out using mapping at a scale of 1:50,000. In this phase, the entire route was divided into homogeneous subsections, with a 2-km strip on each side of the centerline.

The specific path of the transmission lines was selected on the basis of the following social and environmental criteria:

- As far removed as possible from urban centers and areas of higher population density, as well as from sites of specific interest;
- Choose a path on the mountain slope to avoid positioning the line along high points with the structures showing against the sky;

- Avoid passing through areas of native vegetation or high ecological interest, primarily protected natural areas, or historical-cultural heritage sites or indigenous settlements;
- Run the route preferably through less productive agricultural areas or open, clear areas, with a view to minimizing the impact on plant ecosystems. In the event that forests must be traversed and trees must be felled to clear a path, the alternative of rerouting the line should be weighed;
- Minimize routing that runs parallel to road infrastructure such as highways or railway lines, thus limiting the number of potential observers. Seek to screen or conceal the transmission line using nearby hills or small woodlands, by placing the line behind these visual obstacles;
- Avoid generating direct damage in protected species nesting areas, particularly in areas listed as natural habitats of species of interest; and
- Avoid positioning the route near large bodies of water that may be used by migratory birds as layover sites or as part of their migration path.

Matrices of significant environmental impacts were prepared for the line construction and operation stages. Images were produced for environmental, surface water, groundwater, soil, biota, landscape, and socioeconomic impact factors for each subsection of the route.

In addition, field work was conducted, and consultations were held with various institutions and each of the 19 municipios in the transmission line's path. In the case of Pérez Zeledón, consultations were held in the various districts at the municipio's request, following notices distributed by the municipality. Two of these consultations were held in the communities of Barú and Tinamastes. During the consultation in Tinamastes, the participants expressed concern regarding the waterworks. As a result, the route was moved 300 meters to the north in order to further distance the waterworks' catchment point.

Following the presentation of the EIAs, the Environmental Secretariat of Costa Rica (SETENA) determined that public consultations were needed, setting locations and dates. Only three consultations were required to be held for the entire country. The nearest one to La Alfombra was held in Palmar Sur, approximately 80 km away, in June 2004.

SETENA granted environmental feasibility approval in April 2005. However, the route's final design had not been fully completed at the time. Despite the lack of a final design, at the time of approval of the environmental impact assessment there was a route for the La Alfombra area running along the center of the 4-km environmental feasibility corridor, which is described in the following section. The geographic scale used in conducting the EIA made it impossible to identify all environmental and social characteristics over the entire route. Consequently, general mitigation and compensation measures were established, as well as environmental supervision and management responsibilities. For purposes of determining the final path, it was established that the route could be adjusted using the margin provided by the 2-km strip on each side.

SIEPAC in Costa Rica, and Tramo 17. The Request submitted to ICIM refers to the portion of SIEPAC's Tramo 17 that runs through the community of La Alfombra. Tramo 17 connects the Parrita and Palmar

Figure 2:
Status of the right-of-way acquisition process in the subsection located in the area of La Alfombra



B. Main findings and assessment method

2.1. Assessment method

In assessing the Request, the ICIM team carried out the following activities: (i) analysis of documents and information presented by the Requesters, the execution unit, and the Bank's project team, as well as documents obtained by ICIM and/or compiled by independent experts; (ii) field visits; (iii) discussions with the Requesters and their representatives, the execution unit, the project team, and other relevant stakeholders; (iv) public meetings with the community; (v) contracting of a local technical specialist and a local facilitator.

The results of these activities include: (i) mapping of parties and stakeholders with an interest in and/or influence on the implementation of the SIEPAC project portion running through the community of La Alfombra, including identification of roles, responsibilities, and interests; (ii) identification of opportunities for and difficulties in creating a dialogue process to facilitate a consensus solution; (iii) review of the technical background and status of SIEPAC, particularly the portion of Tramo 17 that runs through La Alfombra; (iv) compilation and analysis of the technical characteristics of the locations proposed by ICE and by the Requesters. The findings and conclusions of these activities are set forth in detail below.

2.2. Parties and stakeholders

Classification of stakeholders

For identification and analysis purposes, stakeholders have been classified as primary or secondary stakeholders.

The term **primary stakeholders** refers to those who are directly affected by the path of this specific portion of the transmission line. Thus, primary stakeholders include both the entities responsible for alignment of the transmission line's path for SIEPAC and those who could collectively or individually be affected if the line's path cuts across their properties or across a natural resource on which they depend (or which they have a direct responsibility to protect), or disrupts an activity or process on which their economic livelihood depends.

The term **secondary stakeholders** refers to those who, while not directly affected by the transmission line's path, have influenced or can influence the context and/or the conditions for determining the path and/or the conflict's resolution.

Primary stakeholders.

The stakeholders directly affected by the transmission line's path are:

- **Empresa Propietaria de la Red (EPR)**, the SIEPAC project's execution unit for the entire Central American region. EPR is responsible for managing all stages of transmission line planning, construction, and operation. Its main concern is ensuring progress on the SIEPAC project and

avoiding additional setbacks, especially in this section, which has the longest delays. EPR believes that the route proposed by the SIEPAC-La Alfombra Committee (CSLA) would have a lesser environmental impact, would potentially affect a new group of property owners and communities, and would lead to greater delays and costs, particularly as it lies outside of the approved environmental feasibility corridor.

- **Instituto Costarricense de Electricidad (ICE)**, the autonomous institution responsible for power generation and transmission in Costa Rica, representing Costa Rica as an EPR shareholder. ICE prepared the detailed alignment of the transmission line's route and the easement configuration for Costa Rica. Its concerns are to implement the SIEPAC project and avoid additional setbacks in the project's execution. ICE concurs with EPR as to the route proposed by CSLA. Since the project's outset, ICE/EPR have led an intensive technical effort to study the various routing options for the portion of the transmission line that runs through the La Alfombra community.
- **La Alfombra community**, composed of a heterogeneous group of approximately 200 people. It includes both local residents whose families have been in the community for several generations and others (mostly foreigners) attracted by the area's environmental and scenic charm. While the community's concerns are diverse, they tend to coalesce around the fear that the transmission line's visual impact will deter foreign investors and tourists who create employment and potential for economic growth in the community. Another oft-repeated concern is the potential impact on water sources as a result of felling trees. There are community members interested in greater transparency on the part of the Committee in managing the conflict and in having greater access to, and direct influence on, the community's negotiations with ICE/EPR.
- **SIEPAC-La Alfombra Committee (CSLA)**, a group formed in May 2009 following ICE/EPR's request for a single representative to be appointed to discuss the details of SIEPAC's path through the area on behalf of the community. CSLA is chaired by Mrs. Yamileth Román, who served as Regidora (Councilwoman) for the District of Barú in the Municipality of Perez Zeledón during the 2006-2010 period. The committee also includes another eight members, who are either associated with ecotourism projects or are foreigners who have settled in the community. CSLA is opposed to ICE's currently proposed path for the transmission line due to the impacts the Committee believes it will have on the forest, the water sources, the biological corridor, and, first and foremost, the community's attractiveness as an ecotourism destination. CSLA has since 2009 been proposing an alternative corridor for the line's path, which the Committee believes would not affect either water sources or forests, since it would run through areas that have already been damaged. This path is located "outside of La Alfombra" on the other side of the Fila Costeña range but also outside of the environmental feasibility corridor currently approved by SETENA. CSLA members have either individually or collectively appealed to the Administrative Litigation Court, the Environmental Administrative Court, and ICIM, and lobbied local and national authorities, international nongovernmental organizations, local media outlets, and other neighboring communities, to prevent construction of the transmission line along its current path.

- **Park family**, owners of Agrícola Ganadera El Sueño S.A., a major property with forested land affected by the project's current path. Starting in 2004, the family has been negotiating with ICE (on initially good but ultimately unfriendly terms) regarding the transmission line's route, with a view to preventing impacts on its property. Members of the Park family have been or are now a part of CSLA. The family wishes to spare its property, where it plans to develop an ecotourism project, from the path. It has appealed to the Constitutional Chamber, the Administrative Litigation Court, the Environmental Administrative Court, local, national, and international political figures, and local and international nongovernmental organizations to prevent construction of the transmission line along its current path or any other that affects the family's property.
- **La Alfombra ecotourism entrepreneurs**. In addition to the Park family's planned development, there are other ecotourism projects in the area of La Alfombra and in the neighboring community of Caña Blanca, including two hotels, some cabins, a restaurant for tourists, and a high-end residential development for foreigners. The last two projects are directly represented to some degree on CSLA. All of these developers believe that the transmission line would harm the area's tourism potential if it creates a visual impact on the La Alfombra microbasin, even though some of these lands are not on the line's current path.
- **Property owners affected by the alternative path proposed by CSLA**. These people own or reside in properties located to the north of the path currently proposed by ICE/EPR, in the area which the alternative path proposed by CSLA would cross. This group is not represented in CSLA and its properties are outside the self-defined boundaries of the La Alfombra community and the boundaries of the project's environmental feasibility corridor. There is no information available on the social characteristics of this group of property owners and their opinion on the natural resources surrounding a portion of this route. In 2008, CSLA provided ICE with a list of some property owners, who were, however, not contacted by any of the parties. Recently, ICE has worked on compiling a list of properties and tracking the property owners, who are estimated to number 36, including several corporations.

