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BRAZIL

MICI-BID-BR-2022-0189

CONSULTATION PHASE ASSESSMENT REPORT
NATIONAL TOURISM DEVELOPMENT PROGRAM – PRODETUR NACIONAL –
RIO DE JANEIRO

(BR-L1210)
(2411/OC-BR)

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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-BR-2022-0189 https://www.iadb.org/en/mici/complaint-detail?ID=MICI-BID-BR-2022-0189
4.	Management's Response. Request MICI-BID-BR-2022-0189 https://www.iadb.org/document.cfm?id=EZSHARE-1975243025-105
5.	Eligibility Memorandum. Request MICI-BID-BR-2022-0189 https://www.iadb.org/document.cfm?id=EZSHARE-1975243025-136
6.	First extension of the Assessment stage of the Consultation Phase process. Request MICI-BID-BR-2022-0189 https://www.iadb.org/document.cfm?id=EZSHARE-1975243025-143
7.	Second extension of the Assessment stage of the Consultation Phase process. Request MICI-BID-BR-2022-0189 https://www.iadb.org/document.cfm?id=EZSHARE-1975243025-148
8.	Loan proposal for the National Tourism Development Program – PRODETUR Nacional – Rio de Janeiro (BR-L1210) https://www.iadb.org/Document.cfm?id=EZSHARE-1092210103-80
9.	Third contractual amendment of the National Tourism Development Program – PRODETUR Nacional – Rio de Janeiro (BR-L1210) https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-2056220512-6053 (available only in Portuguese)
10.	Environmental and social management report for the National Tourism Development Program – PRODETUR Nacional – Rio de Janeiro (BR-L1210) http://idbdocs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=35104660 (available only in Portuguese)
11.	Project completion report https://www.iadb.org/Document.cfm?id=EZSHARE-915027987-9 (available only in Portuguese)
12.	Conditional Credit Line for National Tourism Development (PRODETUR Nacional CCLIP BR-X1008) https://www.iadb.org/Document.cfm?id=EZSHARE-274803875-181 (available only in Spanish)

ABBREVIATIONS

Bank or IDB	Inter-American Development Bank
MICI or Mechanism	Independent Consultation and Investigation Mechanism of the IDB Group
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-47-6)
Parties	The Requesters, Management, the Borrower, the Client, and/or the Executing Agency, as applicable
Program or PRODETUR	“National Tourism Development Program – PRODETUR Nacional – Rio de Janeiro” (BR-L1210)
Protocol	Management’s Protocol for Environmental and Social Grievances

EXECUTIVE SUMMARY

The National Tourism Development Program (“PRODETUR” or “the Program”) was a multiple-works loan operation approved by the Bank’s Board of Executive Directors on 15 September 2010 for an original amount of US\$187 million. The Borrower was the State of Rio de Janeiro, and the Executing Agency was the Department of Tourism, Sport, and Leisure of the State of Rio de Janeiro (“the Executing Agency”). The core objective of the Program was to help increase employment, revenue, and foreign exchange generated by the tourism sector in the state. Later, after three contract amendments, the Program was closed in July 2021, with 37% of the loan’s original proceeds disbursed.¹

The specific works giving rise to the complaint lodged with the Independent Consultation and Investigation Mechanism (MICI) relate to the “Sanitation, Drainage, and Urban Development Project of Vila do Abraão, Ilha Grande, Angra dos Reis” (“the Project”), which was part of the Program’s destination access infrastructure and basic services component. The firm Hécio Gomes Engenharia Ltda. (“the Contractor”) won the bidding for the Project’s works. The works contract was signed in April 2016 with a deadline for completion of 14 months. According to reports from the Bank, the works began with trenching, but the Executing Agency suspended the contract indefinitely in January 2017, and ultimately on 3 August 2018 it was rescinded with a disbursement level of 13%. In November 2018, under the Program’s third contract amendment, the suspended projects were canceled and, consequently, the works were not put out to bid again in the context of this operation.

