

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

PR-MICI002-2010

**COMPLIANCE REVIEW REPORT
REVISED VERSION**

**“Program to Improve Highway Corridors in Paraguay”
(933/OC-PR)
PARAGUAY**

This document was prepared by the Compliance Review Panel team composed of Werner Kiene as Panel Chairperson and Korinna Horta and Gilberto Amaya. The Report is based on information the Compliance Review Panel obtained up to July 29th, 2012.

Under the Access to Information Policy, this document is subject to public disclosure.

COMPLIANCE REVIEW PHASE

TO: Board of Executive Directors of the Inter-American Development Bank

CC: Mr. Luis Alberto Moreno - President of the Inter-American Development Bank

FROM: Werner Kiene, Chair of the Compliance Review Panel

REFERENCE: PR-MICI-002-2010, Case “Program to Improve Highway Corridors in Paraguay”

PROJECT: Program to Improve Highway Corridors in Paraguay (933/OC-PR)

COUNTRY: Paraguay

DATE: November 20th , 2012

I am pleased to submit to you the Panel’s Report on the Compliance Review of the “Program to Improve Highway Corridors in Paraguay.”

A draft Report was submitted to the Requesters and to Management on February 21. This final Report incorporates the comments from both. The attached Management response does not address this final Report but comments only on the draft Report .

After circulation of its draft Report on February 21, 2012, the Panel received information that on July 26, 2012 the Government of Paraguay granted the Aché Kuetuvy community legal title to Finca 470. The request for a Compliance Review centered on this problem which now, after our investigation and after many years of IDB engagement in the question appears to be solved.

However, reports from Paraguay indicate that starting in May 2012 and until today, a group of heavily armed illegal loggers has invaded Finca 470. The group is threatening violence against the Aché and is cutting down large trees in Finca 470 sold as illegal timber.

Although our investigation found that the IDB did not comply with relevant Operational Policies in the design and implementation of the Program, the IDB has over several years been a constructive force in trying to find a viable solution for the Aché. It would be in keeping with this record of support and the original goals of the Program if the IDB could continue to observe the situation of Finca 470 and use its good offices to bring about a solution to the serious problems now engulfing the Aché Kuetuvy community.

As per sections 69 and 72 of the ICIM Policy, the Panel would be pleased to meet with you on the findings of this Report and, should the Board so decide, the Panel stands ready to monitor any remedial or correctional action agreed upon as a result of this Compliance Review.

With our kind regards,

Werner Kiene

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About the Compliance Review Panel

The Compliance Review Panel is part of the Independent Consultation and Investigation Mechanism (ICIM) of the Inter-American Development Bank (IDB). A Panel Chairman and four Panel Members were appointed by the Board of Executive Directors of the IDB. The Panel took up its functions in October 2010.

The Chairman and the Panel Members exercise their duties in an independent manner. They are not employees of the IDB and are not entitled to work for the IDB for a period of five years after their terms expire.

The role of the Panel is to carry out independent investigations of complaints by Requesters who assert that their rights or interests have been or could be expected to be directly, materially adversely affected by the failure of the IDB to follow its operational policies.

All requests addressed to the ICIM are routinely first processed through the Mechanism's Consultation Phase led by the ICIM's Project Ombudsperson. Requests proceed from the Consultation Phase to consideration under the Compliance Review Phase if the Requester has expressed a desire for a Compliance Review and if the Consultation Phase has been terminated or concluded for any reason or the Request was deemed ineligible under the Consultation Phase.

Detailed information on the ICIM is available at www.iadb.org/icim.

Acknowledgements

The preparation of this Report would not have been possible without the support and valuable contributions of many people who shared information and experience. The Panel wishes to thank the Requesters and both the Aché and the Avá Guaraní communities who met with the Panel in the Project area. Furthermore, we extend our gratitude to Bjarne Fostervold for his translation services during the Panel's mission.

The Panel expresses its appreciation to Government officials and representatives of civil society organizations in Paraguay with whom the Panel met. They provided valuable insights, information, and analysis. The Panel is also grateful to the IDB's Country Office in Paraguay for assisting with logistical arrangements and for its support in identifying documentation and making it available in printed and electronic forms.

The Panel wishes to thank IDB staff members in Washington, D.C., for valuable assistance with background documentation and thoughtful assessments of the evolution of the Project within IDB.

Last but not least, the Panel thanks the ICIM Secretariat support.

Acronyms and Terms

AES	Applied Energy Services
CI	Comisión Interinstitucional (Inter-Institutional Commission)
EIA	Environmental Impact Assessment
FMB	Fundación Moisés Bertoni (Moisés Bertoni Foundation)
IADB/IDB	Inter-American Development Bank
IFC	International Finance Corporation
ICIM	Independent Consultation and Investigation Mechanism
INDI	Instituto Paraguayo del Indígena (Paraguayan Indigenous Institute)
IIM	Independent Investigation Mechanism
IBR	Instituto de Bienestar Rural (Institute for Rural Well-Being)
MAB	Man and the Biosphere Programme (UNESCO)
MERCOSUR	Mercado Común del Sur
MOPC	Ministry of Public Works and Communications
NGO	Non-Governmental Organization
OII	Office of Institutional Integrity
PCAT	Plan Consolidado de Adquisición de Tierras (Consolidated Plan for Land Purchases)
SEAM	Secretaría del Ambiente (Environment Ministry)
RPA	Rapid Participatory Appraisal
REDD	Reduced Emissions from Deforestation and Forest Degradation
TNC	The Nature Conservancy
UA	Unidad Ambiental (Environmental Unit)
UNESCO	United Nations Educational, Scientific, and Cultural Organization
USAID	United States Agency for International Development

Executive Summary

1. This Report is in response to a Request for a Compliance Review of IDB decisions and actions related to a Project¹ referred to as the “Program to Improve Highway Corridors in Paraguay (PR-0035) (933/OC-PR),” approved by the Board of Executive Directors of the IDB in June 1996.²
2. The Request was submitted in November 2010 by Professors Kim Hill and Magdalena Hurtado on behalf of the indigenous Aché community of the Ygatimi District in eastern Paraguay and some of their leaders. As per the ICIM Policy, the Request was first placed in the hands of the ICIM’s Project Ombudsperson for the Consultation Phase. However, the Requesters did not wish to be engaged in a Consultation exercise and explicitly asked for a Compliance Review. Therefore, the Project Ombudsperson determined on December 16, 2010, that the Request was not eligible for the Consultation Phase as stipulated by the ICIM Policy. The case was transferred to the Compliance Review Phase.
3. Based on a preliminary analysis of the circumstances surrounding the Program, the Chairman of the Compliance Review Panel determined that the Request was eligible for a Compliance Review in January 2011.
4. **Key Claims presented to the Panel.** The Requesters allege that the Aché community of eastern Paraguay has suffered harm and will continue to do so due to the IDB’s failure to enforce provisions in the Loan Contract that were meant to safeguard their claims to ancestral lands.
5. The Program had the potential for negative impact on forest lands and the livelihoods of indigenous peoples. For this reason, the IDB and the Executing Agency agreed to fund an off-set strategy under an Environmental Sub-Program to compensate for the likely ecological and social impacts of future road works anticipated by the Program. The agreement included the purchase of land for forest reserves (20,000 hectares) and indigenous settlement (11,000 ha.). The Loan Contract was approved in 1996 and fully disbursed in August 2009 according to the Project Completion Report.³
6. The Requesters allege that the IDB loan effectively blocked the purchase of a tract of forest land known as Finca 470 by the Moisés Bertoni Foundation (FMB) of Paraguay and the transfer of its title to the Aché community. The Requesters furthermore assert that the off-set provisions of the Project were not implemented in line with agreements and were not properly monitored and supervised by the IDB. They insist that much less land than

¹ The terms “Project” and “Program” are used interchangeably in this Report and refer to activities financed by the IDB and others within the overall design of the “Program to Improve Highway Corridors in Paraguay (PR-0035) (933/OC-PR).” The focus of the Request and of this Report is the environmental sub-program funded as a requirement for approval of the total Program.

² Management and the Requesters provided comments on a draft version of this Report. The comments are gratefully acknowledged. Based on the Panel’s judgment and in line with ICIM Policy Section 68, a number of these comments are incorporated into an Annex to this Final Report. Both the Report and the Annex are published in the ICIM Registry and made public as per Section 70 of the ICIM Policy.

³ In a meeting on May 1, 2012, Management informed the Panel that the date of last disbursement listed in the Project Completion Report was wrong and that the correct date of last disbursement was December 30, 2007.

originally agreed is now under off-set protection and that this has added to the pressure on the land that had been promised to them. Due to this and the intervention in an almost completed purchase on their behalf, the Aché have thus far failed to claim title to the land that they consider theirs by tradition and customary use.

7. The land claimed by the Aché community, known as “Finca 470”, was previously owned by a Taiwanese investor who was also the proprietor of a nearby sawmill. Finca 470 is contiguous to and serves as a buffer zone for the Mbaracayú Natural Reserve, which protects what is considered to be the last significant fragment of the Interior Atlantic Forest remaining in Paraguay. The Mbaracayú Forest Reserve is managed by the FMB of Paraguay.
8. The FMB negotiated the purchase of Finca 470 with the Taiwanese owner with the objective of transferring the property to the Aché who were playing a vital role in protecting the Mbaracayú Natural Reserve from land invasions and illegal logging. However, these negotiations came to a halt when the Ministry of Public Works and Communications (MOPC) in Paraguay purchased Finca 470 to meet the off-set requirements of the Environmental Protection Sub-Program. Subsequently, Finca 470 was titled to the Secretary of the Environment (SEAM) with the understanding that the land would be given title to the Aché community.
9. The Aché obtained usufruct rights over Finca 470 under an agreement with SEAM. As a pre-requisite for the agreement, they developed and implemented detailed management plans for the property. The Aché have struggled over the past ten years to claim title to the land that they had been promised. Their efforts included numerous meetings with IDB officials in Asunción. The IDB expressed its support for the Aché claim to Finca 470 both in writing and through action. For instance, IDB funds were used to pay for the services of a lawyer to analyze and expedite the process to obtain legal title for the Aché.
10. **A threat to the agreed off-set provisions and to Aché cultural survival.** To date, the Aché have not been granted title to Finca 470. They state that their efforts of sustainable management have made the forest of Finca 470 more valuable and therefore more vulnerable to being destroyed by illegal logging and other economic interests. They claim that the aim of the off-set agreed between the IDB and the Government of Paraguay, i.e., that Finca 470 will be a protected area in perpetuity, could only be achieved if they are allowed to continue to manage the forest in their traditional ways and obtain legal title to do so. They claim that the sustainable management of the forest of Finca 470 and the cultural survival of their community are intimately linked.
11. In contradiction to what appear to have been widely accepted in earlier agreements on the use and titling of Finca 470, the current administration of SEAM issued Resolution 662/10 on June 21, 2012, determining that Finca 470 should be divided between the Aché community and a group of Avá Guaraní families, who live as deeply impoverished *campesinos* on the edge of Finca 470. While SEAM’s search for a solution for the Avá Guaraní communities is noteworthy, there exists widespread concern about the future of this off-set due to the planned deviation from earlier agreements. The Aché offered - once they obtain legal title – to provide sufficient land to the five Avá Guaraní families who have lived in the area for a long time. But they oppose the influx of additional Avá Guaraní, which would place the forest of Finca 470 at risk.

12. Outside observers report that the recent influx of additional Avá Guaraní risks placing unsustainable pressure on the land. A division of Finca 470 between the two groups will most likely spell the end of the integrity of this forest ecosystem. It will threaten the survival of the Aché, a traditional forest people, as a community. Equally important, given the Avá Guaraní's traditional pattern of clearing the forest, such a division would result in more logging. This, in turn, would lead to non-compliance with the mandate to ensure Finca 470 environmental protection in perpetuity, at a time when it appears to be the only parcel of forest land under the off-set provisions that is managed in keeping with the Loan Contract signed between the IDB and the Government.
13. **Panel Findings on Compliance and Harm.** The Panel concluded that the Aché claim of harm is valid. They had been promised title to Finca 470 in an agreement supported by the IDB. As part of this promise they have invested in a certified Management Plan of the forest. Breaking this promise and not granting them title to Finca 470 threatens to bring direct material harm to them as a community and as individuals.
14. While the Project's Loan Contract did not specifically mention the Requesters as a direct recipient of the title to Finca 470, the Panel confirmed numerous references to the intent of both Paraguayan authorities and the IDB to transfer the title of Finca 470 to the Aché community that had made the Request to ICIM. This intent manifested itself both in written documents and in accounts of oral agreements.
15. The Panel's analysis focuses on lapses in compliance during the Project implementation, which affected the promised land transfer to the Aché. The Panel recognizes IDB's efforts to assist in obtaining legal title to Finca 470 for the Aché. Nevertheless, the Panel's principal conclusion is that failure to enforce compliance with Relevant Bank Operational Policies to ensure an appropriate design and implementation of the off-set provisions stipulated in the Loan Contract is an important cause for the harm alleged by the Aché. In the first instance, the Project interfered in an almost completed purchase of Finca 470 on behalf of the Aché. Later on, the lack of appropriately managed social off-set land led SEAM to propose that a large portion of the land promised to the Aché should be given to an Avá Guaraní group that had not contributed to the Finca's sustainable management.
16. The Panel examined compliance in light of the Relevant Operational Policy context in force at the time of Program approval in 1996, particularly the Environment Policy (OP-703).⁴ Its central objectives are to ensure "that in all projects financed by the Bank, environmental aspects are considered and that appropriate measures are taken to avoid adverse environmental impacts, with due attention to economic and social costs and benefits." The application of OP-703 was guided by "Strategies and Procedures on Socio-Cultural Issues as related to the Environment" of June 1990.
17. The Policy context at the time of Project approval also included OP-302 (Project Preparation, Evaluation and Approval), which requires the Bank to ensure environmental soundness, adequate legal and institutional frameworks. Furthermore, OP-304 (Operations Administration) that was in force at the time requires the Bank to verify the compliance of executing agencies with contractual covenants.

⁴ The Project under review was designed and approved in 1996 and the applicable Relevant Operational Policy was Environment Policy (OP-703)

18. The overall direction for the Bank's environmental and social commitments was set by its "Eighth Replenishment Report" of June 1994.

19. The Panel noted non-compliance and related weaknesses in the following areas:

20. The Panel found that monitoring of the implementation of the Environmental Sub-Program, including land purchases and titling to indigenous communities was handled inadequately. Appreciation of the land led to a shortfall of funds for land purchases, hampering the Bank's ability to carry out mid-course corrections and ensure that the Project was in full compliance with the Environment Policy (OP-703), Project Preparation, Evaluation and Approval (OP-302), and Operations Administration (OP-304).
21. Procedures for "Classifying and Evaluating Environmental Impacts of Bank Operations" were not adequately followed as required by the objectives of the Environment Policy (OP-703). It is the Panel's view that a categorization of "IV" instead of "III" would have been more appropriate, because it would have sensitized the Bank and Paraguayan institutions to managing this Project in a more consistent and sustainable manner.
22. A more complete Environmental Impact Assessment (EIA) with detailed information on indigenous communities would have been critical to the adherence to the Environment Policy (OP-703). Such a more detailed EIA would have contributed to the improved planning of the land purchases both for protected ecological areas and for indigenous settlement.
23. The Panel notes a lack of consultative processes with the affected indigenous peoples as required by the Strategies and Procedures on Socio-Cultural Issues as Related to the Environment (1990). The IDB's Environmental Committee as well as the Regional Development Plan, which was part of the Project's Environmental Sub-Program, had called for more intensive and more inclusive consultations.
24. In addition, the Panel notes that Project implementation suffered from shortcomings in design and implementation.
25. Lessons from similar projects were inadequately or not at all incorporated into the Project design, the Loan Contract, and subsequent implementation. Based on experience with significant problems and delays experienced with land purchase agreements in previous IDB-supported transport sector projects in Paraguay, the Environmental Summary elaborated for this Project in 1995 set forth a series of requirements to be met before Loan approval as well as before first disbursement. These included the requirement that the Government of Paraguay presented a plan for land titling, including the list of indigenous communities to benefit the amount of land and funding for each case and a timetable for land acquisition and demarcation prior to Loan approval. However, this phased approach was not included in the Loan Contract and was not put into effect.
26. **Institutional strengthening was funded but inadequately supervised.** Although the IDB funded the strengthening of the Environmental Unit at MOPC and the establishment of the Inter-Ministerial Commission, Bank supervision of the effectiveness of this strengthened institutional framework appears to have been inadequate, as the problems related to land acquisition demonstrate. Officers of the MOPC confirmed the Panel's findings regarding their limited capacity in this important area.

27. Inadequate design and management of off-sets. The Panel investigation finds that the off-set strategy lacked the necessary realism during the design phase in terms of the availability of land and adequate counterpart funds. Equally important was the lack of consistent supervision to ensure the successful implementation of the Environmental Sub-Program's objective of purchasing 20,000 hectares for forest reserves and 11,000 hectares for the regularization of ownership by indigenous communities.
28. **Overall observations.** The concerns raised by the Request are fundamental, serious, and relate to central issues of land tenure in relation to indigenous peoples affected by infrastructure investments. The Panel's Compliance Review confirms the critical importance of IDB policies and procedures designed to ensure that concerns of indigenous peoples, the most vulnerable and marginalized segment of the population in many Latin American countries, are fully taken into account. In line with IDB policies, avoiding impoverishment of vulnerable populations in the context of IDB-funded development projects must be of paramount importance to the IDB.
29. Although the Project failed to ensure the adequate implementation of its social and environmental components, the Panel wishes to acknowledge that members of the IDB Country Office have engaged in serious efforts, especially after 2006, to ensure the transfer of legal title to Finca 470 to the Aché community. The Request to ICIM and the resulting case have shown that failure of timely involvement of IDB's most senior Management in the solution of complex problems dealing with social and environmental issues can lead to intractable issues later on, as well as to potential reputational risks for the Bank.
30. Finally, the Panel considers that IDB still has the opportunity to work with the Government of Paraguay to help facilitate the titling process and prevent this issue from becoming a reputational risk for the Bank. Title to the land would assist the Aché in protecting this unique forest ecosystem that survives in the midst of an encroaching agricultural frontier and to preserve their way of life. Furthermore, the Aché know how to manage the forest sustainably and its continued existence as a group depends on its preservation. In addition, obtaining legal title of Finca 470 for the Aché would also require finding adequate solutions for the Avá Guaraní families who live as *campesinos* in extreme poverty on the margins of Finca 470 and who urgently need access to land for small-scale agriculture. Perhaps, as proposed by some of the Panel's interlocutors in Paraguay, the Government could find ways to provide them with land on forest areas, which had also been set aside as off-sets under the IDB loan, but (in non-compliance with the original Loan Agreement) have been deforested and might be more suitable to the campesino agriculture practiced by the Avá Guaraní.

I. The Request and Subsequent Actions

A. Initial Request

- 1.1 In September 2009, the Office of Institutional Integrity (OII) of the IDB received a Request submitted by Professor Magdalena Hurtado on behalf of the Aché community alleging that the Government of Paraguay had failed to comply with the conditions of the Program to Improve Highway Corridors in Paraguay (933/OC-PR) concerning indigenous lands.



Results of forest management plan

- 1.2 This communication was then forwarded to the IDB's previous accountability mechanism, the Independent Investigation Mechanism (IIM), which was established in 1994.
- 1.3 In October 2009, the IIM declared the request to be ineligible for investigation pursuant to Section 1.5(D) of its Policy, which excluded the consideration of claims made after the final loan disbursement. According to the Project Completion Report the last disbursement for the Program took place on August 31, 2009. In a meeting on May 1, 2012, Management informed the Panel that the date of last disbursement listed in the Project Completion Report was incorrect and that the correct date of last disbursement was December 30, 2007.

B. Present Request

- 1.4 In November 2010, Professors Kim Hill and Magdalena Hurtado writing on behalf of the legal authorities of the Aché Kuetuvy community, its Management Council and a prominent community representative, submitted a new Request to the newly established Independent Consultation and Investigation Mechanism (ICIM) at the IDB. The Requesters included a letter authorizing them to represent the Aché in this matter when communicating with international agencies.
- 1.5 The Requesters asserted that the IDB had not followed through to ensure that conditions of Loan Contract (933/OC-PR) agreed to with the Government of Paraguay were met and allege the following harm:
- a. That actions carried out under the Environmental Sub-Program prevented them from obtaining title to Finca 470, because these actions prevented its purchase by the Moises Bertoni Foundation (FMB), which would have given them title to the property. As a result, they state that they have effectively been denied the right to maintain their livelihood and culture;
 - b. As advised and endorsed by the Bank, they have invested in the sustainable management of this land and will be deprived to enjoy the fruits of their labor if they are not granted legal title;

- c. They furthermore report that the delays in the titling process enabled outsiders to be engaged in unsustainable and illegal logging within the confines of Finca 470. According to the Requesters, such irresponsible exploitation is taking away from them its future livelihood and is in contradiction to the Project's intent to ensure sustainable management of the reserves created through the agreed off-set provisions. They state that effective defense of these lands from illegal logging can only be achieved by the Aché with a title of ownership. Under the current arrangement, SEAM is the only entity that can legally challenge intrusion into Finca 470, but lacks the institutional capacity to do so.⁵

1.6 This Request was processed differently than the initial one for two reasons:

- a. First, the ICIM Policy of February 2010 superseded the previous IIM Policy, which brought about a change in the exclusion criteria. The Panel's eligibility determination of January 19, 2011, came to the conclusion that the Request was eligible and that no exclusion criteria applied. The Panel Chair took into consideration that there was new evidence furnished by the Requesters in line with ICIM Policy Section 37/e and that official IDB documents consulted by the Panel showed that the Request was filed within 24 months⁶ of the last disbursement, in line with ICIM Policy Section 37/f.
- b. Second, a change in Finca 470 tenure status triggered the new Request. On June 21, 2010, a new SEAM administration issued Resolution N° 662, authorizing the transfer of Finca 470 to both the Aché Kuetuvy community as well as to the Avá Guaraní of Ytu and Tekoha Ka'a Poty. The Requesters considered this change a breach of previous agreements with the Government to which IDB had given its endorsement and support.

1.7 In particular, the Requesters allege that the IDB shares responsibility for their problems because of the Bank's agreement to the purchase and management of Finca 470 and the subsequent failure to ensure transfer of legal title to the Aché Kuetuvy community. The Requesters focus on two crucial events of IDB involvement:

- a. Prior to the purchase of Finca 470 by the Ministry for Public Works and Communications (MOPC) as a forest reserve to meet the conditions spelled out in the Loan Contract with the IDB, FMB was finalizing negotiations with the Taiwanese owner of Finca 470 with the intent of titling it to the Aché. FMB considers the Aché to be the ancestral inhabitants of this forest.
- b. These negotiations fell apart when the MOPC became interested in purchasing the land at a higher price than what had been negotiated with the FMB.
- c. The requesters allege that the IDB-funded operation thus effectively blocked the transfer of Finca 470 to the Aché Kuetuvy community.

