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COSTA RICA

MICI-BID-CR-2021-0171

**SECOND MONITORING REPORT OF THE AGREEMENTS
CANTONAL ROAD NETWORK PROGRAM II**

**(CR-L1065)
(4507/OC-CR)**

**UNDER THE CONDITIONAL CREDIT LINE FOR INVESTMENT PROJECTS (CCLIP)
“TRANSPORTATION INFRASTRUCTURE PROGRAM”
(CR-X1007)**

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2.	Guidelines for the Consultation Phase http://www.iadb.org/document.cfm?id=EZSHARE-525549286-333
3.	Public Registry for Request MICI-BID-CR-2021-0171 https://mici.iadb.org/en/cases/MICI-BID-CR-2021-0171
4.	First Monitoring Report of the Agreements under Request MICI-BID-CR-2021-0171 https://www.iadb.org/document.cfm?id=EZSHARE-1412667640-140
5.	Loan proposal for the Cantonal Road Network Program II (CR-L1065) https://www.iadb.org/document.cfm?id=EZSHARE-998400382-69
6.	Environmental and social management report for the Cantonal Road Network Program II (CR-L1065) https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-565167379-12755
7.	Guidance Note for Accessible and Secure Remote Case Management https://www.iadb.org/document.cfm?id=EZSHARE-525549286-344

ABBREVIATIONS

Bank or IDB	Inter-American Development Bank
MOPT	Ministry of Public Works and Transportation
MICI or Mechanism	Independent Consultation and Investigation Mechanism
Parties	The Requesters, Management, and the client and/or the executing agency, as applicable
MICI Policy	The policy approved by the IDB Board of Executive Directors in December 2014 and revised in December 2015, governing the MICI processing of Requests associated with operations financed by the IDB or the MIF (document MI-47-8)
Program	Cantonal Road Network Program II (CR-L1065)

EXECUTIVE SUMMARY

The “Cantonal Road Network Program II” (operation CR-L1065; the “program”) is a sovereign guaranteed investment loan approved by the Board of Executive Directors on 20 March 2018 for a total of US\$152,036,000 (US\$144,036,000 from the Bank with the remaining US\$8,000,000 as a local counterpart contribution). The guarantor of the operation is the Republic of Costa Rica, and the executing agency is the Ministry of Public Works and Transportation (MOPT).

The program’s general objective is to contribute to productivity growth and poverty reduction in Costa Rica by facilitating closer integration between production and consumption areas and improving the population’s access to public and social services. Its specific objective is to improve the quality of the Cantonal Road Network through: (i) road rehabilitation and maintenance works that include a climate change adaptation component, which will result in shorter travel times and lower operating costs; and (ii) strengthening of the institutions responsible for road network management.

The complaint received by the Independent Consultation and Investigation Mechanism (MICI) concerns works related to two projects under the “PRVC-II-60-LPI-O-2019 – Improvement and Rehabilitation Works for Seven Roads in the Cantonal Road Network” contract, which are being executed in the canton of Buenos Aires, province of Puntarenas, Costa Rica. These works were included in the program sample. The works fall under: (i) Project 6, which involves reinforcement of the pavement structure through the installation of subgrade and aggregate base and application of the asphalt concrete layer on Road 6-03-008 (from Ent.N02 Cruce Brujo to Ent.C.332 Las Brisas), and (ii) Project 7, which involves reinforcement of the pavement structure through the installation of subgrade aggregate base and application of an E-38 bituminous surface treatment on Road 6-03-035 (from Ent.N.2 Rancho Coco to Ent.N.610 Cruce Socorro). Both projects are currently in the correction of defects stage.

On 23 July 2021, the MICI was contacted by a group of 28 residents of the canton of Buenos Aires, province of Puntarenas, Costa Rica, raising environmental and social concerns related to the MICI’s mandate. The Requesters asked the MICI to keep their identities confidential in accordance with paragraph 15 of the MICI-IDB Policy. During the dialogue stage, the complainants were represented by Ariel Mora Fallas, who was not part of the group of Requesters and who formally informed the MICI that his identity did not need to be protected.

The Request describes potential harm to the living conditions of the residents of three communities (Ujarrás and Salitre, which are Indigenous territories, and Bajo Remolino) stemming from the extraction and transport of materials for the works on Roads 6-03-008 and 6-03-035, which are part of the cantonal road improvement program financed by the IDB.