On 12 July 2022, Bank Management forwarded through Management’s Protocol for Environmental and Social Grievances (“the Protocol”) a request originally directed at the MICI but that had not included the Mechanism’s email address. The Request was presented by a family of four² (“the Group of Requesters”) living in the community of Vila do Abraão. The complaint alleges social and environmental impacts from the construction and subsequent suspension of Project works. According to the Request, the alleged impacts fall into two groups: (i) allegations of environmental and public health impacts related to suspending the works and abandoning the materials, and (ii) allegations related to the loss of the Group of Requesters’ livelihood.

Regarding the former, the Group of Requesters states that cancelation of the operation and abandonment of the machinery increased environmental pollution. Moreover, according to the Request, abandoning the machinery led to the accumulation of water and created conditions for greater spread of diseases like dengue, chikungunya, and zika, threatening the health of the population. The Group of Requesters said that the machinery had been removed about six months after construction was suspended.

Regarding the latter set of allegations, the Group of Requesters indicated that they lost their only livelihood as a result of Project activities. The Requesters allege that in June 2016 the company responsible for the construction hired them to transport materials on a boat that they owned and used for fishing and transporting freight under six tons. According to the Group, they had an agreement with the Contractor to transport three tons of lumber. The member of the Group of Requesters who was responsible for the boat said that, during the loading process he had to be away from the boat because the Contractor

¹ See: Project Completion Report.

² During the eligibility determination process, the MICI received a request for additional individuals to join the complaint.

required him to be elsewhere. That Requester said that when he returned the boat had partially sunk and was inoperable. The Group of Requesters said that the Contractor had loaded more materials than originally agreed without its consent. According to the Request, the partial sinking of the boat caused economic damage and loss of livelihood. The Requesters indicated that, although they were able to repair the boat, they had to sell it in 2018 to pay the debt they took on while it was inoperable. As a result of the partial sinking of the boat, the Group of Requesters says that it has not been able to regain the standard of living it had before the incident.

In the wake of the incident, the Group of Requesters says that it approached multiple parties to resolve its concerns. One of those was IDB Management on 24 September 2018 to express concern about its loss of livelihood. In Management's Response, the IDB mentioned this first contact and said that at that time it had not been in contact with any potential beneficiary and person affected by the Program. Meanwhile, Management reported that it had contacted the Executing Agency, which provided a series of documents. On 1 June 2020, the Group of Requesters again contacted IDB Management through its Complaint Portal. On that occasion, Management responded by saying that "it would seek updated information from the Executing Agency regarding the progress of the Project."³ Management indicated that, in response, the Executing Agency re-sent the same documents it had submitted on the first occasion and "reiterated that [there was] a case in the courts in the state of Rio de Janeiro."⁴

On 30 September 2022, the MICI declared the Request eligible. On 3 October 2022, the Consultation Phase Assessment was begun, to determine whether the conditions were present for starting a dispute resolution process facilitated by the MICI. During the Assessment stage, the Consultation Phase team reviewed Program documents, the Project, and contextual information. It also held 10 meetings with the Group of Requesters and different areas of IDB Management ("the Parties"). For this case, the Mechanism did not have contact with the Executing Agency, which is normally part of the MICI process, since Management reported that the Executing Agency had been dissolved after shutting down the operation and there was not currently any contractual relationship with the Borrower.

Over the course of the Assessment, three critical issues were identified that could have been the subject of structured dialogue between the Parties. These include the allegations of the impact from suspending the works and abandoning the materials and those related to the Group of Requesters' loss of livelihood. The latter would be the focal point of a potential dialogue process agenda.

At the same time, the Assessment revealed a series of difficulties and dynamics that hampered starting a process for jointly pursuing solutions in the Consultation Phase, including:

- **Untimeliness for establishing an appropriate forum for exploring solutions.** By the time the MICI received the complaint, a lengthy period had elapsed during which the Project, Program, and context changed significantly, and the situation of the Group of Requesters may have deteriorated. On the one hand, the partial sinking of the boat and subsequent loss of livelihood happened in 2016—six years before the complaint was presented to the MICI. Moreover, the construction was suspended in early 2017, the contract was

³ See: Management's Response. Case MICI-BID-BR-2022-0189.