Secondary stakeholders

Stakeholders not directly affected by the transmission line's path but exercising considerable influence on the conditions determining the path are:

- **Environmental Secretariat of Costa Rica (SETENA)**, the environmental authority responsible for regulating environmental impact assessments (EIA), issuing environmental licenses, and monitoring compliance. In May 2004 it outlined the public consultation requirements for the EIA process, and in April 2005 it approved as environmentally feasible a 4-km corridor spanning the length of the SIEPAC project's route through Costa Rica, including the portion that crosses the area of La Alfombra. In October 2009, following a request from the community of La Alfombra, SETENA staff toured the community together with ICE, EPR, and La Amistad-Pacific Conservation Area (ACLA-P) technical staff. In April 2010, SETENA issued a resolution reaffirming the environmental feasibility of the La Alfombra-Alto San Juan section, stating that the section's

environmental feasibility and mitigation measures had already been approved and that the CSLA arguments were untimely as the public consultation period had concluded.

- **La Amistad-Pacific Conservation Area (ACLA-P)**, operating as the State Forest Authority for the region through the Head of Pérez Zeledón, currently Mr. Gerardo Mora. ACLA-P supervises and issues permits for the felling of trees in the rights of way on which the transmission line is to be built. In May 2009 it prepared a report indicating that the ICE-proposed route affects “significant forested areas,” while the CSLA-proposed route lies “entirely outside the natural forest.” ACLA-P’s technical recommendation is to use the route proposed by CSLA.
- **National Water and Sanitation Institute (AyA)**, which in June 2009 issued a memorandum noting the fragile nature of the forest area and arguing that the route proposed by CSLA involves less of an impact on the forest and springs. Recently, under the Environmental Administrative Court resolution of July 2009, AyA has been required, as part of the investigation conducted by the aforementioned court, to certify whether any rural waterworks management associations (ASADAs) exist in the project area.
- **Constitutional Chamber of the Supreme Court of Justice (Chamber IV)**, the specialized chamber that oversees compliance with the basic rules, rights, and guarantees embodied in the Costa Rican Constitution as well as in other human rights instruments and treaties. In November 2006, Chamber IV agreed to consider an appeal by Agrícola Ganadera El Sueño S.A. alleging that installing the transmission line in the company’s forested land posed an environmental risk. In January 2008, the chamber dismissed the appeal on the grounds that the path was within the environmental feasibility corridor and that approval of this corridor furthermore included a series of environmental commitments imposed by SETENA to prevent or mitigate ecological harm.
- **Administrative Litigation Court (TCA)**, an instrument of the Judiciary aimed at “ensuring or rectifying the legality of any government conduct subject to administrative law.” In October 2009, TCA agreed to consider a complaint filed by CSLA against ICE and SETENA, seeking to have the transmission line running through the forest of La Alfombra declared environmentally unfeasible. Between February and April 2010, TCA granted interim relief, which it subsequently modified upon an appeal by ICE. The details of this case are set forth in the section on legal aspects. In addition, in August 2010 TCA agreed to consider another case brought by Agrícola Ganadera El Sueño S.A. against expropriation actions aimed at this company’s property.
- **Environmental Administrative Court (TAA)**, a fully autonomous agency of the Ministry of Environment, Energy, and Telecommunications with authority to hear, in administrative proceedings, complaints of violations of environmental legislation. In September 2010, TAA agreed to consider a complaint filed against ICE/EPR by Agrícola Ganadera El Sueño S.A., as well as by ACLA-P and ASANA, alleging that construction of the transmission line in the forested area of La Alfombra (on Mr. Park’s property) involved a risk of environmental harm. In March 2011, TAA inspected the site and in July 2011 granted interim relief preventing construction by

ICE/EPR in the forested area of La Alfombra until ICE/EPR can show that building the transmission line will not create environmental damage.

- **Asociación de Amigos de la Naturaleza del Pacífico Central y Sur (ASANA)**, a conservationist organization in the South Pacific region that promotes conservation and recovery of the Paso de la Danta Biological Corridor (CBPD). In June 2009, ASANA sent a letter supporting CSLA's arguments, stating that the SIEPAC line fragments the CBPD and arguing that the CSLA-proposed path does so to a lesser extent.
- **Tropical Science Center (TSC)**, a conservationist organization with a long history in Costa Rica and Latin America. In 2008, engineer Rafael Bolaños, a TSC consultant, conducted a study on the Park family property at the family's request, concluding that the SIEPAC project's EIA does not address the specific conditions of this forested strip, which is made up of very fragile primary forest and requires protection. The TSC consultant suggests that an alternative route through the surrounding grasslands would be more appropriate.⁶
- **Noel Ureña**, a naturalist guide and researcher of local area birds. He believes that the forest on Mr. Park's property houses a large variety of birds, as validated in Audubon Society studies. Due to his association with various national and international ornithological organizations, he has attracted support from these organizations for the CSLA petition not to install the transmission line in the forest area owned by the Park family. On 10 June 2010, during the ICIM team's mission to La Alfombra, Mr. Ureña proposed creating a technical commission that both parties can trust for the purpose of assessing the various routing alternatives.
- **Asociación de Desarrollo Integral de San Cristóbal (ADISC)**, a formal grassroots organization with valid legal status under the Associations Act, created by area residents with a view to fostering the communities' economic and social improvement. It includes La Alfombra and another three communities (Caña Blanca, San Cristóbal, and Las Tumbas). The ADISC chairman resides in La Alfombra and has ties to and supports CSLA. There are no indications of involvement by the other members of the ADISC board of directors in the dispute. In April 2009, ADISC adopted a resolution supporting the route proposed by ICE/EPR and subsequently reversed its decision (at CSLA's urging) in favor of another resolution that exclusively supports the route proposed by CSLA in September 2009.
- **Rural Waterworks Management Association for the neighboring community of Alto San Juan (ASADA Alto San Juan)**. In January 2011, ASADA Alto San Juan issued a letter indicating that the water supply for its community will come from a spring located on a property close to the La Alfombra forest area. However, it is not clear from this letter whether building the transmission line would affect the spring's recharge area.

⁶ It should be added that other national and international conservationist organizations, although involved to a lesser extent than TSC, have sent letters to ICE's Chief Executive Officer expressing their concerns regarding environmental impact aspects of the current route and encouraging ICE to consider an alternative route through grasslands. The background section of this report contains a list of these organizations and of the documents received by ICIM along with the Request by the SIEPAC-La Alfombra Committee.

- **Office of the Attorney-General (PGR)**, the highest technical and legal government advisory body and the government's legal counsel in matters within its purview. Since SETENA is one of the entities named in CSLA's complaint before the Administrative Litigation Court, PGR joins the judicial process as counsel to SETENA. In addition, PGR has, through its pronouncements, outlined the parameters within which ICE, as a public entity, may reach a settlement with other entities or individuals.
- **Regional Electric Interconnection Commission (CRIE)**, the entity that regulates the regional electricity market and to which EPR is required to report. CRIE must approve any cost overruns incurred by the project, as well as the public transmission rates that will cover these costs. CRIE is likely to oppose any solution that entails project cost overruns that CRIE deems unreasonable.
- The **IDB, IDB project team, and Country Office** have provided support and collaboration in facilitating the consultation process and have participated in meetings and visits conducted during the process. Prior to the submittal of the Request to ICIM, the IDB project team was in contact with the Requesters and proposed alternative avenues. These avenues did not satisfy the Requesters. The Country Office has played a key coordinating role with ICE/EPR.

Representativeness

The La Alfombra community is comprised of a group of people with heterogeneous interests. Between 2004 and 2008, negotiations regarding this portion of the transmission line's path were conducted mostly between ICE and Mr. Park. At the time, there was no organization within La Alfombra that could represent the community's interests. Apparently, attempts to assign the role of representative to Asociación de Desarrollo Integral de San Cristóbal (ADISC), which is made up of residents of La Alfombra and three other neighboring communities, were not successful.

