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**DOCUMENT OF THE
INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM**

CR-MICI001-2011

**CLOSING REPORT OF THE CONSULTATION PHASE
LOANS 2421/BL-NI, 1908/OC-CR AND 2016/BL-HO
“PROPOSAL FOR AN ADDITIONAL FINANCING OF COST OVERRUNS FOR THE
CENTRAL AMERICAN ELECTRIC INTERCONNECTION SYSTEM (SIEPAC)
PROJECT AND REALLOCATION OF RESOURCES FROM LOANS”**

This document was prepared by the *Project Ombudsperson* for the *Consultation Phase*.

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Consultation Phase

Closing Report SIEPAC—La Alfombra Case CR MICI001/2011 Costa Rica



November 2011

Closing report

This report has been prepared in compliance with the provisions of article 51 of the Policy Establishing the Independent Consultation and Investigation Mechanism (the Mechanism) with the object of presenting the conclusions and findings obtained, the methodologies followed, and the lessons learned during the Consultation Phase.



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Executive Summary

Country: Costa Rica

Consultation Team: Isabel Lavadenz, Project Ombudsperson; Ana Núñez Sánchez, Case Analyst; Maureen Ballesterio, Technical Specialist; and Sergio Guillén, Local Mediator and Facilitator.

Request: On 2 February 2011 the Mechanism received a Request alleging that the construction of electrical interconnection infrastructure in the La Alfombra community's surrounding area could cause irreversible damage to people and ecosystems in the area, in particular, to water and forest resources, biodiversity, and local livelihoods (primarily ecotourism).

Project: The Central American Electric Interconnection System (SIEPAC), 1908/OC-CR, approved in 1997 and reformulated in 2001, is a regional project with the objective of creating a regional electricity market and establishing electric interconnection infrastructure (lines and substations) in six Central American countries.

Stakeholders:

Requesters: Mrs. Yamileth Román Segura, representing the SIEPAC-La Alfombra Committee (Requesters) and the La Alfombra Community.

Executing agency: Empresa Propietaria de la Red (EPR), the grid operator. Instituto Costarricense de Electricidad (ICE) is involved in project implementation in Costa Rica.

Determination of Eligibility: The Projects Ombudsperson declared the request eligible for the Consultation Phase on 8 April 2011.

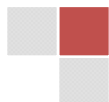
Assessment: The Assessment Phase took place from May to July 2011, and the Assessment Report was published in August 2011. The Assessment generated and compiled a large quantity of technical information, mapped the key stakeholders, and established the parameters for dialogue between the parties. The Assessment concluded that suitable conditions for dialogue did not exist. This was for two fundamental reasons: (a) the parameters for dialogue laid down by the parties are irreconcilable; and (b) the Request submitted to the Mechanism covers issues that are currently being handled by the courts of Costa Rica, such that under article 37 (i) of the Policy Establishing the Mechanism, efforts to foster dialogue cannot be continued.

Results of the Consultation Phase: The main results obtained include: Identification of key socioeconomic issues for the Community; identification of the direct and indirect stakeholders in the process, their interests and level of involvement in proposing and making decisions on possible solutions; strengthening of the technical discussion; and observing the concerns of the members of the Community on the subject of improved access to information about the Project, and more effective communication management.

Lessons learned in the Consultation Phase:

Operational: It is essential to identify effective Environmental and Social Impact Assessment tools and map out a Stakeholder Engagement Strategy in the early stages of the Project. This can facilitate early identification of the Community's concerns so that these can be addressed during Project design and implementation. Large-scale infrastructure projects, such as the one addressed in this Request, can benefit significantly from a Complaints Management mechanism.

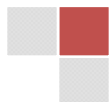
Process: It is of utmost importance that the Mechanism make direct contact with the Community at strategic points in the Consultation Phase, and that the Community's expectations be measured against criteria of reasonableness and equity. The significant interference of legal processes in any possible dialogue requires that the Mechanism have a full mapping of the legal processes at the early stages of the Consultation Phase. Lastly, the willingness to engage in unconditional dialogue offers the best opportunity for reaching innovative and sustainable agreements between the Parties.