⁴ Ibid.

rescinded in 2018, and the Program closed in July 2021. While the MICI Policy allows complaints to be processed up to 24 months after the last disbursement, in this case the passage of time, coupled with the absence of an active Project and an active relationship with the Borrower, were factors that contributed to closing the window of opportunity for exploring solutions to the issues raised in the Request.

- **High levels of frustration.** The MICI identified that the passage of time, together with the lack of an effective response from the multiple channels through which the Group of Requesters had presented its concerns, had caused a very high level of frustration among the Group. Although this factor would not constitute an obstacle for starting a potential Consultation Phase process, it would have created an additional layer of complexity. This could have been addressed through a short Consultation Phase process, if the conditions for such a process were present.
- **Absence of channels of communication.** The MICI found that there were no channels of communication between the Parties. While a member of the Group of Requesters had contacted IDB Management in 2018 to express concern about the loss of livelihood, Management said that at that time “there was no direct communication between the Bank and any beneficiary or potential affected party of the Project.”⁵ As a result, it tried to address the issue by requesting information from the Executing Agency. As communicated to the MICI, when a member of the Group of Requesters tried to make contact a second time, the response was limited to requesting documentation from the Executing Agency. Despite attempts to better understand what happened with the Project, the MICI Consultation Phase team found that efforts to establish and maintain channels of communication and to explore the possibility of resolving the issue were limited.
- **Difficulty addressing the core issue in the Request and exploring potential solutions.** During the Assessment stage, IDB Management indicated that it would have difficulty addressing the allegations of loss of livelihood that, as mentioned above, were the core issue in the Request. Although the MICI held multiple meetings with different areas of Management, examined with it the different scenarios, and shared ideas for designing a potential Consultation Phase process, the different areas of the Bank maintained that the lack of an Executing Agency, of an active operation, and of an active relationship with the Borrower were decisive constraints to their participation in addressing and exploring solutions to the issue of loss of livelihood.

Lastly, in accordance with paragraph 29 of the MICI-IDB Policy, based on the obstacles identified in the Assessment stage and in light of the constraint expressed by Management to exploring solutions to the core issue of the Request, the MICI determines that it is not feasible to begin a dispute settlement process. In view of the foregoing, the Mechanism informs the IDB’s Board of Executive Directors and the stakeholders that processing of case MICI-BID-BR-2022-0189 in the Consultation Phase has concluded and that it will forward the case to the MICI Compliance Review Phase.

⁵ See: Management Response. Case MICI-BID-BR-2022-0189.

I. BACKGROUND⁶

A. Geographic and social context of the Program

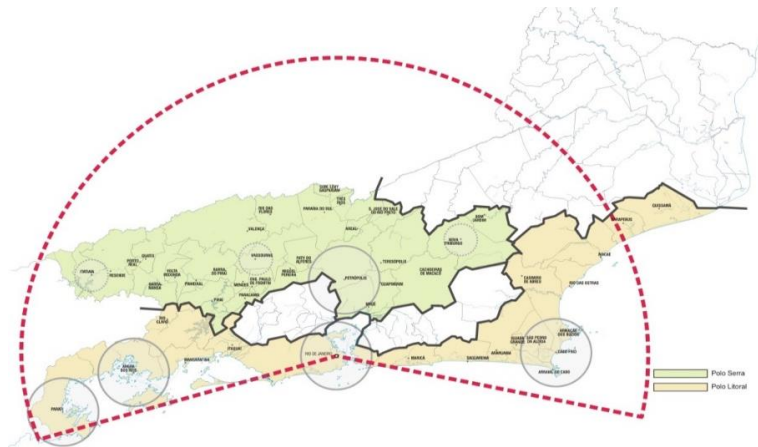
- 1.1 The state of Rio de Janeiro is one of the main tourism destinations in Brazil and Latin America and the Caribbean. In 2010, tourism accounted for 38% of state GDP. At that time, tourism's upward trend was expected to continue and to increase as a result of soccer's 2014 World Cup and the 2016 Olympic Games. Moreover, demand for business in the state was expected to rise due to the discovery of oil wells along the coast.
- 1.2 The heightened inflow of visitors represents a considerable increase in the city's revenue. According to Program documents, the authorities expected to receive approximately US\$24.9 billion. Also, according to Program documents, the aim was for the city and state to have better conditions for inbound tourists. The loan proposal mentioned that the state was facing structural challenges that needed to be addressed to create those conditions. The main challenges included: insufficient connectivity and access to tourist attractions; shortcomings in access to basic services; limited local capacities for tourism planning and management; interagency coordination difficulties; potential pressure on the state's environmental resources; and lack of development to promote tourism activity in inland areas.