Specifically, the Requesters allege potential harm on two key fronts. The first concerns adverse impacts on access roads leading to the Salitre and Ujarrás Indigenous territories, which left those communities completely isolated. They point out that poor road conditions damaged public and private vehicles, hampering emergency vehicles’ access to the communities, and created tensions with public transportation services, adversely affecting residents’ livelihoods (activities such as agriculture, tourism, and service delivery) since their communities were not freely accessible.

Second, the Request describes harm experienced by the residents of Bajo Remolino resulting from the continuous operation of a breaker used to process material for the works on the aforementioned roads. They claim that this situation caused health problems in the community due to the lack of sleep, emotional exhaustion, and increased noise and dust, as well as adverse impacts on pets and livestock, whose normal behaviors were disrupted. They also allege that the access roads leading to the community were damaged.

Lastly, the Requesters say there has been a lack of public information on the projects, their hours of operation, and the duration of the works, as well as a lack of meaningful consultation of the affected parties pursuant to Bank policies. It should be noted that the Requesters reported that the aforementioned project impacts intensified or worsened as a direct result of the COVID-19 pandemic and the measures instituted to combat the disease.

The Request was registered on 12 August 2021, declared eligible on 14 August, and transferred to the Consultation Phase at the behest of the Requesters. During the initial assessment, the MICI team determined that conditions were in place to initiate a dispute resolution process.

On 14 December 2021, based on the progress made over time at the plenary session and bilateral meetings, an Agreement was reached establishing a set of measures intended to address the problems described in the Request. The Agreement focuses on repairing and improving four roads in the Cantonal Road Network of Buenos Aires identified during the Consultation Phase Process.

This report reflects monitoring activities and progress toward fulfilling the Agreement for the period from February 2023 to January 2024. During the period of analysis, constant communication has been maintained between the MICI and the Parties, and a meeting of the Agreement Monitoring Committee was held whereby a new participatory monitoring plan and new timeline were developed for effective and total fulfillment of the MICI Agreement.

In addition, the final public tender process concluded satisfactorily, allowing the start of outstanding works that are expected to be completed during the first quarter of 2024. Additionally, pursuant to Clause 1.3 of the Agreement, on 21 December 2023, the works on road 6-03-173 were completed to the satisfaction of all the Parties, thus bringing fulfillment of the agreement to 83%.

It is important to point out both the enduring interest of all Parties in ensuring effective and total fulfillment of the Agreement and the transparent and open communication that has characterized the Request throughout the dialogue and monitoring stages.

As stipulated in paragraph 35 of the MICI Policy, the MICI will continue to report annually to the IDB Board of Executive Directors through the Monitoring Reports.

I. BACKGROUND¹

- 1.1 The “Cantonal Road Network Program II” (operation CR-L1065; the “program”) is a sovereign guaranteed investment loan approved by the Board of Executive Directors on 20 March 2018 for a total of US\$152,036,000 (US\$144,036,000 from the Bank with the remaining US\$8,000,000 as a local counterpart contribution). The guarantor of the operation is the Republic of Costa Rica, and the executing agency is the Ministry of Public Works and Transportation (MOPT). According to Bank information, the execution period is set to be five years from the effective date of the loan contract. As of this writing, 37.7% of the operation’s proceeds have been disbursed.²
- 1.2 The program’s general objective is to contribute to productivity growth and poverty reduction in Costa Rica by facilitating closer integration between production and consumption areas and improving the population’s access to public and social services. Its specific objective is to improve the quality of the Cantonal Road Network through: (i) road rehabilitation and maintenance works that include a climate change adaptation component, which will result in shorter travel times and lower operating costs; and (ii) strengthening of the institutions responsible for road network management.
- 1.3 The complaint received by the Independent Consultation and Investigation Mechanism (MICI) concerns works related to projects under the “PRVC-II-60-LPI-O-2019 – Improvement and Rehabilitation Works for Seven Roads in the Cantonal Road Network” contract (known as “Package 4”), which are being executed in the canton of Buenos Aires, province of Puntarenas. These works were included in the program sample.
- 1.4 On 23 July 2021, the MICI was contacted by a group of 28 residents of the canton of Buenos Aires, province of Puntarenas, Costa Rica, raising environmental and social concerns related to the MICI’s mandate. The Requesters asked the MICI to keep their identities confidential in accordance with paragraph 15 of the MICI-IDB Policy. During the dialogue phase, the complainants were represented by Ariel Mora Fallas, who was not part of the group of Requesters and who formally informed the MICI that his identity did not need to be protected.
- 1.5 The Request describes potential harm to the living conditions of the residents of three communities (Ujarrás and Salitre, which are Indigenous territories, and Bajo Remolino) stemming from the extraction and transport of materials for the works on Roads 6-03-008 and 6-03-035, which are part of the road program financing by the IDB.
- 1.6 Specifically, the Requesters divide the potential harm into two main areas. The first encompasses the adverse impacts on the access roads leading to the Salitre and Ujarrás Indigenous territories, which are not directly part of the program but were used to transport material for use in the works on Roads 6-03-008 and 6-03-035. The second concerns the adverse environmental and social impacts stemming from the installation of a breaker in the community of Bajo Remolino, which was used to break rocks for construction works on the aforementioned roads.

