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AND INVESTIGATION MECHANISM

COLOMBIA

MICI-BID-CO-2022-0192
ASSESSMENT REPORT

FIRST LINE OF THE BOGOTA METRO – SECTION 1 – REQUEST V
(CO-L1234) (4572/OC-CO)

UNDER THE CONDITIONAL CREDIT LINE FOR INVESTMENT PROJECTS
(CCLIP) “FIRST LINE OF THE BOGOTA METRO”
(CO-00003)

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This document is being made publicly available simultaneously with its distribution to the Board for information.

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LINKS	
1.	Policy of the Independent Consultation and Investigation Mechanism (MICI-IDB Policy/document MI-47-8) https://www.iadb.org/document.cfm?id=EZSHARE-525549286-365
2.	Guidelines for the Consultation Phase https://www.iadb.org/document.cfm?id=EZSHARE-525549286-333
3.	Public registry file for Request MICI-BID-CO-2022-0192 https://www.iadb.org/en/mici/complaint-detail?ID=MICI-BID-CO-2022-0192
4.	Public registry file for Request MICI-BID-CO-2022-0184 https://www.iadb.org/en/mici/complaint-detail?ID=MICI-BID-CO-2022-0184
5.	Eligibility Memorandum https://www.iadb.org/document.cfm?id=EZSHARE-1810218382-95
6.	Loan proposal for the First Line of the Bogota Metro – Section 1 (CO-L1234) https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-980467396-81
7.	Environmental and social management report for the First Line of the Bogota Metro – Section 1 (CO-L1234) https://www.iadb.org/Document.cfm?id=EZSHARE-980467396-80
8.	Resettlement plan for the First Line of the Bogota Metro – Section 1 (CO-L1234) https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1375452094-176

EXECUTIVE SUMMARY

Bogota, Colombia is one of the most demographically dynamic capital cities in the region. According to official data, it has over 10 million inhabitants and a high rate of annual urban growth, and it concentrates between 25% and 30% of the country's gross domestic product (GDP). This situation poses a challenge in terms of mobility and urban development.

In this context, the Inter-American Development Bank (hereinafter "IDB" or "Bank") has sought to support the consolidation of a quality public transportation system for Bogota, including the First Line of the Bogota Metro ("PLMB") and three new Transmilenio trunk lines. For such purposes, the Bank's involvement has taken the form of a Conditional Credit Line for Investment Projects (CCLIP), which will allow the Bank's financing to be divided between various operations and improve the programming of resources. The CCLIP entitled "Conditional Credit Line for Investment Projects for the First Line of the Bogota Metro – Section 1" (CO-O0003), currently in execution, was approved by the Bank's Board of Executive Directors on 18 July 2018 for a total amount of US\$600 million. The objective of the operation is to contribute to Bogota's economic growth and productivity, improving public transportation and the district's urban environment by developing and implementing the PLMB.

Accordingly, the first operation under this CCLIP is the project "First Line of the Bogota Metro – Section 1" (CO-L1234) (hereinafter, the "Project"), a sovereign guaranteed loan operation approved by the Bank's Board of Executive Directors on 31 July 2018, with the Republic of Colombia and the Bogota Capital District as guarantors.

The objective of the operation is to support financing for the start-up of works and technical assistance for the PLMB through two components: (1) preparatory activities, civil works, and inspections; and (2) environmental and social management.

On 12 August 2022, the MICI received a Request from three individuals who hold an equity interest in a company consisting of an automotive service station (under the registered name of Gas Vehicular Comprimido de Colombia, S.A.S.) operating in the neighborhood of San Bernardo in central Bogota, Colombia (hereinafter, "the Group of Requesters"). This information, which is public, is available at the MICI's Public Registry (file corresponding to Request [MICI-BID-CO-2022-0192](#)).

The Request describes potential harm to the Group of Requesters' living conditions and property stemming from the expropriation of the land where their automotive service station was located for construction of the Project. In addition, according to the Request, the entire process has been characterized by a lack of public information on the Project and contradictions in the communications with the executing agency, which have made a potential resolution more problematic.

Specifically, the Requesters allege that the assessment of their property was deficient inasmuch as it failed to consider the investment made to install the infrastructure and underground works required to build a service station. This has allegedly resulted in a lower compensation value which only reflects the parcel of land and visible infrastructure.

They add that the amount granted for replacement of the property under expropriation is not consistent with market values, failing to restore the Requesters to their previous economic situation. Thus, they have been unable to purchase a similar property within Bogota and are being forced to relocate to another city. Along these lines, the Requesters allege additional economic harm inasmuch as in their statement of income for 2021 from the service station

in question, they were required to pay an amount on the value of the expropriated property as part of the occasional gains tax.