⁵ During the Panel's field trip in Paraguay, SEAM officers expressed concern about the further promotion of additional protected areas because of limited capacity to manage them.

⁶ In a meeting on May 1, 2012, Management informed the Panel that the date of last disbursement listed in the Project Completion Report was wrong and that the correct date of last disbursement was December 30, 2007.

d. Subsequently, MOPC transferred legal title to Finca 470 to SEAM. In 2001, the then Minister of SEAM agreed to title Finca 470 to the Aché community under the condition that the IDB agree that this change would meet the loan conditions.

1.8 The IDB requested that a forest management plan for Finca 470 be prepared before agreeing to this change. According to the Requesters, this management plan was presented to the IDB as early as in 2001. The IDB country office then endorsed the granting of a legal title of Finca 470 to the Aché. The IDB officially communicated this agreement to SEAM.

1.9 The Requesters assert that the Aché community obtained management funds from the NGO “Conservation International” and under an interim agreement of usufructo with SEAM, which allowed them to take over Finca 470 and initiate the agreed-upon Management Plan, which included protecting the Finca from illegal logging and land invasions.

1.10 Between 2001 and 2007, Aché representatives met on numerous occasions with the IDB country office and were assured of the IDB’s support for their claim. Indeed, the IDB through a loan to SEAM funded the work of a Paraguayan lawyer to work on advancing the land titling process for the Aché.

1.11 However, the Requesters assert that the IDB has remained silent after the new SEAM administration issued a Resolution calling for a division of Finca 470 between the Aché and Avá Guaraní communities.

1.12 The Requesters allege that the change in SEAM’s intention from granting legal title to the Aché to dividing the property between the two groups is linked to a conflict of interest within SEAM’s administration.

1.13 The Requesters report that in the spring of 1992, the Aché were expelled from this area in Eastern Paraguay that now includes Finca 470 and forcibly removed to a reservation located a 100 km to the southwest of their present location. They report that it is estimated that about 40 percent of the Aché community died as a result of this forced resettlement, which led to international allegations of genocide.

1.14 The Requesters assert that the Avá Guaraní, on the other hand, are not the original inhabitants of the area and that many of them have been moved into the area in recent times by outside interests linked to the illegal timber trade. They allege that the Avá Guaraní have no intention to manage Finca 470 sustainably and that they are engaged in the illegal extraction of timber.



1.15 In addition, they state that the IDB had demanded a management plan from the Aché community, but has not done so with regards to the Avá Guaraní.

1.16 The bottom-line of the Request is that ten years after the IDB first agreed to a titling of Finca 470 to the Aché community, the Aché still do not have title to their land. According to the Requesters, this represents a violation of the loan conditions as well as of ILO Convention 169, which requires that indigenous peoples be granted title to land within their traditional territories.

C. Management Reaction to the Request

- 1.17 The period between Program preparation, Board approval, implementation delays and final disbursement spanned the years 1993 to 2009.
- 1.18 This protracted timeframe led to a situation where those officials in charge of the Program had moved on in their career paths. Furthermore, the periodic rotation of personnel throughout the region prevented the Panel team from having the benefit of access to the Project team as well as to documents considered relevant for the Compliance Review.
- 1.19 In spite of the cooperation from several Bank officials familiar with some aspects of the Project, the Panel faced difficulties in obtaining from Management a comprehensive reaction to the various elements of the Project and the Request.
- 1.20 The Compliance Review Panel was, however, able to interview officials at both headquarters and in the country office in Asunción who provided the Panel with information and documentation on the Program and the IDB's efforts to obtain legal title of Finca 470 for the Aché community.
- 1.21 The Country Office in particular was helpful in tracking down documentation that was no longer in IDB files, such as the Regional Development Plan⁷ which had been prepared to serve as the basis for the identification of the areas to serve as forest reserves and for indigenous settlement. In addition, the Panel was able to interview a former staff member of the Country Office in Paraguay who now serves in another Country Office in Latin America and who played a key role in efforts to obtain legal title to Finca 470 for the Aché community. The cooperation of these IDB officials with the Compliance Review Panel has greatly contributed to the Panel's understanding of the case.

D. ICIM Response to the Request

- 1.22 **Consultation Phase Eligibility Determination.** As per the ICIM policy the Request went first to the Project Ombudsperson. On December 16, 2010, the Project Ombudsperson issued the Consultation's Phase Eligibility Determination.
- 1.23 The Project Ombudsperson's analysis of the Request notes that it raised concerns about the environment and indigenous peoples' land rights. Since Article 26 of the ICIM Policy establishes that the Relevant Operational Policies are the ones in effect at time of Board approval (June 1996), both the Project Ombudsperson and the Panel Chair pointed out that the Bank's Eighth Replenishment Report, adopted in 1994, required the systematic inclusion of indigenous issues in IDB policies and projects (document AB-1704,⁸ paragraph 2.27). Furthermore, at the time of Project approval, policy mandates related to the Environment Policy (OP-703), Project Preparation, Evaluation and Approval (OP-302), and to Operations Administration (OP-304) were in force. Together these documents were considered to constitute the Relevant Operational Policy framework for this Project and the Request under consideration.

⁷ See Loan Proposal "Program to Improve Highway Corridors in Paraguay (PR-0035)," Regional Environmental Program, paragraph 2.25, June 4, 1996 - PR-2128, original in Spanish.

⁸ Document AB-1704, entitled "Report on the Eighth General Increase in the Resources of the IDB, approved by the Board of Governors on August 12, 1994, by Resolution AG-6/94 recommended the adoption and implementation of proposed resolutions entitled, respectively, "increase of US\$40 billion in the authorized capital stock and subscriptions."

- 1.24 **Compliance Review Phase Eligibility Determination.** Given the Requesters' refusal to participate in a Consultation Phase and their explicit call for a Compliance Review, the Project Ombudsperson in line with ICIM Policy, Sections 40 and 41, determined that the Request was not eligible for a Consultation Phase and transferred it to the Compliance Review Panel.
- 1.25 In January 2011, the Panel Chair submitted the Compliance Phase Eligibility determination confirming a significant probability that the Aché could suffer lasting harm if they were not granted title to the lands that they had been promised by SEAM with the IDB's agreement and support. Given the close relationship between land rights and the livelihoods and culture of indigenous peoples, but without prejudging the outcome of a possible Compliance Review, the Chairman considered these allegations plausible in terms of pointing to direct material harm. Based on the then available information and without any judgment on the merits of the Request, the Chairman determined that the Request was eligible for a Compliance Review.
- 1.26 **Recommendations for a Compliance Review.** On March 11, 2011, the Panel submitted the Terms of Reference (the "ToR") for a Compliance Review laying out both the objectives and the methodology of the investigation. The Panel decided for a postponement of its originally scheduled mission to Paraguay when discussions of concern to the Requesters were held at the highest political levels in Paraguay. After an additional examination of potential litigation in Paraguayan courts and awaiting the conclusion of highlevel political discussions on Aché issues in Paraguay, the Panel renewed its proposal to the Board on June 6, 2011.
- 1.27 **Compliance Review Field Mission.** On June 13, 2011, the IDB Board of Executive Directors approved by short procedure the ToR and the recommendation to conduct a Compliance Review. The Chairman of the Compliance Review Panel and two Panel members carried out an investigation mission in Paraguay from June 14-20, 2011.
- 1.28 During this mission, the Panel held extensive interviews with representatives of Government agencies, NGOs and the IDB Country Office.⁹ In addition, the Panel identified and reviewed all the available documents relevant to the case many of which were provided to the Panel by the IDB country office staff.¹⁰ It then undertook an on-site visit to Finca 470 to gather evidence as well as listen to the views of both the Aché Kuetuvy community and the Avá Guaraní of the Ytu community.

⁹ See Annex I: Compliance Review Methodology.

¹⁰ Limited time and resources hampered the Panel's efforts to make a more in-depth search, given the dispersion of the documents and lack of availability of staff members who were directly involved in the Project design and implementation.

II. The IDB-funded Project and its Context

A. The Project

1. Design and Approval

- 2.1 **The Loan.** The Program to Improve Highway Corridors in Paraguay was designed during the early 1990's and was eventually funded through Loan Contract 933/OC-PR approved on June 26, 1996, by the IDB Board of Directors to the Government of Paraguay. The Loan Contract became effective on May 30, 1997, and the first disbursement took place on February 3, 1998.
- 2.2 The Loan Contract was approved for eighty two million and three hundred thousand dollars (US\$82,300,000) (74.8 percent of the total Project cost) with a counterpart requirement of twenty seven million and seven hundred thousand dollars (US\$ 27,700,000) (25.2 percent) from the Paraguayan Government.
- 2.3 The Project Completion Report, which was approved on January 29, 2009, lists August 31, 2009, as the date of final disbursement. In a meeting on May 1, 2012, Management informed the Panel that the date of last disbursement listed in the Project Completion Report was incorrect and that the correct date of last disbursement was December 30, 2007.
- 2.4 **The Executing Agency.** The IDB and the Paraguayan Government agreed that the Project implementation and the use of the resources provided by the Bank's loan would be carried out in its totality by the Borrower through MOPC, designated as the "Executing Organization," whose legal and financial capacity were certified by the Paraguayan Government.
- 2.5 To address the environmental and indigenous peoples' issues, an Environmental Sub-Program was added to the design of the Highway Corridor Program. The MOPC assigned the implementation of this Environmental Sub-Program to its Environmental Unit (UA).
- 2.6 **The Project Objectives.** The objectives of this Highway Corridor Program were to: i) reduce transportation costs to improve competitiveness and encourage the production of goods that are suitable for the export market or in high demand in the domestic market; and ii) support the social and economic integration among MERCOSUR member countries, by strengthening inter-country linkages.
- 2.7 Specific objectives included to: i) reduce by approximately 80 kilometers (50 miles) the route traveled between Asunción and the northern corridor of the Eastern Region of Paraguay, thus reducing time as well as transport costs; ii) eliminate economic loss and isolation of rural communities for about 90 days per year, due to poor road conditions resulting from adverse weather; and iii) expand the year-round use of national routes (primary and secondary) from 60 percent to 80 percent.
- 2.8 The Program consisted of five main components: i) upgrading and paving of Highway 3; ii) highway maintenance program with the application of new conservation techniques for unpaved roads; iii) Environmental Sub-Program; iv) institutional strengthening of MOPC and; v) environmental, economic and engineering studies for important national integration corridors.

- 2.9 **The Environmental Sub-Program.** Clause 4.05 of the Loan Contract contains “Areas for Environmental Protection and Settlement of Indigenous Communities,” stipulating that the Borrower should, within 24 months of the entry into force of the Loan Agreement, provide evidence of a law project for the expropriation of the land required for the establishment of approximately 20,000 ha. of forest reserves and 11,000 ha. of land for indigenous settlement. The justification for this Sub-Program emanated from the expected environmental and social impact of the Highway Corridors Program. The implementation and monitoring of the Environmental Sub-Program is the focus of the complaint by the Requesters and it is the focus of the Panel’s Compliance Review and the present Report.
- 2.10 The establishment of Forest Reserves was to have a total cost of four million and three hundred thousand dollars (US\$ 4,300,000) with four million dollars (US\$ 4,000,000) being provided through counterpart funds. The establishment of lands for indigenous communities was to have a total cost of two million two hundred fifty dollars (US\$2,250,000) with (US\$ 2,000,000) being provided by counterpart funds to be provided by the Government of Paraguay.
- 2.11 Other components of the Environmental Sub-Program were the following: a) the preparation of a Regional Development Plan; b) environmental monitoring; and c) institutional support to both the Environmental Unit (UA) at the MOPC and the Inter-Institutional Commission,¹¹ which was to coordinate the activities of the various Government agencies engaged in executing this Sub-Program, which included the establishment of approximately 20,000 ha as forest reserves and legalizing tenure on 11,000 ha.¹² of land for indigenous settlements in the area of influence of Highway 10 along the section of the highway corridor between San Estanislao and Salto del Guairá.¹³
- 2.12 The area at the core of this Compliance Review is known as Finca 470, a property of 4,700 ha which lies in the area of influence of Highway 10, and was purchased by MOPC to meet part of the requirements of the Environmental Sub-Program. Through this Sub-Program, which included a land procurement plan, the Bank provided legal and other support for the purchase of Finca 470 to ensure its preservation. Funding from a subsequent IDB loan to SEAM was used in efforts to obtain legal title to Finca 470 for the Aché.
- 2.13 Component five of the Program included financing of studies for future construction of Highway 10 that directly impacted Finca 470. Contrary to original plans, the actual execution of the envisaged road improvement was not financed by the IDB but by Paraguay and Brazil. However, the IDB’s obligations for ensuring the implementation of the Environmental Sub-Program as related to Highway 10 were an integral part of the Loan Contract and therefore not affected by later decisions about who would actually fund the road improvement works. Although not financed by the IDB as had been initially planned, Highway 10 appeared to be central to the viability of the entire Program and its economic objectives.

¹¹ See Loan Proposal “Program to Improve Highway Corridors in Paraguay (PR-0035),” document (PR-2128) of June 4, 1996, original in Spanish, section related to the Environmental Protection Program component, paragraphs 2.25, 2.31 and 2.34. See also Loan Contract 933/OC-PR, Resolution DE-79/96, Clause 4.05 of the Special Conditions, and Section 1.02 of Annex A.

¹² See Project Completion Report of the Program to Improve Highway Corridors in Paraguay (933A/OC-PR), January 29, 2009.

¹³ See Loan Contract 933/OC-PR, Annex A, page 3.

2. Project Implementation

- 2.14 Although the Program's Loan Contract was approved in 1996, the implementation of the Program was plagued with delays from the beginning.
- 2.15 Actual implementation only began two years after Loan Contract approval because of difficulties concerning the availability of the required counterpart resources, given that disbursements and counterpart funds were to be made following the *Pari Pasu* approach required by the Loan Contract.
- 2.16 Throughout the duration of the Program there were delays in the appraisal, negotiation and payments by the MOPC when it sought to purchase land. According to MOPC officials, MOPC lacked the necessary experience in land acquisition. According to an IDB Portfolio Report of October 2005, this situation was further aggravated by the scarcity of counterpart funds for the land purchases agreed to for Loan Contract 933/OC-PR.
- 2.17 These delays also meant that there were significant price increases for the land to be purchased due to market conditions and some elements of speculation associated with selling land to Government-sponsored projects.
- 2.18 Furthermore, according to MOPC, the Loan Contract was negotiated on the basis of a fixed dollar amount for land acquisition presupposing that this amount would be sufficient to meet the targets of 20,000 ha. for forest reserves and 11,000 for indigenous peoples. On the basis of said legal agreement, the MOPC allocated US\$2 million for the purchase of indigenous lands and US\$4 million for forest reserves. Both allocations proved to be insufficient for meeting the stipulated number of hectares to be purchased. The Panel could not identify any efforts to correct these inconsistencies during the course of the Project.

3. The Acquisition of Finca 470

- 2.19 Competition for Forest Land to Satisfy Off-Set Conditions. By the time the MOPC initiated the land purchases to meet the requirements of the Loan Contract, the Moisés Bertoni Foundation was already finalizing negotiations for the purchase of the property known as Finca 470. Representatives of the Moisés Bertoni Foundation had travelled twice to Taiwan and had enlisted the assistance of Paraguay's ambassador to that country in order to buy Finca 470 from its Taiwanese owner.
- 2.20 The Moisés Bertoni Foundation (FMB) wanted to purchase Finca 470 to transfer its ownership to the Aché Kuetuvy community, who were already settled in that property since 2000. This arrangement aimed at ensuring the environmental preservation of the property and the survival of the Aché culture, while at the same time contributing to the protection of the adjacent Mbaracayú Reserve.
- 2.21 Once the Taiwanese owner learned about the MOPC's interest in purchasing Finca 470, he abandoned the close to final negotiations with FMB.
- 2.22 It is noteworthy that IDB was concerned about a possible large disparity between what the FMB would have had to pay for Finca 470 and the price to be paid by MOPC. In 2002 it commissioned an evaluation of Finca 470. MOPC purchased Finca 470 from the Taiwanese

owner in 2003 for slightly more than the value estimated by the IDB-commissioned evaluation¹⁴ and transferred title to the land to SEAM.

- 2.23 Individuals interviewed by the Panel in Paraguay stated that the purchase of Finca 470 by the MOPC and its transfer to SEAM prevented its purchase through the FMB and its promised transfer to the Aché Kuetuvy community.
- 2.24 **Combining Environmental and Social Use and proposed transfer of Finca 470 to the Aché.** SEAM lacked the resources to effectively manage protected areas and to prevent land invasions and illegal logging activities. The Panel learned that at some point SEAM requested from IDB to refrain from supporting the creation of new reserves but to strengthen existing ones, because of lack of resources for their management and protection.
- 2.25 The technical team at SEAM confirmed to the Panel that lack of resources to manage Finca 470 led in 2004 to a Covenant between SEAM, the Instituto Paraguayo del Indígena (INDI) and the Aché Kuetuvy community to grant usufruct rights to the Aché community. This was seen as a first step in the legal transfer of Finca 470 to the indigenous community.
- 2.26 SEAM's intention to transfer legal title of Finca 470 to the Aché Kuetuvy community was further confirmed by a letter of November 2005 of the then SEAM Minister to the Aché leader Margarita Mbywangi affirming that the community was authorized to patrol and control Finca 470 and that the process of land transfer was at an advanced stage.
- 2.27 Reversal of Intention to Transfer Title to the Aché. However, following elections in Paraguay in 2008 and the establishment of a new administration at SEAM, the prior agreements – which had been actively supported by the IDB – were suspended, and SEAM enacted Resolution 662/10 of June 21, 2010, seeking to divide Finca 470 between the Aché Kuetuvy community and the Avá Guaraní communities of Ytu and Ka'a Poty, two small indigenous settlements at the edge of Finca 470.
- 2.28 In its meeting at SEAM, the Panel was informed that the reason for this shift in the position of SEAM was that its newly appointed senior staff believe that the area of Finca 470 was part of both the Aché's and the Avá Guaraní's ancestral territory and that this overlap in territorial history justified the change in SEAM's position and the annulment of earlier agreements.
- 2.29 Reference was made to documents archived at the INDI, in which the Avá Guaraní claimed the allocation of Finca 470 to their communities dating back to 1994, at a time when Avá Guaraní were settled on the property and no Aché presence was recorded.
- 2.30 The Panel was able to consult the original documents at INDI. INDI's director confirmed to the Panel that the initial claims by the Avá Guaraní had been archived for lack of follow-up by the Avá Guaraní communities or their supporters.
- 2.31 While outside of the Panel's mandate, the Panel noted a heated discussion within Paraguay about SEAM's change in position vis-à-vis the Aché community. Observers and some NGOs in Paraguay allege a conflict of interest of senior SEAM officials due to direct

¹⁴ The Taiwanese owner had tried to obtain a higher price from MOPC than what had been negotiated with FMB. Alarmed by a possible speculative land price, the IDB commissioned the "Evaluación de la Finca 470" in 2002 to evaluate the costs of Finca 470. The study concluded that the price per hectare should be about US\$ 314.26 plus or minus 20 percent. (IDB, Representación para el Paraguay, Evaluación de la Finca 470, Septiembre 2002.)

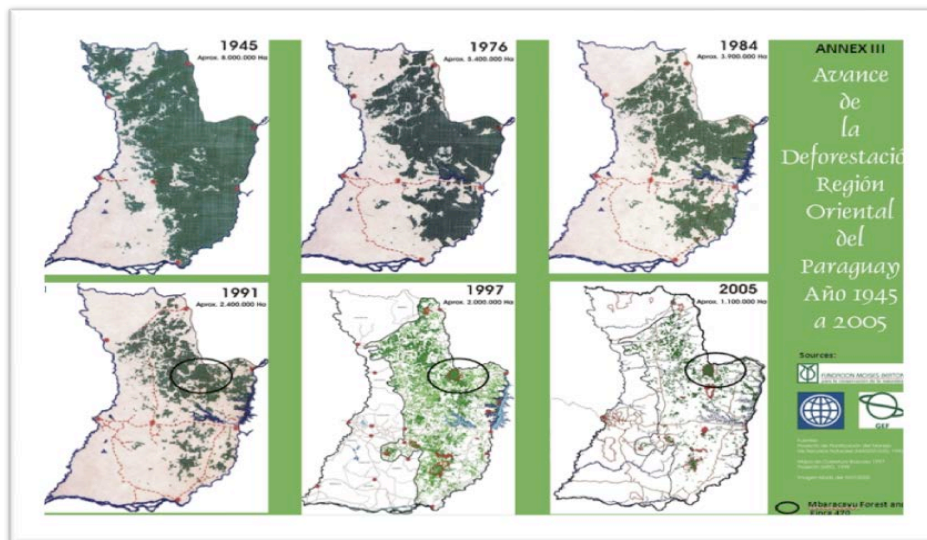
family relationships being linked to efforts and external financial support for the advancement of the cause of the Avá Guaraní.

- 2.32 The Panel observed that the current situation is one of impasse and of great uncertainty for the prospects of maintaining the off-set conditions agreed to by the Bank and the Government of Paraguay. There is evidence that this impasse represents a threat to the sustainable forest management of the area practiced by the Aché. Recent increases of attempts to carry out more illegal logging in Finca 470 have been observed as the Avá Guaraní communities on the edge of Finca and others seek to earn a living from logging the thus far protected forest. The Panel was also told that the specter of inter-ethnic conflict has become real.

B. The Natural and Socio-Economic Context

1. Geographic and Natural Environment

- 2.33 The area of influence of the Project includes the last remnants, in Paraguay, of the Atlantic Forest Eco-Region; other sections are found in Brazil and Argentina. The Atlantic Forest, also known as Mata Atlántica, was a continuous and highly diverse ecosystem with an original extension of 1,233,875 square kilometers. Today, only 99,944 square kilometers (7 percent of original forest covers) remain.
- 2.34 The deforestation is mostly associated with the expansion of the agricultural frontier, including the cultivation of export crops and with the increase in Cattle ranching (see satellite images). In Paraguay, the last remaining areas of the Atlantic Forest include the Mbaracayú Reserve and Finca 470, which is contiguous to it. The Mbaracayú Reserve is managed by Paraguay's FMB and has the status of a UNESCO Biosphere Reserve.