B. The Program

- 1.3 Against that backdrop, the IDB's Board of Executive Directors approved the "National Tourism Development Program – PRODETUR Rio de Janeiro" (BR-L1210) ("the Program") on 15 September 2010. The Program was part of the Bank's support that began in 1994 for Brazil's tourism sector. Specifically, the state of Rio de Janeiro was identified as a beneficiary of the Program of Support for PRODETUR Nacional (BR-L1195) approved in 2009 as the first individual loan under the Conditional Credit Line for National Tourism Development (BR-X1008). The objective of the Program of Support for PRODETUR Nacional was to strengthen the Ministry of Tourism's capacity to support state and municipal tourism planning and investment.
- 1.4 PRODETUR Nacional – Rio de Janeiro is a multiple works investment loan operation. The Borrower was the State of Rio de Janeiro, and the guarantor was the Federative Republic of Brazil. At the time of approval, the Department of Tourism, Sport, and Leisure ("the SETE") was the Executing Agency. The original Program amount was US\$187 million, with US\$112 million from the IDB and US\$75 million from the local counterpart.
- 1.5 The main objective of the Program was to help increase employment, revenue, and foreign exchange generated by the tourism sector in the state. To that end, the Program considered two tourism zones: Coastal and Sierra (see Figure 1) and was divided into five components: tourist product; promotion and marketing; institution strengthening; destination access infrastructure and basic services; and environmental management.

⁶ Information taken from the Bank's website and public documents on related operations.

Figure 1.
State of Rio de Janeiro - Division of the Sierra and Coastal Zones



Source: Environment and social management report.

- 1.6 At the time of approval, the Program was classified as a Category “B” operation. Moreover, the loan proposal identified the following applicable Operational Policies: Environment and Safeguards Compliance Policy (OP-703), Disaster Risk Management Policy (OP-704), Involuntary Resettlement Policy (OP-710), and Disclosure of Information Policy (OP-102).⁷
- 1.7 In the course of implementation, the operation underwent three contractual amendments. First, on 9 May 2012, the Executing Agency was changed due to the break-up of the Department of Tourism, Sport, and Leisure, which became by the Department of Tourism (“SETUR”). Second, on 8 October 2015, the loan disbursement period was extended from 8 August 2015 to 31 August 2017. Lastly, on 26 November 2018, several changes were made: the disbursement period was extended again, this time from 31 August 2017 to 30 June 2020; there was a partial waiver of loan proceeds; the counterpart resources for the program were decreased; resources were reallocated among program components; the expected outputs of each component were modified, and execution conditions were established for one of the works.⁸ According to the project completion report, the project closed on July 2021, with 37% of the original loan proceeds disbursed.⁹
- 1.8 The specific works giving rise to the complaint lodged with the MICI relate to the “Sanitation, Drainage, and Urban Development Project of Vila do Abraão, Ilha Grande, Angra dos Reis” (“the Project”) and were part of the Program’s destination access infrastructure and basic services component. The Project’s objective was to build works to provide drainage, paving, landscaping, lighting, and street furniture. The works also included expanding the water and sanitary sewerage systems in Vila do Abraão in Angra dos Reis.

⁷ This policy was subsequently replaced by the Access to Information Policy.