Lastly, with respect to the MICI process, the Requesters expressed their wish for the MICI to handle their Request, if eligible, through both phases of the MICI process: the Consultation Phase and the Compliance Review Phase.

On 7 October 2022, the Request was declared eligible and transferred to the Consultation Phase.

In light of the technical nature of the allegations set out in the original Request, the divergent viewpoints of the Parties, and the Parties' interactions prior to the determination of the Request's eligibility, the MICI proposed hiring an independent and impartial entity to issue a comprehensive technical report on the original appraisal of the property expropriated from the Requesters. The objective was to use this technical report as a key input for a dialogue aimed at searching for a consensus-based solution by determining the presence (or absence) of conditions for conducting a dispute resolution process.

The Parties agreed to the proposal and actively participated both in drafting the Terms of Reference that were used to hire the independent entity and in preparing the list of entities to be invited to submit bids. Subsequently, the MICI requested bids from five entities. Based on their proposals, terms, and satisfaction of the established requirements, the MICI selected the proposal submitted by the Sociedad Colombiana de Ingenieros (Colombian Society of Engineers) (hereinafter, "SCI"). The SCI, founded in 1887 and declared a national government advisory center under Law 46 of 1904, is a nonprofit academic, scientific, and guild organization tasked with the mission of improving the quality of life and wellbeing of humanity by advancing science and engineering.

On 20 March 2023, as an input for preparation of the comprehensive technical report, the MICI accompanied SCI specialists in Bogota, Colombia, on a visit to the property underlying the Request. Following the visit and considering the technical complexity of the report to be produced, the SCI asked the MICI for an extension of the deadline for delivering the technical report, which was ultimately set for 27 April 2023.

As has been the case in other MICI assessment processes, the Consultation Phase was transferred to Bogota on 2 May 2023 and facilitated work sessions among the Parties aimed at exchanging views on the document prepared by the SCI. The SCI participated in these work sessions, presenting the contents of its comprehensive technical report and addressing questions and comments from the three Parties to the MICI process.

At the conclusion of the work sessions, the Parties agreed to meet again in Bogota on 21 and 22 June 2023 to continue to examine scenarios for resolving the dispute and to facilitate payment of the components still owed to the Group of Requesters for the expropriation and their resettlement.

On 14 June 2023, during a preparatory bilateral meeting, EMB informed the MICI that it still did not have an official position to present during the meeting scheduled for 21 June. Based on the foregoing and since a pretrial mediation process at the Attorney General's Office was still pending, the MICI decided to postpone the scheduled meeting.

As a result of the numerous exchanges with the Requesters, Management, and the executing agency, and the two visits to the Project's area of influence, the Consultation Phase team identified a set of factors that could affect the development of a dispute resolution process facilitated by the MICI. These factors include: the high financial

compensation amount claimed, the conclusions of the SCI's comprehensive technical report, the changes in EMB's land management team, the time elapsed since the Group of Requesters raised its concerns, the pretrial mediation process underway, and the local elections in Bogota in 2023.

However, as of the date of this report, none of the Parties has indicated to the MICI that it wishes to give up the possibility of resolving the dispute through facilitated dialogue. At the same time, the mediation hearing is still pending, along with other contextual factors that will develop in the short term. In addition, the exchanges and work sessions between the Parties have been respectful, sincere, and useful, resulting in procedural agreements. Therefore, the MICI considers it prudent to continue making efforts with the three Parties to the process to create agreement scenarios that can resolve the dispute during the Consultation Phase process.

Based on the identified factors and pursuant to paragraph 29(a) of the MICI-IDB Policy, it is concluded that conditions are present for initiating a Consultation Phase process.

I. BACKGROUND¹

A. Geographic and social context of the project

- 1.1 Bogota, Colombia is one of the most demographically dynamic capital cities in the region. According to official data, it has over 10 million inhabitants and a high rate of annual urban growth, and it concentrates between 25% and 30% of the country's gross domestic product (GDP). This situation poses a challenge in terms of mobility and urban development.
- 1.2 At the end of the last century, Bogota was one of the first cities to propose an integrated public transportation system for passengers through the construction of a network of trunk line corridors under the Transmilenio project, based on rapid transit buses, which is currently in operation. Along with the foregoing, the city has sought to make other efforts to improve mobility, making public transportation the primary mode of transportation for the people of Bogota, followed by trips using non-motorized methods (bicycles) and private transportation, whether by motorcycle or automobile.
- 1.3 Despite this, while demand for mass transit is high, the use of public transportation has been falling in recent years, according to information from the Bogota government, primarily due to saturation, an increase in travel times, and lack of coverage in various areas in the city.
- 1.4 For decades, both the national and district governments have considered the need for a structural axis through the integrated public transportation system, as well as for sustained investments to expand the mass transit system, improve the quality of service, discourage the use of private transportation, and coordinate urban development with investments in transportation. In this regard, the District Development Plan (PDD) 2016-2019 "Bogota Mejor para Todos" (A better Bogota for all) includes the program "Mejor Movilidad para Todos" (Better mobility for all), where investments in the Transmilenio and First Line of the Bogota Metro (PLMB) are central. Moreover, at the time, the National Development Plan 2014-2018 incorporated the mobility strategy.