In May 2009, at ICE/EPR's request, the community created the SIEPAC-La Alfombra Committee (CSLA). CSLA has substantial constituent strength within the La Alfombra community. ICIM has been able to ascertain that the community's concerns are similar to those reflected in CSLA's request. Nonetheless, during ICIM's latest visit it emerged that some members of the community are demanding more information on, and greater participation in, CSLA's processes and decisions.

Furthermore, there is evidently no significant distinction between the interests of CSLA and the interests of the Park family, nor is there full independence in the conduct of legal proceedings on behalf of either party.

Lastly, it is worth repeating that, so far in the process of addressing the dispute, the owners of land that could be affected by the CSLA-proposed alternate path have been neither represented nor consulted.

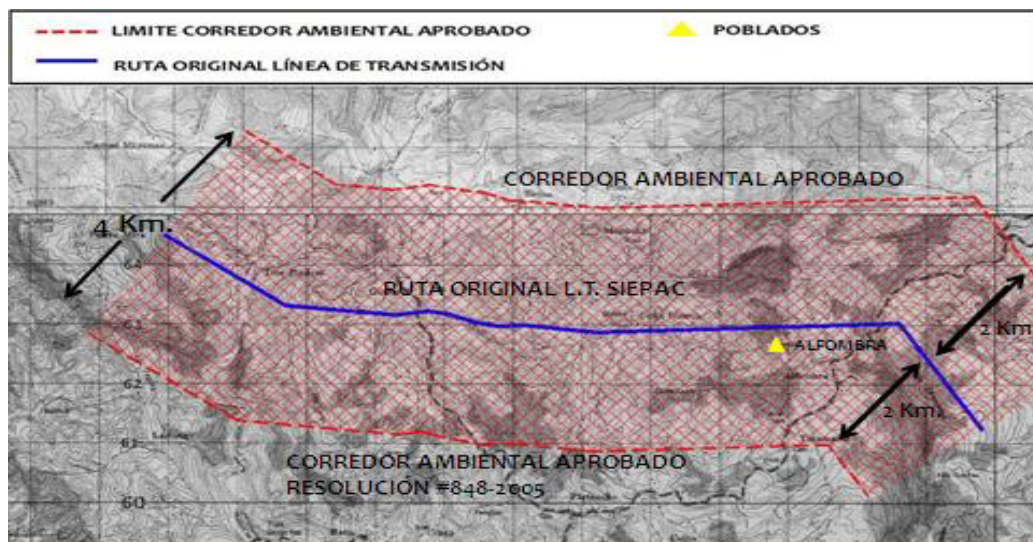
2.3. Technical aspects

Alternative paths for the transmission line

Original alignment under the environmental impact assessment

The original route alignment in the EIA, namely the centerline of the 4-km-wide corridor, came very close to the La Alfombra community. Given this original path's proximity to homes and communal infrastructure such as the school and the community hall, EPR/ICE followed the prudent avoidance principle set forth in the EIA and searched for alternative paths that would be more distant from the populated core of La Alfombra.

Figure 3. Original route of the transmission line through the area of La Alfombra



Source: ICE/EPR

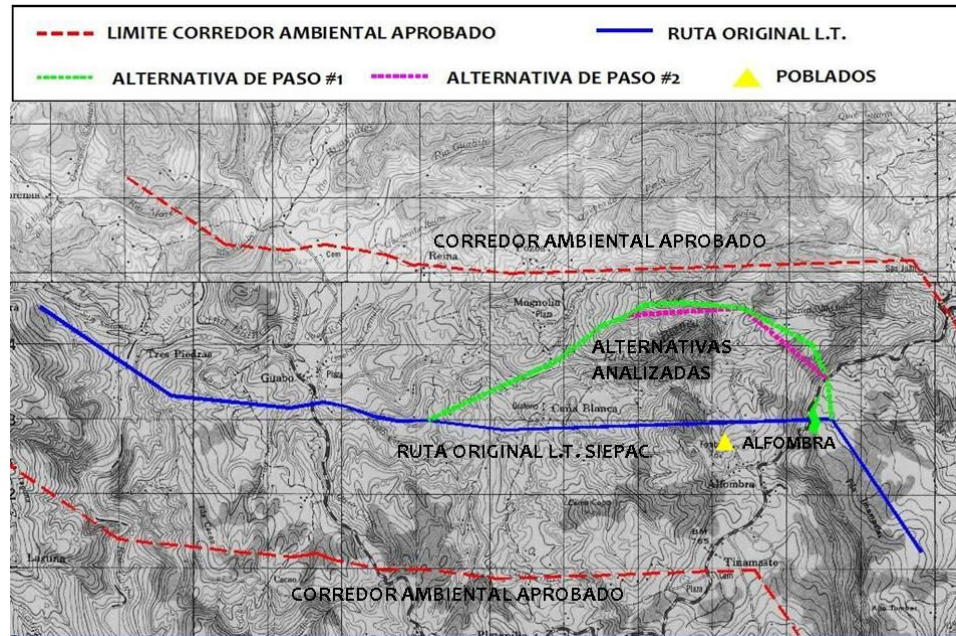
Alternative routes initially explored

In 2004, the ICE Project and Associated Services Unit, which was responsible for designing and subsequently creating rights of way, searched for alternative routes for the transmission line. With a view to removing the route from the populated core of La Alfombra, ICE explored potential alternative paths within the environmental feasibility corridor, which provided a 2-km margin to the north or to the south of the original route. ICE discovered that the alternatives to the south were not geographically feasible due to a natural topographical barrier in the form of an abrupt embankment stretching 7 km to the southeast. This feature of the terrain eliminated the possibility of creating a viable path to the south of the original route.

To the north of the original route, ICE initially examined two possible alternatives across an area of grasslands within a set of four properties belonging to Agrícola Ganadera El Sueño S.A. Figure 4 indicates the location of these two alternative routes in relation to the corridor approved by SETENA as

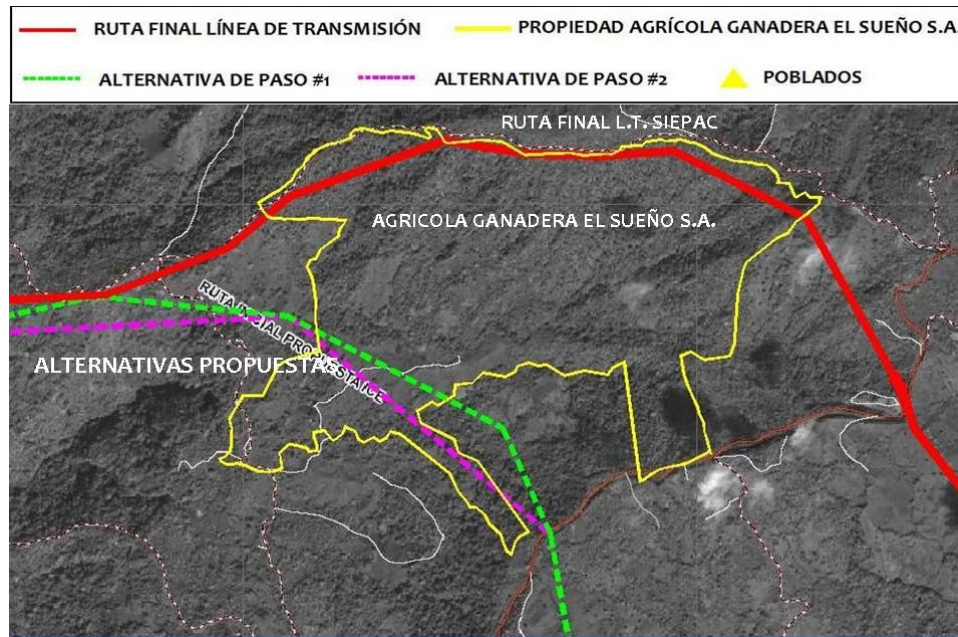
environmentally feasible. Figure 5 shows both routes (in green and purple) in relation to the set of properties owned by the aforementioned company.

Figure 4. Detailed view of location of initial alternatives (green and purple) proposed by ICE in relation to the environmental feasibility corridor



Source: ICE/EPR.