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I. Introduction

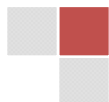
On 2 February 2011 the Independent Consultation and Investigation Mechanism (Mechanism) received a Request from Mrs. Yamileth Román Segura, on behalf of the SIEPAC–La Alfombra Committee (Requesters) and the La Alfombra Community. The Request alleges that the section of the Central American Electric Interconnection System (SIEPAC) transmission line running through the La Alfombra community could have significant environmental and social impacts. This section of the SIEPAC Project belongs to a line segment called “Tramo 17” (Section 17) located between the Parrita and Palmar substations. The potential impacts alleged in the Request are summarized below:

- **Water and forest resources:** The construction of the transmission line will require felling a significant area of woodland on erosion-prone soil, which could seriously affect natural resources in the area, particularly the amount and quality of La Alfombra’s water supply.
- **Biodiversity:** The planned transmission line will run through the Paso de la Danta Biological Corridor, which is part of the Mesoamerican Biological Corridor, causing unnecessary fragmentation of the corridor and harming the species present.
- **Local livelihoods:** The construction of power transmission lines and pylons in the community’s viewshed could affect local businesses, particularly those engaged in ecotourism, and hence have an adverse impact on the local economy.

Furthermore, the Requesters submitted to the Mechanism an alternative location for the transmission line that they considered would have a more limited environmental and social impact. The Requesters had suggested this alternative to the Project Executing Agency, Empresa Propietaria de la Red (EPR) previously, as a counterproposal to the various routes proposed by the EPR for the section running through La Alfombra. The Mechanism declared the Request eligible for the Consultation Phase on 8 April 2011,¹ conducted its Assessment from May to July 2011, and published its Assessment Report in August 2011.²

¹ The Eligibility Memorandum is available on the Independent Consultation and Investigation Mechanism’s website at <http://www.iadb.org/es/mici/detalle-de-reclamo,1804.html?id=cr%20MICI001/2011>.

² The Assessment Report is available at <http://www.iadb.org/es/mici/detalle-de-reclamo,1804.html?id=cr%20MICI001/2011>.



II. Assessment Process: Methodology and Results

A. Methodology

Once the Request had been declared eligible, the Consultation Team conducted an Assessment to “clarify the issues and concerns raised by the Request, identify and gather information from stakeholders, including potentially other parties similarly situated to the Requester, inquire as to the views and incentives of all stakeholders, and help determine whether a resolution to the issues raised can be reached and what is the best process for doing so.”³ To meet these objectives, the Consultation Team carried out the following tasks: (i) analysis of the documents and information presented by the Requesters, the Executing Unit and the IDB Project Team, along with the documents obtained by the Mechanism and/or gathered by independent experts; (ii) field visits to the Project area, covering the current route for the line and the one proposed by the Requesters; (iii) discussions with the Requesters and their representatives, the Executing Unit, the Project Team, and other community stakeholders; and (iv) formation of a local team comprising a technical specialist and a facilitator/mediator, to handle the onsite tasks involved in the Consultation Phase.

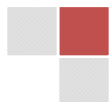
B. Results of the Assessment

The Assessment’s main findings included:⁴

- ✓ ***Deficiencies in the flow of information and loss of trust between ICE/EPR and the community.*** In general, these factors have led to tensions between the parties, and have hindered their reaching a shared vision of the nature of the line’s impacts on its path through La Alfombra, and the measures that should be taken to prevent or mitigate these impacts.
- ✓ ***Prevalence of a strategy of recourse to the courts, to settle the differences between the parties.*** This has resulted in a proliferation of lawsuits filed with various courts by different parties, who nevertheless share numerous links. The ICE/EPR’s legal response has, in many instances, focused on administrative and procedural arguments, which has not helped address the technical issues concerning the environmental and social performance which it was hoped the courts would clarify.
- ✓ ***Relegation of the socioeconomic aspects of the dispute to a secondary status, and concentration on environmental impacts.*** This prevented discussion between the parties from addressing one of the Community’s main concerns, the possible impact the line could have on the ecotourism business in the area, and the consequent job losses. It has also hindered the production of analytical work needed to inform decision-making.

³ Article 42 of the Policy Establishing the Independent Consultation and Investigation Mechanism <http://www.iadb.org/es/mici/acerca-del-mici-que-es-el-mici,1752.html>.

⁴ The Assessment Report is available at <http://www.iadb.org/es/mici/detalle-de-reclamo,1804.html?id=cr%20MICI001/2011>.



- ✓ *The Community's stated desire for greater access to Project information and better management of local communication.* A concern was noted among Community members to receive more information from the Committee about the steps taken in relation to the power transmission line, and that the negotiations be conducted in “fuller view” of the community and with its greater involvement.