B. The Project

- 1.5 In this context, the Inter-American Development Bank (hereinafter "IDB" or "Bank") has sought to support the consolidation of a quality mass transit system for Bogota, including the PLMB and three new Transmilenio trunk lines. For such purposes, the Bank's involvement has taken the form of a Conditional Credit Line for Investment Projects (CCLIP), which will allow the Bank's financing to be divided among various operations and improve the programming of resources. The CCLIP entitled "Conditional Credit Line for Investment Projects for the First Line of the Bogota Metro – Section 1" (CO-O0003), currently in execution, was approved by the Bank's Board of Executive Directors on 18 July 2018 for a total amount of US\$600 million. The objective of the operation is to contribute to Bogota's economic growth and productivity, improving public transportation and the district's urban environment by developing and implementing the PLMB.

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

- 1.6 The first individual operation under this CCLIP is the project “First Line of the Bogota Metro – Section 1” (CO-L1234) (hereinafter, the “Project”), which is a sovereign guaranteed loan operation approved by the Bank’s Board of Executive Directors on 31 July 2018, with the Republic of Colombia and Bogota Capital District as guarantors. It should be noted that the total cost of this first operation is equivalent to US\$196 million: US\$70 million from the IDB’s Ordinary Capital and the remaining US\$126 million in parallel financing from other multilateral banks such as the World Bank and the European Investment Bank. The executing agency for this operation, which is currently in execution, is Empresa Metro de Bogotá S.A. (hereinafter “EMB” or “executing agency”), created by the district authorities as a corporation entirely with public capital.
- 1.7 The objective of the operation is to support financing for the start-up of works and technical assistance for the PLMB through two components:

Component 1. Preparatory activities, civil works, and inspections. This component will finance the designs for the First Line of the Bogota Metro, train yard construction, works for the viaduct, transfer of utility networks, demolition, traffic management plans, activities to reconfigure roadways temporarily or permanently along the metro’s route, procurement and management of land, and inspections.

Component 2. Environmental and social management. This component aims to provide technical assistance during development of the project, such as supporting and strengthening EMB during the execution phase of this first individual operation, including a study of the metro’s fare collection system and identification of the most appropriate system to ensure fare integration.
- 1.8 According to the Bank’s information, the analysis of the project’s alternatives concluded that the best option, considering construction, financial, urban, and environmental issues, consisted in having an elevated metro following the path of strategic road axes in southwest Bogota, connecting with Transmilenio’s route on Avenida Caracas between Calles 1 and 72, which is the corridor with the heaviest demand in the city.
- 1.9 Considering the magnitude of the works and the associated risks, the Bank classified the project, in accordance with the Environment and Safeguards Compliance Policy (Operational Policy OP-703), as a category “A” operation, given the potential impacts of large infrastructure works, primarily including effects on heritage; disruptions to pedestrian and vehicle mobility; impacts on business due to decreased access; alteration of the landscape; and changes in environmental noise levels. Consequently, to address this situation, the IDB reports on the creation of specific environmental and social analyses and studies, including an environmental and social impact assessment (ESIA), environmental and social management plans (ESMPs), a social engagement strategy, and a resettlement plan (hereinafter, the “Resettlement Plan”).
- 1.10 With respect to the issues of resettlement (the grounds for the claim with the MICI), the project generally identified the need to carry out three types of interventions in the urban environment: (i) procuring property to create space for the construction of the viaduct and the stations; (ii) managing publicly owned land; and (iii) addressing and mitigating the effects on social units of informal economic activities in public spaces.

- 1.11 Specifically, in accordance with the loan proposal and the project's ESIA, to build the metro and its stations, a need was identified to physically and/or economically displace 2,895 units, which required purchasing nearly 1,474 properties.² As of the date of issuance of this document, IDB Management reports that 1,267 offers to purchase have been made and that only 10% have resulted in expropriation resolutions.
- 1.12 Given this situation, the IDB reports that all of the mitigation actions considered in the Resettlement Plan would be undertaken in accordance with the standards of the Involuntary Resettlement Policy (Operational Policy OP-710), and that they include a series of programs created in order to supplement the processes of voluntary transfer and expropriation, including: (i) a real estate property replacement program to assist with the search and purchase of alternative properties; (ii) a program to reestablish social conditions that seeks to provide assistance for the resumption of economic activities; and (iii) a program to reestablish economic conditions, targeting the vulnerable population.