Figure 5. Detailed view of location of initial alternatives (green and purple) proposed by ICE in relation to the lands of Agrícola Ganadera El Sueño (Mr. Park)



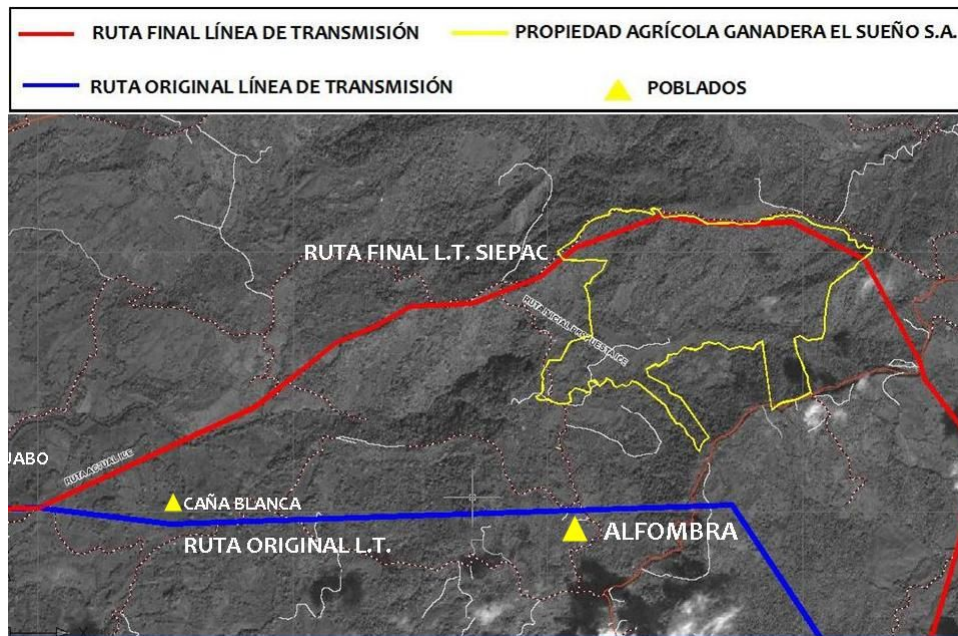
Source: ICE/EPR.

Discrepancy with Agrícola Ganadera El Sueño and proposal of the route currently supported by EPR/ICE

The land belonging to Agrícola Ganadera El Sueño, a company owned by Mr. Park, is comprised of four properties apparently titled in the name of this company and spanning a total surface area of 245 hectares. The properties include forested areas as well as grasslands. According to ICE and EPR executives, in 2004 Mr. Park told the ICE executives that he planned to build an ecotourism development on his property and therefore requested that ICE identify alternative routes. Several meetings were subsequently held between Mr. Park and ICE staff, and the latter conducted additional studies to identify alternative alignments. ICE states that, in response to Mr. Park's request, it provided him with alignment options for the transmission line's path along the boundary of his property, on either the southern or the northern boundary.

The parties offer conflicting accounts of the outcome of the negotiations. ICE states that Mr. Park initially agreed to a path along the northern boundary of his property but later demanded that it run outside his property, on the adjacent property on the opposite side of the old Alto San Juan-La Magnolia road. In view of Mr. Park's refusal to acquiesce, the procedures for forcible expropriation of the land were approved by the ICE board of directors in September 2006.

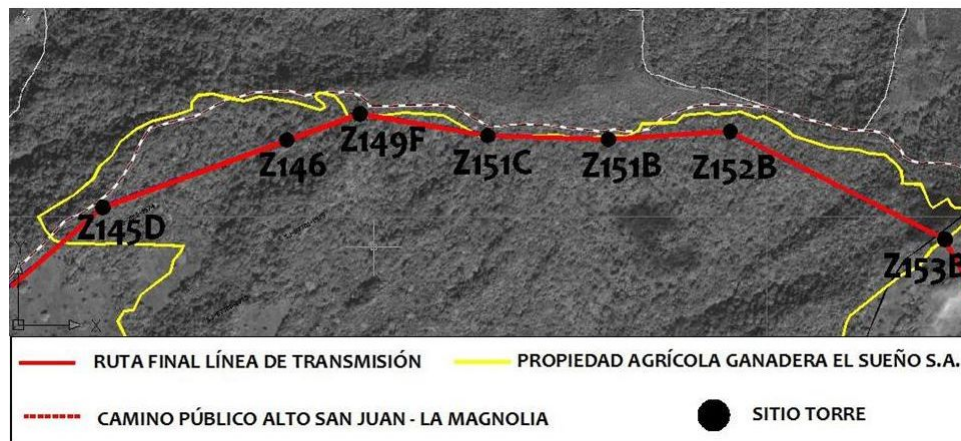
Figure 6. Route currently being proposed by EPR/ICE (red) and original route (blue)



Source: ICE/EPR

The route currently being proposed by ICE and EPR is shown in red in Figure 6. It is 14.6 km long and cuts through 47 properties, for which ICE already has 26 legalized rights of way and 16 rights of way by possession. Only three properties are still in the expropriation process. This route cuts across the property belonging to Agrícola Ganadera El Sueño S.A., owned by Mr. Kirk M. Park, running parallel to a 6-meter-wide road over an area with forest coverage and steep slopes. The decision to place the route in forested areas on Mr. Park's property has been challenged by the Committee and/or some of its members in administrative and judicial proceedings brought against ICE, EPR, and even against SETENA's approval of environmental feasibility. Some of these legal actions were initiated by Mr. Park (on behalf of his company, Agrícola Ganadera El Sueño S.A.) and were then taken up by the SIEPAC-La Alfombra Committee. These challenges have led to the development of various technical arguments, described further below, regarding the environmental and social impacts of this route.

Figure 7. Location of tower sites on the portion of the route currently proposed by ICE/EPR that cuts through Mr. Park's property



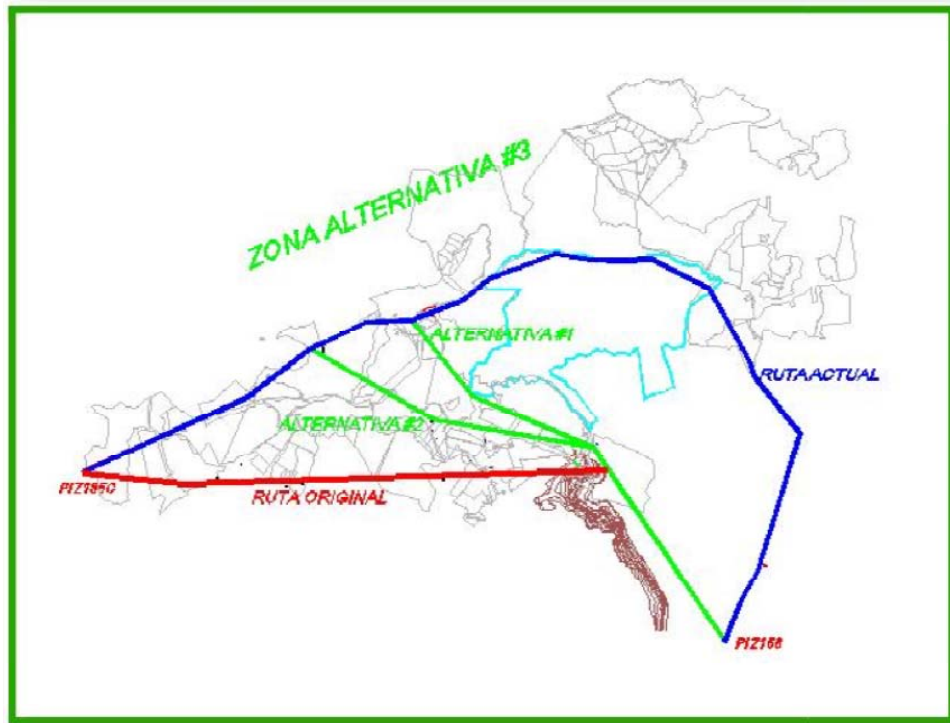
Source: ICE/EPR

Route alternatives examined in the ICE 2008 report

Faced with Mr. Park's opposition to ICE/EPR's proposed route for the transmission line, and the support for Mr. Park by members of the La Alfombra community, ICE's Institutional Legal Department asked a multidisciplinary group of ICE professionals to examine alternative routes. The multidisciplinary group, comprised of seven ICE/EPR professionals, carried out the analysis in November 2008, taking into account the following criteria:

- Socioenvironmental factors (potential passage restrictions; presence of dispersed primary and secondary forests; urban-commercial area; urban-rural area; presence of homes, public spaces, and landscape elements);
- Topographic factors;
- Electromechanical design factors (identification of technical constraints due to span length, lateral profiles, etc.);
- Preliminary stability analysis of potential tower sites and risk of landslides; and
- Effect on individual property.

Figure 8. Alternatives explored by ICE (green) versus current route (blue) and original route (red), November 2008 study.