Deforestation in the region between 1945-2005

2. Land Tenure

- 2.35 The history of land tenure in Paraguay is distinct from that in most Latin American countries. Although there had been a system of land grants to conquistadores, Paraguay was distinguished by Jesuit “reducciones” that dominated rural life for over a century.¹⁵
- 2.36 After the expulsion of the Jesuits in 1767 and later after the end of Spanish rule, the State became the owner of 60 percent of the country's land. Large tracts of land were sold, mostly to Argentinean nationals to pay the country's war debt from the War of the Triple Alliance.
- 2.37 **Concentration of Land Ownership.** This ushered in an era of concentration of land ownership in Paraguay not in the hands of the Spanish or of local elites but rather of foreign investors. After 1954, multinational agribusinesses, mostly Brazilian and American, played an increasing role in the economy, often purchasing large tracts of land for agriculture.
- 2.38 The 1981 agricultural census revealed that 1 percent of the nation's more than 273,000 farms covered 79 percent of the nation's farmland in use. These large farms had an average landholding of almost 7,300 hectares. By contrast, the smallest farms, which made up 35 percent of all farms, covered only 1 percent of the land, which made the average size of a *minifundio* to be 1.7 ha. much smaller than was necessary for a family's subsistence.
- 2.39 The same census also pointed to an increasing problem of landlessness. Census figures indicated that roughly 14 percent of all peasants were landless. Landlessness historically had been mitigated by the undeveloped nature of the eastern border region. Because the owners of estates in the region used only a portion of their holdings, peasants could live on the properties without retribution.
- 2.40 **Colonization of Paraguay's East.** Increasing land pressure was initially alleviated by the existence of vast tracts of untitled land in the east. Beginning in the 1960's, however, competition for land in the area increased dramatically. Many land owners sold their lands to agribusinesses. The new owners, who were committed to an efficient and extensive use of their holdings, sometimes called upon the Government to remove from the land people considered to be squatters.
- 2.41 In addition, thousands of colonists were resettled in the eastern region under the Government's agrarian reform program. Furthermore, there was a large influx of Brazilian settlers as a consequence of the dramatic increase in land prices in the 1970's in the neighboring Brazilian state of Paraná. Many farmers sold their properties and crossed into Paraguay, where land was much cheaper.
- 2.42 By the late 1980's, at least half of the agricultural land in the Canendiyú Department (the location of Finca 470) and Alto Paraná Department was thought to be in the hands of Brazilian owners. Currently, the area of influence of the Program is characterized by large areas of commercial agriculture—corn, soy beans, cotton, etc.—associated with exports and large agribusinesses owned, to a large extent by Brazilian citizens.

¹⁵ See the Report “Hanratty, Dannin M.; Meditz, Sandra W. (1988). “Paraguay: A Country Study: Land tenure”. Library of Congress, Washington D.C., available at <http://countrystudies.us/paraguay/42.htm>, last visit January 9, 2012.

- 2.43 Land Titling and its impact on indigenous populations. The Institute for Rural Well Being (Instituto de Bienestar Rural—IBR), created under the Agrarian Statute of 1963, superseded the Agrarian Reform Institute and became the central Government agency mandated to plan colonization programs to issue land titles to farmers.
- 2.44 From 1963 to the late 1980's, the IBR titled millions of hectares of land and created hundreds of colonies, directly affecting the circumstances of roughly one-quarter of the population.
- 2.45 Although the IBR played an important role in stimulating the celebrated "March to the East," the exodus from Paraguay's central zone to the eastern border region that began in the 1960's was much more a spontaneous than an organized process. The task of the IBR was so enormous and its resources so limited that many of the country's farmers bypassed the Institute to participate in the colonization of the eastern part of the country.
- 2.46 In this context, titles changed hands frequently and often leading to overlapping claims and conflicts. Many people sold properties that included indigenous communities settled on those lands. The indigenous people considered the land to be part of their ancestral territories but these rights were not recognized.
- 2.47 **Impact on Aché Communities.** As the agricultural frontier was expanded, clashes between the *colonos* and the indigenous communities became commonplace, as the latter were displaced and persecuted. According to reports available to the Panel, between 1960 and 1968—a period consistent with the “March to the East”—the northern Aché were decimated by diseases and were constantly persecuted by *colonos*, loggers and ranchers.¹⁶
- 2.48 Aché bands were systematically raided with the intention of killing the men and capturing women and children, who were later sold openly in the region as late as the 1970s, according to Hill's personal observations and testimony from the Aché.¹⁷

3. Social Development

- 2.49 Recent data (2009)¹⁸ indicate that 35 percent of the Paraguayan population is low income, 19 percent of which live in extreme poverty. Moreover, 71 percent of the latter live in rural areas of the country.
- 2.50 Paraguay has a population of 6,669,086, 95 percent of which are mestizo (mixed European and Amerindian) and five percent are labeled as "other" and are members of indigenous tribal groups. One remarkable trace of the indigenous Guaraní culture that has endured in Paraguay is the Guaraní language, generally understood by about 90 percent of the population. Both Spanish and Guaraní are official languages.
- 2.51 The Paraguayan Government is making significant efforts to tackle some of the key challenges in social development. Priorities include reactivating the economy and promoting employment creation, maintaining a macro environment favorable to growth and development, promoting the development of exports, and investing in physical and human

¹⁶ See annex II, the Aché and the Avá Guaraní, issues pertaining to the Aché.

¹⁷ See the history of the Aché, by Kim R. Hill, Professor of Anthropology School of Human Evolution and Social Change Center for Social Dynamics and Complexity Institute for Human Origins, available at: <http://www.public.asu.edu/~krhill3/Aché.html>. Last visit January 5, 2012, at 6:05pm.

¹⁸ See statistics on Paraguay, ABC Digital, available at: <http://www.abc.com.py/nota/en-paraguay-disminuyo-la-pobreza-entre-2003-y-2009/>. Last visit January 5, 2012 at 6:15pm.

capital. Furthermore, fighting poverty and inequity by developing targeted interventions to improve access to health services, education, and basic utilities for poor and vulnerable sectors are considered to be important priorities.

2.52 Social Development of Indigenous Communities. There are obvious signs that the indigenous communities are at the bottom of the socio-economic ladder and living in conditions of poverty and extreme poverty. This situation was observed by Heiner Bielefeldt, the UN Special Rapporteur, who observed: “There are enormous societal inequalities in terms of distribution of wealth, access to public or private education, political influence, ethnic and linguistic minority status, etc.”¹⁹ He highlighted weakness in the implementation of non-discrimination mechanisms and drew special attention to the Paraguayan indigenous peoples’ long history of discrimination, neglect, harassment, and economic exploitation.

4. IDB Strategy in Paraguay: Focus on Infrastructure Development

2.53 IDB is the principal multilateral agency active in Paraguay. In terms of financing, it is the largest lender, with 45 percent of external public debt and 81 percent of multilateral debt, which is the highest level of debt held in a borrowing member country. As of 31 March 2009, the stock of external public debt is US\$2.148 billion, of which US\$0.9588 billion (45 percent) corresponds to the IDB.

2.54 The 2009 – 2013 Country Strategy paper replaces the country strategy paper (document GN-2312-1) approved in July 2004. It contains the agreement between the Bank and the Government of Paraguay on the amount of the Bank’s lending program in support of the country during the period 2009-2013.

2.55 Under the 2009-2013 strategy, the Bank’s action in the country is concentrated in the public sector and includes a broad spectrum of sectors and activities that reflect the Bank’s important role in providing technical assistance and institutional support to the Government, in addition to loan resources.

2.56 At the beginning of the period covered by the strategy, as of 31 March 2009, the outstanding portfolio consisted of 106 operations totaling US\$751.2 million; the participation of the private sector window was growing, particularly the share of the Inter-American Investment Corporation (IIC); and the technical assistance program was extensive and going beyond the areas covered by loan operations. The technical cooperation portfolio included projects in the Social Entrepreneurship Program.

2.57 With respect to the undisbursed portfolio at the time, the largest share, i.e. 54 percent, was destined for the infrastructure sector, while 17.3 percent corresponds to poverty-reduction projects, and 12.6 percent corresponds to institutional modernization.

2.58 The infrastructure focus is explained by Government of Paraguay’s desire to improve infrastructure in the country. According to the IDB’s country strategy for Paraguay (2004-2008) the immediate objective has been to revitalize the economy, which had not grown (on average) in the last seven years. The Bank’s portfolio in Paraguay, over the last five years, continued to reflect the priority on infrastructure development, especially in

¹⁹ See UN New Centre available at <http://www.un.org/apps/news/story.asp?NewsID=37951&Cr=religion&Cr1=#>. Last visit, December 5, 2012.

transportation. Of a total investment of US\$622 million, US\$334.5 million (54 percent) went to transportation.²⁰

III. Environmental and Indigenous Peoples Aspects of Project Design, their Reflection in Loan Documents and their Implementation

- 3.1 Documentation on the environmental and indigenous aspects of the Program to Improve Highway Corridors in Paraguay (Loan 933/OC-PR) covers project preparation starting in 1993, Loan approval in 1996 and subsequent efforts that stretched out to 2009.
- 3.2 The Panel's investigation into the claim by the Aché Kuetuvy community that they have been suffering harm as a result of not receiving title to Finca 470 as part of the IDB's commitment to help identify, mitigate and off-set any potential negative impacts associated with the future up-grading of Highway 10. This situation required a review of the facts related to the specific studies, loan documents and implementation efforts of the Environmental Sub-Program.
- 3.3 Land acquisition for protected areas and for indigenous peoples was the core component of the Environmental Sub-Program. As part of this broader effort, IDB management undertook numerous good faith efforts to obtain land title for the Aché to Finca 470, especially since 2006.
- 3.4 It is the Panel's view that there are a number of reasons why these efforts have not succeeded to date. The following summarizes some of the facts related to the IDB's design, loan documents, and implementation efforts.

A. Preparatory Phase: Repeated Recognition of High Risk Environmental and Social Issues

- 3.5 A Loan Committee Meeting in 1993 called for a careful review of the proposed Project also in light of the availability of local counterpart funds. It recommended that given the non-trivial impact on the environment and indigenous peoples, the Project team should give special consideration to the recommendations of the Environmental Committee.
- 3.6 The IDB's Environmental Committee classified the proposed Project as a Category III Project in July 1993.²¹ Category III refers to operations with moderate impact on the environment and those that have recognized and well defined solutions.²² During the meeting, the Environmental Committee referred to a Technical Cooperation component which was planned to provide funding for the necessary environmental impact studies and to a proposal of establishing a direct consultation mechanism with the affected populations during Project preparation.

²⁰ See IDB's Country Strategy with Paraguay for 2009-2013, paragraph 2.7, available at <http://www.iadb.org/en/countries/paraguay/paraguay-and-the-idb,1039.html>, last visit, January 5, 2012, at 6pm.

²¹ See Environmental Committee, Minutes 28/93 of July 20, 1993.

²² See IDB's Procedures for Classifying and Evaluating Environmental Impacts of Bank Operations, February 1990.

- 3.7 In addition, the Environment Committee called for the revision of an initial Environmental Brief to include more information on measures related to safeguarding of the indigenous culture and the sustainable use of natural resources.
- 3.8 The revised Environmental Brief was presented to the Environmental Committee later in the same month of July 1993.²³ It referred to a special Japanese fund be used for Project preparation, including the engineering and environmental studies.
- 3.9 The Brief also referred to the institutional framework that was planned to be in place to ensure a successful implementation of the Environmental Sub-Program. The prescription included: a) the Environmental Unit (UA) established in the MOPC and b) the establishment, at IDB's recommendation, of the Inter-Institutional Commission (CI) in charge of coordinating environmental studies related to road building projects.²⁴
- 3.10 It mentions that previous IDB-funded road projects (Loans 744/OC-PR and 745/OC PR – Caminos Rurales) had included the CI's strengthening. As a result, the Environment Committee considered that CI had already gained experience during preparation and implementation of other IDB-financed road projects (Loans 635/OC- PR, 829/SF-PR and the above mentioned 744/OC-PR and 745/OC-PR) and that this would be fundamental for the preparation of the new road-building Program (PR-0035).
- 3.11 Concerning environmental impacts, the Environmental Brief concluded that potential direct impacts would be localized, of short duration, and non-cumulative. Therefore, direct impacts would be prevented or mitigated by incorporating specific measures in procurement and contract documents.
- 3.12 For the purposes of the present case, it is noteworthy that the Brief was quite explicit in stating that the potential indirect impacts were considered to be very complex, involving changes in land-use patterns and resource use in the area of influence of the improved roads. The Brief pointed out that these potential impacts would be magnified in areas inhabited by indigenous peoples.
- 3.13 The Brief stated that indirect socio-cultural impacts would be subject to detailed interdisciplinary studies. The ToR for these environmental studies would include pro-active measures to safeguard indigenous culture by, among other things, titling indigenous lands.
- 3.14 Based on the predicted elements of risk, the Environment Committee proposed that the Project team should ensure the adequate analysis of the institutional and financial feasibility of the proposed environmental measures.²⁵
- 3.15 The IDB "Environmental Mission Report" of September 1994. At the time of designing the Highway Corridor Program, IDB was involved in several other road construction projects with persistent environmental and social problems. To avoid repetition of such issues, IDB organized an "environmental mission" in 1994 with the objective to draw up recommendations for improvements and lessons to be learned from past problems. The

²³ See IDB's Memorandum, OP1/PR -215/93 of July 29, 1993.

²⁴ The CI was composed of representatives of the MOPC, the Sub-Secretariat for the Environment of the Ministry for Agriculture and Livestock, the National Institute for Indigenous Development and NGOs. Its objective was to analyze and recommend approval of documents and policies related to the environment.

²⁵ *Idem*.

environmental mission's specific goal was to review four on-going road projects in Paraguay.²⁶

- 3.16 The mission report found that the indigenous components of all four projects were delayed. The cause was described as lack of communication among Government agencies and lack of communication with indigenous peoples. Proposed remedies included institutional strengthening of the Environmental Unit at MOPC and of INDI. In fact, a complete restructuring of INDI was proposed.
- 3.17 The negative impacts on indigenous communities from the various road projects are listed as pressure on land and resources, rendering indigenous communities without land titles especially vulnerable to involuntary resettlement. It refers to increased deforestation, which precludes traditional hunting and resource uses that are central to indigenous livelihoods. The Aché as well as the Chiripa Guaraní (Avá Guaraní) are mentioned along with two other indigenous groups in the Jejuy watershed region as living in the area of influence of the planned Highway 10.
- 3.18 Given the serious difficulties with land purchases for displaced indigenous peoples in other road projects, the mission report calls for an in-depth study of the affected indigenous communities in the EIA. This would include their land tenure situation, economy, and leadership. It called on the IDB to ensure sufficient resources and time for the consultants to conduct these studies with the necessary detail.²⁷
- 3.19 The mission report referred to the lack of capacity of both the Environmental Unit at MOPC and of INDI and the lack of inter-institutional communication, as well as lack of communication with indigenous peoples and the organizations that work with them. It highlights the case for a complete restructuring at INDI since its lack of human and material resources rendered its task of consulting with indigenous peoples and ensuring that land purchases actually reflect the land claimed by indigenous peoples close to impossible.
- 3.20 In December 1995, the IDB published the Environmental Summary for (PR-0035).²⁸ Given the potential severity of indirect environmental impacts, the Summary stated that the Program should include the preparation and implementation of a Regional Development Plan focused on (i) forest conservation; (ii) protection of indigenous peoples; (iii) support for urban planning; (iv) environmental monitoring. Its recommendations also include institutional strengthening to improve management capacity and decision-making processes.
- 3.21 Thirty three indigenous communities were identified as living in the Project area, among them the Aché and the Avá Guaraní. The Environmental Summary warns that once pressure on the land further increases as a result of road paving, it would be more difficult to solve the land tenure problems of indigenous groups lacking clarity of land titles and usage rights.
- 3.22 The Environmental Summary was explicit in stating that improved access and the international character of the road paving would increase demand for land for both

²⁶ See Final Mission Report, Paraguay: Mitigación de Impactos sobre Poblaciones Indígenas, Dr. John Renshaw, September 1994.

²⁷ Idem paragraph 19.

²⁸ See Environmental Summary of the Program to Improve Highway Corridors in Paraguay –933A/OC-PR, December 20, 1995.

livestock production and large-scale mechanized agriculture. An influx of migrants would further complicate the situation and render the provision of public services more difficult. Market conditions could lead to speculative actions, which could result in the displacement of indigenous communities who lack information on the economy and have little capacity to negotiate. The Summary explained that these conditions would make the efforts of indigenous communities to obtain legal title to their land more difficult.

3.23 The indirect impacts are especially important to indigenous communities whose livelihoods depend to a large degree on hunting and gathering and whose property rights are not defined.

3.24 The Bank funded a Regional Development Plan to be prepared and implemented by the Government of Paraguay which would define the specifics of the Environmental Sub-Program covering the area of influence of planned improvements in Highway 10. The Environmental Sub-Program stipulated the following:

- a. An amount equivalent to US\$ 4 million for the purchase of land for conservation purposes, which at the time of the Loan Contract approval was estimated to be approximately 20,000 ha.
- b. The titling of about 11,000 ha. of land for various indigenous communities that live on or have land claims in the area affected by the Program; support for access to social services and technical and legal support for indigenous communities to inform them about their legal rights and to assist them in their claims vis-à-vis public and private entities.
- c. Project monitoring to evaluate the progress in land titling for indigenous communities and their access to social services.
- d. Institutional strengthening of the Environmental Unit at MOPC and the IC.

3.25 The total cost for the Environmental Sub-Program would be US\$ 8 million of which US\$ 6.4 million would be provided by counterpart funds and US\$ 1.6 million by the IDB loan. It is the Panel's view that the Regional Development Plan can be considered both as Project-specific guidance as well as an innovative blueprint for enhancing the effectiveness and sustainability of infrastructure investments supported by the IDB in Paraguay. The problem was that the recommendations of the Regional Development Plan were not implemented.

3.26 **The Environmental Summary** of December 1995 recommends ten conditions to be integrated into the Loan Contract in order to ensure the environmental viability of the Loan. Among the conditions are:

- Before approval of the Loan Contract, the MOPC should provide the IDB with detailed information on the environmental components of four on-going IDB supported road projects (Loans 825/SF, 635/OC, 774/OC, and 775/OC). The information should include timetables for implementation of the environmental components;
- Before approval of the Loan Contract, the Government of Paraguay should present a plan for the land titling component, including (i) the indigenous communities to

be benefited; (ii) the amount of land and funding for each of the communities; (iii) the time table for management, land acquisition, and demarcation;

- Before the first disbursement of the loan, the borrower should provide the IDB with the Regional Development Plan;
- The borrower is to provide regular reporting on the implementation of the Environmental Sub-Program, including progress made in the implementation of the Regional Development Plan.

B. Loan Proposal and Loan Contract: Good Intentions

3.27 **The Loan Proposal of June 4, 1996**, (original in Spanish) lists four specific objectives and goals of the Project. The first three concern the reduction of transportation time and costs to be achieved by the road program. The fourth objective concerns the amount of land set aside as environmental reserves (approximately 20,000 ha.) and the regularization of ownership of some 11,000 ha. by indigenous communities in the area of influence of Highway 10.

3.28 The Loan Proposal recognizes that IDB experience had shown that the construction of highways in Paraguay had contributed to environmental degradation. It emphasizes the Bank's commitment to protecting vulnerable ecosystems and to ensure the availability of land for indigenous communities. It explicitly recognizes that the planned upgrading of Highway 10 was bound to lead to socio-economic changes and pressure for changes in land use that may have adverse impact on the indigenous communities.²⁹ In order to mitigate these impacts, it proposes an **Environmental Protection Sub-Program** consisting of:

- a. Regional development plan
- b. Preservation of woodlands
- c. Purchase of land for indigenous communities
- d. Environmental monitoring as part of Project activities
- e. Support for the Environmental Unit at the Ministry for Transportation and Communications and for the Joint Commission which was set up to improve inter-agency coordination.

3.29 The Regional Development Plan was to be the fundamental planning document for the region affected by potential upgrading and paving of Highway 10. It was to include an analysis of the situation of the indigenous communities, the problem of land tenure, identification of land areas to be turned over to these communities and helping them gain access to social services. The most costly components of the Environmental Protection Sub-Program would be the preservation of woodlands and the purchase of land for indigenous communities. Both were to be financed largely through local counterpart funding.

²⁹ See Loan Proposal for the Program to Improve Highway Corridors in Paraguay (933A/OC-PR), page 13, paragraph 2.24.

- 3.30 In the case of the preservation of woodlands, the Government of Paraguay would provide US\$ 4 million to begin the purchase of some 20,000 ha. of forest. In the case of the purchase of 11,000 ha. of land for indigenous communities, meant to benefit approximately 1,000 indigenous families, the Government of Paraguay would provide US\$ 2 million to begin the purchase and titling of land. Unfortunately, the Loan Proposal did not contain any provisions for dealing with the potential inconsistencies between the off-sets' hectare commitments and the amount of funds necessary to purchase the agreed-upon areas.
- 3.31 An annex of the Loan Proposal lists the timetable for verifiable indicators and their means of verification:
- a. March 31, 1998: Regional development plan formulated;
 - b. December 31, 1998: Presentation of a bill to allow land purchases for ecological reserves and indigenous communities;
 - c. December 31, 2000: US\$ 4 million invested as part of process of land purchases for ecological reserves;
 - d. December 31, 2000: US\$ 2 million invested as part of process to purchase indigenous lands.
- 3.32 **The Loan Contract of June 27, 1996**, while mostly administrative in nature, includes the clauses and conditions listed in the Loan Proposal of June 4, 1996. Clause 4.05 of the Loan Contract "*Areas for Environmental Protection and for Indigenous Communities*" stipulates that within 24 months following the entry into force of the Agreement, the borrower, through the Executing Agency, should show evidence that a *project of law of expropriation for eminent domain* of the lands to be dedicated to nature reserves and for indigenous settlement had been presented as specified in Annex 1.³⁰ The Borrower should buy the *pertinent rights* up to the sum equivalent to the amounts indicated in Annex 1, i.e. US\$ 4 million for nature reserves and US\$ 2 million for land for indigenous settlement.
- 3.33 The Loan Contract did not reflect the conditions for disbursements proposed in the Environmental Summary³¹ referred to above, except for the requirement that the borrower hired an environmental expert to strengthen the institutional capacity of the Environment Unit at the MOPC prior to the first disbursement.³² As in the Loan Proposal, the Loan Contract did not contain any provisions for dealing with the potential inconsistencies between the off-sets' hectare commitments and the amount of funds necessary to purchase the agreed-upon areas.

C. Subsequent Efforts during Implementation: Lack of Success with Enforcing Off-Set Commitments

- 3.34 The Panel was informed that during project implementation, IDB staff members made attempts to assist the Government of Paraguay in (a) fulfilling its obligations concerning the purchase of land for conservation purposes and for indigenous communities as stipulated in the Loan Contract; and (b) granting title of Finca 470 to the Aché community. However, these efforts proved insufficient to attain the intended outcomes. **Several of the**

³⁰ See Loan Contract for the Program to Improve Highway Corridors in Paraguay – Highway 10 (933A/OC-PR), Annex 1, paragraph 1.02, June 27, 1996.

³¹ See Program to Improve Highway Corridors in Paraguay – Highway 10, (933A/OC-PR) document (PR-2128), and Resumen Ambiental, December 20, 1995.

³² See Loan Contract for the Program to Improve Highway Corridors in Paraguay (933A/OC-PR), June 27, 1996.

key recommendations and agreements during the design phase were not implemented. While the Panel saw internal records about lack of progress dating to the final stages of the Project, it did not find evidence that IDB senior management or the Board had been informed about the issues at stake in a timely manner.