C. The Request

- 1.13 On 12 August 2022, the MICI received a Request from three individuals who hold an equity interest in a company consisting of an automotive service station (under the registered name of Gas Vehicular Comprimido de Colombia, S.A.S.) operating in the neighborhood of San Bernardo in central Bogota, Colombia (hereinafter, "the Group of Requesters"). This information, which is public, is available at the MICI's Public Registry (file corresponding to Request [MICI-BID-CO-2022-0192](#)).
- 1.14 The Requesters originally contacted the MICI in September 2021, and their complaint was processed under number [MICI-BID-CO-2021-0174](#). In the Registration phase, the MICI determined that there had been no prior contact with Management to address the issues raised in the Request. In order to enable that interaction to proceed, it declined to register the complaint.³ Nevertheless, the Requesters decided to return to the MICI nearly one year later inasmuch as they continued to have concerns despite having gone to Management.
- 1.15 The Request describes potential harm to the Group of Requesters' living conditions and property stemming from the expropriation of the land where their automotive service station was located for construction of the Project. In addition, according to the Request, the entire process has been characterized by a lack of public information on the Project and contradictions in the communications with the executing agency, which have made a potential resolution more problematic.
- 1.16 Specifically, the Requesters allege that the assessment of their property was deficient inasmuch as it failed to consider the investment made to install the infrastructure and underground works required to build a service station. This has allegedly resulted in a lower compensation value that only reflects the parcel of land and visible infrastructure.

² According to Management's response (see links in this document), the updated number of properties to be acquired has increased from 1,421.

³ This complaint reached the MICI prior to the activation in November 2021 of Management's Environmental and Social Grievances Protocol, so it was submitted to the project team only.

- 1.17 They add that the amount granted for replacement of the property under expropriation is not consistent with market values, failing to restore the Requesters to their previous economic situation. Thus, they have been unable to purchase a similar property within Bogota and are being forced to relocate to another city.
- 1.18 Along these lines, the Requesters allege additional economic harm inasmuch as in their statement of income for 2021 from their service station, they were required to pay an amount on the value of the expropriated property as part of the occasional gains tax.
- 1.19 In addition, they allege that despite having informed the executing agency of the underground structures, the assessment did not specify that it would be a requirement to remove tanks and other material that had been in contact with fuel, which are now presumably being cataloged as an “environmental liability” that must be addressed by the Requesters. They also point out inconsistencies on this matter with respect to what they were told by EMB in 2021, when in a response to a request for information on the dismantling of the service station, it had been established that dismantling costs would be assumed directly by the executing agency.
- 1.20 The Request further notes that in early 2022 an agreement was reached with the executing agency recognizing the economic costs of dismantling and transferring items and equipment, as well as the amounts stemming from the loss of economic activity; EMB presumably changed its mind in June that year, refusing to recognize these direct costs.
- 1.21 With regard to the previous contact with Management, following the decision not to register the Requesters' original complaint in 2021, the MICI provided the Requesters with the contact information for the IDB project team and sent the information from the Request to the project team. The current Request includes information on the contact that has been maintained since then both with Management and with EMB, including phone calls and in-person and virtual meetings. However, the Requesters indicate that despite having been addressed, their original concerns not only persist but have deepened due to the alleged environmental liability, which is why they decided to return to the MICI.
- 1.22 Lastly, with respect to the MICI process, the Requesters expressed their wish for the MICI to handle their Request, if eligible, through both phases of the MICI process: the Consultation Phase and the Compliance Review Phase.

D. MICI process up to eligibility determination

- 1.23 Table 1 shows the main actions performed by the MICI from the Request intake to eligibility determination.

Table 1. Chronology of MICI actions up to eligibility determination

Date	Actions
20 July	Video call with one of the Requesters
12 August	Request received
18 August	Request registered and notified to the Requesters and IDB Management
18 August - 3 October	Document review and desk work
14 September	Video call with the IDB project team
14 September	Phone call with Requester
19 September	Management Response received
4 October	Video call with Requester
6 October	Video call with IDB project team
7 October	Eligibility Memorandum issued