Source: ICE/EPR

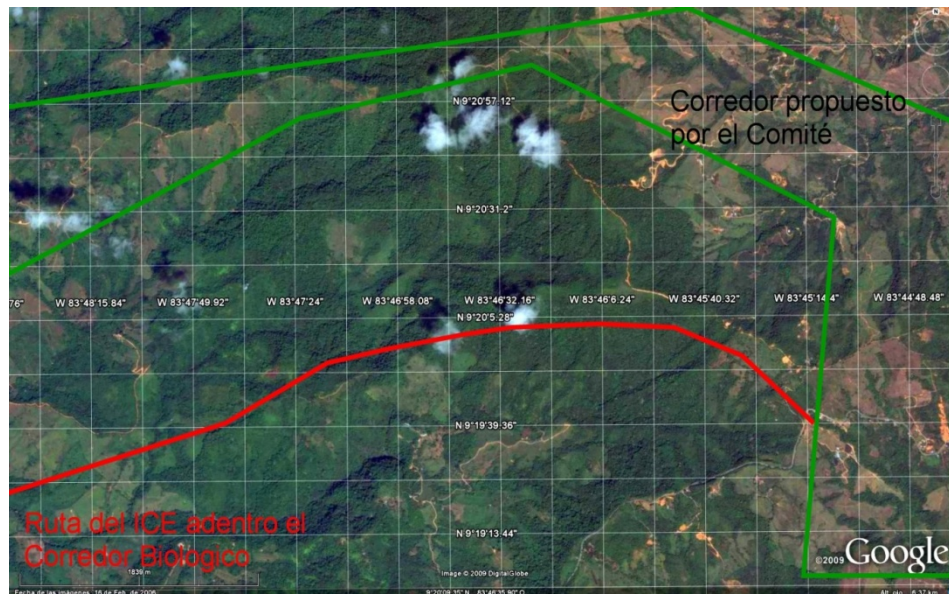
All alternatives examined in this study were located outside Mr. Park's property. The first two ran between the original route and Mr. Park's property (green lines), while the third, labeled Alternative 3 (not delineated on this figure), was in an area further north. Alternative 3 was eliminated because it cut through areas with high-end residential development projects and would thus have increased opposition to SIEPAC, and because it was outside the environmental feasibility corridor. Alternatives 1 and 2 were also eliminated because they affected homes and would potentially require population resettlement, and because they affected areas with high-end residential development projects.

Corridor proposed by the SIEPAC-La Alfombra Committee for an alternative route

In July 2009, the SIEPAC-La Alfombra Committee submitted to ICE a proposal for an alternative route corridor. The purpose was to indicate an area where the Committee had identified a greater possibility of running the transmission line through grasslands. In the Committee's judgment, this alternative would create a lesser impact on water and forest resources, while decreasing the visual impact on the area's scenic beauty and tourism potential. This corridor is located to the north of the route currently being proposed by ICE/EPR, on the other side of the Fila Costeña range.

The possible route within this corridor lies outside the area of La Alfombra, veering north before reaching this community. This path would cut through land owned by residents who do not belong to the community of La Alfombra and are not represented on the SIEPAC-La Alfombra Committee.

Figure 9. Route currently proposed by EPR/ICE (red) and corridor proposed by the SIEPAC-La Alfombra Committee (green)



Source: SIEPAC-La Alfombra Committee

A route design incorporating technical criteria for a transmission line has yet to be prepared for this corridor. Likewise, there is no comprehensive study examining all social and environmental considerations associated with the corridor. Nevertheless, both ICE/EPR and the SIEPAC-La Alfombra Committee have searched for specific arguments that will allow the environmental aspects of a potential route within this corridor to be compared to those of the route currently being proposed by ICE/EPR. ICE/EPR have performed a general comparative analysis, using available cartographic data, and did not find a significant difference in impact between one route and the other in terms of effects on the forest mass, biological corridor, and fragility and slopes of the terrain, or on the number of properties affected. Of the arguments raised by CSLA, the one that most specifically establishes a comparison between the two routes is a pronouncement from the Subregional Office of Pérez Zeledón for La Amistad-Pacific Conservation Area (ACLA-P), indicating that the route proposed by the SIEPAC-La Alfombra Committee entails a lesser impact on the forest.⁷

The technical arguments and points raised by both parties in connection with the environmental and social impacts of the routing alternatives for the transmission line are described in detail in the following section.

Environmental impacts of the routes

The environmental impacts described by the Requesters arise from the transmission line's path through a fragile wooded area which they consider particularly important for conserving the area's biodiversity

⁷ See a discussion on this point in the paragraph on impacts on forest resources, in the following section.

and water resources, as well as for the community's ecotourism development potential. This section summarizes the technical arguments raised by both parties regarding the impact on water resources, on forest resources, on fragile soils, and on biodiversity, and especially on the connectivity of the Paso de la Danta Biological Corridor.

Impact on water resources

The Requesters argue that the forest area on the current path of the transmission line will be affected not only by the installation of towers and power lines during the construction stage, but also by the felling of trees for right-of-way maintenance during the operating stage. They point out that the area's wealth of water resources is evident from the presence of springs, 10 of which have been identified in the upper portion of the property in addition to others located lower down on the property. Some of these springs are used by approximately 13 homes in the area to pipe water directly for domestic consumption. The Requesters also argue that the entire area of forests is an aquifer recharge area. Although water is currently not being harvested from the springs located in the upper portion of the property, the Requesters point out that the nearby community of Alto San Juan supplies its waterworks from an adjacent property directly to the north of Mr. Park's property, which denotes the latter's water catchment potential. Another argument raised by the Requesters is that the CSLA-proposed alternative route would entail a lesser impact on water resources because rain patterns are less intense on the other side of the Fila Costeña range and there is greater land degradation in that area.

In response to these arguments, EPR and ICE assert that all tower sites will be located more than 100 meters away from the nonharvested springs in the upper portion of the property, thus complying with the provisions of article 33 of the Forestry Act. Furthermore, EPR and ICE point out that the report prepared in January 2010 by the expert appointed by the Administrative Litigation Court indicates that the identification of the 10 springs may not be reliable since it was done by a professional who is not a specialist in the field. According to the expert report, the author's field verification of the two springs closest to the transmission line, performed in December 2009 at the end of the rainy season, indicates that both are intermittent brooks. In addition, ICE and EPR state that the La Alfombra community takes its water from a spring located 22 km from the currently proposed path for the transmission line.

Impact on forest resources

The Requesters have argued that the route currently being proposed by EPR/ICE will generate an impact due to land-use changes in significant areas of forest. They assert that EPR/ICE has marked approximately 1,470 trees more than 15 cm in diameter located within the right of way. Thus, the project would entail felling at least this number of larger trees, in addition to young, smaller-diameter trees. The Requesters add that, as told by residents who settled in the community many decades ago, most of the area's woodlands are primary forest. The notion that the area's forest is mostly primary is also supported by technical reports conducted by forest engineers from the La Amistad-Pacific Conservation Area (ACLA-P) and the Tropical Science Center (TSC).

For their part, EPR and ICE assert that, while taking a forest inventory requires marking all large-diameter trees located in the area, tree felling will be restricted to the tower sites. This assertion,

however, is followed by the caveat “provided that tree branches under the transmission line are not high enough to affect the line’s operation.” In this regard, there is mistrust on the part of the Requesters as to how EPR/ICE plan to control tree height without felling all trees in the right of way. Moreover, they argue that the sloping terrain could lead ICE and EPR to perceive that other trees on either side of the right of way threaten or interfere with the transmission line, thus requiring even more felling of trees.

In addition, the expert report commissioned by the Administrative Litigation Court (TCA) indicates that, while the area is forested, it is secondary forest, mixed in with scrubland. Thus, a difference admittedly exists between the technical opinions provided by the two parties regarding the uniqueness of this strip of forest. This difference of opinion has at times intensified the animosity between the parties; however, in practical terms, the most relevant point is that, in any event, the area is a forest and subject to the protections provided under Costa Rican legislation for this land-use category.

Consequently, despite the existence of a Decree of National Interest for this area, the felling of trees requires approval from the National Forest Authority, which in this area is represented by the Subregional Office of Pérez Zeledón for the La Amistad-Pacific Conservation Area (ACLA-P). At the request of the TCA and as part of the process led by Mr. Dylan Park, ACLA-P has noted that the felling of trees to be carried out in connection with transmission line construction and maintenance in this forest area could create an environmental impact exceeding levels that can be mitigated and compensated, thus generating environmental harm. The TCA inspected the area and granted interim relief preventing SIEPAC from initiating construction work until EPR/ICE can show that the SIEPAC project in Costa Rica will not cause environmental harm.