⁸ After the last contractual amendment, the final cost of the Program was US\$82,045,692.47, with US\$41,486,692.47 from the IDB loan and the remaining US\$40,559,000.00 from the local counterpart.

⁹ See: Project Completion Report.

- 1.9 According to Management's Response, in March 2016, the firm Hécio Gomes Engenharia Ltda. ("the Contractor") had the winning bid for the Project's works. On 19 April 2016, the works contract was signed for R\$28,261,046, and the completion date was set for 19 August 2017. According to the Bank, while the works had begun with trenching for installation of the respective systems, on 2 January 2017 the Executing Agency halted construction and suspended the contract indefinitely on account of judicial liens that had been placed on resources disbursed by the Bank into Program accounts. This led the Executing Agency, on 27 September 2017, to freeze all contracts under way. As a result, with 13% of resources disbursed, the Contractor and Executing Agency canceled the contract on 3 August 2018.¹⁰
- 1.10 The IDB reports that, in the third amendment to the Program contract, which was made in November 2018, the projects that had been suspended and were not very far advanced were canceled, including the Sanitation, Drainage, and Urban Development Project of Vila do Abraão, Ilha Grande, Angra dos Reis. Accordingly, the works were not put out to bid again under the IDB operation.

C. The Request

- 1.11 On 12 July 2022,¹¹ Bank Management forwarded the Request to the MICI through Management's Protocol for Environmental and Social Grievances ("the Protocol"). Although the complaint had originally been directed to the MICI on 1 July 2022, the communication only copied the Protocol's email address. The Protocol's staff informed the MICI that the Request had been sent to the MICI 12 calendar days after receipt due to an unintentional oversight.
- 1.12 The Request was submitted by a family of four¹² ("the Group of Requesters") living in the community of Vila do Abraão in Ilha Grande, município de Angra dos Reis, state of Rio de Janeiro, Brazil. The public information the Mechanism received in the eligibility phase can be found in the file of Request [MICI-BID-BR-2022-0189](#).
- 1.13 The Request alleges social and environmental impacts resulting from the construction and subsequent suspension of construction for the Sanitation, Drainage, and Urban Development Project of Vila do Abraão, Ilha Grande, Angra dos Reis. The Group of Requesters indicated there was potential noncompliance with the Bank's Operational Policies, principally the Environment and Safeguards Compliance Policy (OP-703), Indigenous Peoples Policy (OP-765), and Disaster Risk Management Policy (OP-704). In that regard, the allegations described in the Request include alleged environmental and public health impacts related to the works being suspended and materials abandoned, and allegations of damage related to the Group of Requesters losing their livelihood.
- 1.14 Regarding the former, the Group of Requesters states that canceling the operation and abandoning the machinery increased environmental pollution on the island and affected public health. According to the Request, when the operation was

¹⁰ See: Management's Response.

¹¹ Since the current MICI Policy entered into force, the MICI has regarded the date of formal receipt as the next business day after a new Request is received, to fully comply with the five days established in the Policy for processing Registration. So, the date of receipt is 13 July 2022.

¹² During the eligibility determination process, the MICI received a request for additional individuals to join the complaint.

canceled, installation of the water and sanitation system was not completed, nor was the urban development of the city. The Group of Requesters says that this has jeopardized the living conditions of traditional communities present in the region, such as quilombolas, indigenous groups, and fishermen. Indeed, the Group of Requesters says that several families were affected by the flooding that occurred in March 2022, and wastewater continues to overflow into the bay on a daily basis. The Request also states that the increased tourism worsened the problem described above and has even jeopardized conservation of the area's cultural heritage.