1. Land Purchases for Protected Areas and Indigenous Settlement

- 3.35 The **Regional Development Plan**, the key document to identify areas suitable for the establishment of protected areas and areas for indigenous settlements, was concluded in June 2000. The Loan Contract had stipulated that the Regional Development Plan would be completed by 1998. Thus, the Program experienced overall delays, including the first disbursement which took place in 1998.
- 3.36 The Regional Development Plan pointed out that the plan itself would be insufficient to ensure positive social and environmental outcomes, and considered it indispensable that it be supplemented with other measures, such as development programs and adequate resources for land purchases. It also called for an **Action Plan on Monitoring**, which should include local participation.
- 3.37 Given the valuation problem for the land to be expropriated and uncertainties about the development of the market for land, the Regional Development Plan listed more ha. than the stipulated 31,000 ha. as feasible for potential purchase for natural protection and for indigenous settlement. Finca 470 was among the areas proposed for indigenous settlement.³³
- 3.38 **The Portfolio Review for Land Acquisition.** Given delays in the purchase of land not only for this project (933/OC-PR), but also for two other road improvement projects (Caminos Rurales 2ª Etapa (1230/OC-PR), and Corredores de Integración Oriente (1278/OC-PR), a Portfolio Review in October 2002 led the IDB to call for the **“Plan Consolidado de Adquisición de Tierras”** (PCAT), which was approved by the Government of Paraguay in 2003. The idea was to consolidate commitments for land purchases under the three ongoing road loans to compensate for indirect environmental impacts.
- 3.39 However, subsequent portfolio reviews in 2004 and 2005 found that the PCAT had only partially been implemented.³⁴ **According to the Portfolio Reviews, the clauses of the Loan Contract dealing with the purchase of land for protected areas or indigenous peoples were in full or partial non-compliance.**
- 3.40 Following the **Loan Closing Workshop** in 2009, an IDB letter to the MOPC³⁵ called attention to issues that required further attention by the MOPC, including the need to disseminate the Regional Development Plan to ensure that it really serve as the guiding document for sustainable development in the region, as well as the need to undertake

³³ See Loan Proposal for the Program to Improve Highway Corridors in Paraguay (PR-0035), section on Regional Environmental Program, par. 2.25, June 4, 1996, document (PR-2128), original in Spanish. See also “Plan de Desarrollo Regional en el área de influencia de la Ruta 10, Las Residentas, República del Paraguay, Ministerio de Obras Públicas y Comunicaciones, Sub-Secretaría de Obras Públicas y Comunicaciones, Banco Interamericano de Desarrollo, Licitación Pública Internacional MOPC 9/98.”

³⁴ See Mission Reports of the Program to Improve Highway Corridors in Paraguay –933A/OC-PR, November 2004 and November 2005.

³⁵ See the letter to Deputy Minister Ing. Andrés Rivarola of April 3, 2009, IDB, Country Office in Paraguay.

additional efforts to ensure that the purchased land really serves to compensate for the environmental degradation caused by the rapid development in the region.

2. Specific Efforts Concerning Finca 470

- 3.41 The property known as Finca 470 is located in the District of Curuguaty in the Department of Canindeyú and covers approximately 4,760 hectares. It is adjacent to the Mbaracayú Reserve, a privately owned protected area and UNESCO Biosphere Reserve of 64,000 hectares which represents a significant remnant of the endangered Interior Atlantic Forest type which has been reduced to less than 5 percent of its original range.
- 3.42 **MOPC Purchase of Finca 470 and Transfer to SEAM and INDI.** Law N° 19.689/02 of December 10, 2002, authorized the MOPC to purchase the land for protected areas and for indigenous settlement in the area of influence of the Road Program. MOPC purchased FINCA 470 and then handed it over to SEAM in 2003.³⁶
- 3.43 This was followed by an agreement in 2004 between SEAM and INDI in which SEAM ceded the temporary usufruct rights of Finca 470 to the INDI in order to allow the community of the Aché Kuetuvy to continue their traditional way of life. The agreement stated that this temporary arrangement was to be followed by a process to obtain the legal transfer of land to the Aché as required by the Constitution of Paraguay and several specific laws.³⁷
- 3.44 **IDB Assistance to Title Transfer to the Aché.** In 2000 the IDB approved **the Support of the National Environmental System project (1300/OC-PR).**³⁸ The IDB authorized that parts of the Loan could cover the costs for facilitating the legal transfer of Finca 470 to the Aché. The funds used were part of a support agreement between SEAM and the Fundación Moisés Bertoni to obtain legal title of Finca 470 for the Aché.³⁹
- 3.45 IDB funds from a different project were to be used to pay for the lawyer working to obtain land title for the Aché, including the preparation of a law project to authorize the transfer of the property from SEAM to the Aché.⁴⁰ In addition, the IDB agreed to use funds from the Project for the services of the same lawyer to obtain the release from prison of several Aché leaders who had been imprisoned in 2006 after they had resisted the invasion of loggers into Finca 470. The invaders claimed to have title to an area labeled Finca 27, which in their view partially overlapped with Finca 470. Within the FMB-SEAM agreement, the same lawyer was also hired with funds from PR 1300 to obtain a “juicio de nulidad” concerning the claims of Finca 27.
- 3.46 In 2006, several letters sent by the IDB to MOPC and others reaffirmed the IDB’s commitment to granting legal title to Finca 470 to the Aché Kuetuvy community.⁴¹ In the same year, the IDB Country Representative accompanied the Ministers of SEAM and of MOPC on a visit to Finca 470. The visit was meant to reaffirm the Government’s commitment to providing title to the Aché and the support of the IDB to this process. In

³⁶ See “Escritura N° 30, Año 2003” Escribanía Mayor de Gobierno.

³⁷ See Agreement of Inter-Institutional Cooperation between SEAM and the Paraguay Indigenous People Institute, September 2, 2004.

³⁸ See Loan Contract for the “Programa de Apoyo al Sistema Nacional Ambiental,” (1300/OC-PR), December 2000.

³⁹ See Letter of July 10, 2006 to Ing. Juan Carlos Cano, SEAM, IDB Country Office of Paraguay.

⁴⁰ See Semi Annual Progress Report N° 13, SEAM, “Programa de Apoyo al Sistema Nacional Ambiental, and IDB Loan 1300/OC-PR, February 2008.

⁴¹ Letter of July 5, 2006, to Minister Alfredo Molinas, SEAM, country office of Paraguay

2007, IDB representatives participated in several meetings at SEAM, which reaffirmed the goal of the agreement between SEAM and FMB to obtain legal title of Finca 470 for the Aché.

- 3.47 Finally in 2009, **a letter of the IDB country office in Paraguay to the Deputy Minister of the MOPC**, considered that Clause 4.05 of the Loan Contract was largely met also because the agreements between MOPC, SEAM and INDI had granted usufruct rights to the Aché Kuetuvy community and because the final legal transfer of the property to the Aché was at an advanced stage.⁴²
- 3.48 However, due to further delays and complications the Aché Kuetuvy community does not have, to date, legal title to Finca 470. This situation led to the presentation of a Request for a Compliance Review alleging that the Aché have suffered and continue to suffer due to IDB's failure to ensure the implementation of provisions concerning the titling of indigenous land as spelled out in its Loan Contract with the Government of Paraguay.

IV. Relevant Operational Policies and Compliance

- 4.1 The Panel concluded that the Aché's claim of feared harm is valid. Once they were promised title to Finca 470, they invested in a certified Management Plan of the forest as required by their agreement with SEAM. Breaking this promise and not granting them title to Finca 470 threatens to bring direct material harm to them as a community and as individuals.
- 4.2 While the Project's Loan Contract did not specifically mention the Aché as a distinct recipient of the title of Finca 470, the Panel confirmed numerous references to the intent of both the Paraguayan authorities and of the IDB to transfer the title of Finca 470 to the Aché. This intent manifested itself both in written documents and in accounts of oral agreements.
- 4.3 The Panel found several reasons for the failure to conclude the intended transfer of Finca 470 to the Aché, up to the present. Since the Panel's mandate is to concentrate on actions and decisions of the Bank, the following analysis and findings address IDB decision-making. The Panel does not assess possible shortcomings in decisions by Paraguayan authorities or others.
- 4.4 Section 26 of the ICIM Policy establishes that the Relevant Operational Policies guiding the work of ICIM are the ones in effect at time of Board approval. In this case, the provisions in force in June 1996 are used as a basis to assess the IDB's compliance with its own policies.

A. The IDB's Policy Context at the Time of Project Approval

- 4.5 The overall policy context at the time was set by the IDB's **Eighth Replenishment Report of August 1994** that emphasized the importance of social equity and the environment. It also included a provision on indigenous groups recognizing their rich cultural and linguistic heritage as well as the suitability of their social and economic practices for the management

⁴² See IDB Letter to the Deputy Minister Ing. Andrés Rivarola, Ministry of Public Work and Communication (MOPC), April 3, 2009.

of the fragile ecosystem they inhabit. It also required the systematic inclusion of indigenous issues in Bank policies and projects.⁴³ Since indigenous groups typically belong to the poorest economic strata, the Report called for project design and execution mechanisms to strengthen indigenous capacity in undertaking and implementing development projects.

B. Relevant Operational Policies⁴⁴ in Force at Project Approval and of Significance to the Panel's Findings

- 4.6 An important policy guiding project activities at the time was the **Environment Policy (OP-703)** which lists as its first objective: *"To assure that in all projects financed by the Bank environmental aspects are considered and that appropriate measures are taken to avoid adverse environmental impacts, with due attention to economic and social costs and benefits."*⁴⁵



Aché Leader with a mate drink produced with Sustainable Forest Management

- 4.7 In addition, the **Project Preparation, Evaluations and Approval Policy (OP-302)**⁴⁶ of September 1980, establishes that projects shall be environmentally sound and take place in adequate institutional and legal frameworks.
- 4.8 Furthermore, the **Operations Administration Policy (OP-304)**⁴⁷ dealing with supervision and compliance with contractual covenants is relevant to this case. It stipulates that the approved financial resources are used in accordance with the covenants of the respective financing agreement and with the Bank's policies, rules and procedures.



C. Policy-related statements that informed the Panel's analysis of the case

- 4.9 Given the lack of detail of some of the Operational Policies in force at the time of approval of the Loan document, the Panel also examined related documents based on the Relevant Operational Policies. Such documents, when issued by IDB Management and not vetted by the Board, are not subject to a compliance determination. They are nevertheless deemed to be useful in enriching the analysis. They provide background on the Operational Policies. They also indicate the kind and level of importance that the Board and Management attached to the issues under review as well as Board expectations concerning the

⁴³ Document AB-1704, entitled "Report on the Eighth General Increase in the Resources of the IDB, approved by the Board of Governors on August 12, 1994, by Resolution AG-6/94 recommended the adoption and implementation of proposed resolutions entitled "Increase of US\$40 Billion in the Authorized Capital Stock and Subscriptions."

⁴⁴ See the ICIM Policy Section 26 of Relevant Operational Policies.

⁴⁵ See Environment Policy (OP-703), IDB, paragraph 1.1, (GP-73-3), May 22, 1979.

⁴⁶ See the Project Preparation, Evaluation and Approval Policy (OP- 302), GP-97-1, September 24, 1980.

⁴⁷ See the Operations Administration Policy (OP-304).

implementation of such policies. They are relevant to what the Panel defines as “compliance-relevant findings.”

- 4.10 **Statements Related to Environmental Issues.** Based on the Operational Policy on the Environment (OP-703), the “Conceptual Framework for the Bank’s Environmental Protection and Improvement and Natural Resource Conservation Activities” of March 1989 lists the deterioration of the natural and cultural heritage of Amerindian Communities among the principal environmental problems of Latin America and the Caribbean.
- 4.11 Important for analyzing this case are the “Procedures for Classifying and Evaluating Environmental Impacts of Bank Operations” of February 1990. These procedures call for a classification of “Category IV” for operations which may have significant negative impacts on the environment (including indigenous populations and other vulnerable groups in the area of influence of the Project) and which require a detailed EIA, (e.g. road construction in ecologically fragile areas, large hydro-electric developments, large irrigation projects, mining, toxic waste disposal).
- 4.12 **Statements Related to Indigenous Peoples Issues.** The Panel examined the “Strategies and Procedures on Socio-Cultural Issues as Related to the Environment” of June 1990. This document refers to the lessons learned *“from development projects that negatively affected indigenous peoples, especially those infrastructure projects that improve transport and communication, which often resulted in invasions by miners, migrant farmers, lumber companies and large-scale cattle ranching, and resulted in the loss of tribal land use rights and environmental degradation of traditional habitats.”*
- 4.13 The document lists general principles to guide the Bank’s activities with regard to tribal and other people inhabiting natural environment areas that *“are based in the Bank’s Environmental Policy and in the Conceptual Framework for the Bank’s Environmental Protection and Improvement and Natural Resource Conservation Activities.”*
- 4.14 One of its principles states that *“...in general the IDB will not support projects that involve unnecessary or avoidable encroachment onto territories used or occupied by tribal groups or projects affecting tribal lands, unless the tribal society is in agreement with the objectives of the project, as they affect the tribe, and unless it is assured that the executing agencies have the capabilities of implementing effective measures to safeguard tribal populations and their lands against any harmful side effects resulting from the project. In addition, the Bank will avoid, where possible, the relocation of tribal indigenous people from the lands they traditionally occupy.”*

D. Compliance Analysis and Findings

- 4.15 **The Loan Agreement did not specify that any particular parcel of forest land was to be transferred to the Requesters; however, there exists ample evidence that Finca 470 was to be transferred to the Requesters during Project implementation. The Panel recognizes IDB’s efforts to assist in obtaining legal title to Finca 470 for the Aché. Nevertheless, the Panel’s principal conclusion is that failure to enforce compliance with Relevant Bank Operational Policies to ensure an appropriate design and implementation of the off-set provisions stipulated in the Loan Contract is an important cause for the harm alleged by the Aché. At first, the Project interfered with an almost completed purchase of Finca 470 on behalf of the Aché. Later on, SEAM**

proposed that a large portion of the land promised to the Aché be given to another group that had not contributed to the Finca's sustainable management or submitted a Management Plan.

- 4.16 **The Panel's principal conclusion is that the non-adherence to the off-set provisions stipulated in the Loan Contract and the resulting shortage of land for protected areas and indigenous settlement is an important cause for the harm now experienced by the Aché.**
- 4.17 **The Panel recognizes the IDB's efforts to assist in obtaining legal title to Finca 470 for the Aché. Nevertheless, the Panel's findings show that the IDB failed to enforce adherence to Relevant Operational Policies in designing and implementing the off-set provisions, particularly the Environment Policy (OP-703), Project Preparation, Evaluation and Approval Policy (OP-302), and Operations Administration Policy (OP-304). The Panel also acknowledges that the context of IDB's Relevant Operational Policies has become more clearly structured since the approval of the Loan Contract in 1996, and that the Bank staff has received more guidance on how to apply these policies.**

1. Designing the Off-Set Provisions

- 4.18 Implementation of the land purchase commitments for conservation and indigenous peoples depended almost exclusively on counterpart funds. The stipulation was that an equivalent of US\$ 4 million in counterpart funds would purchase 20,000 ha. for protected forest areas and the equivalent to US\$ 2 million would purchase 11,000 ha. for indigenous settlement. The basis for these calculations does not appear to have been clear.
- 4.19 There were early concerns during Project preparation about the availability of such funds expressed both, by the Loan Committee and the Environmental Committee. The planned upgrading of Highway 10 most certainly led to land speculation in the region and possibly inflated prices. However, the increasing inconsistency between the area of land to be purchased and the amount of available counterpart funds must have been apparent in the early stages of the Project, especially since other IDB-funded projects had experienced similar problems related to unrealistic off-set calculations and unmet commitments.
- 4.20 The analysis of the institutional and financial feasibility of the proposed measures to compensate for the indirect impacts of the Program, as proposed by the Environment Committee, does not appear to have taken place.
- 4.21 The Panel investigation found general agreement among Government and other stakeholders in Paraguay that problems related to the availability of counterpart funds were central to the delays and inadequacies in the implementation of the Environmental Sub-Program.
- 4.22 **Compliance Findings.** Off-sets are crucial instruments for managing environmental and social impact in the development of necessary infrastructure. Failure in adequately designing off-sets and monitoring their implementation are detrimental to achieving overall and specific project objectives. The Environment Policy (OP-703) states that appropriate measures should be taken to avoid negative environmental impacts. The Project Preparation, Evaluation and Approval Policy (OP-302) requires that projects are "...technically, economically, and environmentally sound, financially secure, and take

place in an adequate legal and institutional framework.” The Operations Administration Policy (OP-304) that was in force at the time requires the Bank to verify the compliance of executing agencies with contractual covenants. **The Panel concludes that the Bank did not comply with these three Relevant Operational Policies.**

- 4.23 Recognizing the reliance on problematic counterpart funds for compensating the indirect environmental impacts, the Panel finds that the Bank failed to ensure that appropriate measures were taken to identify, mitigate and off-set any adverse environmental impacts as stipulated in the Environmental Sub-Program. **The Panel finds that the Environment Policy (OP-703), and the Project Preparation, Evaluation and Approval Policy (OP-302) were not adequately complied with.**

2. Environmental Categorization and Environmental Impact Assessment

- 4.24 It is the Panel’s view that a categorization of “IV” instead of “III” would have been more appropriate and would have sensitized the Bank and Paraguayan institutions to managing this Project in a more consistent and sustainable manner.
- 4.25 The Environmental Committee classified the project as a Category III, which refers to operations with moderate impact on the environment and those that have recognized and well defined solutions. Examining Bank documents from the time when the Project was designed and approved, the Panel concludes that available evidence to IDB Management at the time should have led to the determination of Category IV.
- 4.26 Given previous experience of serious delays and problems concerning the environmental components of other IDB-funded road projects in Paraguay, it is unclear why Category IV, which refers directly to road upgrading projects in fragile environments, was not attributed to this Program.⁴⁸
- 4.27 Classification as a Category IV project would have led to a full-fledged EIA. The IDB’s mission report of September 2004 called for an in-depth study of indigenous communities as part of an EIA, which would include addressing questions of land rights and technical, social and economic support for indigenous communities.⁴⁹
- 4.28 To the Panel’s knowledge, this in-depth study was never carried out. Instead of an EIA,⁵⁰ a “Diagnostico Ambiental” was prepared which hardly refers to indigenous communities except for a few pictures in an annex.⁵¹
- 4.29 Several other documents, including the Regional Development Plan and the Consolidated Plan for Land Purchases (PCAT), include lists of indigenous communities. However, these lists are difficult to compare and do not contain the more thorough analysis considered indispensable by the above mentioned mission report. Such a deeper analysis might also have alerted the IDB to the presence of Avá Guaraní in Finca 470 and helped find an

⁴⁸ Regardless of the eventual funding sources for the various elements of the Highway Corridor Program, the IDB-funded environmental studies should have led to a more realistic categorization (category IV) of the program, considering its potential impact on the environment and the indigenous communities.

⁴⁹ See Mission Report Paraguay “Mitigación de Impactos sobre Poblaciones Indígenas, Final Report: Dr. John Renshaw, September 1994.”

⁵⁰ The existence of an EIA was later brought to the attention of the Panel although it had no access to it at the time of the Compliance Review.

⁵¹ See First Partial Report “Consorcio CNEC-Electromon-Hydroconsult.” Correspondiente al Diagnostico Ambiental de las áreas de influencia (March 1995).

appropriate solution to their predicament as prescribed in the Environment Policy (OP-703).⁵²

- 4.30 **Compliance Findings:** A Program of this nature with significant indirect impacts linked to the expansion of the agricultural frontier into fragile landscapes inhabited by indigenous peoples should have benefitted from a classification as a Category IV project. A full EIA with detailed information on indigenous communities would have contributed to improve planning of the land purchases both for protected areas and indigenous peoples.
- 4.31 **The Procedures for Classifying and Evaluating Environmental Impacts of Bank Operations were not adequately complied with as required by the objectives of the Environment Policy (OP-703).**

3. Participation

- 4.32 The Environmental Committee and related IDB documents called for the establishment of a direct consultation mechanism with indigenous peoples. The Regional Development Plan had referred to Program monitoring with public participation as indispensable to the attainment of the Program's goals.
- 4.33 The leading principle in the "**Strategies and Procedures on Socio-Cultural Issues as related to the Environment**" of June 1990, which is based on the IDB's Environment Policy (OP-703), states that there is "the need for indigenous peoples directly or indirectly affected by Bank financed operations, to be consulted and to participate in the identification, design, analysis, execution and evaluation stages."
- 4.34 **Compliance Findings:** The Panel was unable to locate documentation on such consultative processes with the indigenous communities involved in the Request. This may suggest non-compliance with this key principle of the Bank's Policy Framework contained in the Environment Policy (OP-703): Systematic Monitoring and Supervision.
- 4.35 The Environmental Summary of 1995 had called for the monitoring of the titling of land to indigenous peoples and their access to social services. This would have been consistent with the requirements of the Environment Policy (OP-703).⁵³

4. Systematic Monitoring and Supervision

- 4.36 In addition, the Regional Development Plan stipulated that an Action Plan for Monitoring with local participation was critical to attaining the Plan's objectives as per Clause 4.04 of the Loan Contract. As mentioned earlier in this report, Clause 4.04 established the central role of the Regional Development Plan in identifying the land to be purchased for protected areas and indigenous settlement.
- 4.37 However, the Action Plan for Monitoring recommended by the Regional Development Plan appears not to have been put in place. It is also unclear how relevant the Regional Development Plan was during project implementation.

⁵² See Environment Policy (OP-703), IDB, paragraphs 1.3 and 3.2, (GP-73-3), May 22, 1979.

⁵³ See Environment Policy (OP-703), Inter-American Development Bank (IDB), paragraph 3.3, (GP-73-3), May 22, 1979.

4.38 Following the Program Closing Workshop, the IDB alerted the MOPC of the need to “socializar” the Regional Development Plan and to undertake additional measures to ensure that the purchased land would really serve to compensate for the environmental degradation likely to occur in the area that would be impacted by Highway 10.⁵⁴ In this context, the Panel was alerted to the deforestation of an area of 1,600 ha. that had been purchased by MOPC for conservation.

4.39 **Compliance Findings:** While recognizing efforts by Bank staff to follow through with this complicated Program, the Panel finds that the apparent lack of systematic monitoring of the Project, particularly of **purchases of off-sets⁵⁵ and titling to indigenous communities was not in compliance with the Environment Policy (OP-703), and not in the spirit of other aspects of the examined policy context.**

4.40 **The Panel also notes non-compliance with provisions of the Operations Administration Policy (OP-304),⁵⁶ which requires effective monitoring and supervision.**

5. Institutional Strengthening

4.41 Although the IDB has worked to strengthen the Environmental Unit at MOPC, supported the establishment of the Inter-Ministerial Commission and undertook other measures concerning institutional strengthening, this proved insufficient for the complex tasks at hand.