C. Parameters for dialogue

The parties set out their parameters for engaging in dialogue, stating their positions and describing a reference framework for dialogue to find solutions. These are summarized in Table 1, below. An analysis of the parameters seems to suggest that the only location for the Project acceptable to both parties is one which: (i) lies within the environmental license⁵ corridor but (ii) away from the La Alfombra community, and its forests and springs.⁶ Although the parameters for dialogue establish that one route might be feasible (insofar as it did not affect the three elements indicated by the Requesters and remained within the environmental license corridor), the technical background to the case seems to indicate that the parties' positions are irreconcilable.⁷



MICI meeting with the
La Alfombra community (April, 2011)

⁵ Environmental feasibility approval was given in April 2005 by the environmental authority, the Environmental Secretariat of Costa Rica (SETENA), delimiting a 4-km wide environmental corridor within which the transmission lines could be located if certain parameters are met.

⁶ The Requesters did not specify in geographical terms what they understood by the location and limits of the town of La Alfombra, its forests, and springs.

⁷ The ICE/EPR stated that, prior to the Mechanism's involvement in the process, it had examined no fewer than five different locations within the Environmental License corridor, and these were discussed with various members of the community. However, no specific agreement was reached. Subsequently, the Committee proposed an option lying outside the Environmental License corridor to the ICE/EPR, but states that, although the proposal was made two years ago, it has not been informed of ICE/EPR's analysis of the proposal.

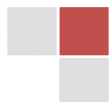


Table 1. Positions of the Parties

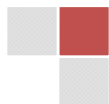
Parameters for dialogue SIEPAC–La Alfombra Committee	Parameters for dialogue ICE/EPR
<ul style="list-style-type: none"> Agree to a dialogue only to discuss route changes outside the town, forests, and springs of La Alfombra on a path such as the one proposed by the Committee or a better one, if any. Do not agree to discuss improvements to the currently proposed route or any other that runs through La Alfombra. 	<ul style="list-style-type: none"> Any alternative route solution must be within the 4-km wide environmental feasibility corridor approved by the environmental authorities (SETENA) in 2005. Accept dialogue if a genuine willingness is shown by the Committee and the Community, expressed by withdrawing the litigation, with a commitment that the suits will not be reactivated by third-party community stakeholders. The negotiation process must include all the social groups that make up the Alfombra de Barú community, not just the SIEPAC–La Alfombra Committee. The public communication and technical clarification process must be facilitated in a way that reaches the whole Alfombra de Barú community.

D. Legal proceedings

The existence of two additional lawsuits came to light during the Assessment stage, of which the Mechanism had been unaware at the time of its Eligibility analysis. These suits had been brought by a local family business that owns land adjoining the route of the transmission line. In one case, the representative of the company filing the suit is also a member of the La Alfombra Committee.⁸ These newly discovered suits had been filed with the Environmental Administrative Court (TAA), alleging environmental harm caused by the choice of route in the segment that is the subject of the Request made to the Mechanism; and with the Administrative Litigation Court (TCA), challenging the use of an administrative expropriation process to establish rights of way in this segment of the route. Moreover, the Environmental Administrative Court granted interim relief suspending all work in the segment concerned.

Consequently, the Project Ombudsperson deemed that there was sufficient similarity between the cases being heard by the Environmental Administrative Court, and the environmental factors set out in the Request submitted to the Mechanism. These coincident elements considered in both

⁸ This Committee member, along with another relative, belongs to a family that has been a key player in the dispute, leading various lobbying campaigns and lawsuits. The family in question owns the land in which the forests referred to in the Requesters' complaint are located. This land is adjacent to the route of the line, and its owners hope to develop its ecotourism potential.



processes include: the claim of environmental harm caused by the felling of trees on the forested land, the effect on water resources, the impact on biodiversity given that ICE/EPR's proposed route lies within the Paso de la Danta Biological Corridor, and ICE/EPR's proposal of an alternative route. Moreover, the same individual filing the suit with the Environmental Administrative Court is also a member of the Committee and the group of Requesters.⁹

E. Conclusion of the Assessment Stage

The Assessment concluded that suitable conditions for dialogue did not exist. This was for two fundamental reasons: (i) the parameters for dialogue laid down by the parties are irreconcilable; and (ii) the Request submitted to the Mechanism covers issues currently before the courts of Costa Rica, such that under article 37(i) of the Policy Establishing the Mechanism¹⁰ efforts to foster dialogue between the Parties cannot be continued. The Project Ombudsperson therefore declared the Consultation Phase concluded.