- 1.15 The Request also says that abandoning the construction machinery and materials on the community's only public square led to the accumulation of water and created conditions for increased spread of diseases such as dengue, chikungunya, and zika, threatening the health of the population that has traditionally inhabited this area. During talks with the MICI in the Eligibility phase, the Group of Requesters said that the machinery had been removed around six months after it had been abandoned.
- 1.16 Regarding the second set of allegations, the Group of Requesters says they lost their only livelihood as a result of Project activities. The Group of Requesters alleges that on 14 June 2016, the Contractor hired it to transport materials on a boat that the Group owned. It says that the boat was used for fishing and transporting freight up to six tons and was their only livelihood. The Group also says that it had agreed with the Contractor to transport three tons of lumber. According to the Request, one member of the Contractor's staff asked the Requester responsible for the boat to accompany him to take care of some business, and he left the boat while it was being loaded. The Group of Requesters indicated that, upon his return, the boat had partially sunk and was inoperable, in part due to damage to the electrical navigation devices. The MICI was told that the company had loaded more material than originally agreed and established in the service invoices, without the Group of Requesters' consent.
- 1.17 According to the Request, the partial sinking of the boat led to economic damage and loss of livelihood. The Group of Requesters said they had to cover the cost of pulling the boat out of the water and repairing it. To that end, according to the Requesters, they had to acquire debt to both pay for the repairs and to cover their daily living expenses. In talks with the MICI, the Group of Requesters mentioned that after having repaired the boat, they had to sell it in 2018 to pay off some of that debt. That same year (2018), the Group of Requesters say they contacted IDB Management to express concern about their loss of livelihood. They indicated, however, that they did not receive a response.
- 1.18 In the wake of the incident with the boat, the Group of Requesters says that it has not been able to recover its livelihood. In addition, due to a lack of income, it was not able to pay for medical expenses and its health has deteriorated. It adds that both the incident and efforts to find ways to support themselves have caused significant stress that has harmed their mental health.
- 1.19 Lastly, with respect to the MICI process, the Requesters wanted the Request to be processed through both the Consultation Phase and the Compliance Review Phase.

D. MICI process up to Eligibility Determination

- 1.20 Table 2 lists the main actions taken by the MICI between receipt of the request and determination of eligibility.

Table 2.
Timeline of MICI actions prior to determination of eligibility

Date	Actions
2022	
12 July	Request received
14 July	Phone call with the Requesters
19 July	Notification of extension for the Requesters to meet certain requirements
2 August	Request registered and notifications sent to the Requesters and IDB Management
18 August	Phone call with the Requesters
23 August	Meeting with Project Team
30 August	Receipt of Management's Response
30 August	Additional information sent by the Requesters
30 August to 30 September	Document review and desk work
21 September	Phone call with the Requesters
30 September	Eligibility Memorandum issued

II. CONSULTATION PHASE

A. Regulatory framework

- 2.1 The Independent Consultation and Investigation Mechanism (MICI) is governed by the MICI-IDB Policy (document MI-47-6), which was approved by the Bank's Board of Executive Directors on 15 December 2015 and updated on 14 April 2021. Pursuant to the Policy, the Requesters may opt for the Consultation Phase, the Compliance Review Phase, or both. If both options are selected, the process begins with the Consultation Phase.
- 2.2 The goal of the Consultation Phase is to provide an opportunity for the Parties to address the issues raised in the Request in a flexible, consensus-based manner, based on a set of methodologies 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, in particular paragraphs 24 to 35, by supplementing and putting its provisions into practice (document MI-74).
- 2.3 The Consultation Phase has three consecutive stages: Assessment, Consultation Phase Process, and Monitoring. The Policy establishes the purpose and time frame for each stage. The objective of the Assessment stage is to determine whether conditions are favorable to proceed with a dispute resolution process. That stage seeks to gain an in-depth understanding of the operation that gave rise to the Request and the main issues that could be addressed by the Parties in a potential Consultation Phase process. The Requesters, Executing Agency, and

Management will also exchange views, to determine whether proceeding with the Consultation Phase process is viable. Lastly, it would identify individuals who could represent the Parties, 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 dealing 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 timeline