4.42 Weak and under-resourced institutions were then unable to complete the tasks they were asked to carry out, such as the holding of consultative processes that the IDB’s Environmental Committee and IDB documents had called for.

4.43 The Panel notes that the area of institutional strengthening does not directly relate to a compliance issue, but that institutional weaknesses contributed to the problems of compliance encountered by the Program.

6. Phased Approach

4.44 Based on its experience with the delays of the land purchase agreements in other transport projects in Paraguay, the Environmental Summary of the Project put forth a series of conditions to be met before Loan Contract approval, prior to first disbursement, and so on. These conditions included a requirement for the Government of Paraguay to present a plan for land titling, including the indigenous communities to benefit, the amount of land, and funding for each case and a timetable for land acquisition and demarcation prior to Loan Contract approval. However, the proposed phased approach was not reflected in the Loan Contract.

4.45 The Panel notes that this is not an issue directly related to compliance, but that such a phased approach would have provided incentives as well as the space for corrective action and thereby contributed to ensuring compliance with the IDB’s Policy Framework.

⁵⁴ See Letter of July 26, 2007 to MOPC, IDB, Country Office of Paraguay.

⁵⁵ The off-sets were defined in terms of funds invested as opposed to the original commitment of a specified area of land, which had to be determined following an accepted method to assess off-set requirements.

⁵⁶ See the Operations Administration Policy (OP-304).

V. Observations on Systemic Issues: What Could Explain Non-Compliance?

5.1 The preparation and implementation of the Program to Improve Highway Corridors in Paraguay stretched out over a period of approximately 16 years. In addition to supporting export corridors deemed important for Paraguay's development, it dealt with complex issues of compensating the environmental and social impacts of the Project by establishing forest reserves and securing the land rights of indigenous communities.

5.2 The implementation of the environmental component of the Project must be judged to have failed. The hectare targets of the environmental and social off-set conditions were not reached. Aside from a few exceptions (notably Finca 470), it appears that much of the forest land, that should have been protected in perpetuity has been unsustainably logged or completely cleared. This land now appears to be put to uses that are not consistent with the off-set agreements. What could explain the reasons why the Environmental Sub-Program did not achieve its set goals despite Management's efforts?



Aché Chief and Spiritual Leader
Photo: Gilberto Amaya, June 2011

A. Environmental and social issues viewed as “add-on” and not as a core Project concern

5.3 In spite of the elaboration and co-financing of an Environmental Sub-Program, it appears that the Bank failed to realize the institutional risks embodied in not paying careful attention to the agreed-upon implementation of the environmental and social dimensions established by the sub-program. Only after the possibility of reputational risks had manifested itself did Bank Management act with specific review missions and attempts to implement corrective actions.

5.4 The Panel observed that more efforts could have been undertaken during the design phase to ensure that this Project would benefit from lessons learned of the IDB's investments in earlier road construction projects in Paraguay.

5.5 As documented in the preceding chapter of this report, specific papers were drafted and studies were undertaken (e.g. the “Revised Environmental Brief” of 1993 and the “Environmental Mission Report” of 1994) and plans were designed (such as a Regional Development Plan which called for an Action Plan for monitoring its implementation). All showed an increasing awareness of the anticipated risks and spelled out proposals on how to address them. While some of those ideas made it into the Loan Proposal and the Loan Contract, they did not receive the systematic attention and care during implementation. For instance, the Regional Development Plan, crucial for a balanced and loan-conform implementation, appears not to have been utilized and the many useful elements for enhancing the achievement of recommended commitments were not implemented.

B. Lacking realism in establishing counterpart obligations

- 5.6 As documented elsewhere in this Report, the off-set conditions established in the design phase of the Project were not met. In retrospective, it appears that while these conditions might have been technically sound, they turned out to be unrealistic and, in the Panel's view, constituted the core reason for the Project not meeting the agreed-upon targets and the failure to conclude the planned transfer of Finca 470 to the Aché.

C. Failure of building adjustment clauses on counterpart obligations into Loan Contract

- 5.7 Off-set conditions are often spelled out in hectares or similar physical quantities. In this Project, as is the case in many others, the establishment of off-sets or similar conditions is the responsibility of the IDB's partner institutions and requires co-financing by them. Since valuation of land is delicate and political, exact costs for the off-sets are difficult to establish.
- 5.8 In the case of this Project, the Loan Contract specified both the quantities of land for the off-sets and the funds to be spent on concluding the land purchases. The value calculated as a counterpart contribution for the purchase of the off-set proved to be insufficient for purchasing the number of hectares agreed-upon in the loan agreement. A correction or adjustment of the counterpart funding requirements did not take place. As a result, the shortage of funds resulted in fewer hectares bought for the off-sets and contributed to a non-compliance with relevant IDB Operational Policies.⁵⁷
- 5.9 The Panel believes that if such a shortage of counterpart funds had developed in the road-building component of the Project, ways would most likely have been found to adjust the budget or enforce adherence to the covenant. It is the Panel's view that the lesson that the IDB might draw from this is that off-sets and similar obligations need to be planned carefully, calculated with potential adjustment clauses in mind, and consistently monitored and, whenever necessary, formally enforced or adjusted.

D. The need for active engagement by IDB senior Management in ensuring adherence to the Loan Contract's environmental and social provisions

- 5.10 The Panel recognizes that once the problems with the off-sets became better understood, IDB staff undertook efforts to propose solutions. It appears to the Panel that most of the dialogue between the Bank and Paraguayan institutions was handled at the Country Office level. In spite of the mounting reputational risk of non-compliance with the section on environmental and social provision of the Loan Contract, the Panel found little evidence that the issues at stake were discussed with the Bank's most senior Management at Headquarters.

⁵⁷ See OP-304 Operations Administration of 1994, "...actions performed by the Bank during project execution are intended to ensure that projects are executed in such a way as to attain the planned objectives" of ensuring that the "approved financial resources are used in accordance with the covenants of the respective financing agreement and with the Bank's policies, rules, and procedures."

E. Final Remarks

- 5.11 Although the Project failed to ensure the adequate implementation of its social and environmental components, the Panel wishes to acknowledge that the IDB Country Office staff has engaged in serious efforts, especially after 2006, to ensure legal title to Finca 470 for the Aché community.
- 5.12 The Panel has been informed recently that the Paraguayan administration has enacted Law 4304/11, transferring Finca 470 to the Aché. However, the Panel has also been informed that thus far the land has not been officially transferred, prompting illegal logging and invasions by unauthorized people.
- 5.13 The Panel hopes that ways can be found to facilitate the titling process and prevent this issue from becoming a reputational risk for the Bank. Title to the land would assist the Aché in protecting this unique forest ecosystem that survives in the midst of an encroaching agricultural frontier and to preserve their way of life, as the forest people who know how to manage the forest sustainably and whose continued existence as a group depends on its preservation. In addition, to obtaining legal title of Finca 470 for the Aché, this would require finding adequate solutions for the Avá Guaraní families who live as *campesinos* in extreme poverty on the margins of Finca 470 and who urgently need access to land for small-scale agriculture.
- 5.14 The Panel acknowledges that the capacity **for dealing with environmental and social issues has increased over the years both at the IDB and in Paraguay. The lessons to be drawn from this Project are equally important today, particularly at a time when the IDB is expanding its portfolio in infrastructure development.**
- 5.15 **The importance of indigenous peoples' issues in the IDB's work is likely to grow further given the focus on infrastructure development of many of its client countries and the interest expressed by many governments in obtaining financing for forest protection under REDD programs. This will require the IDB's continued proactive engagement in questions concerning indigenous land rights.**
- 5.16 **Monitoring and supervision of project implementation are critical for achieving Development Effectiveness.** Adequate resources must be made available for this purpose.

Annex A: Compliance Review Methodology

The methodology for this Review follows the procedure outline in the ToR: a) Definition of issues, b) Hypothesizing priority areas of the alleged harm and potential non-compliance, c) document-based research, d) field mission, e) verification of obtain data, f) analysis, and g) reporting.

The research methodology for the investigation, especially in the field visit, incorporated the basic aspects of the Rapid Participatory Appraisal (RPA) methodology. This methodology owes its early development to Farming Systems Research and Extension as promoted by the Consultative Group on International Agricultural Research Centers (CGIAR). RPA was developed in response to the disadvantages of more traditional research methods, including: the time taken to produce results, the high cost of formal surveys and the low levels of data reliability due to non-sampling errors. RPA is a bridge between formal surveys and unstructured research methods such as in-depth interviews, focus groups and observation studies. In developing countries, it is sometimes difficult to apply the standard research techniques employed elsewhere.

There is often a paucity of baseline data, poor facilities for research (e.g. no sampling frames, relatively low literacy among many populations of interest and few trained enumerators) as well as lack of appreciation of the need for research. The nature of RPA is such that it holds the promise of overcoming these and other limitations. This approach is excellent when fairly accurate results are needed in a short time on the basis of a combination of primary and secondary sources and field observation. It provides quick insights and quick results.

The Panel's field investigation followed deskwork that consisted of an extensive review of secondary sources including documents available at the Bank's archives. Many documents, however, were no longer available at the Bank, due to the length of time elapsed between project preparation and the compliance investigation. Additional documents were made available by SEAM, INDI, the requesters and Paraguayan NGOs like Guyra-Paraguay and the Instituto de Derecho y Economía Ambiental (IDEA). Also, the Compliance Review Team carried out extensive web-based research to achieve a better understanding about the indigenous cultures of Paraguay and their past and current living conditions, and their relationship to their ancestral lands.

The use of primary sources was based on interviews with Bank officers familiar with the Project, including meetings with the IDB's Executive Director from Paraguay. The Panel did not have the benefit of a full discussion with the original Project Team because its members have moved on in their careers and are now serving in different countries. The Compliance Review team, however, had access to a Bank consultant in Paraguay, who helped with both his own recollections of the Project as well as with documents. During its visit to Paraguay, the team interviewed Government and NGO officials, as well as leaders and members of the Aché Kuetuvy and of the Avá Guaraní who acted as key informants about their cultures and livelihoods, as well as their struggles for the survival of the last tracts of forest in the region and their endangered traditional way of life.

Finally, direct observation allowed the Compliance Review team to enhance its understanding of the cultures and cultural diversity, as well as the different living

conditions and practices between the Aché Kuetuvy community and the Avá Guaraní who live on the edge of Finca 470. It also allowed the team to observe the different forms of land use that have evolved over the past several years because of the introduction of more efficient and cost-effective transportation of goods and the enhanced access to new markets, in large part as a result of the construction of Highway 10.

The team noted that what was once a pristine forest ecosystem had become large extensions of open fields under commercial monoculture including corn, soybeans, sugar cane, oats, etc. at the expense of the ever-shrinking remnants of the Mata Atlantica in eastern Paraguay. The methodology chosen for the field visit provided an efficient snapshot of the situation but could, of course, not substitute for in-depth scientific research. The resulting report is based on the methodologies provided by Rapid Rural Appraisal and desk reviews which helped the team in its efforts to illustrate the context and facts surrounding the claim of the Aché Kuetuvy community to legal title to Finca 470.

Annex B: The Aché and the Avá Guaraní

A. Issues Pertaining to the Aché Kuetuvy Community

1. History

The Aché people are a traditional hunting and gathering society whose traditional homeland extended over an area of an estimated 20,000 km² of dense forest in the upper reaches of the watershed of the Jejui River in eastern Paraguay. Although the Aché are also thought to belong to the Guaraní family, their physical appearance, culture and language are distinct from their Guaraní cousins. The Aché are known for being the last indigenous people in Paraguay to leave the forest, with the last group of Aché reported to have made contact with the outside world in 1978.

When the last Aché people left the forest in the late 1970's, they did so in a locality called Punto Cuatro which lies about 15 km to the north of Finca 470, a tract of forest land covering 4,760 ha.

Available records show that the Aché suffered systematic persecution. Whole families were reported to have been killed and many Aché children were sold into slavery. In addition, large numbers of Aché died as a result of diseases for which they were not able to have access to medical help.

The plight of the Aché was brought to the world's attention in the early 1970s when allegations of atrocities were first publicized. In 1977 the Inter-American Court of Human Rights issued a decision concerning serious human rights violations against the Aché people and called on the Government of Paraguay to ensure their protection.

Today the surviving Aché population is made up of about 1,500 individuals who are distributed over six settlements. The present review by the ICIM Compliance Review Panel was requested by the Aché Kuetuvy community, which includes about 200 members.

Following the adoption of Paraguayan Law 904 in 1981 that recognized the rights of indigenous peoples, some Aché returned to the area that once had formed part of their ancestral land in the 1980s and 1990s. According to SEAM officials, the Aché submitted the first claim in Paraguay to recover their ancestral land in 1991. However, the Aché forming the Kuetuvy community returned only in 1999-2000 to reestablish themselves in Finca 470, a place that used to be part of their traditional homeland.

The INDI officially recognized the community in December 2000 (Resolution N° 521/00) and in the following year the community received status of legal personality (Decree N° 13.527). Since 2000, this community has struggled to obtain legal title to Finca 470, which it considers indispensable to its survival as a group.

2. Geographic Setting and the Role of the Aché in Forest Protection

Finca 470 is located in the Department of Canindeyú about 50 kilometers from Curuguaty, the Department's main town, which in turn is about 245 kilometers north-east from the capital city of Asunción by Highway 10, also known as "Las Residentas."

The Department of Canindeyú is reported to have one of the highest population growth rates in Paraguay (6 percent) largely due to the influx of small farmers brought into the region by the opening of new roads.

The region has suffered significant deforestation and by the 1990s an estimated 87 percent of the forest ecosystem had been destroyed. Only the Mbaracajú Natural Reserve (64,400 ha.) and Finca 470, which is contiguous to it, remain in a largely pristine condition.

The Mbaracajú Natural Reserve and Finca 470 have now become what has been described as an “island of trees in a sea of agro-business expansion”. They are surrounded by both Paraguayan and foreign-owned large agricultural enterprises involving the production of soy, wheat, and cattle ranching. In addition, small campesino settlements are spreading throughout the area.

Finca 470 serves as a vital buffer zone for the Mbaracajú Natural Reserve that protects one of the last significant fragments of the Interior Atlantic Forest remaining in Paraguay. The Aché were provided with a critical role in ensuring the protection of the Mbaracajú Natural Reserve since it was first established. They were granted the right to continue hunting in it with traditional weapons. The Panel was informed that a similar role was foreseen for the Aché in the case of ensuring adherence to the off-set provisions agreed upon for Finca 470.

The Aché and the Mbaracayú Forest Reserve. The Nature Conservancy (TNC) and its Paraguayan partner, FMB, purchased the Mbaracayú Forest from the International Finance Corporation (IFC), the private sector arm of the World Bank Group, for US\$ 2 million in 1991. The IFC had taken the land as a collateral when a Paraguayan timber company, defaulted on an IFC loan.

USAID, the energy company AES, and other donors contributed funds to the purchase. Among the conditions for the sale was that the claims of the Aché for continued use of the land would be respected.

Other conditions for the sale were satisfied when the Government of Paraguay signed an agreement with the United Nations, TNC and FMB to establish the Mbaracayú Nature Reserve in the same year. This agreement was ratified by Paraguayan law 112/91 and led to the creation of the largest protected area in eastern Paraguay.

Article 13 of law 112/91 explicitly recognizes that the Aché people used to live in the Mbaracayú Forest in previous times and grants them the right to pursue their traditional hunting and gathering activities in the reserve as long as these activities are based on a management plan for the reserve. In addition, it provides the Aché with a role in the management and protection of the reserve.

Given its extraordinary richness in plants and animals, UNESCO classified the reserve as a Biosphere Reserve under its Man and the Biosphere (MAB) Program. The goal of MAB is to promote sustainable development based on local community efforts and sound science. It was the first such reserve established in Paraguay.

The Reserve is home to important bird populations as well as to numerous species of mammals threatened with extinction elsewhere, such as jaguars (*Panthera onca*), pumas (*Puma concolor*) and tapirs (*Tapirus terrestris*).

The Aché have played an important role in the establishment and maintenance of the Reserve. They have been employed to mark the boundaries of the reserve and to patrol it.

Aché and Finca 470. Paraguayan officials told the Panel members that, as in the case of Mbaracayú Natural Reserve, there was strong support for the Aché presence in the Finca 470 area because they were known to prevent the illegal extraction of timber. They also referred to SEAM as having no resources, guards, or vehicles to patrol protected areas, and that therefore SEAM had to rely on the Aché to carry out protection. Records available to the Panel show that SEAM explicitly authorized the Aché to patrol the land and to expel invaders.

Both Government officials and NGO representatives in Paraguay confirmed to the Panel that the Aché were playing a vital role in preventing illegal logging and illegal campesino invasions of both the Mbaracayú Reserve and Finca 470.

3. The Aché Economy on Finca 470

According to the Loan Contract, Finca 470 was a designated off-set to maintain the forest in perpetuity. While open to new ways of dealing with the outside world and finding innovative and sustainable means to supplement their livelihoods, the Aché continue to maintain both their spiritual heritage and the practical skills, which allow them to pursue their traditional forest-based life to this day. Evidence available to the Panel indicates that their lifestyle has helped to sustain the forest of Finca 470.

A three-year survey of the wildlife normally hunted by the Aché was completed along with data on their take of game for subsistence purposes. The study found that the species commonly taken by the Aché were in abundance and unlikely to be affected by their continued hunting. However, the same study found that species were diminishing on the borders of the reserve near rural communities suggesting that poaching continues to be a problem.

With external support, the Aché have presented a detailed management plan for Finca 470 that was carried out in a participatory manner under the Aché's Council of Wise People (Consejo de Sabios). This management plan was prepared to meet the agreements and commitments made to SEAM in the Aché's quest to obtain legal title to Finca 470.

The management plan represents the commitment of the Aché to preserve the forest in its natural state and to not use more than 5 percent of the land for farming and other activities.

As part of these 5 percent for farming, the Aché are cultivating yerba mate (*Ilex Paraguayensis*) under the tree canopy. They have been able to generate cash income for the community by selling this famous Paraguayan tea to a U.S.-based organic drinks company. In addition, they have begun to plant stevia (*Stevia rebaudiana*), which is native to Paraguay and serves as a sweetener.

The Aché have been successful in achieving credibility and support both inside and outside of Paraguay. As a result they have been able to generate the resources that have allowed them to put in place a rudimentary infrastructure in their community. Harvesting of traditional forest products, the protein provided by game, the existence of numerous fruit trees and small-scale farming are providing the Aché with a diversified diet.

However, members of the Aché community told the Panel that the lack of legal title to Finca 470 is making life increasingly difficult for the community. Over the past two years, they feel that the local authorities are no longer listening to them when they denounce illegal logging and campesino invasions: "We are told that we are not the owners of the land, SEAM is, but SEAM does not do anything."

The Panel learned that while previous SEAM administrations had granted the Aché the usufruct rights to Finca 470 and promised to advance the process of the transfer of legal title to the Aché, the current SEAM administration intends to divide the property between the Aché and Avá Guaraní communities in the area.

4. Cultural Aspects

During its stay in the Kuetuvy community, the Panel noted a very strong sense of community identity and cultural integrity. The trauma and despair linked to their dispossession, killings and enslavement continue to be very much alive in the community's memory and is reflected in its oral history and cultural expression, such as in the mournful singing of the elders.

Many of the forebears of the members of the Aché Kuetuvy community are buried in what is now Finca 470 and the Mbaracayú Forest Reserve. Their attachment and strong personal and collective linkage to this land cannot be overstated. This land is also home to the animal world that is central to the cosmology of the Aché.

It is widely recognized that the Aché play a critical role in defending the area from illegal logging and invasions by campesinos. In 2006 several Aché were imprisoned for defending the land. IDB funds disbursed to SEAM financed the contracting of a Paraguayan lawyer by the FMB to obtain their release from prison.

While the Aché are strongly engaged in preserving their traditions, they are also concerned about the need to work within Paraguayan society. The former is illustrated by their continued mastery of archery that leads them to regularly win competitions hosted in the capital city of Asunción and by their efforts to maintain their own distinct language.

In the face of the spread of the Guaraní language, the Aché undertake efforts to teach their children the Aché language. A further step to highlight the importance of their language has been a bilingual (Aché-Spanish) publication to document Aché history and culture which was prepared by the Aché themselves supported by the Fondo Nacional de la Cultura y las Artes (FODEC) and the German embassy in Asunción.

On the other hand, the Aché look to the future as full members of Paraguayan society. They are concerned about education and wish to see some of their children as doctors and lawyers capable of representing Aché interests in mainstream society. Already today the Aché Kuetuvy community counts among them leaders who have had access to higher education. One of them explained to the Panel: "We Aché have a vision of work and conservation. You will never see an Aché child begging in the city."

Concerning their Avá Guaraní neighbors, the Aché say that they have peacefully co-existed over many years. They told the Panel that they respect the rights of the Avá Guaraní families who are now living on the edge of Finca 470 and that they are willing to give them several hundred hectares of land once they obtain legal title to Finca 470. However, they object to extend this welcome to Avá Guaraní who are induced to migrate to the Finca from far away. They see this migration as induced by illegal logging interests and by political interests supported by SEAM.

B. Issues related to the Avá Guaraní

1. Recent History

The Avá Guaraní people are far more numerous than the Aché. There are an estimated 14,000 Avá Guaraní spread out in eastern Paraguay. The Avá Guaraní are traditionally more used to live in open spaces rather than in the interior of forests. A small number of Avá Guaraní now live on the outer edge of Finca 470 in small settlements, called “Ytu” and “Ka’a-Poty”.

Before Finca 470 was purchased by MOPC as part of the agreement with the IDB, a Taiwanese businessman owned Finca 470 and a nearby sawmill. During those years several Avá Guaraní families are reported to have lived in the area of Finca 470.

The Taiwanese owner offered those Avá families money to leave his property. Member of the Avá Ytu community told the Panel that most of the Avá left the Finca in 1994 because of threats from the owner and because their leaders had accepted the money.

In the same year, 1994, some of the Avá had attempted to obtain legal title to land of Finca 470 by approaching the IBR. However, in the following years there appear to have been limited efforts to follow-up on their claim and the process was eventually archived without any plans for further action.

The Avá families of the small “Ytu” community told the Panel that only 5 Avá families stayed behind on the edge of Finca 470 after the departure of other Avá from Finca 470 in 1994 and that those who stayed appeared to be those who at the time had not accepted compensation from the Taiwanese owner. The Aché confirmed this. They told the Panel that when they returned to Finca 470 in 2000, there were only 4-5 Avá families on the edge of the property.

The Paraguayan lawyer who was contracted by the FMB and funded by SEAM with IDB funds provided additional confirmation. The lawyer told the Panel that there were 5 Avá families on the property in the 1990s but that recently more Avá families had moved into the area.

This small number of Avá families present in Finca 470 may explain why there was little awareness of their presence at both the MOPC and the IDB country office until recently. MOPC officials told the Panel that there were no Avá Guaraní on the property of Finca 470 in 2007. MOPC confirmed that there has been a recent influx of Avá into the area. They explain the influx with the pending legalization of the property by citing a local proverb: “When there is food, all come to eat.”