III. Consultation Process

After issuing the Assessment Report, sent by the Mechanism to the representatives designated by the parties on 22 August 2011, the Requesters, through the chair of the SIEPAC–La Alfombra Committee, sent a letter to the Mechanism on 3 September confirming their intention to continue with the Compliance Review phase.

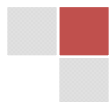
The Mechanism received comments on its Assessment Report from both parties. These were analyzed in line with the terms of the Policy Establishing the Mechanism. The aim of the Assessment Reports from the Consultation Phase is to compile the information gathered by the Mechanism so as to reflect the current state of affairs and offer an impartial opinion on the question of whether the existing conditions are conducive to a fruitful dialogue seeking to find solutions. As the Mechanism is an independent and impartial actor, it is foreseeable that the parties will not always consider their points of view to be fully reflected as they would hope in the report.

The data included in the Assessment Report are based on information supplied by the primary and secondary stakeholders, with whom the Mechanism held interviews and from which it received documentation during the Assessment Stage. Any minor factual inaccuracy does not alter the basis of the technical analysis or the conclusions reached as to whether the conditions exist for dialogue.

The Assessment Report indicated that there were no technical factors to fully compare, based on social, economic and environmental criteria, the various routes proposed by the ICE/EPR and the

⁹ This individual was on the list of Committee members its chairperson submitted to the Mechanism, was invited to and actively participated in meetings and field visits as part of the Mechanism's Assessment, and signed documentation submitted to the Mechanism as a member of the Committee.

¹⁰ Article 37(i): "the Consultation Phase [will not be applied] to "Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies."



corridor proposed by the Requesters, or any other alternative route that might be proposed. The Assessment Report does not favor any particular location for the route of the SIEPAC Project through La Alfombra. As this is a Consultation Phase, only the parties, by mutual agreement and in the context of dialogue, have the authority to favor any specific solution to their dispute.

In terms of the involvement of certain stakeholders in the Consultation Phase, the Mechanism cites the active assistance received before and during its field visits, and the correspondence, meetings and communications of the Consultation Team with members of the Committee and the Community.

The Mechanism wishes to state clearly that, as expressed by the ICE/EPR's representatives in technical documents and conversations, the ICE/EPR does not regard the alternative route proposed by the Committee as significantly reducing the environmental and social impacts with respect to the one proposed by the ICE/EPR.

IV. Conclusion of the Consultation Phase

The Mechanism supported the parties with a view to establishing a dialogue aiming to find solutions by identifying the interests and real, specific and technical concerns on both the Requesters' and the ICE/EPR's sides, and encouraging these parties to identify the necessary conditions for a reasonable, balanced and fruitful dialogue. The Mechanism offered technical and professional support to assist the parties as required and thereby facilitate the exchange of information. However, the Consultation Phase ended without proceeding to dialogue, due to the following determining factors:

Legal proceedings open at the same time as the Request submitted to the Mechanism.

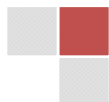
The proliferation of lawsuits filed by various stakeholders, and their accumulation, have a profound effect on the possibility of initiating and pursuing a dialogue without preconditions. The proceedings under way could have the effect of putting one of the parties at a disadvantage with respect to the other, depending on how the courts decide. Therefore, the strategy of recourse to the courts currently pursued by the parties stands in the way of dialogue that meets the standards of impartiality, equal standing, and noninterference sought by the Mechanism.

Contradictory conditions for initiation of dialogue. In both cases, the parameters for dialogue set by each of the parties as preconditions for dialogue negate, a priori, significant points of the parameters set by the other party (see Table 1).

V. Achievements of the Consultation Phase

The main achievements of the Consultation Phase include:

Identification of key socioeconomic issues for the Community (for example, the possible impact on ecotourism and the local economy), which had previously been secondary considerations. This made it possible to inform the process and the parties were able to better understand the



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rationale behind each point raised. One of the most significant environmental impacts for the community is the possible impact on the La Alfombra Community's water supply.

The Consultation Process highlighted the concern expressed by members of the Community over the *need for more and better access to information about the project's route through La Alfombra and for more effective communication management.*

The analysis conducted during the Consultation Phase enabled the *identification of the direct and indirect stakeholders in the process, their interests and level of involvement in proposing and making decisions* on possible solutions. This is an important input to be considered in the search for viable future solutions.