Another point of dispute between the parties is whether the alternative route proposed by the SIEPAC-La Alfombra Committee would actually have a lesser impact on the forest. A note from ACLA-P asserts that the alternative route proposed by CSLA is more favorable because it is located entirely outside the forest and “one of its sections uses an existing public road that cuts through a segment of natural forest.” Yet this goes beyond Costa Rican road and municipal regulations, assuming as it does that placing a portion of the SIEPAC transmission line on a public road is feasible. Instead, affecting a public road would have other implications which ACLA-P fails to consider. Thus, a clearer outline of the arguments and parameters for both routes is needed before a comparison can be made of their impacts on the forest.

Impact on fragile soils and steep slopes

Side by side with the issue of the effect on forest and water resources, the Requesters have expressed their concern regarding the area’s topographic conditions and its susceptibility to erosion and landslides. They point out that the grade of the area’s slopes is predominantly in the range of 45% to 80%. Moreover, the condition of the soil, if its tree cover were removed, would make it even more prone to erosion and landslides. Given the nature of the forest, any landslides, even those resulting from the removal of trees, could lead to a further loss of forest coverage.

These concerns are answered by EPR/ICE citing a series of environmental mitigation measures established in the EIA and approved by SETENA, which have been incorporated into the techniques used to build most of the line, including other portions on similar terrain. EPR/ICE believe that existing

extraction techniques, whether manual or aerial, make it possible to prevent impacts due to the terrain's grade and fragility. Nevertheless, the Committee members are very skeptical regarding the feasibility of a strategy based on aerial removal techniques due to the area's difficult cloud and visibility conditions.

Impact on the area's biodiversity and biological corridor

The Requesters argue that the area's woodlands, being a mostly primary cloud forest, constitute an important ecosystem that is uncommon within the Paso de la Danta Biological Corridor and therefore supports several endangered animal species. They assert that the transmission line would cut this cloud forest in two. Moreover, they point out that the forest sustains very rich bird life, as documented by an Audubon Society project.

EPR and ICE answer this concern by stating that the environmental commitments under the EIA include measures designed to minimize the impact on this type of area, even though the area has not been established by decree as a management category. These measures include aligning a path that runs parallel to existing roads and refraining from creating additional roads in order to avoid further fragmentation of the biological corridor. They point out that, when the EIA was prepared, the biological corridor did not exist as such; the study that would lead to the corridor's implementation by The Nature Conservancy was only being conducted at the time.

In addition, EPR and ICE argue that there are two versions of information as to the boundaries of the Paso de la Danta Biological Corridor. They point out that the information "available in public databases" when the route was being determined indicated that the biological corridor's boundaries were more than 10 km from the site of the route. Yet information currently available from the National Conservation Area System's National Biological Corridor Program shows that the route lies within the Paso de la Danta Biological Corridor. EPR and ICE add that, according to this broader version of the biological corridor, the alternate path proposed by the SIEPAC-La Alfombra Committee is also located within the corridor.

Socioeconomic impacts of the locations

Of vital importance to the Requesters is the potential impact of the transmission line's path on the La Alfombra community's attractiveness as an ecotourism destination. One cannot understand the concerns of La Alfombra as a community without recognizing the importance attributed by its members to the recent influx of foreigners who have invested in the community, particularly when viewed in contrast to the economic downturn and neglect experienced by other, neighboring communities such as La Perla and La Magnolia.

While hotel developments in the community are few and mostly very recent, they are viewed as a great opportunity for the community's future growth. In addition, the Requesters believe that neither the EIA nor the expert report commissioned by the Administrative Litigation Court addresses with any depth the socioeconomic features of the population and the consequence of the transmission line's potential impact on the area's scenic beauty.

2.4. Review of Bank policies

The project has gone through a gradual process of compliance with IDB operational policies and safeguards. Since its original approval in 2001, SIEPAC has been supported by the Bank via various financial and technical assistance instruments, the most recent being a restructuring of funds in 2010. At the same time, the IDB has been developing a framework of operational policies and safeguards, particularly the Environment and Safeguards Compliance Policy (OP-703). The project team and ESG have made notable efforts to develop an environmental and social performance system for all of SIEPAC in the project's various Central American constituent countries, starting with baseline audits and specific performance strengthening recommendations as of 2010.

In Costa Rica, and in the section under discussion, ICIM has been able to confirm the ability and predisposition for service shown by the IDB team and the executing agency, and their abundant technical and field work, both environmental and social. In 2011, ESG carried out a project performance analysis and detailed tracking of SIEPAC's path through La Alfombra in light of Directive B.9, "Natural habitats and cultural sites," of the Environment and Safeguards Compliance Policy (OP-703). The highlights of these reports are as follows:

- The line will run along the margin of the basin that supplies water to the community of La Alfombra;
- The forest area directly affected is important both as a component of the Paso de la Danta Biological Corridor and as an area of great biodiversity;
- The transmission line will not further fragment the biological corridor because the projected route runs parallel to and within 100 meters of an existing public road, and installing the transmission line and towers will leave the undergrowth intact, allowing the movement of fauna.
- There is a possibility that the line will have direct effects on the area's vegetation and wildlife, but these effects may be mitigable;
- There are considerable declivities in the area and a concomitant risk of landslides (there is a landslide in the mountains north of the site); however, the towers and the line are located next to the public road in areas with minor slopes, and this risk will be taken into account during construction;
- It is possible that the transmission line's current path will have an aesthetic impact, affecting the view from existing and planned hotels;
- EPR has yet to determine and establish the relevant environmental mitigation and monitoring measures to minimize and mitigate the expected environmental impacts. These measures should include dissuasive and bird-saving measures and an adaptive monitoring and management process to identify and manage direct impacts;
- Based on existing information, a visit to the projected site for the SIEPAC transmission line in the area of the Paso de la Danta Biological Corridor, and the planned implementation of mitigation measures, the project appears to be in compliance with Directive B.9, "Natural habitats and cultural sites," of the Bank's Environment and Safeguards Compliance Policy (OP-703).

Due to gradual compliance in the context of the various operations that comprise SIEPAC and the inability to apply the Bank's operational policies and safeguards retroactively, it is difficult to analyze the project's performance history. Key elements such as the 1997 environmental impact assessment (EIA), updated in 2003, were implemented prior to the approval of OP-703 and could have benefited from the application of this policy's quality standards. In fact, a single EIA (originally prepared in 1997 and updated in 2003) was used for the entire alignment of SIEPAC's route through Costa Rica; consequently, impacts and mitigation measures are identified on a general basis and make reference to future studies. For the section under discussion, the project team has performed numerous technical studies, which could have benefited from an information integration exercise, the design of a specific environmental and social management plan (ESMP) for the subsection, and an institutional open process of public consultation.

C. Analysis of the context for dialogue

3.1. Dynamics of the dispute

A. Flow of information and communications

It appears that communication and a fluid exchange of information between the parties, which could have helped to create a unified vision of the problem, did not exist at any point in the process. For example, there are large gaps as to how the parties interacted during the initial years in the search for solutions to the problem.

The parties also mention and use technical arguments, but it is not entirely clear to what extent these arguments have been fully shared with the other party. In addition, the technical information produced by both parties is generally limited by the adversarial logic that guided its development. Virtually none of the existing technical points focuses on devising the best route without regard to the positions of the parties. Instead, these points have in most cases been developed to lend support to one party's argument and delegitimize the opposing party's argument.

B. Loss of trust between the parties

Trust between the parties has markedly diminished as a result of persistent tensions and fruitless past attempts at a solution. For ICE/EPR, the existence of legal proceedings brought by CSLA and Mr. Park feeds a reluctance to become involved in a process of dialogue, for fear that views expressed in good faith could later be used as opposing arguments in court and/or that agreements reached between the parties may later be set aside under court rulings.

For their part, the CSLA members cite past offers that were not honored, and the lack of specific information on the project's environmental impacts and mitigation measures, as the reasons for their mistrust.

C. Prevalence of a legal and adversarial strategy

Unlike other disputes between community stakeholders and development projects, this case is remarkable for the influence exerted by the legal counsel to both parties. Annex 1 provides a table showing the open legal proceedings. In some instances, this has led to blatantly contradictory situations, such as the fact that the administrative action challenged by CSLA in its complaint to the TCA is the environmental feasibility approval for the modified Matapalo route, which has nothing to do with the community of La Alfombra. Likewise, in the same complaint, CSLA seeks to require ICE to build on the originally aligned path which has received environmental feasibility approval, when this path is the one that cuts through the center of La Alfombra.

In the case of ICE/EPR, the attorneys have also been instrumental in steering the response strategy toward the legal challenges, at times with a weak or nonexistent technical and socioenvironmental basis.