Present and former IDB officials in the Country Office in Paraguay informed the Panel that they too did not know about the Avá Guaraní in the area and about any Avá claims to the land. A court-ordered census (Tribunal de Cuentas) in 2010 concluded that Avá from other places like Colonia Fortuna were moving into the area.

2. The Economy of the Avá Guaraní

The Avá in the “Ytu” community live in dire poverty on the edge of where the forest-covered Finca 470 meets the large expanse of fields and ranches underpinning the agro-export and livestock economic model.

They practice subsistence agriculture and have great difficulty in generating cash income because they do not find a market for their limited production. Their nutritional status appears to be very poor. They live in wind-swept rudimentary shelters.

The Avá told the Panel that there are now 115 persons in the Ytu community and an additional 110 persons in the Ka-a Poty community. They described their situation to the Panel: “No one defends us, we have no support from anyone, we are like slaves.”

The Panel could confirm a state of utter abandonment and marginalization. This dire situation may explain the association of the Avá with the illegal extraction of timber that has been alleged repeatedly in recent years.

On the other hand, culture and tradition might also explain the Avá’s disregard for forest conservation practices. The Paraguayan lawyer referred to above told the Panel that he observed in early June 2011 that the Avá were selling timber. In his words: “If the Avá sell logs while they do not own the land imagine what will happen when they own it. The Avá were never part of the discussions, they have no management plan.”

The Avá told the Panel that they respect the rights of the Aché and their legitimate needs but that they are desperate for land. Conflict with the Aché is nevertheless on the rise. The Avá reported that the Aché had burned down 10 of their houses in March 2010. Both the Aché and an independent observer denied this claim.

The Avá now put their hope into the division of Finca 470 between them and the Aché as proposed by SEAM resolution 662/10 of June 2010. The Avá showed the Panel a tattered copy of a Google map of Finca 470 with a line drawn in to show the intended division of the property. According to the map, the property would be almost divided equally between the two groups.

This was the first and only document brought to the Panel’s attention showing the proposed division of the land. SEAM had told the Panel that its resolution did not spell out how the land was to be divided while the Avá in the Ytu settlement claimed that a senior SEAM official had provided them with this map. On the other hand, during the Panel’s meetings in Asunción with the IDB country office, Government officials and non-governmental organizations, there seemed to be no awareness of the existence of a map showing the precise boundaries for a division.

C. Issues Related to both the Aché and the Avá Guaraní

Both Governmental and non-governmental sources told the Panel that outside meddling was the principal problem leading to conflict between the Aché and Avá Guaraní.

A senior INDI official and representatives of NGOs voiced their concern to the Panel that the Avá Guaraní community in its desperate efforts to obtain land is being manipulated by outside forces linked to logging and agricultural interests. In their view, the conflict would be resolved if things were left to the Aché and the Avá Guaraní. However, as currently handled, they fear that the stage is being set for a serious tribal confrontation.

In addition, NGOs emphasized that the shift in SEAM’s approach from supporting the Aché claim to Finca 470 to dividing the property between the Aché and the Avá coincided with the appointment of senior SEAM officials. It is alleged that there may be a conflict of interest due to related attempts by an NGO in raising funds for the Avá Guaraní cause from

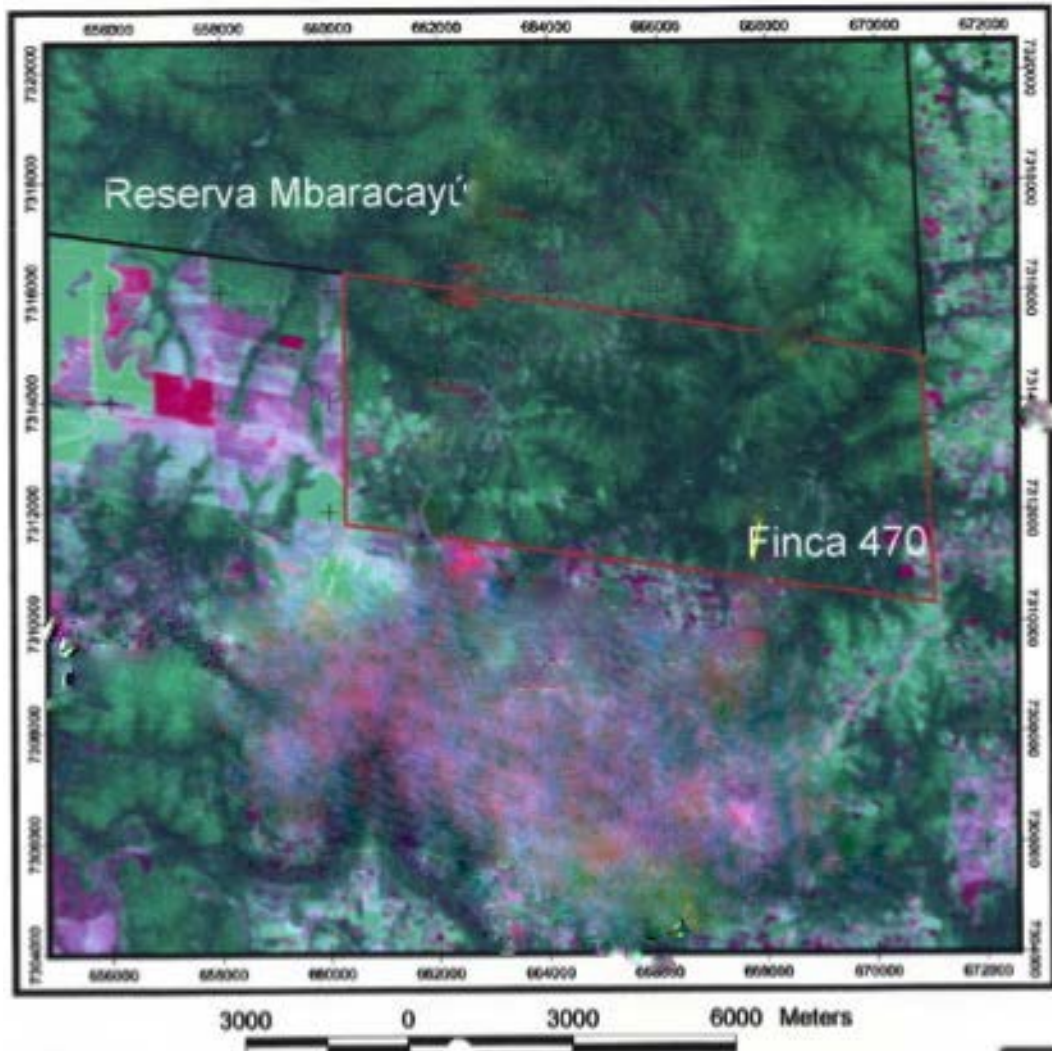
Norway and other donors. The Panel is referring to this information only because it forms part of the much discussed background issues in public debates about these issues.

It is the Panel's view that both the Aché and the Avá families most directly involved in this dispute wish to respect each other's rights. They told the Panel that they feel they are brothers as Indian people. But the visible despair of the Aché in not having gained access to legal title to Finca 470 after ten years of tireless efforts and promises by the Government of Paraguay and the IDB, and the severe poverty and marginalization of the Avá community, have led to significant polarization. The Panel was informed by various sources that this polarization – allegedly also unintentionally stoked by outside forces – could lead to a serious worsening of the inter-ethnic relations.

D. A Possible Solution to the Aché-Ava Conflict with respect to Finca 470

There is, however, a solution that has been advanced by several of the Panel's interlocutors during the mission to Paraguay. It would include granting legal title to Finca 470 to the Aché, while granting land title to the Avá for nearby land that – although purchased by the Government of Paraguay to meet IDB off-set targets - has already been largely deforested. This land would be more suitable to their campesino type of agricultural activity. In addition, the Avá would require assistance with setting-up the basic infrastructure for their community.

Annex C: Finca 470 Map



Annex D: The Aché



The Aché Community, Kwe Tuvy, Photos: Gilberto Amaya, June 2011

Annex E: The Avá Guaraní Living at the Edge of Finca 470



Ava Guaraní Community, Tecoja/Capoty, Photo: Gilberto Amaya, June 2011

Annex F: Requesters' Response to the Compliance Review Panel's Draft Report

Dear All,

My main comment is that the Ache of Kue Tuvy are still without a land title without any assurances that the process is under way to produce the title in a timely fashion. The MICI report needs to include that the government of Paraguay has refused to comply and that the IDB as the loan provider should take steps to make sure that the matter is solved.

Magdalena Hurtado

Annex G: IDB Management's Response to the Compliance Review Panel's Draft Report

The attached Response consists of comments made by IDB Management with respect to a draft Compliance Review issued by the Panel on April 20th, 2012. The Response does not refer to the Final Report issued by the Panel on November 20, 2012.

MEMORANDUM

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Date: 3 May 2012

To: Werner Kiene, Chairperson, Compliance Review Panel, Independent Consultation and Investigation Mechanism (ICIM).

From: Chief, Transport Division

Via: Executive Secretary, ICIM

cc: Vice President for Countries, Vice President for Sectors and Knowledge, Manager of the Infrastructure and Environment Sector, Representative in Paraguay, Manager of the Social Sector, Chief of the Environmental Safeguards Unit.

Subject: Case PR-MICI 002/2010 "Route 10-Finca 470." Loan 933/OC-PR. Program to Improve Highway Corridors in Paraguay

The purpose of this memorandum is to convey the comments by the Bank's Management⁵⁸ on the Preliminary Report, dated 17 February 2012, drawn up by the Compliance Review Panel in connection with Case PR-MICI 002/2010, Route 10-Finca 470 – Loan 933/OC-PR, Program to Improve Highway Corridors in Paraguay. The comments are submitted pursuant to Section 68 of the ICIM Policy.⁵⁹

⁵⁸ The comments were prepared by the Transport Division of the Infrastructure and Environment Sector of the Vice Presidency for Sectors and Knowledge.

⁵⁹ Section 68 of the Policy establishing the ICIM states: "(...) Both Management and the Requester will have forty-five (45) calendar days from receipt of the draft or outline to provide their comments in writing to it. The Panel may make changes before issuing its final report, which shall be the sole responsibility of the Panel, but which shall include in an annex the comments received and any written submissions pursuant to Section 61 (...)."

I. Introduction

- 1.1 First, Management would like to say that it appreciates and understands the importance of listening to and addressing the concerns raised by communities or individuals who may consider themselves adversely affected by IDB-financed operations. One of the principal objectives of the Bank's policies is precisely to protect communities against such potentially adverse impacts and reviewing compliance with its policies is an important way to ensure the quality and effectiveness of the Bank's activities. Thus, Management is fully committed to the principles of transparency and accountability that should be embodied in the design and execution of all its operations.
- 1.2 Management likewise wishes to underscore the importance that the Bank attaches to civil society as a partner in the development process. Dialogue with civil society and its active participation are essential in both preparing and executing projects. Addressing its concerns is a prerequisite for enhancing the positive impact of the Bank's operations.
- 1.3 In this specific case, the investigation was prompted by a complaint by the Aché community regarding lands adjacent to the Mbaracayú nature reserve that was submitted to the ICIM in November 2010, 35 months after the last disbursement of the operation in question.⁶⁰ It is important to note that the Aché have enjoyed beneficial ownership of the land for approximately a decade, largely thanks to the Bank's support through the Program to Improve Highway Corridors in Paraguay (loan 933/OC-PR), and that, according to information recently received from the attorney for the Aché community, the land is soon to be titled as pertaining to that community.⁶¹ Therefore, the principal basis for the complaint is soon to be resolved.
- 1.4 Given that this is the first project for which the Transport Division of the Infrastructure and Environment Sector of the IDB's Vice Presidency for Sectors and Knowledge has had to respond to an ICIM compliance review, a team has been devoted almost full-time to addressing the Panel's findings. Moving forward, our commitment is to continue providing any necessary cooperation relating to projects currently being investigated or that may be investigated in the future. We hope that the lessons learned will enhance both the independent investigation process and project preparation and execution.
- 1.5 Although Management believes that it properly prepared and supervised execution of the project in question and therefore does not agree with the Panel's conclusion regarding failure to comply with operational policies in the preparation and execution of the Program to Improve Highway Corridors in Paraguay (PR-0035), it does fully share the Panel's aspirations regarding the rights of indigenous populations and reaffirms its commitment to continue addressing the needs and concerns of such communities.

⁶⁰ This request to the ICIM dates back to 21 June 2010, approximately 30 months after the last disbursement under this operation, when the Secretariat of the Environment (SEAM) of the Republic of Paraguay published Resolution 662, establishing that Finca 470 would be divided between the Aché and Ava Guaraní communities and registered in that manner.

⁶¹ The file is currently with the Public Registry Bureau, the last phase of the administrative land titling process.

- 1.6 The Preliminary Report of the Compliance Review Panel identifies four main areas of noncompliance with the Bank's operational policies: (a) classification of the project's impacts; (b) inadequate assessment of the socioenvironmental impacts, especially with regard to information on indigenous communities; (c) lack of consultation with affected indigenous communities; and (d) inadequate monitoring and supervision of the environmental protection component's subprograms.
- 1.7 Management wishes to underscore certain key aspects of project PR-0035, in order to establish an appropriate context for discussing the issue of compliance with relevant IDB operational policies. As described in the Environmental Summary, the project was originally designed as a highway corridor between Asunción and Salto del Guairá (border with Brazil). It comprised three sections: (i) Route 3: upgrading and paving of the segment between Asunción (Mariano Roque Alonso) and San Estanislao; (ii) construction and paving of a new, approximately 30-km segment of Route 10 from San Estanislao to Río Corrientes; and (iii) upgrading and paving of the existing Route 10, from Río Corrientes to Salto del Guairá, originally a dirt road built in 1972. However, this original plan was redesigned so that initially construction would only be done on Route 3, with the idea that the Bank could potentially finance work on Route 10, at some future point, with another possible loan. It should be clarified, however, that the Bank never financed construction, upgrading, and paving work on the segments of Route 10. They were financed by the Government of Paraguay, in part with funds from Banco Nacional de Desenvolvimento Econômico e Social (BNDES) of the Federative Republic of Brazil (the 181-km stretch between Tacuara and Cruce Carumbey), and in part with funds from Itaipú Binacional (the Cruce Carumbey-Salto del Guairá segment).
- 1.8 Thus the final project (PR-0035) presented to and approved by the Board of Executive Directors in June 1996, included the following components: (i) upgrading and paving of the 131-km Emboscada-San Estanislao segment of Route 3; (ii) a support program targeted at building the capacity of the Ministry of Public Works and Communications (MOPC) to increase road maintenance efficiency; and (iii) an environmental protection program that included formulation of a regional development program (RDP), a plan to purchase lands for indigenous community settlements and for protected areas in Route 10's area of influence, and institutional support required for effective operation of the MOPC's Environmental Unit and the Joint Commission. The purpose of this last component was to ensure that the initial socioenvironmental prevention and mitigation measures would begin to be implemented prior to the start of potential construction work on Route 10. It should therefore be stressed that: (i) part of project PR-0035 was designed to ensure that initial appropriate socioenvironmental mitigation and prevention measures would be adopted before the Bank, at some future point, could help finance construction, upgrading, and paving work on Route 10 with another potential loan; and (ii) that financing never materialized.
- 1.9 During preparation of project PR-0035, the Aché community lived in other communities, including the Chupa Po'u, who recently acquired ownership rights to more than 6,000 hectares with the support of *The Nature Conservancy* and the Moisés Bertoni Foundation. It was only after approval of project PR-0035 that Finca 470 was identified as a potential nature reserve, because it adjoined the 64,400-hectare Mbaracayú nature reserve, one of the major protected areas in northeastern Paraguay. IDB Management wishes to clarify that the Aché were not in the area of

influence of the upgrading and paving project for the Emboscada-San Estanislao segment of Route 3. From the early years of the twenty-first century, the Bank has been providing legal and other support to ensure the preservation of Finca 470 and, although it was not contractually obligated to do so, the Bank has supported the process of titling this land in the name of the Aché community. Management considers that the Aché community has benefited from the approach adopted by the Bank for environmental and social risk management in the framework of project PR-0035.

- 1.10 In this context, Management submits the following considerations regarding some of the key issues of compliance with the Bank's operational policies addressed in the Compliance Review Panel's Preliminary Report.
- 1.11 *Classification of the impacts of project PR-0035.* Management wishes to clarify that the project PR-0035 that the Board approved and the Bank financed had been redesigned prior to approval to include only the investment corresponding to the upgrading and paving of the (131 km) Emboscada-San Estanislao segment of Route 3 and not construction of the new segment of Route 10 from San Estanislao to Río Corrientes, or the upgrading and paving of the rest of Route 10 from Río Corrientes to Salto del Guairá. While the original project could have been classified as a category "IV" operation, after elimination of the upgrading and paving of Route 10, IDB Management considers that it was correct to classify the upgrading and paving of Route 3 in the final version of project PR-0035 as category "III." Furthermore, by their very nature, the socioenvironmental subprograms for Route 10 could not generate the significantly adverse impacts that would have warranted changing the classification of the project from category "III" to "IV."
- 1.12 *Environmental Impact Assessment (EIA) in connection with project PR-0035.* Environmental impact assessments were conducted for the original project (Route 3 and Route 10) and the risks and impacts associated with the upgrading and paving of both routes were identified, even though the Bank never financed the engineering studies or the upgrading and paving construction work on Route 10. Based on the environmental analysis conducted, ecological conservation areas were identified, including specific ecosystems and biomasses that required priority attention. In addition, the Bank had an independent consultant carry out a preliminary analysis of the indigenous communities that would be affected by the original project (Routes 3 and 10). The analysis specifically identified the indigenous communities at risk and accorded priority to those that would be most affected and would need to secure or expand their rights to the land. A key component of project PR-0035 was preparation of a Regional Development Plan (RDP), which involved activities such as gathering additional information and analyzing it in order to help identify, mitigate, and offset the potential adverse impacts associated with the future upgrading and paving of Route 10 and support the sustainable development of Route 10's area of influence, once the upgrading began.
- 1.13 Management considers that the level of information generated by the EIA for Route 3 was consistent with Bank policies in force at that time. An EIA was also prepared for Route 10, although subsequently the Bank decided not to include its upgrading and paving within the scope of project PR-0035. Although the EIA for Route 10 did not represent a policy requirement for execution of the ultimately approved project PR-0035, it was financed by the Bank.

- 1.14 *Consultation processes with the indigenous peoples affected by project PR-0035.* An IDB consultant engaged in consultations with the affected indigenous communities in 1994 and 1995. He confirmed that those consultations took place in the communities of Santa Isabel and La Palomita, which would be those most affected by the Route 10 upgrading and paving project (the new road segment between San Estanislao and Río Corrientes). The consultant also confirmed that the outcomes of that process were taken into account in the development of the socioenvironmental protection subprograms financed by project PR-0035, which sought to ensure that the initial measures to prevent and mitigate the project's possible adverse impacts on the indigenous communities in Route 10's area of influence would be in place before the Bank, at some future point, could support the financing of those works with another potential loan.
- 1.15 *Monitoring and supervision of the environmental protection component's subprograms in project PR-0035.* Although there is no explicit evidence regarding estimates of the areas that could have been purchased for indigenous community settlements and protected areas, using the counterpart funds envisaged under loan 933/OC-PR, the documents analyzed indicate that those estimates were made on the basis of market prices in effect at the time the operation was designed. However, delays in the execution of all project PR-0035 components meant that the price of land had gone up and that therefore less land could be bought in connection with the operation than had originally been estimated. Despite that, the Paraguayan government substantially fulfilled its local counterpart contribution commitments for the purchase of land established in loan contract 933/OC-PR. In addition to the above, a number of monitoring and supervision activities were conducted, including in particular: (a) the hiring of a consultant to assess the prices of the land to be purchased by the MOPC, so as to avoid paying more than the real market price; (b) presentation of a statement of no objection to the turnover of Finca 470 for the beneficial use (usufruct) of the Aché; (c) payment of an attorney's fees for procedures relating to the transfer to the Aché; and (d) follow-up to and systematic monitoring of the MOPC's land purchases. At the same time, as recorded in the relevant IDB systems, all the contractual conditions for operation 933/OC-PR were duly met by the project executing agency. It is important to note, once again, that this request was submitted to the ICIM approximately 35 months after the last disbursement under loan contract 933/OC-PR.
- 1.16 Management considers that the Bank took appropriate steps to apply the policies in force to mitigate the possible environmental and social impacts associated with the upgrading and paving of Route 3. With respect to Route 10, the Bank's actions went beyond the scope of the Environment Policy in effect (OP-703), since they addressed in advance possible impacts associated with a future upgrading and paving of Route 10, which was never financed by the Bank. With its approval in 2006 of the Environment and Safeguards Compliance Policy and the Indigenous Peoples Policy, and the allocation of resources specifically for safeguards management, the Bank took major steps forward in responding to the needs of indigenous peoples to ensure their wellbeing and the protection of their natural habitat.
- 1.17 Following is a more detailed account of Management's comments on the Compliance Review Panel's Preliminary Report.

II. Comments by Management

A. Ineligibility of this case for ICIM review

- 2.1 **The request giving rise to case PR-MICI 002/2010 should have been declared ineligible for the Consultation and/or Compliance Review phases because it was filed more than twenty-four (24) months after the last disbursement (Section 37.f of the ICIM Policy).**
- 2.2 Section 37.f of the ICIM Policy establishes that neither the Consultation Phase nor the Compliance Review Phase will be applied to requests dealing with a Bank-financed operation that are filed more than 24 months after the last disbursement. According to the Web-enabled Loan Management System (WLMS), the computerized system recording all of the Bank's operational disbursements, the last disbursement for operation 933/OC-PR was on 30 December 2007 (see Annex I), and since the request was filed in November 2010, 35 months after the last disbursement, it should have been declared ineligible.
- 2.3 It should be noted that the Project Completion Report (PCR) for the operation contained an involuntary error when it gave "August 2009" as the date of the last disbursement. It should also be noted that all other IDB systems record the correct date.
- 2.4 **Management was informed that when the request was filed with the ICIM on 10 November 2010, giving rise to Case PR-MICI 002/2010 on 11 January 2011, the date on which it was declared eligible for the Policy Compliance Review Panel, the subject matter of this investigation was the subject of judicial proceedings before the Audit Office of the Judiciary of the Republic of Paraguay in the case entitled "Indigenous Community KUETUVY-KO'ETI OF THE ACHÉ GUAYAKI ETHNIC GROUP v. Resolution 662" dated 21 June 2010 issued by the Secretariat of the Environment of the Republic of Paraguay (SEAM).**
- 2.5 That administrative legal action began on 5 July 2010. The Audit Office's Second Division issued preliminary injunction to preserve the status quo 341 dated 3 November 2010, granting the petition filed by the plaintiff (Attorneys Sheila Abed Duarte and Ezequiel Santagata on behalf of the Kuetuvy-Ko'eti Indigenous community of the Aché Guayaki ethnic group). Consequently, a decree was issued banning any change in the status quo with respect to the factual and legal status of *Finca* (Property) 470, *Padrón* (Lot) 518 of the District of Curuguaty. Said injunction to preserve the status quo remained in effect until early 2012.
- 2.6 Management would like to know why, in both the Consultation Phase and the Compliance Review Phase it was interpreted that the exclusion contained in Section 37.i of the ICIM Policy⁶² did not apply when it was pointed out that *"the Requesters are currently not part of any judicial or arbitral process, but they are aware that some local NGOs are demanding the nullification of the Internal Notice of SEAM"*

⁶² Section 37.i of the ICIM Policy establishes 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.