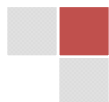
The Consultation Process has facilitated an exchange of information through which it has been possible to express more precisely the concerns of all the parties involved in the dispute. This has resulted in *strengthening of the technical discussion*, offering the possibility of enriching the substantive analysis by each of the parties regarding the socioenvironmental features of the project.

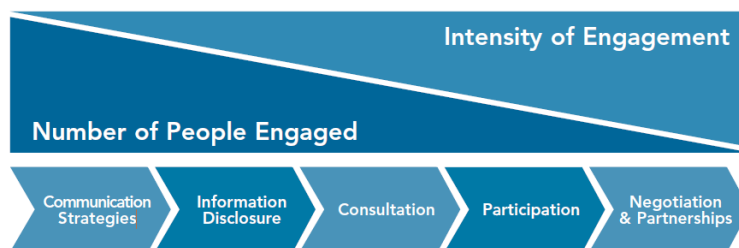
As the Executing Unit for the Project, the ICE/EPR has had the opportunity to **expand its vision of the project in relation to the Community's perceptions** of socioeconomic and environmental issues. In this regard, it has expressed its interest in developing a more fluid process of communication with the Community, for which it is currently making plans.

VI. Lessons Learned

A. Operational

The identification and selection of the tool to study environmental and social impact given the Project's complexities is essential to creating a sound technical foundation for optimal environmental and social performance. Large-scale infrastructure projects, such as the one addressed in this Request with numerous, significant environmental and social impacts, can benefit from a broad tool like Strategic Environmental Assessment, supported by other, more specific tools for each subsection, such as an Environmental Impact Assessment or an Environmental and Social Management Plan. Similarly, the development and implementation of these tools needs to be accompanied by an effective participation process, with a management scope that varies with the different levels of engagement and the number of participants.



Range of social stakeholder engagement activities¹¹

The *early identification of the Community's concerns* about the Project should be measured against the Project's Environmental and Social Management Plan, in order to identify areas for improvement and/or misconceptions in the Community's understanding of the Project. This analytical work will also facilitate effective design of the communication strategy and future dialogue between the parties on technical issues.

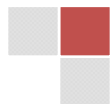
It is essential to *identify and analyze the community stakeholders and their representatives at early stages*, as well as the established systems of communication and decision-making among them. This analysis facilitates identification of potential bottlenecks and barriers in communication and support that might be provided to ensure that the broadest possible range of affected stakeholders are informed and represented effectively and are engaged in the decision-making process.

Large-scale infrastructure projects, such as the one addressed in this Request, can also benefit from a project-level Complaints Management mechanism, which can act as a one-stop-shop for the community's questions, queries, concerns, or complaints. Having a robust and functional Complaints Management mechanism can aid the process of interaction with the community and contribute significantly to responding to complaints early on, thereby avoiding the risk of their escalating.

B. Process

It is of utmost importance that the **Mechanism make direct contact with the parties affected by the Project early on at strategic points in the Consultation Phase**, as well as in the processes of gathering information and determining positions, presentation of the Assessment findings, and discussion of opportunities for dialogue. The day-to-day management of the process can be done with the representatives. It is vital to hear from the majority of the parties affected by the Project.

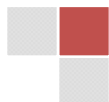
¹¹ Figure taken from "Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets," published by the International Finance Corporation: [http://www.ifc.org/ifcext/enviro.nsf/attachmentsbytitle/p_stakeholderengagement_full/\\$file/ifc_stakeholderengagement.pdf](http://www.ifc.org/ifcext/enviro.nsf/attachmentsbytitle/p_stakeholderengagement_full/$file/ifc_stakeholderengagement.pdf).



The preliminary and preparatory stages for dialogue are essential in establishing a feasible agenda. In this regard, the **willingness to engage in unconditional dialogue offers the best opportunity to find creative solutions** that meet the parties' expectations.

The parties' expectations must be measured against criteria of reasonableness and equity at the early stages of the process. For example, in what way is the feasibility of the dialogue affected by the fact that a proposal formulated by the community redirects the impacts of the project onto another group of stakeholders who have not been included or consulted in the definition of the proposal?

In order to initiate a dialogue free from pressures and interference, the parties need to be equally well informed. *It is indispensable to have full disclosure of all legal proceedings being pursued by the parties as early as possible* in the consultation process. The potential decisive impact of legal proceedings on the possibility and development of dialogue is such that even new proceedings or the progress of proceedings already under way (such as the accumulation of proceedings or interim relief granted) can even become decisive factors in whether or not dialogue is possible.



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