D. Underestimating the socioeconomic elements of the dispute

The fact that Costa Rican legislation strongly protects forest and water resource conservation has given this issue a great deal of weight in the arguments put forth during legal proceedings. However, this has had the counterproductive effect of undermining the Requesters' primary concern, namely the transmission line's potentially adverse impact on the area's scenic beauty and attractiveness for tourism, which is perceived as the main driver of the local economy. Underestimating this concern has led to a very subjective debate on this issue, a debate conducted without the benefit of socioeconomic studies that can measure the potential effects on the community and allow a comparison of different routing options to determine which will have the lowest impact in this respect.

E. Mr. Kirk M. Park's predominance in addressing the dispute

Despite having resigned as a CSLA member in 2009, Mr. Park (and his family) still appear to wield considerable influence on this committee. In addition, as indicated in the section on representativeness, there is no clear separation between the legal actions brought by CSLA and those brought by Mr. Park. Furthermore, Mr. Park has expressed his disagreement with certain suggestions, such as performing a new and neutral technical evaluation of possible routes (proposed by an expert invited by CSLA), arguing that "all major environmental institutions agree with the Committee's position."

F. Disparities in initiatives arising from the dispute

The dynamics of the dispute have been a function of the pace imposed by CSLA and Mr. Park. They are the ones who initiated the legal actions, engaged in political lobbying, contacted several local media groups, and submitted the Request to ICIM. On the other hand, EPR and ICE have adopted a less proactive stance, responding to the legal actions and simultaneously compiling technical information as to the best routing option.

G. Pressures due to the lapse of time

The time elapsed without a solution to the dispute has caused relations between the parties to sour; it has also resulted in political, financial, and operational pressures on EPR as the SIEPAC project's execution unit. By now, Tramo 17 has become the most delayed section of SIEPAC's transmission line in the region. Consequently, this is now the project's critical section and any further delay on Tramo 17 will mean a delay in the entire regional network and in SIEPAC's entry into service.

3.2. Predispositions and points for dialogue

CSLA

- Agrees to a dialogue only for purposes of discussing route changes outside the town, forests, and springs of La Alfombra on a path such as the one proposed by the committee or a better one, if any.
- Does not agree to discuss improvements to the currently proposed route or any other path that runs through La Alfombra.

ICE/EPR

- Agree to a dialogue if CSLA and the community show their predisposition by withdrawing the legal actions filed by the SIEPAC-La Alfombra Committee against ICE and EPR, including the Administrative Litigation Court (TCA) and Environmental Administrative Court (TAA) proceedings, and provide a commitment that these actions will not be renewed by interested third parties in the community.
- Any alternative route solution must lie within the 4-km wide environmental feasibility corridor approved by SETENA.
- As the SIEPAC-La Alfombra Committee has for several years conducted an ongoing campaign against the project in the Barú sector of Pérez Zeledón, with statements such as "SIEPAC-ICE-EPR want to destroy our forests and our future," ICE/EPR see little likelihood that any other community or group of property owners would be willing to agree to be included in the transmission line's path. Thus, any attempt to align a path outside the environmental feasibility corridor would be met with as much opposition as shown to date by the SIEPAC-La Alfombra Committee, if not more, aside from the estimated 35 months it would take to achieve the progress attained by the project to date. The negotiation process should include all social groups comprising the La Alfombra de Barú community, not just CSLA. The process of social communications and technical explanations should be carried out with the community of La Alfombra de Barú and not only with the SIEPAC-La Alfombra Committee. These processes must be organized, facilitated, and moderated by an impartial body such as ICIM-IDB.

D. Achievements, opportunities, and limitations of the consultation process

The main achievement, opportunities, and limitations of the consultation process are summarized as follows:

Achievements

- **Encouraging the exchange of information between the parties:** The parties have been provided with key information during the Assessment; for example, a copy of the project's environmental impact assessment (EIA) was made available to the Requesters.
- **Compiling existing technical information and identifying information gaps:** Facilitated by ICIM, the Requesters and the execution unit conducted an exercise during the Assessment for purposes of: (i) compiling the numerous studies submitted in the process of comparing the two proposed routes; and (ii) identifying contradictory information and information gaps.
- **Organization, community, and representativeness:** It is essential in the ICIM process for the community to be adequately represented in the dialogue through legitimate representatives. ICIM has particularly stressed the importance of proper and transparent communications between the Committee and the community, and has offered the Committee tools to facilitate the communications process.
- **A more integrated approach to the situation in La Alfombra by EPR/ICE:** When preparing and managing the project section that runs through La Alfombra, EPR/ICE were supported by various professionals and groups in the technical, legal, environmental, social, and other areas. The ICIM Assessment has fostered communication among, and development of common strategies by, these groups and individuals, as well as leading to the introduction of environmental and social technical arguments into EPR/ICE's legal/judicial strategy.
- **Identification of substantive issues:** As part of the Assessment, ICIM facilitated a process in which the parties focused on technical issues regarding environmental and social impacts directly attributable to the project, in order to search for potential solutions. This has helped identify more clearly the environmental and socioeconomic technical aspects of the Request.
- **More relaxed relations between the parties:** The erosion of trust between the parties led to moments of tension. The ICIM process fostered an environment of respectful dialogue, culminating in an express request and invitation by members of the community for ICE/EPR to visit in order to discuss technical project issues. ICIM could facilitate such a meeting as part of the dialogue process.
- **Points for dialogue:** The parties' stated positions and points appear to indicate a potential window for dialogue focused on a search for solutions. There is a strong need for a comprehensive, impartial technical analysis that, based on parameters reflecting the concerns of both parties, compares the routing alternatives in relation to their potential social and environmental impacts. Such an analysis could fill an information gap which the parties have been slow to acknowledge. Specifically, the Committee has been erroneously interpreting the stance of various environmental organizations as a uniform consensus that explicitly favors the route proposed by CSLA, when most of these documents merely indicate that the area is

sensitive and support efforts to examine other paths, preferably over grasslands or already affected terrain.⁸

- Since 2009, both in the legal proceedings and in its Request to ICIM, CSLA has been proposing an alternative path on the other side of the mountain range. However, it is worth noting that this alternative would affect third parties who are not represented on CSLA. In this dialogue process, it is important for these stakeholders to be taken into account and consulted if this alternative is to be considered for a possible agreement. EPR/ICE should jointly determine a strategy for approaching these stakeholders.

Opportunities

- Creation of an enabling environment and a positive attitude for dialogue on the part of ICE/EPR;
- Synthesis of technical proposals for the alignment based on reasonableness parameters;
- Build a productive dialogue based on respect and on a nonadversarial tone;
- Change the EPR/ICE strategy from adopting an opaque technical position to presenting the abundant information compiled, and the conclusions based on this information, to various audiences;
- Opportunity to generate additional key information;
- Possibility of improving communications among the parties, that is to say, the community, the Committee, EPR, and ICE;
- Possibility of identifying affected third parties who could conceivably be part of the process;
- Possibility of developing the capability of EPR's mechanism for addressing noncompliance.⁹

Limitations of the dialogue process:

- *Institutional and policy limitations*
 - There is a risk of insufficient coordination among the various areas of ICE/EPR, which could, for example, limit the implementation of a joint technical/legal strategy.
 - There is a web of pending legal proceedings and consolidation of cases, which could jeopardize the implementation of potential consensus solutions as well as the continuity of the ICIM process due to ICIM Policy limitations.¹⁰

⁸ As indicated above, the only document provided that comparatively examines the routes and indicates that the one proposed by the Committee is the lowest-impact route is Official Letter ACLA-P SRPZ-367 DE 2009, which states "(...) Following an inspection and after processing the location of the routes with respect to the land-use information in FONAFIFO-2000, it is confirmed that the original route proposed by the ICE-SIEPAC project **invades significant areas of forest**, which would be affected by the land-use change involved in removing the forest cover in order to install power lines or wires. In addition, it has been determined that the route proposed by the SIEPAC-La Alfombra Committee lies entirely **outside the natural forest**, utilizing in part an existing public road that crosses a portion of the natural forest."

⁹ In 2011, EPR approved the creation of a mechanism for addressing nonconformity as a pilot program in Costa Rica, with the option of expanding it into other Central American countries in SIEPAC.

¹⁰ ICIM Policy, Section 37.i.

- The numerous pending proceedings at environmental institutions and court actions could lead to overlapping and/or conflicting decisions making it difficult to establish the decision-making scope of the dialogue.
 - The interim relief ordered by the various courts and by the Environmental Administrative Court¹¹ restrict an open search for solutions by the parties as well as ICIM's participation in the process.
 - The executing agencies would not be willing to start from scratch, that is, to negotiate or discuss a route that forces them to apply for a new environmental license.
- *Technical limitations*
 - EPR/ICE have conducted general internal inquiries aimed at comparing the route proposed by the Committee and the routes proposed by ICE based on reasonableness parameters. These inquiries and the general technical conclusions reached have not been fully presented to the community.
 - EPR/ICE believe that a location outside the environmental feasibility area entails other, unexamined impacts which could be socially and environmentally significant.
 - CSLA would not be willing to discuss a location within the community or forests of La Alfombra. The community and ICE would need to provide a georeferenced description of the physical boundaries of the community and its forests, which as of this writing are unknown.
 - The scale used in the EIA and the ESMP is very high, which has made it difficult to work out in detail the specific impacts that the project could generate in each subsection. This can be done once agreement has been reached on the final alignment.