¹ Information taken from the Bank’s website and public documents on related operations.

² Information taken from the loan proposal.

- 1.7 The complaint received by the MICI also includes allegations of a lack of public information on the projects, their hours of operation, and the duration of the works. The Requesters also allege that the consultation processes were not meaningful and did not include the residents of the areas directly and indirectly affected by the program.
- 1.8 On 14 October 2021, the MICI issued an Eligibility Memorandum declaring the Request eligible and officially transferring it to the Consultation Phase, at the behest of the Requesters.
- 1.9 During the Consultation Phase Process, the MICI convened and facilitated seven bilateral meetings between the Parties and three plenary dialogue sessions with the participation of the MOPT, IDB Management, and the Requesters. In parallel with the bilateral meetings and plenary sessions, MICI staff remained in constant communication with the representatives of each Party.
- 1.10 The plenary sessions were attended by a representative of the Office of the Ombudsperson of the Republic of Costa Rica, participating as an observer, and the complainants signatory to the original Request. As provided in paragraph 15 of the MICI-IDB Policy, the complainants who attended these sessions remained anonymous and did not appear on camera, and their participation was limited to attending the sessions and consulting with their Representative, as necessary.
- 1.11 On 14 December 2021, based on the incremental progress that had been made in the plenary sessions and bilateral meetings, an Agreement was reached establishing a set of measures intended to address the problems described in the Request. The Agreement, which is included in Annex I to this report, describes in technical detail the actions that the executing agency would take to address each of the four affected roads and the startup dates and estimated duration of each work. Likewise, the Agreement contains clauses designed to safeguard the administrative and bidding process involved in work on some of the roads; establish a committee and a strategy for monitoring the agreements; and agree on how the results of the dispute resolution process would be disseminated given the confidentiality of the final Agreement.
- 1.12 Based on the Agreement and as requested by the Parties, the MICI proposed a Monitoring Plan to the Board of Executive Directors for the purpose of monitoring the established Agreement. The Monitoring Plan was approved by the IDB Board of Executive Directors, via short procedure, on 26 January 2022.
- 1.13 The First Monitoring Report on the Agreements, corresponding to the period from February 2022 to January 2023, was distributed to the IDB Board of Executive Directors on 25 January 2023. That report highlighted 67% fulfillment of the MICI Agreement on time and to standard, the corresponding monitoring having been carried out by means of the established Agreements Monitoring Committee and a visit to the program's area of influence.
- 1.14 However, the report also indicated that parts of the Agreement were still pending completion, as the bidding process that would allow execution of the works indicated in clauses 1.3 and 1.4 was delayed. Although such delays had been considered and result from interest in having a bidding process consistent with the law and IDB policies, they exceeded the pessimistic scenario identified in the Agreement, resulting in continuation of the problems identified by the Requesters in two of the four roads.

- 1.15 Background information on case MICI-BID-CR-2021-0171 and public documentation prepared during the process can be consulted in the [Case File](#) in the MICI Public Registry.³

II. MICI POLICY AUTHORITY FOR THE MONITORING OF AGREEMENTS

- 2.1 Paragraph 35 of the MICI-IDB Policy (document MI-47-6) stipulates that if the Parties reach an agreement during the Consultation Phase process, the MICI will prepare in collaboration with them a plan and timetable for monitoring compliance with the agreement reached, where appropriate. The term of the plan will not exceed five years.
- 2.2 In accordance with paragraph 35 of the MICI-IDB Policy, the MICI will submit an annual report to the Board of Executive Directors for information.