2010, *defending the Aché rights*,”⁶³ bearing in mind that the ICIM Policy makes no reference whatsoever to the participation of the requesters in a judicial or arbitral process and refers, rather, to the mere existence of a judicial or arbitral process raising the issue addressed in the complaint as grounds for ineligibility.

B. Compliance with the loan contract and the Bank’s operational policies

2.7 IDB Management considers that it properly supervised execution of the project under review and that the Compliance Review Panel’s Preliminary Report contains no evidence that could lead one to assume that Management failed to comply with Bank policies in effect applicable to the activities financed under loan contract 933/OC-PR. That opinion is based on the considerations summarized in the following table and then developed in greater detail in the body of this section of the memorandum:

⁶³ Document MI-6-a, page 4, paragraph 10 and Document MI-6, page 6.

Panel findings	Reference	Management's comments
Matters relating to compliance with the loan contract		
<i>Allegation of failure to comply with the provisions of loan contract 933/OC-PR</i>		
<p>The Compliance Review Panel's Preliminary Report states that the Requesters assert that the Bank did not comply with the provisions of loan contract 933/OC-PR entered into with the Republic of Paraguay. The Preliminary Report also asserts that the failure to comply with the loan contract meant that the Aché community did not receive title to its land as had been "promised," and that it was denied the right to preserve its life-style and culture.</p> <p>In short, the crux of the Requester's complaint is based on the allegation of a breach of contract that resulted in harm. It is alleged that the breach of contract resulted in the Aché community being denied title to the land (referred to as Finca 470).</p>	Paragraphs 16 and 16.a, b, and c of the ICIM Preliminary Report	<p>All provisions of loan contract 933/OC-PR were properly fulfilled and supervised by the Bank. The loan contract does not provide for the financing of land titling. Therefore, the argument that the Bank harmed the Aché community because it did not receive title to the land is irrelevant. Through the project team, Management complied with the fiduciary mandate established in Annex A of the loan contract to facilitate, as part of an environmental protection program, the "acquisition of lands for indigenous communities." The Aché community gained access to land under a usufruct arrangement, which is a legally viable way of meeting the project's objective and carrying out the activity financed by the loan contract, because it grants the community possession, use, and enjoyment of the land.</p>
Matters relating to compliance with relevant IDB operational policies		
<i>Allegation of failure to comply with the following policies: Environment (OP-703); Project Preparation, Evaluation and Approval (OP-302); and Operations Administration (OP-304), with respect to adequate prevention and mitigation of adverse socioenvironmental impacts, including those relating to indigenous communities, resulting from Route 10 upgrading and paving works.</i>		
<p>The Compliance Review Panel's Preliminary Report considers that, as part of project PR-0035, construction work was carried out on Route 10, as follows: "...the activities financed by the Bank to upgrade Route 10..."; "...the project affects the livelihood of the indigenous communities..."; "...the Aché community was and continues to be harmed as a result of not receiving title to Finca 470 as part of the IDB's commitment to compensate for the indirect impacts of the upgrading of Route 10..."</p>	Paragraphs 5, 21, and footnote 1 of the Executive Summary and paragraphs 3.2 and 4.16 of the ICIM Preliminary Report	<p>Loan contract 933/OC-PR did not finance any upgrading and paving work on Route 10, in the indirect area of influence of which the Aché community is located. Only work on Route 3 was financed by loan contract 933/OC-PR. Consequently, evaluating compliance with operational policies OP-703, OP-302, and OP-304 with respect to adequate prevention and mitigation of adverse socioenvironmental impacts, including those associated with the indigenous communities, resulting from the upgrading and paving work done on Route 10 is irrelevant because this work was not financed by the Bank and is therefore ineligible for review under the ICIM.</p> <p>The Bank only helped the Government of Paraguay finance implementation of the initial socioenvironmental mitigation and protection measures to ensure that they were in place before the Bank, at some future time, might support, with another potential loan, financing of upgrading and paving works on the aforementioned Route 10, in which the Bank ultimately did not take part.</p>
<i>Environment Policy (OP-703)</i>		
<i>"To ensure that all Bank operations and activities are environmentally sustainable as defined in this Policy"</i>		
The project was incorrectly classified as category III when it should have been category IV.	Paragraph 16 of the Executive Summary	Project PR-0035 only included financing of one segment of Route 3, which, according to the Environmental Summary, would have little socioenvironmental impact, which is why it was

Panel findings	Reference	Management's comments
<p>An EIA conducted with detailed information on indigenous communities would have ensured compliance with Operational Policy OP -703.</p> <p>Alleged lack of evidence on public consultations carried out.</p>	<p>and paragraphs 19.a, b, and d; 4.21 and 4.24 of the ICIM Preliminary Report.</p>	<p>correct to classify the project as category III.</p> <p>The Bank did not finance upgrading of any segment of Route 10 (in the indirect area of influence of which the indigenous communities are located). The project only financed implementation of the initial socioenvironmental mitigation and protection measures to ensure that they were in place before the Bank, at some future point, might support, with another potential loan, financing of upgrading and paving works on the aforementioned Route 10, in which the Bank ultimately did not take part.</p> <p>Several consultations took place during the operation's design and execution in order to promote stakeholder participation. They included consultations with local communities, public institutions, nongovernmental organizations (NGOs), and other pertinent stakeholders.</p>
<p><i>Project Preparation, Evaluation and Approval Policy (OP-302)</i> <i>"Bank-financed projects shall be technically, economically, and environmentally sound, financially secure, and take place in an adequate legal and institutional framework."</i></p>		
<p>Deficient design and implementation of project PR-0035.</p> <p>Lessons learned from similar projects were not built into the design of project PR-0035, loan contract 933/OC-PR or implementation.</p> <p>Institution-strengthening measures were financed, but inadequately supervised.</p> <p>Off-sets were poorly designed: There was a lack of realism at the design stage with respect to the availability of land and counterpart resources.</p> <p>There was not enough supervision to ensure successful implementation of the objectives of the environmental component.</p>	<p>Paragraph 20 of the Executive Summary and paragraphs 4.7; 4.21; 4.23; and 4.24 of the ICIM Preliminary Report</p>	<p>Although there were delays, project implementation showed that the institutional, financial, technical, and environmental designs were appropriate for this type of project.</p> <p>The team analyzed lessons learned regarding the implementation of environmental protection measures in other Bank-financed highway programs financed in Paraguay. For that reason, measures were proposed to minimize the risk associated with the operation: (i) the Joint Commission was established; (ii) the institution-strengthening measures being financed by the World Bank were incorporated into the project design; (iii) studies were commissioned to strengthen the institutional framework. This is reflected in both the project PR-0035 loan proposal and in the corresponding IDB systems relating to the project's execution.</p> <p>The project execution framework helped strengthen the government institutions involved.</p> <p>The off-set estimates were conducted on the basis of market prices in effect when the operation was designed. However, delays in executing the loan components meant that the price of the land went up and so less land could be purchased.</p> <p>The Paraguayan government substantially complied with its local counterpart contribution commitments under the loan contract for the acquisition of land: US\$4,411,794 to purchase 8,365 hectares of uncultivated land (<i>áreas naturales</i>) (including 1,600 hectares under negotiation) and US\$2,375,000 to purchase</p>

Panel findings	Reference	Management's comments
		10,975 hectares of land for indigenous communities (of these, 1,000 hectares were purchased with local funds through the National Indigenous Development Institute (INDI); 4,600 hectares (Finca 470) were originally purchased to serve as an environmental protection area; and 1,600 hectares, which would also serve a dual purpose, are currently under negotiation).
<i>Operations Administration Policy (OP-304)</i> <i>"Verify compliance by borrowers/beneficiaries/executing agencies with the contractual covenants and general rules established by the Bank."</i>		
There was a lack of systematic monitoring of the process of purchasing and titling of land for indigenous communities.	Paragraph 17 of the Executive Summary and paragraphs 4.8 and 4.41 of the ICIM Preliminary Report	Monitoring and supervision activities were systematically carried out, including: (a) the hiring of a consultant to evaluate land prices; (b) presentation of a statement of no objection to the turnover of Finca 470 for "usufruct" by the Aché; (c) payment of attorney's fees for procedures relating to the transfer to the Aché; (d) monitoring of the land purchase process; and (e) a workshop to propose adjustments to the support programs for indigenous communities. At the same time, as recorded in all the relevant IDB systems, all contractual conditions for operation 933/OC-PR were duly met by the project executing agency. In light of the above, it cannot be said that there was failure to comply with Operational Procedure OP-304.

MATTERS RELATING TO COMPLIANCE WITH THE LOAN CONTRACT

Allegation of failure to comply with the provisions of loan contract 933/OC-PR

- 2.8 All provisions of loan contract 933/OC-PR were properly fulfilled and supervised by the Bank. The loan contract does not provide for the financing of land titling. Therefore, it cannot be argued that the Bank harmed the Aché community because it did not receive title to the land under the loan contract. Through the project team, Management complied with the fiduciary mandate established in Annex A of the loan contract to facilitate, as part of an environmental protection program, the "acquisition of lands for indigenous communities." The Aché community gained access to land under a usufruct arrangement, which is a legally viable way of meeting the project's objective and carrying out the activity financed by the loan contract, because it grants the community possession, use, and enjoyment of the land, even if title to ownership of the land is not transferred.
- 2.9 Paragraph 1.6 of the Compliance Review Panel's Preliminary Report states that **the Requesters assert that the Bank failed to comply with the provisions of loan contract 933/OC-PR** entered into with the Republic of Paraguay. Furthermore, the Preliminary Report also indicates, in paragraphs 1.6.a., b., and c., with varying degrees of emphasis, that the failure to comply with the loan contract meant, among

other damages, that the Aché community did not receive title to its land as had been “promised” and was denied the right to preserve its life-style and culture.

- 2.10 In short, the crux of the Requester’s complaint is based on the allegation of a breach of contract that resulted in harm. It is alleged that the breach of contract resulted in the Aché community being denied title to the land (referred to as Finca 470).
- 2.11 The legal and operational analysis of loan contract 933/OC-PR performed by Management reaches two preliminary conclusions contrary to those reached by the Compliance Review Panel:
- (i) **Annex A of the contract does not envisage the financing of land titling.**
 - (ii) **Annex A of the contract does not specifically envisage land titling for the Aché community.**
- 2.12 The arguments made in the Compliance Review Panel’s Preliminary Report reflect an analysis of the loan contract lacking in legal rigor, attributing legal significance to “promises” and expectations generated during supervision of project execution. That means that, before responding to the conclusions of the Review Panel’s Preliminary Report, the exact scope of the case under review must be determined.
- 2.13 The first analysis supporting Management’s conclusions is analysis of the contract itself. Below is the description from Section II of Annex A of the loan contract, which contains no mention of financing any land titling activity on behalf of the indigenous communities:

II. Description

2.01 To accomplish the aforementioned objective, the project includes (i) the upgrading and paving of 131 km of Route 3, between Emboscada and San Estanislao; (ii) the road maintenance program, which includes implementation of the Integrated Road Maintenance Administration System nationwide, actions to improve vehicle weight controls, surface upgrading works on experimental segments of unpaved roads, and the implementation of road maintenance monitoring; (iii) the environmental protection program, which includes formulation and implementation of a regional development plan, the adoption of woodland conservation measures, the purchase of land for indigenous communities, environmental monitoring of the project and support for the Environmental Unit and the Joint Commission.

- 2.14 In Management’s opinion, legally speaking, the purchase of land for indigenous communities could take several forms. The activity financed by the project, and regarding which Management received, through the project team, a fiduciary mandate, did not specify how such purchasing would be done (what legal form it should take) or that the indigenous communities would necessarily have title to ownership of the property. The purchase of land by the Ministry of Public Works and Communications (MOPC) for the benefit of the indigenous communities and the implementation of an arrangement for the beneficial use (usufruct) of the land by the Aché community (as defined in paragraph 9 of the Executive Summary of the Compliance Review Panel’s Preliminary Report) constituted a legally viable way of fulfilling the project objective (and the activity financed by the loan contract)

inasmuch as it granted the indigenous communities the possession, use, and enjoyment of the land, even though title of ownership was not transferred to them.

- 2.15 The foregoing notwithstanding, Management considers it important to explore the possibility that the Aché community may have been led to have higher expectations than those considered in the loan contract due to some other nonbinding but relevant project document. To that end, Management proceeded to analyze loan proposal PR-0035, which was submitted to the Bank's Board of Executive Directors for approval.
- 2.16 As specified below, loan proposal PR-0035 acknowledges the advisability of initiating a land titling process in favor of the indigenous communities in Paraguay. That advisability is couched in hypothetical language in order not to generate contractual obligations or concrete expectations in the context of a development objective as complex as the one addressed in this case. All loan proposals contain a conceptual analysis which provides a framework for financing a series of activities that are part of a development process far broader than what a single program can finance on its own. A loan proposal expressly grants a fiduciary mandate to finance specific activities with the loan proceeds. In this specific case, the project grants a fiduciary mandate to finance the identification and demarcation of lands and to assist government authorities with the purchase of lands. However, at no point does the fiduciary mandate extend specifically to land titling. Nor does it specifically extend to land titling for the Aché community.
- 2.17 The activities for which a fiduciary mandate does exist were succinctly described in Annex A of the loan contract under the activity "(...) **purchase of land for indigenous communities.**" The formula chosen does not obligate the Bank to go further than what is described in that contract. Moreover, in the analysis carried out, there is no inconsistency at all between the fiduciary mandate of the loan proposal and that of the loan contract, however binding the loan contract's fiduciary mandate may be and however nonbinding that of the loan proposal may be.
- 2.18 Following is the relevant part of loan proposal PR-0035:

(...) c. **Purchase of land for indigenous communities:**

- 2.30 One of the most important measures needed to prevent or mitigate the possible negative impact of the program on the indigenous communities in the area is the regularization of their title to the land they currently occupy, and the purchase of additional land in cases where the current area is insufficient for ensuring their survival. According to a **preliminary survey**, the indigenous communities located in the area indirectly affected by Route 10 (i.e. between Tacuara and Salto del Guairá) require approximately 11,000 ha of suitable forest to meet their basic needs. The Government of Paraguay will therefore **provide** the equivalent of US\$2 million to begin the purchase and titling of land on behalf of these communities, in anticipation of possible pressure arising from the continuation of upgrading work on the highway corridor in this area. This program will benefit approximately 1,000 indigenous families.
- 2.31 **Loan resources will be used to hire consulting services or an NGO with experience providing support for indigenous communities, to identify and determine the boundaries of the land, and to assist government agencies in negotiations for its purchase.**

- 2.19 Having analyzed the loan contract and limited the fiduciary mandate in the loan proposal, the purpose of the investigation under way should be confirmed. In other words, it is necessary to pinpoint what it is that should be investigated (which issues must be investigated and which should not be because they are no longer part of the investigation).
- 2.20 Section 53 of the ICIM Policy, cited below, describes the purpose of a Compliance Review. It limits any noncompliance to the scope of a “Bank-financed operation.” That point is important because it limits an investigation to the financed program and its objectives. Accordingly, the investigation cannot extend, as paragraph 23 of the Executive Summary of the Compliance Review Panel’s Preliminary Report would have it, to a discussion of “*historical opportunities for work*” between the Bank and the Republic of Paraguay to protect a unique ecosystem or other socially, politically, or economically important matters that fall outside the sphere of the contractual, fiduciary, or policy mandate to implement the specific activities financed by the Program to Improve Highway Corridors (PR-0035).

53. (...) The objective of a Compliance Review investigation shall be to establish whether (and if so, how and why) **any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requester.**

- 2.21 As indicated by Section 53 of the ICIM Policy, the definition of a “Bank-financed operation” is important because it limits the scope of the investigation. The Policy defines this term broadly, because it construes operation to mean the financing (whether reimbursable or not) of operational activities for which the Bank has received a fiduciary mandate through its institutional mechanisms:

2. **Bank-Financed Operation:** Covers all Bank investment or other financing activities, whether with or without sovereign guarantee (public or private sector), and includes any operational activities involving loans, grants, technical cooperation assistance and guarantees financed or to be financed in whole or in part from Bank funds or from funds administered or guaranteed by the Bank, including MIF operations. (...).

- 2.22 In connection with a Bank-financed operation, which is implemented through a loan contract, it makes sense to analyze the scope of the operational policies applicable to it and the extent to which they apply in processing a case with the ICIM. On this point, in particular, it appears toward the end of Section 26 of the ICIM Policy that the scope of the policies is also limited to specific provisions in the loan contract, the document that governs the mandate of the Bank-financed operation which Management has to execute through the project team.

26 **Relevant Operational Policies:** The ICIM applies to all “Relevant Operational Policies,” which initially will be deemed to include only the following: (...). **The Relevant Operational Policy that shall be applicable shall be the version in effect at the time of the Request (for projects not yet approved by the Board) or, for projects approved by the Board, the version in effect at the time of Board approval of the operation that is the subject of the Request, unless the relevant policy or legal documentation provides otherwise.** Guidelines, procedures or norms approved only by the Management of the Bank are not subject to the Mechanism.

- 2.23 In light of the above, Management's mandate through the project team is limited solely to proper supervision of execution of the project under review. The loan contract defines the activities to be executed and, consequently, to be properly supervised. Investigating what the project team could have done or should have done in alternative scenarios beyond its mandate is beyond the scope of the ICIM's own mandate. That is why this section aimed to limit the Bank's mandate to supervising the project in order to be accountable for compliance with respect to what was in fact done pursuant to the contractual and policy mandate received and not for noncompliance with what was not done pursuant to a mandate it did not have contractually, outside the scope of policies in effect.
- 2.24 Notwithstanding the foregoing, it is worth briefly recalling relevant facts regarding the complaint submitted and providing an update on the current situation. As we point out below, Management would like to place on record that its actions went beyond the fiduciary mandate contained in the respective contract. The Ministry of Public Works and Communications (MOPC) of the Republic of Paraguay purchased Finca 470 and gave title to it to the Secretariat of the Environment of the Republic of Paraguay (SEAM), initially as part of the off-set of areas for environmental protection. Since the Aché community asked to be given beneficial use (usufruct) of that property, in that context, the SEAM requested and received the Bank's no objection in order to grant said community usufruct of that property. Subsequently, the Aché asked for ownership of the land to be transferred to their community. It is necessary to understand that in Paraguay, for title to a State property to be transferred legally, that transfer has to be effected by a decree-law, following approval by both chambers of Parliament. At the initiative of a member of the Paraguayan House of Representatives, the transfer was placed on the House agenda and approved, and later approved also by the Senate. Consequently, a Bill was prepared and sent to the Executive Branch, which vetoed it in March 2011. In May of that same year, both the House and, one week later, the Senate overrode that veto. That parliamentary override of the Executive Branch's veto authorized the procedures for undertaking the due transfer of title to the land in question, identified as Finca 470, to the Aché community. The transfer proceedings began immediately but came up against a judicial injunction to preserve the status quo ("*no innovar*") that the Aché themselves had requested. On Wednesday, 7 March 2012, that injunction was lifted and, according to the attorney for the Aché, legal titling of Finca 470 in the Aché community's name will soon be completed.⁶⁴ In short, beyond the fact that loan contract 933/OC-PR did not envisage financing land titling and it cannot be alleged that the Aché community was harmed by the lack of land titling under the loan contract, the Bank did collaborate, after the land had been purchased, with the future titling of the land in the Aché community's name by giving its no objection to the request by the MOPC to effect the transfer of Finca 470 from the environmental protection off-set category to an environmental protection area owned and controlled by indigenous communities.

⁶⁴ Currently, the file is with the Public Registry Office, that being the final phase of the administrative land titling process.

MATTERS RELATING TO COMPLIANCE WITH RELEVANT IDB OPERATING POLICIES

Allegation of failure to comply with the following policies: Environmental (OP-703); Project Preparation, Evaluation and Approval (OP-302); and Operations Administration (OP-304), with respect to adequate prevention and mitigation of adverse socioenvironmental impacts, including those relating to indigenous communities, resulting from Route 10 upgrading and paving works.

- 2.25 Loan contract 933/OC-PR did not finance any upgrading and paving work on Route 10, in the indirect area of influence of which the Aché community is located. Only work on Route 3 was financed by loan contract 933/OC-PR. Consequently, evaluating compliance with operational policies OP-703, OP-302, and OP-304 with respect to adequate prevention and mitigation of adverse socioenvironmental impacts, including those associated with the indigenous communities, resulting from the upgrading and paving work done on Route 10 is irrelevant because this work was not financed by the Bank and is therefore ineligible for review under the ICIM. The Bank only helped the Government of Paraguay finance implementation of the initial socioenvironmental mitigation and protection measures to ensure that they were in place before the Bank, at some future time, might support, with another potential loan, financing of upgrading and paving works on the aforementioned Route 10, in which the Bank ultimately did not take part.
- 2.26 The Compliance Review Panel's Preliminary Report alleges failure to comply with Bank policies during preparation and execution of the project under review because steps were not taken to ensure the design and implementation of appropriate measures to avoid adverse impacts of upgrading and paving work done on Route 10, including the adverse impacts on the indigenous communities, specifically the purchase and titling of Finca 470 for the Aché community. However, Management believes that it is not possible to argue noncompliance with the Bank's policies regarding adequate prevention and mitigation of adverse impacts—including those associated with the indigenous communities—caused by the upgrading and paving work done on Route 10, since those policies can only apply to works actually financed under loan contract 933/OC-PR. Under that contract, the Bank did not finance either construction work or upgrading and paving of any segment of Route 10, whose area of influence includes the indigenous communities. Despite that, the Aché community, which is located outside the Route 3 area of influence, initiated Case PR-MICI 002/2010, as Requester.
- 2.27 Having indicated that the Bank did not finance the construction, upgrading, or paving of any segment of Route 10, it should be noted that project PR-0035 only financed the initial environmental and social protection measures to be implemented before the Bank might possibly at some future point support the upgrading and paving of the 181-km Tacuara-Cruce Carumbey segment of Route 10 with a potential loan—which it never in fact granted—as can be shown in the PR-0035 loan proposal document and confirmed by both Annex A of the loan contract and the operation's Project Completion Report.