¹¹ Which entail "a halt in any work or activity."

E. Conclusion and next steps

Conclusion

As indicated in the section on legal aspects, the existence of an Environmental Administrative Court (TAA) action, case file no. 346-10-01-TAA, came to light in the course of the Assessment, not having been disclosed by the Requesters during the eligibility stage. This action was filed in August 2010 by Mr. Dylan Park in his capacity as attorney-in-fact for Agrícola Ganadera El Sueño S.A. It should be noted that Mr. Dylan Park has also served as an active member of the SIEPAC-La Alfombra Committee in its Request to the ICIM.

On 12 July 2011, the TAA issued resolution 697-11, granting interim relief in respect of the forested property underlying the Request submitted to ICIM by the La Alfombra community. This interim relief halts all work or activity on the land in question, including the installation of structures, felling of trees, and elimination of underbrush, until a final decision is issued in the TAA proceedings or until, prior to a final decision, “it is reliably shown that none of the alleged anomalies exists.” Thus, ICIM was able to determine that the issues before the TAA, which underlie the interim relief to prevent environmental harm, are the same as those raised by the Requesters in their Request to ICIM.

Also during the Assessment, ICIM identified very similar elements in the other pending legal proceedings filed in connection with SIEPAC and the Tramo 17 transmission line. All of this triggers the ICIM Policy’s exclusion (Section 37.i) to the effect that “neither the Consultation Phase nor the Compliance Review Phase will be applied to... Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies.” Consequently, the discovery of the existence of new TAA proceedings and the substantive similarities with other pending legal actions combine to create an impediment to ICIM facilitation of the dialogue process.

It should be noted that, quite aside from the ICIM Policy exclusion, fostering and seeking resolution between the parties currently in litigation could place any of the parties at a disadvantage with respect to the other, depending on the decisions handed down. Thus, it would only be possible to continue with the ICIM process if the Requesters and ICE/EPR exercise their option to stop the proceedings and seek conciliation.¹²

Adding to this scenario is the fact that all parties have been inflexible regarding their parameters for engaging in dialogue. While the parties had originally agreed to discuss parameters for comparing

¹² The parties have the option of submitting their disputes before the Administrative Litigation Court (TCA) and Environmental Administrative Court (TAA) for judicial or extrajudicial conciliation. It should be noted, however, that this process is not entirely devoid of complexities. In the TCA dispute, the complexity arises from the fact that this case has been consolidated with another, and a third case is being consolidated with these two. Once the consolidation is completed, suspending the proceedings to allow the Committee to reconcile with ICE and EPR could require the consent of the claimants in the other two cases. In the TAA dispute, the complexity lies in the fact that the Court has the authority to accept, reject, or even modify some of the terms of the settlement reached by the parties if and as it deems necessary based on any environmental criteria and technical studies it deems relevant.

possible routes, both the Committee and EPR/ICE make the possibility of dialogue contingent on acceptance a priori by the other party of route placement restrictions incompatible with the other party's position. Thus, it may be concluded that, as of the date of completion of this Assessment Report, **the conditions are not in place for proceeding with a consultation process and search for solutions, due to both the irreconcilable nature of the parties' parameters for dialogue and the aforementioned description of judicial proceedings (known as well as new) currently underway in connection with matters intrinsically and directly related to the case under review.** Moreover, the existence of the latter situation requires ICIM to remove itself from the case in order not to interfere with legal proceedings conducted by national bodies of competent jurisdiction and in order to prevent the opposing party from using the efforts deployed by the parties during dialogue for unilateral purposes.

This conclusion does not prevent the Requesters and/or all parties from resubmitting the case to ICIM in the future if they so wish, provided that the current conditions have changed and new facts and circumstances exist.¹³ In such an event, the ICIM Project Ombudsperson could reassess the possibility of directly continuing with the now interrupted dialogue.

Next steps

The next steps will depend to a great extent on the Requesters and ICE/EPR. ICIM is now and will remain open to a dialogue process under the right conditions, where none of the parties is at an evident disadvantage whether due to lack of response, information, or knowledge or due to judicial or administrative rulings. ICIM has planned a mission to share with and explain to the parties the findings of this Assessment Report and answer any questions.

¹³ See ICIM Policy, Section 37.e

Annex 1: Summary of judicial proceedings

Below are the main legal actions initiated by the Committee and/or its members in connection with the environmental and social impacts of the SIEPAC line's passage through La Alfombra.

Proceedings	Claimant	Judicial venue	Purpose	Status	Interim relief
06-014439-0007-CO	Agrícola Ganadera El Sueño, S.A.	Constitutional (amparo proceeding)	Environmental threat due to the line's impact on the Paso de la Danta Biological Corridor, springs, and primary forest.	Closed (January 2008). Dismissed on all causes of action.	
Case file 09-002439-1027-CA 10/26/09	SIEPAC-Alfombra Committee Agrícola Ganadera El Sueño (interested third party).	Administrative Litigation Court (TCA). Cases 2439 and 2212 have been consolidated, and consolidation of case 2366 is being considered. The proceedings will not resume until a decision is issued on the consolidation, and then all cases will have to be taken to the same procedural stage.	Overturn the SETENA resolution declaring the project environmentally feasible, due to a failure to conduct a public consultation; visual and economic impacts; and impacts on water resources, primary forest, and Paso de la Danta Biological Corridor.	Answer to the motion to join the proceeding (EPR, PGR, ICE). Other open case files on this property: 10-1098 CA and 346-10-01-TAA.	Ruling 311-2010: <ul style="list-style-type: none"> Ban on building roads for machinery: use paths for access. Cables may be installed manually or from the air. The tower infrastructure must blend in with the natural environment. Compliance verification mechanism.
Case file 09-002212-1027-CA 14/09/09	ASADA Matapalo, GUPEDUTSS, Aguirre Municipality.		Overturn the modification of the line's path due to failure to provide a right of reply; visual and economic impacts; and impacts on water resources and key ecosystems (mangroves).	Answer to the complaint (EPR, PGR, ICE).	Ruling 042-2010: <ul style="list-style-type: none"> The court orders a halt in construction work.
Case file 10-002366-1027-CA 08/11/10	Committee for Health, Environment, Flora, and Fauna Protection (COPSAFF) of San		Request for interim relief halting the construction of towers due to the proximity of structures in population centers, the effect on the	Notice of complaint not served and pending litigation unresolved, as the claimant is an interested third party	No interim relief has been ordered due to the pending briefs submitted by ICE.

	Juan de Dios and Tres Piedras in Barú, and Punto de Mira and Tierras Morenas in Aguirre.		Paso de la Danta Corridor, and unavailability of the complete EIA file at SETENA.	under the complaint filed by the Matapalo ASADA.	
Case file 346-10-01-TAA Complaint	Sociedad Agrícola Ganadera El Sueño, La Amistad-Pacific Conservation Area, and the NGO ASANA.	Environmental Administrative Court (TAA)	Risk of environmental harm resulting from building the transmission line in the La Alfombra forest area.	Answer to the complaint (EPR, ICE).	July 2011: Interim relief prohibiting ICE/EPR from building in the La Alfombra forest area until they can show that building the transmission line will not harm the environment.
Case file 10-1098-1027-CA.	Kirk Park, Agrícola Ganadera El Sueño, S.A.	Administrative Litigation Court (TCA)	a) Nullify the expropriation actions on the claimant's properties, as the basis for these actions (the transmission line's route and the basis for it) runs counter to technical considerations, reason, justice, and experience and evidences a clear misuse and abuse of the institution's power. b) Environmental harm, both current (in the process of aligning the route) and future (as the transmission line's path will affect springs, primary forest areas, habitats, and animal and plant life in general).	Preliminary hearing conducted, waiting for the court to appoint experts to perform a forest inventory and inventory of springs, and set dates for oral and public proceedings, and for the expert testimony to be presented.	The TCA rejected the ICE petition for consolidation and fast-track processing because the complaint is not identical to case 2439 filed by CSLA. Case 2439 seeks to require ICE to build on the original route, which has been deemed environmentally feasible, while case 1098 seeks to require ICE to build along the route proposed by CSLA.