III. ACTIONS TAKEN IN THE REPORTED MONITORING PERIOD

- 3.1 During the second year of monitoring, which covers the period from February 2023 to January 2024, the following activities were undertaken:
- 3.2 **Meetings with the Parties.** The MICI held several bilateral meetings with the MOPT, IDB Management, and the Requesters. The purpose of these meetings was to analyze the status of commitments, identify challenges and possible actions to address them, and determine how each of the actors perceives the monitoring of the Agreements. These meetings were held virtually or by telephone. Similarly, there was ongoing contact with the Parties through *WhatsApp* messages and emails.
- 3.3 **Fourth Session of the Agreement Monitoring Committee.** On 16 February 2023, the MICI facilitated the Fourth Session of the Agreement Monitoring Committee, the objective of which was to update the Committee on the status of the second bidding process initiated pursuant to clauses 1.3 and 1.4 of the MICI Agreement. During the Session, the executing agency reported that the second bidding process had failed because only one company had submitted a bid while the process required the submission of at least three bids.
- 3.4 As an alternative, based on prior coordination between IDB Management and the MOPT, and due to the IDB's high integrity and transparency requirements, it was indicated that the only alternative that would allow full compliance with the MICI Agreement would be to conduct a national competitive bidding process. Although this process allows companies from all over the country to participate, it has no requirements in terms of the number of bidders and could improve the quality of the bids and the work, it takes approximately nine months, followed by three months to execute the works. This meant that the works would not be completed until the first quarter of 2024.
- 3.5 **New participatory monitoring plan.** Due to the imminent and new delay that would affect the works considered in clauses 1.3 and 1.4 of the Agreement, the Parties developed a new participatory monitoring plan that established joint

³ The public documents corresponding to the case can be consulted in the links section.

oversight of the bidding process through frequent updates and weekly meetings in the field during execution of the works.

- 3.6 **Award of the works.** Once the national competitive bidding process and the subsequent internal IDB approval process were completed, on 25 August 2023 the MOPT and the contractor company that won the bidding process signed the respective contract.
- 3.7 **Startup of pending works.** On 23 October 2023, through events open to the public, the works indicated in clauses 1.3 and 1.4 were simultaneously launched. Similarly, with the startup of outstanding works, the participatory monitoring plan was initiated, for which weekly meetings were established between MOPT staff and representatives of the Requesters. The MICI is updated simultaneously regarding the results of the weekly meetings during which the questions and concerns of members of the community are addressed and immediate measures are even agreed upon to resolve them.
- 3.8 **Clause 1.3 of the Agreement.** On 21 December 2023, through an on-site ceremony, the executing agency delivered Road 6-03-173 to the community with the agreed upon improvements. In turn, IDB Management provided the MICI with a document with technical validation of the measures implemented on the road, confirming their compliance with the criteria established in the MICI Agreement. The MICI was able to record the satisfaction of all Parties with the final result of the works.

Road 6-03-173 after implementation of the agreed upon measures.



Source: Ministry of Public Works and Transportation

- 3.9 The contract for execution of the outstanding works allows the company 120 calendar days (plus accommodations for bad weather or other contingencies), which would make it possible to verify compliance with clause 1.4 and the entirety of the MICI agreement in the first quarter of 2024.

IV. CONCLUSIONS AND NEXT STEPS

- 4.1 This report reflects the monitoring tasks undertaken and progress made in implementing the Agreement during the period from February 2023 to January 2024. During the period under analysis, constant communication has been maintained between the MICI and the Parties, and a Session of the Agreement Monitoring Committee was held whereby a new participatory monitoring plan and new timeline were developed for the effective and full implementation of the MICI Agreement.
- 4.2 In addition, there was a final competitive bidding process that concluded satisfactorily and allowed for the startup of outstanding works that are expected to be completed by the first quarter of 2024. In turn, pursuant to clause 1.3 of the Agreement, on 21 December 2023, the works were completed on Road 6-03-173 to the satisfaction of all the Parties, bringing fulfilment of the Agreement to 83%.
- 4.3 However, full compliance with the Agreement was also subject to delays that although beyond the control of the Parties and due to interest in making the bidding process integrated and transparent, exceeded the revised deadline reported in the First Monitoring Report of the Agreements and delayed implementation of some of the measures agreed upon to address the problems raised by the Requesters.
- 4.4 It is essential to highlight both the enduring interest of all Parties in ensuring effective and full implementation of the Agreement, as well as the transparency and open communication that have characterized the Request throughout the dialogue and monitoring stages.
- 4.5 The MICI will continue to carry out the monitoring activities planned to track progress made in implementing the Agreement and will continue to report to the Board of Executive Directors through the annual Monitoring Reports, as established in paragraph 35 of the MICI-IDB Policy.