- 2.28 In short, no segment of Route 10 was financed by the Bank. Only work on the 131-km Emboscada to San Estanislao segment of Route 3 was financed by loan contract 933/OC-PR. Consequently, evaluating compliance with operational policies OP-703, OP-302, and OP-304 with respect to mitigation of adverse socioenvironmental impacts, including those associated with the indigenous communities, resulting from the upgrading and paving work done on Route 10 is irrelevant because this work was not financed by the Bank and is therefore ineligible for review under the ICIM. Furthermore, Management considers that, for reasons explained below, there is no evidence of failure to apply the Environment Policy (OP-703), Project Preparation, Evaluation and Approval Policy (OP-302); and Operations Administration Policy (OP-304) in the design, evaluation, approval, and supervision of the works and activities actually financed by loan contract 933/OC-PR.

ENVIRONMENTAL POLICY (OP-703)

“To ensure that all Bank operations and activities are environmentally sustainable, as defined in this Policy”

- 2.29 In 1992, with technical assistance support from the Japan International Cooperation Agency (JICA), the Paraguayan government completed its National Transportation Plan (PNT), which was used as the basis for prioritizing investment for the period 1993-2010. In that context, the Paraguayan government asked the Bank to help finance a 131-km segment of Route 3 (Emboscada-San Estanislao) and a 181-km segment of Route 10 (Tacuara-Cruce Carumbey). In July 1993, based on preliminary socioenvironmental data on the two segments (Environmental Brief, PR-0035), the operation was classified by the Bank’s Environmental Committee as category III.
- 2.30 The Environmental Summary prepared by the project team and concluded on 20 December 1995, analyzed the potential impacts and proposed mitigation and environmental and social off-set measures for Routes 3 and 10. During the review of the operation by Bank Management Committees, it was decided to postpone financing of the Route 10 part of the operation because of the possible socioenvironmental impacts of the upgrading work on that highway associated with the presence of indigenous communities in its area of influence.
- 2.31 That decision was confirmed in loan proposal PR-0035, which was submitted to and approved by the Bank’s Board of Executive Directors in June 1996, with a reduction of the original financing amount from US\$196 million to US\$110 million, which included, inter alia, financing for the Route 3 segment (Emboscada-San Estanislao) and an Environmental Protection Program costing US\$7,400,000 with environmental and social mitigation measures for Route 10, aimed, among other objectives, at consolidating land use and regularizing the possession and tenure of the land in the area of influence, thereby paving the way for future, potential support for the upgrading of Route 10.
- 2.32 It should be noted that the Bank never financed Route 10, which was later paved by the Paraguayan government, in part using *Itaipú Binacional* resources and in part with funds from Banco Nacional de Desenvolvimento Econômico e Social (BNDES) of the Federative Republic of Brazil. Below is one of the pertinent paragraphs of the Executive Summary of loan proposal PR-0035, describing the operation financed by

the Bank. It underscores the preventive nature of the Bank's involvement in the financing of the Environmental Protection Program for the Route 10 area of influence, not any financing of investments in that Route.

In order to meet the need for preliminary measures for environmental protection in the area of influence of Route 10, the Government of Paraguay and the Bank agreed to continue processing an operation (referred to below as "the project") as part of the proposed program, consisting of (i) upgrading and paving of the section corresponding to Route 3; (ii) environmental protection activities in preparation for future upgrading of Route 10; and (iii) other components intended to improve the efficiency of highway maintenance and strengthen the management capacity of the MOPC.

- 2.33 Considering that, with its reduced scope, project PR-0035 only included financing of the Emboscada-San Estanislao segment of Route 3 and that said route, according to the Environmental Summary, could potentially have moderate and insignificant socioenvironmental impacts, the project continued to be classified as category III (a category associated with projects with low to moderate environmental impacts). In light of the above, it is incorrect for the Compliance Review Panel's Preliminary Report to conclude, as it does in paragraphs 4.25, 4.31, and 4.32, that category IV (associated with projects with major environmental impacts) would have been more appropriate for this operation, because that category would only apply to Route 10, which, as shown by evidence provided at the start of this section, was not financed under loan contract 933/OC-PR. Moreover, there is no evidence of failure to comply with Operational Policy OP-703.
- 2.34 Paragraph 4.22 of the Compliance Review Panel's Preliminary Report alleges failure to comply with the OP-703 requirement "... *that Bank-financed operations should include measures to avoid adverse environmental impacts.*" As regards financing of the Emboscada-San Estanislao segment of Route 3, appropriate prevention measures were taken during the design phase and those measures were appropriately implemented during execution. As for the Environmental Protection component, that was a component included in anticipation of a possible future intervention by the Bank in the upgrading of the Tacuara-Cruce Carumbey segment of Route 10, an intervention that was ultimately never financed by the Bank. Despite that, the Government of Paraguay and the Bank continued to pursue the targets agreed to under this component. In this regard, Management maintains that there is no evidence of noncompliance with OP-703, because, as explained above, the nature of the activities financed by operation 933/OC-PR show that it was correctly classified as category III and the operation did include sufficient, appropriate socioenvironmental measures in its design and implementation.
- 2.35 It should be noted that the Route 3 segment financed by the Bank and Route 10 are not part of a single highway corridor—Route 3 goes through San Estanislao, where it connects to Routes 10 and 8 (see the map in Annex II of this document). That being the case, the assertion contained in paragraph 4.31 of the Compliance Review Panel's Preliminary Report that the project had significant indirect impacts on the indigenous communities associated with expansion of the agricultural frontier is also invalid, especially since, as explained above, the indigenous communities are located in the area of influence of Route 10 (not Route 3 financed by the Bank).
- 2.36 Paragraphs 4.33 to 4.35 of the Preliminary Report assert that the Compliance Review Panel was unable to find documentation recording the public consultations conducted

and for that reason points to noncompliance with Operational Policy OP-703 with respect to “...*the need for indigenous communities directly or indirectly affected by Bank-financed operations to be consulted and to participate in the identification, design, analysis, execution, and evaluation phases.*” It is important to clarify that several consultations took place during design and execution of the operation with a view to promoting stakeholder participation. During preparation of the Environmental Summary, the Bank’s social development specialist performed a rapid stakeholder analysis which included consultation with local communities, public institutions, nongovernmental organizations (NGOs) and other relevant actors.⁶⁵ The outcomes of those consultations were used in the design of the Environmental Protection Program measures. It should be noted that at the time the operation was designed, Operational Policy OP-765, which details the extent of the consultations to be conducted with indigenous communities in Bank-financed operations was not yet in effect. Moreover, the Final Report of the Regional Development Plan financed by operation 933/OC-PR, included in Vol. 2, Chapter 10, “Participation of the Population” an extensive process of consultation and participation of all the stakeholders. That Final Report expressly states “...*Because of the complexity of the indigenous issue, that sector was consulted in particular. Numerous in-depth interviews and surveys were conducted. ...That approach with the population proved invaluable because it enriched the analysis with better insight into regional problems and demands.*” Lastly, when the land purchasing process began, the National Indigenous Development Institute (INDI) participated directly in all the steps, as demonstrated by the fact that most of the lot titles are in its name. given the foregoing, it is not possible to assert failure to comply with OP-703 with respect to consultation with the indigenous communities, because: (i) the operation under review did not finance construction works on routes directly or indirectly affecting indigenous communities; rather, as this document has reiterated several times, it financed only one segment of Route 3 and no segment of Route 10, whose area of influence included the indigenous communities to be benefited by the land purchases; and (ii) several consultations were conducted, as described in the report of the social sector specialist for the Environmental Summary and in the Final Report of the Regional Development Plan.

PROJECT PREPARATION, EVALUATION AND APPROVAL (OP-302)

“Bank-financed projects shall be technically, economically, and environmentally sound, financially secure, and take place in an adequate legal and institutional framework.”

- 2.37 The Environmental Protection Program (EPP), financed by loan contract 933/OC-PR to support initial environmental and social protection measures so that they would be in place before the Bank, at some future point, might possibly support the upgrading and paving of Route 10 with a potential loan, included the following subcomponents: (i) a regional development program; (ii) conservation of uncultivated areas; (iii) the acquisition of areas for indigenous communities; (iv) environmental monitoring; and (v) support for the environmental units in national agencies. At the time the project

⁶⁵ In accordance with the policy governing the administration of Bank project-related information in effect in 1996, when project PR-0035 was approved, all supporting data generated or collected in order to analyze, design, and approve a project, including the information used for studies and socioenvironmental impact assessments, could be removed from the technical files three years after an operation’s last disbursement.

was designed and loan contract 933/OC-PR signed, Bank policies did not allow the purchase of land with loan proceeds. For that reason, the EPP financed by the Bank under loan 933/OC-PR established the commitment to purchase areas for conservation and for indigenous communities in amounts up to US\$4 million (equivalent to 20,000 hectares at market prices when the operation was designed) and US\$2 million (equivalent to 11,000 hectares), respectively, using local counterpart funds (see Clause 4.05 of the Special Conditions of loan contract 933/OC-PR).

- 2.38 With respect to compliance with Operational Policy OP-302, it is worth noting that, during design of the operation under review, the team undertook a rigorous analysis of lessons learned in connection with the implementation of environmental protection measures in other Bank-financed highway programs financed in Paraguay. In order to make the most of those lessons learned, measures were proposed to minimize the risk associated with operation PR-0035, including: (i) establishing that the recently created Joint Commission would be the agency responsible for coordinating and monitoring the EPP financed by the Bank because it could help expedite and arrange coordination mechanisms between agencies involved in the program's execution; (ii) building into the project's design the measures being financed by the World Bank to boost the technical capacity of the Environmental Unit at the MOPC and to raise that unit's hierarchical standing in the MOPC's organizational chart, thereby enhancing its decision-making capacity and technical expertise; and (iii) commissioning a series of studies to ensure a stronger institutional framework for EPP execution, including support for the Joint Commission and the Environmental Unit, to enable them to function effectively in program execution.⁶⁶
- 2.39 Although there is no explicit evidence or specific information regarding estimates of the areas that could have been bought using the counterpart funds envisaged in loan contract 933/OC-PR, the documents analyzed indicate that those estimates were made on the basis of market prices in effect at the time the operation was designed. However, delays in the execution of all loan 933/OC-PR components (not only execution of the EPP)—design and approval of the operation in the period 1993-1996; first disbursement in February 1998; last disbursement in December 2007—meant that the price of land had gone up and that therefore less land could be bought in connection with the operation than had originally been estimated. Nevertheless, the Paraguayan government substantially complied with its local counterpart contribution commitments for the purchase of land established in the loan contract, amounting to US\$4,411,794 to purchase 8,365 hectares of uncultivated land (including 1,600 hectares under negotiation) and US\$2,375,000 to purchase 10,975 hectares of land for indigenous communities (of these, 1,000 hectares were purchased with local funds through the INDI; 4,600 hectares (Finca 470) were originally purchased to serve as an environmental protection area; and 1,600 hectares, which would also serve a dual purpose, are currently under negotiation).
- 2.40 In light of the above, Management does not agree with the assertions in paragraphs 4.21 to 4.24 of the Compliance Review Panel's Preliminary Report that the operation under review, and specifically its Environmental Protection Component, did not comply with the provisions of Operational Policies OP-703 and OP-302.

⁶⁶ See the reports by consultant Francis Fragano.

- 2.41 Paragraph 4.23 of the Compliance Review Panel's Preliminary Report cites the requirement in OP-302 that *"...projects shall be designed to be technically, economically, and environmentally sound, financially secure, and take place in an adequate legal and institutional framework."* It is worth reiterating here that the project execution framework strengthened the government institutions involved (the Joint Commission and the Environmental Unit). That was accomplished in conjunction with other multilateral institutions, so as to enhance the quality and impact of the project. The fact that the project was implemented, albeit with delays, shows that the institutional, financial, technical, and environmental designs were suited to the nature of the intervention. For that reason, no evidence has been provided to support the assertion of failure to comply with Operational Policy OP-302.
- 2.42 Paragraph 4.24 of the Compliance Review Panel's Preliminary Report chides the project team and the Bank for having relied on local counterpart funds to finance the purchase of land, when that purchase was the principal off-set measure required by the project. That position disregards two key factors. The first, which is generic in nature and concerns the Bank's policies, is that the Bank's lending policy in effect when the operation was approved, did not allow the financing of land purchases. The second factor, in this case specific to this operation, is that the environmental protection component is not there to "off-set" the alleged adverse effects that could result from activities related to the upgrading of the Tacuara-Cruce Carumbey segment of Route 10, because that upgrading was not part of operation 933/OC-PR. The environmental protection component was, we insist, an anticipatory, preventive component related to potential future activities on Route 10, activities that ultimately did not involve the Bank. Thus, the assertion in paragraph 4.24 that, for that reason, the operation failed to comply with Operational Policies OP-703 and OP-302 is also irrelevant.

OPERATIONS ADMINISTRATION POLICY (OP-304)

"Verify compliance by borrowers/beneficiaries/executing agencies with the contractual covenants and general rules established by the Bank."

- 2.43 Paragraphs 4.36 to 4.41 of the Compliance Review Panel's Preliminary Report, assert that the team failed to comply with OP-703, in particular due to the *"...apparent lack of systematic monitoring of the process of purchasing and titling land to indigenous communities..."* and with Operations Administration Policy OP-304, which establishes that the Bank must verify the executing agency's compliance with contractual conditions. Under loan contract 933/OC-PR, various monitoring and supervision activities were carried out, including and specifically the following:
- a. The hiring of a consultant to evaluate the prices of the lands to be purchased by the MOPC, so as to avoid paying more than the actual market prices;
 - b. The presentation of a statement of no objection to the turnover of Finca 470 for the beneficial use ("usufruct") of the Aché;
 - c. The payment of attorney's fees for assisting with procedures for the transfer to the Aché;

- d. Systematic follow-up and monitoring of the process by which the MOPC purchased land.
- 2.44 In addition, after recognizing the importance of the subject for future infrastructure projects and their potential impact on the indigenous communities in their respective areas of influence, the Bank organized a workshop on 25 June 2008 (from 8:30 a.m. until 5:00 p.m.), calling on several anthropologists and country specialists to analyze, evaluate, and propose adjustments to programs supporting indigenous communities. At the same time, as indicated above, this Request to the ICIM originated when, on 21 June 2010, approximately 30 months after the last disbursement for this operation, the SEAM published Resolution 662 in which it announced that Finca 470 would be divided between the Aché and Ava Guarani communities and registered in that manner, whereupon the attorneys representing the Aché filed with the Paraguayan courts for an injunction to preserve the status quo, which was issued on 3 November 2010 and only lifted in early 2012. In light of the above, it cannot be asserted that there was failure to comply with Operational Policies OP-703 and OP-304, because, as the PCR explains in detail, all the contractual conditions of operation 933/OC-PR were duly met by the project's executing agency.

III. Socioenvironmental prevention and mitigation measures in the Route 10 area of influence supported by the Bank under contract 933/OC-PR.

- 3.1 Despite not financing any work on Route 10, the Bank made a major effort under loan contract 933/OC-PR to help identify and implement initial socioenvironmental prevention and mitigation measures in the Route 10 area of influence, so that they would be in place before the Bank, at some point in the future, might help to finance upgrading and paving work on that road with another potential loan. In fact, that financing never happened. Several of these measures were discussed earlier in this document, but following is a list of all of them, described, for ease of understanding, in greater depth.
- 3.2 **Regional Development Plan (RDP)** The RDP was one of the key instruments used to ensure that the initial socioenvironmental prevention and mitigation measures began to be implemented in the Route 10 area of influence before any upgrading or paving work on that Route. The RDP included studies aimed at identifying the tools available in the region for offsetting any possible socioenvironmental impacts attributable to the construction and operation of Route 10. The RDP also explored options for contributing to the analysis of harmonious, sustainable development associated with the upgrading of that highway. It should be noted that during execution of the RDP, there was no way of knowing how much later execution of the works on the Tacuara-Cruce Carumbey segment of Route 10 would take place. The RDP ended in 2000.
- 3.3 The principal initial measures included in the RDP to prevent and mitigate potential socioenvironmental impacts in the Route 10 area of influence are:
 - a. *The purchase of land for environmental protection and for settlements:* An extensive study was carried out of the entire Route 10 area of influence in order to identify:

- Land suitable for indigenous community settlements.
 - Land suitable for protected areas.
 - An estimate of land prices depending on their condition/characteristics.
 - The availability of land for sale.
 - The drafting of a land expropriation bill.
- b. *Social considerations*: The RDP focused on the following social impact activities:
- Public consultation with the participation of communities and local authorities.
 - Consultations with indigenous communities.
 - Proposing an organizational structure for implementing the RDP.
 - A support plan for the indigenous communities that would be affected by the construction of Route 10.
 - Identification of all the institutions that should be involved in implementing the RDP.
 - The budget for implementing the RDP.
- c. *Monitoring Plan*: The RDP included a detailed Monitoring Plan to be implemented during the future execution of upgrading works on Route 10. It included the identification of critical zones, indicators, urban development areas, production zones, etc. The Monitoring Plan also included hydrological monitoring to be executed during construction of Route 10, with parameters to be measured during the construction phase.

3.4 **Purchase of land (US\$4,411,794) for woodland conservation:** In total, two lots were purchased, totaling 6,765 hectares, one of them being Finca 470 (4,600 hectares). The land purchases had a dual purpose, given that Finca 470 was handed over to the Aché indigenous community. Currently, the MOPC is about to purchase another 1,600 hectare property that would also have a dual purpose, that is, to serve as a protected area and to benefit an indigenous community. That would bring the total under protection to 8,365 hectares.

3.5 **Purchase of land (US\$2,375,000) for indigenous community settlements:** Land was purchased to benefit seven indigenous communities. One of those communities received 4,600 hectares (Finca 470), originally purchased to serve as an environmental protection area. Another community was given a 1,000-hectare property, originally purchased through INDI. It is estimated that, in all, 9,375 hectares were purchased for the seven indigenous communities. However, when the program under review ended, it was learned that the MOPC was about to purchase another 1,600 hectares, also with a dual purpose. If that purchase goes through, a total of 10,975 hectares will have been purchased to benefit eight indigenous communities

- 3.6 As regards **institution-strengthening**, in connection with the program, the Environmental Unit enhanced its hierarchical standing within the MOPC and was assigned a budget of its own.
- 3.7 Using program funds, international expert Francis Fragano was hired to prepare a series of studies aimed at strengthening organizational aspects of the MOPC, the Environmental Unit, and the Joint Commission, among other tasks.
- 3.8 The Program's funds were also used to purchase computers and office furniture for the Environmental Unit.
- 3.9 Complementary measures worth mentioning, related specifically to Finca 470 include:
- (i) The hiring of agricultural engineer Sergio de Souza (a specialist in evaluations and appraisals) to conduct an appraisal of Finca 470, in order to determine the real amount that the MOPC should pay for it. Mr. Souza delivered his final report in September 2002.
 - (ii) Institutional support (a statement of no objection) for the transfer of Finca 470 for the beneficial use ("usufruct") of the Aché community.
 - (iii) Support (a statement of no objection) for the titling of Finca 470 in the Aché community's name.
 - (iv) Payment of attorney fees to Dr. Eduardo Bernal, for completing the legal work needed to bring about the transfer of Finca 470 to the Aché community.
 - (v) Visit by the Bank's Representative in Paraguay to Finca 470, accompanying the Minister of Public Works and the Minister of the SEAM, in August 2006, to support to the transfer of Finca 470 to the Aché community.
 - (vi) Reception hosted by the Bank's Representative in March 2011 for the leaders of the Aché community, Martin Achipurangui and Emiliano Mbejyvangi, who delivered a note thanking the Bank for its support in the transfer of Finca 470 to their community.
- 3.10 Lastly, we note the fact that the Bank played a leading and active role in supporting all the efforts of the Paraguayan government during the land titling processes on behalf of the indigenous communities, as a socioenvironmental prevention measure in a context in which infrastructure works were being carried out (despite not being contractually obligated to do so).

Lessons learned

- 3.11 This first process of responding to an ICIM Compliance Review has yielded some lessons learned that Management would like to highlight so that they may contribute to the continuous improvement both of operation preparation and execution and of the Independent Consultation and Investigation Mechanism.
- (i) Documentation of the work done to prepare operations, especially everything related to socioenvironmental studies and public consultations, is extremely important. The conservation, updating, and accessibility of accurate documentation not only improve the monitoring and supervision of operations. It is also a key tool for facilitating the participation of civil society as a partner of the Bank in the development process. Management considers that the new Access to Information Policy (OP-102), the Indigenous Peoples Policy (OP-765) and the new filing procedures will greatly facilitate this process.
 - (ii) The inclusion in loan programs, on a preventive basis, of measures to mitigate and prevent the adverse socioenvironmental impacts of works not financed by the Bank is wrought with specific difficulties that need to be taken into account. Although this may not apply to the particular case of the Program to Improve Highway Corridors in Paraguay, given that in Paraguay the measures established were in fact implemented, if financing of the works is not included, the incentives for countries to implement those measures properly and punctually differ from the incentives built into traditional programs in which the disbursements relating to execution of the works may be subject to implementation of the measures. The option of developing stand-alone operations for mitigating socioenvironmental impacts has also yielded mixed results. In such cases, the best option would appear to be to develop, whenever possible, appropriate incentives to ensure that mitigation measures are implemented and to place special emphasis on supervising and monitoring their implementation.
 - (iii) Inclusion in the Bank's financing of the resources needed to purchase land as a means of compensating affected communities ("off-sets") simplifies those processes and makes them more efficient. At the time the Program to Improve Highway Corridors in Paraguay was being executed, Bank policy did not allow the use of the Bank's financing to purchase land; changes in Bank policies since then have eliminated that restriction. Inclusion of the necessary funds, coupled with the inclusion of appropriate incentives in the loan contracts, would appear to be the best tool for ensuring that such measures are properly and punctually implemented, thereby avoiding all the problems associated with delays in those processes (cost increases, illegal settlements, etc.).
 - (iv) Indicators: With respect to supervision of an operation, Management recognizes that it is vital to have appropriate indicators for monitoring and reporting progress throughout execution of the operation. To that end, the Bank has substantially improved its capacity to identify, compile, and systematically monitor the performance indicators of the

operations it supervises. This improvement has come about in the context of the Development Effectiveness Framework (DEF), which was approved by the Board of Executive Directors in 2008 (document GN-2489). Since that reform, a systematic record has been kept of key performance indicators for all Bank operations.

- (v) Monitoring and reports on environmental performance: In 2011, Management began systematically implementing a monitoring and rating process for implementation of mitigation measures in all Bank operations identified as entailing medium-high and high environmental or social risk. The findings of the supervision and ratings are compiled and reported to Senior Management every six months and reported to the public in aggregate form in the Annual Sustainability Report.
- (vi) With respect to the Independent Consultation and Investigation Mechanism process, IDB Management considers that ways must be found to improve dialogue and facilitate coordination of the ICIM's work. Operation preparation and execution are complex tasks that are difficult to fully understand solely by looking at documents in the files. While respecting the Panel's independence and objectivity, mechanisms should be sought to ensure communication between IDB Management and the ICIM's Panel so as to facilitate this process.