II. CONSULTATION PHASE

A. Regulatory framework

- 2.1 The MICI's Consultation Phase process is governed by the MICI-IDB Policy (document MI-47-8), which was approved by the IDB Board of Executive Directors on 16 December 2014 and updated in April 2021. Section H of the Policy sets out the processes, stages, and time frames to be observed when a case is processed under the Consultation Phase. The "Guidelines for the Consultation Phase" (document MI-74) discuss the provisions of that section in detail.
- 2.2 The Consultation Phase provides an opportunity for the Parties to address the issues raised by the Requesters in a flexible, consensus-based manner, based on a set of approaches that promote unbiased and equitable treatment for all Parties involved in the process. The Guidelines for the Consultation Phase seek to facilitate the effective application of Section H of the MICI-IDB Policy, especially paragraphs 24 to 35, by supplementing its provisions and putting them into practice (document MI-74).
- 2.3 The Consultation Phase consists of three sequential stages: assessment, Consultation Phase process, and monitoring. The Policy establishes the purpose and timeframes for each stage. The objective of the assessment stage is to determine whether conditions are present for initiating a dispute resolution process. This stage is designed to achieve an in-depth understanding of the context of the operation that gave rise to the Request and the central issues that the Parties could address in a potential Consultation Phase process. Views are exchanged with the Requesters, the executing agency, and Management to determine whether or not it is viable to initiate that process. Lastly, individuals who could represent the Parties are expected to be identified, along with their methodological preferences for a potential process.
- 2.4 The purpose of the Consultation Phase process is for the Parties to reach an agreement that deals with the issues raised in the Request and addressed in the MICI process, reinforcing the Bank's commitment to comply with its Relevant Operational Policies.

B. Assessment stage timeline

- 2.5 Paragraph 29 of the MICI-IDB Policy sets a maximum term of 40 business days for the assessment stage as of the date when a Request is declared eligible, which in this case was 7 October 2022. However, in light of the situation created by the COVID-19 pandemic and the restrictions imposed to mitigate it, the MICI asked the IDB Board of Executive Directors for its no objection to extending the timeframes under the MICI-IDB Policy in general should the need arise. This request from the MICI was approved on 2 April 2020.

Table 2. MICI actions during the assessment stage

Date	Actions
2022	
7 October	Eligibility Memorandum issued
10-14 October	Document review and contextual analysis
17 October	Bilateral meeting with Requesters
19 October	Bilateral meeting with executing agency and IDB Management
26 October	Request for proposals to prepare a technical report from impartial entities
2023	
14 February	Hiring of Sociedad Colombiana de Ingenieros (SCI)
20 March	Consultation Phase mission to assist in preparing the comprehensive technical report
27 April	Comprehensive technical report issued by the SCI
2-5 May	Consultation Phase assessment mission to Bogota
3 May	Bilateral meeting with Requesters
3 May	Bilateral meeting with executing agency and IDB Management
4 May	Work session by the Parties
14 June	Bilateral meeting with executing agency and IDB Management
15 June	Bilateral meeting with Requesters
14 July	Consultation Phase Assessment Report issued

C. Assessment methodology

- 2.6 Upon the issuance of the Eligibility Memorandum and in keeping with the provisions of the MICI-IDB Policy and the Guidelines for the Consultation Phase, the Consultation Phase initiated an intensive process of document review, interviews, bilateral meetings, and exchanges of information with the Parties. These activities were primarily aimed at examining the context of the Project, analyzing the feasibility of a consultation process in conjunction with the Parties, and identifying methodological preferences.
- 2.7 Exchanges of information and bilateral meetings were conducted virtually, through the Microsoft Teams platform. Telephone calls, WhatsApp messages, and emails were also used to maintain continuous contact with the Parties. These efforts were aimed at learning the views of the Parties and sharing practical and analytical tools to maximize their participation during the assessment stage and, as the case might be, in a Consultation Phase process.

- 2.8 In addition, a number of Project documents were analyzed, including the loan proposal, the loan contract, the environmental and social management report, and the resettlement plan. Relevant contextual information was also analyzed, such as documents on the Group of Requesters' expropriation and resettlement procedure, and communications between the Parties prior to the start of the Consultation Phase.
- 2.9 **Comprehensive technical report.** In light of the technical nature of the allegations set out in the original Request, the divergent viewpoints of the Parties, and the Parties' interactions prior to the determination of the Request's eligibility, the MICI proposed hiring an independent and impartial entity to issue a comprehensive technical report on the original appraisal of the property expropriated from the Requesters. The objective was to use this technical report as a key input for a dialogue aimed at searching for a consensus-based solution by determining the presence (or absence) of conditions for conducting a dispute resolution process.
- 2.10 The Parties agreed to the proposal and actively participated both in drafting the Terms of Reference that were used to hire the independent entity and in preparing the list of entities to be invited to submit bids. Subsequently, the MICI requested bids from five entities. Based on their proposals, terms, and satisfaction of the established requirements, the MICI selected the proposal submitted by the Sociedad Colombiana de Ingenieros (Colombian Society of Engineers) (hereinafter, "SCI"). The SCI, founded in 1887 and declared a national government advisory center under Law 46 of 1904, is a nonprofit academic, scientific, and guild organization tasked with the mission of improving the quality of life and wellbeing of humanity by advancing science and engineering.
- 2.11 **Joint database.** In order to facilitate the transfer of information that the SCI would need for the issuance of its technical report, the MICI created, administered, and supervised a database on the Microsoft Teams platform to which both the Parties and the SCI had access. The database centralized all the documentary information that the SCI used to prepare its technical report, enabling all Parties to be aware at all times of all the information provided and where it originated.
- 2.12 In addition to ensuring the integrity of the technical report, the database guaranteed the impartiality of the process by making it possible to avoid any type of unilateral exchange of information between the Parties and the SCI.
- 2.13 **Visits to the Project's area of influence.** On 20 March 2023, as an input for preparation of the comprehensive technical report, the MICI accompanied SCI specialists in Bogota, Colombia, on a visit to the property underlying the Request. Following the visit and considering the technical complexity of the report to be produced, the SCI asked the MICI for an extension of the deadline for delivering the technical report, which was ultimately set for 27 April 2023.
- 2.14 As has been the case in other MICI assessment processes, the Consultation Phase was transferred to Bogota on 2 May 2023 and facilitated work sessions among the Parties to exchange views on the document prepared by the SCI. The SCI participated in these work sessions, presenting the contents of its comprehensive technical report and addressing questions and comments from the three Parties to the MICI process.
- 2.15 At the conclusion of the work sessions, the Parties agreed to meet again in Bogota on 21 and 22 June 2023 to continue to examine scenarios for resolving the dispute

and to facilitate payment of the components still owed to the Group of Requesters for the expropriation and their resettlement.

- 2.16 On 14 June 2023, during a preparatory bilateral meeting, EMB informed the MICI that it still did not have an official position to present during the meeting scheduled for 21 June. Based on the above and since a pretrial mediation process at the Attorney General's Office was still pending, the MICI decided to postpone the scheduled meeting.

III. ANALYSIS

A. The issues and the current context

- 3.1 **The issues.** Based on the Request, the supplementary information, and the analysis performed during the assessment stage, the main issue behind the filing of the Request is a manifest disagreement with the appraisal that was made of the Group of Requesters' real estate property for purposes of expropriation and calculation of the financial compensation due to them.
- 3.2 **Background and current context.** The Group of Requesters originally contacted the MICI in September 2021, and their complaint was processed under number [MICI-BID-CO-2021-0174](#). In the Registration phase, the MICI determined that there had been no prior contact with Management to address the issues raised in the Request. In order to enable that interaction to proceed, it declined to register the complaint. However, the Requesters decided to return to the MICI nearly one year later inasmuch as they continued to have concerns despite having gone to Management.
- 3.3 **Request MICI-BID-CO-2022-0184.**⁴ On 29 March 2023, the MICI concluded the processing of a first complaint related to the First Line of the Bogota Metro, having found effective compliance with six Final Agreements. The complaint had been filed in 2022 by 17 residents of Bogota with leases, real estate properties, or businesses on Calle 24 and Avenida Caracas in the Santa Fe neighborhood of downtown Bogota, who alleged potential economic and property damage, as well as harm to their living conditions and health, arising from the resettlement and expropriation processes associated with construction of the Project.
- 3.4 **Mediation process at the Office of the Attorney General.** During a work session facilitated by the MICI in Bogota, in order to prevent the Requesters from losing the possibility of resorting to local courts, EMB informed them of the legal procedure that they would have to undertake to have their allegations heard by the relevant Colombian judicial body. EMB stated that it would not interpret the filing of such claim as an act of bad faith or as incompatible if it were filed before the next work session under the MICI process. The reason for this is that the suggested legal action would entail a pretrial mediation process during which they could continue to analyze potential resolutions to the dispute submitted to the MICI.
- 3.5 On 26 May 2022, the Requesters informed the MICI that they had begun the pretrial process indicated by EMB. Specifically, they confirmed having requested that the Office of the Attorney General initiate an administrative mediation process, as

⁴ The case file for Request MICI-BID-CO-2022-0184 related to the First Line of the Bogota Metro – Section 1 is available in the links section.

a procedural requirement, in order to then be able to go before a judge of the relevant jurisdiction.

B. Views of the Parties

- 3.6 In accordance with the definition set out in the MICI-IDB Policy, the Parties to a Consultation Phase process would be the Requesters, the executing agency, and/or IDB Management.
- 3.7 **Requesters.** Specifically, the Group of Requesters allege that the assessment of their property was deficient inasmuch as it failed to consider the investment made to install the infrastructure and underground works required to build a service station. This has allegedly resulted in a lower compensation value that only reflects the parcel of land and visible infrastructure.
- 3.8 **Executing agency.** The executing agency for the Project is Empresa Metro de Bogotá.
- 3.9 Given the successful dispute resolution process facilitated by the MICI for Request MICI-BID-CO-2022-0184, EMB expressed an interest in repeating the exercise and reaching a consensual agreement that would resolve the issue submitted to the MICI. However, several factors made generating a proposal a considerably more complex exercise than the one performed under the previously resolved Request. These factors included: (1) the size of the expropriated property; (2) the productive activity carried out therein; (3) the complexity of the specialized infrastructure required for performing this productive activity; (4) machinery and equipment that were part of the property but were located underground; and (5) the cost that would be incurred in dismantling the environmental care equipment and machinery.
- 3.10 In view of the foregoing, EMB informed the MICI that it preferred to wait for the SCI to issue its comprehensive technical report before initiating a facilitated dialogue with the Group of Requesters.
- 3.11 **IDB Management.** Like the executing agency and having actively participated in the resolution and closing of the first MICI Request on the Project, Management expressed an interest in resolving the dispute through facilitated dialogue.
- 3.12 From its first contact with the Group of Requesters, Management was in continuous communication with the executing agency in an effort to resolve the dispute directly, prior to intervention by the MICI. As a result of this effort, the Parties held multiple meetings and drafted a preliminary version of the Terms of Reference that were later adapted for the SCI during the assessment stage.
- 3.13 **Factors hindering the conduct of a Consultation Phase process.** In the course of the assessment stage, the facilitation team identified a series of factors that hinder the conduct of a Consultation Phase process. These factors, which gradually became evident during the bilateral discussions with the Parties and as contextual aspects and stakeholder positions were being explored, should be considered when assessing whether recommending the start of a dispute resolution is appropriate.
- 3.14 Below is a description of the main factors that were identified:
- 3.15 Financial compensation amount that would resolve the dispute. Unlike the resettlement cases presented in Request MICI-BID-CO-2022-0184, given the size of the expropriated property in this Request and the complexity of the infrastructure required for the Group of Requesters' productive activity, the financial compensation

amount that would resolve the dispute is considerable. The maximum values authorized so far by the project committee in charge of examining extraordinary situations or compensation amounts exceeding the formulas established in the property management instrument are much lower than the amount claimed by the Group of Requesters before the MICI.

- 3.16 Conclusions of the SCI's comprehensive technical report. As set forth in the Terms of Reference for the SCI's contract, the entity's technical report was expected to provide an amount or range of values as objective criteria that could be used in negotiations aimed at yielding an additional financial compensation for the Group of Requesters. However, in its final report, the SCI indicated that *"given the unverifiability and inadmissibility of the procedures and values reported in the APPRAISAL UNDER REVIEW, these results cannot be expected to produce, for any of the valuation components, even a broad quantification of a possible shortfall in financial compensation."*
- 3.17 The SCI also reported finding procedural errors in the preparation of the original appraisal and identified shortcomings in 27 of the 29 categories reviewed during its analysis.
- 3.18 Changes in EMB's property management team. EMB's lead representative during the successful dispute resolution process under Request MICI-IDB-CO-2022-0184, as well as at the start of the present Request, has been on personal leave since December 2022. The change of EMB representative created a considerable information gap and a loss of institutional memory regarding both the MICI process and the environmental and social safeguards framework that the IDB Group requires be applied in the operations it finances.
- 3.19 Time elapsed since the Group of Requesters raised its concerns. The Requesters originally contacted the MICI in September 2021, and their complaint was processed under number [MICI-BID-CO-2021-0174](#). In the Registration phase, the MICI determined that there had been no prior contact with Management to address the issues raised in the Request. In order to enable that interaction to proceed, it declined to register the complaint.⁵ However, the Requesters decided to return to the MICI nearly one year later inasmuch as they continued to have concerns despite having gone to Management.
- 3.20 Partly as a result of this, the Group of Requesters was forced to initiate the relevant legal proceedings during the assessment stage. The reason is that Colombian legislation provides a period of two years from the administrative expropriation act (which occurred on 12 October 2021) for initiating action before the relevant legal body and for the pretrial mediation procedure that must be exhausted prior thereto.
- 3.21 Pretrial mediation process underway. The MICI was informed by the Group of Requesters that the Attorney General's Office has scheduled a mediation hearing for Friday, 28 July 2023. Mediation is a procedural requirement that must be exhausted before the Group of Requesters can turn to the relevant legal body and present the situation before a judge of competent jurisdiction.

⁵ This complaint reached the MICI prior to the activation in November 2021 of Management's Environmental and Social Grievances Protocol, so it was submitted to the project team only.

- 3.22 Local elections in Bogota in 2023. Lastly, by way of background information, it should be noted that local elections will be held in Bogota on 29 October 2023 to elect a mayor and the 45 members of the district council. In mayoral elections, the Colombian Constitution provides for a potential second round of voting, which in this case would be held on 19 November 2023. Since the Constitution prohibits the immediate reelection of a mayor, there will be a transition process. The newly elected authorities will take office on 1 January 2024. The District Secretary of Finance of the Office of the Mayor of Bogota holds 92% of the shares of EMB.⁶
- 3.23 Despite the foregoing difficulties, as of the date of this report, none of the Parties has indicated to the MICI that it wishes to give up the possibility of resolving the dispute through facilitated dialogue. At the same time, the mediation hearing is still pending, along with other contextual factors that will evolve in the short term. In addition, the exchanges and work sessions among the Parties have been respectful, sincere, and useful, resulting in procedural agreements. Therefore, the MICI considers it prudent to continue making efforts with the three Parties to the process to create agreement scenarios that can resolve the dispute during the Consultation Phase process.

IV. CONCLUSION

A. Feasibility of initiating a Consultation Phase process

- 4.1 In accordance with paragraph 29 of the MICI-IDB Policy, based on the analysis conducted during the assessment stage regarding the allegations presented in the Request and the identified contextual factors, and in light of the Parties' willingness to address the existing issues through a dispute resolution process, it is concluded that conditions exist to initiate a Consultation Phase process facilitated by the MICI.
- 4.2 In accordance with paragraph 30 of the MICI-IDB Policy, this assessment report will be distributed to the Parties and the IDB Board of Executive Directors and will subsequently be disclosed to the public through the MICI's Public Registry.

B. Proposed methodology

- 4.3 As established in the MICI-IDB Policy and the Guidelines for the Consultation Phase (document MI-74), the Consultation Phase process is intended to be a flexible, consensus-based approach tailored to the specific issues raised in the Request. The methodology is adapted case by case, depending on the needs of the process and in line with the Policy and the Guidelines. As a result of the assessment and the exchanges with the Parties, the MICI has prepared a proposed methodology that incorporates various considerations.
- 4.4 **Preparatory sessions.** Prior to the commencement of the dialogue sessions, the MICI may conduct preparatory sessions for capacity-building of the Parties in alternative dispute resolution techniques and methods. These sessions will provide tools and knowledge aimed at enabling each of the stakeholders to participate effectively during the dispute resolution process. In addition, these sessions will seek

⁶ <https://www.metrodebogota.gov.co/?q=transparencia/marco-legal/normatividad/escritura-p%C3%BAblica-no-3192-2020>.

to address potential asymmetries between the Parties, in line with the MICI's Guidelines for the Consultation Phase.

- 4.5 **Bilateral meetings.** Before each plenary dialogue session, the Consultation Phase team will encourage bilateral meetings with the Parties for purposes of planning each session and addressing any questions or concerns about the methodology and the issues to be addressed.
- 4.6 **Records of the process.** The MICI facilitation team will take minutes of each plenary dialogue session, including the issues addressed, main conclusions, and next steps. The minutes will be distributed to the Parties within 72 hours after the end of each dialogue session. Since the Consultation Phase is flexible in nature and geared toward the pursuit of joint solutions rather than the investigation of potential violations of IDB Group operational policies, making audio or video recordings of the Consultation Phase sessions or of the bilateral meetings with the Parties is not advisable.
- 4.7 As a third-party impartial mediation body, the Consultation Phase aims to establish reasonable communication between the Parties, make available key technical information or comparative studies that the Parties may not have had access to, and explore solutions to the issues in question by creating a relaxed environment conducive to collaborative work.
- 4.8 **Representatives of the Parties.** The individuals who represent the Parties at the dialogue sessions should have decision-making power and authority and ensure that they will be present throughout the process. It is not advisable that the delegations representing the Parties in each of the dialogue sessions exceed five individuals.
- 4.9 **Invitation to the sessions.** Invitations to participate in the plenary dialogue sessions and bilateral meetings will be sent only by the MICI. The Parties will be asked to refrain from sharing these invitations with other stakeholders. If the attendance of a technical expert proposed by the MICI or one of the Parties is required, a request will be sent in advance to the MICI facilitation team.

C. Required resources

- 4.10 Based on the proposed methodology for the Consultation Phase process, the MICI will need to transfer Consultation Phase officers to Bogota, Colombia. In addition, it will require the appropriate logistic services for the plenary dialogue sessions.

D. Tentative timeline

- 4.11 In accordance with paragraph 31 of the MICI-IDB Policy, the Consultation Phase process must be completed within a maximum period of 12 months.
- 4.12 The MICI will remain in continuous contact with the Parties and will call bilateral meetings. The MICI expects to be able to facilitate plenary dialogue sessions when the context and the dynamics and functioning of the forum allow it to occur.