- 2.5 Pursuant to paragraph 29 of the MICI-IDB Policy, the Assessment stage has a maximum term of 40 business days from the business day after the eligibility determination date, which was 30 September 2022. For this specific case, pursuant to paragraph 59 of the MICI-IDB Policy, the Board of Executive Directors approved two extensions requested by the MICI with a view to continuing to explore with IDB Management and the Group of Requesters the possibility of finding solutions to the issues raised. The final deadline for the Assessment stage was set for 2 August 2023.
- 2.6 To ensure effectiveness and efficiency in processing the case, and bearing in mind the scope of the allegations of damage, the MICI held all the bilateral meetings virtually. The following activities were conducted during the Assessment stage:

Table 2.
Timeline of activities during the Assessment stage

Date	Actions
2022	
3 October	Assessment stage of the Consultation Phase begins
3 October to 22 November	Document review and desk work
13 October	Call with IDB Management
1 November	Call with the Representative of the Group of Requesters
8 November	Call with IDB Management
17 November	Call with the Representative of the Group of Requesters
13 December	Approval of the first extension
2023	
12 January	Call with the Representative of the Group of Requesters
20 January	Call with IDB Management
2 March	Call with the Representative of the Group of Requesters
28 March	Call with IDB Management
30 March	Call with the Representative of the Group of Requesters
3 April	Approval of the second extension of the Assessment period
27 April	Call with IDB Management
6 July	Consultation Phase Assessment Report issued

C. Assessment methodology

- 2.7 In accordance with the MICI-IDB Policy and the Guidelines for the Consultation Phase, the process involved a desk review and telephone interviews with the Parties. The main objectives of these activities were to study the Project context, jointly analyze with the Parties the feasibility of a Consultation Phase process, determine the issues to be covered by a potential process, and hear the Parties' preferred methodologies for a potential dialogue.
- 2.8 The team also analyzed a series of relevant documents for processing this case, including: the Request and its annexes, the proposed conditional credit line for the Program loan, the loan contract, the environmental and social assessments for the Program and the Project, and the Program Completion Report.

III. ANALYSIS

A. Issues and current context

- 3.1 **The issues.** According to the description in the Request and the information gathered during the Assessment, the issues fall into two categories. First, information on the potential impact of suspending construction and abandoning the materials. This would include the potential public health impact on the population that abandoning the machinery and material on the município's central square might have caused. Second, the allegations of the family's loss of livelihood due to the partial sinking of their boat as part of Project activities. This would include the alleged potential impacts on their living conditions, including the health of the members of the Group of Requesters. As determined in the Assessment stage, this second point would be the central issue in a potential dialogue process agenda.
- 3.2 **Background and current context.** The Group of Requesters had contacted IDB Management on 24 September 2018 expressing concern about their loss of livelihood, which is the main concern in the complaint lodged with the MICI. As a result of that contact, Management said that while it had no direct communication with any potential beneficiary and person affected by the Project, it contacted the Executing Agency and maintained direct communication with the Executing Agency from September 2018 to March 2019. As a result of those exchanges, the Executing Agency delivered a series of documents.
- 3.3 On 1 June 2020, a member of the Group of Requesters again contacted IDB Management through the Complaint Portal. On that occasion, Management responded to the communication by saying that "it would seek updated information from the Executing Agency regarding the progress of the Project."¹³ Management indicated that, in response, the Executing Agency re-sent the documents that it had previously submitted "once again stating that [there was] a Civil Inquiry in the Court of Justice of Rio de Janeiro."¹⁴
- 3.4 In addition to contacting Management, it was found that there were proceedings with national and state authorities. On the one hand, the Delegation of the Port

¹³ See: Management's Response. Case MICI-BID-BR-2022-0189.

¹⁴ Ibid.

Authority performed an inspection, the records from which are dated 13 June 2017. According to Management, the Port Authority concluded that the cause of the accident was the “imprudence of the ship’s captain and owner, because he had stepped away and was not there for the loading of the construction materials.”¹⁵ On the other, the Group of Requesters contacted the Office of the Ombudsperson in 2018 regarding the material damage and said that there was an active case at that time in the first instance of the Court of Justice of Rio de Janeiro.¹⁶

- 3.5 Management submitted the Request to the MICI on 12 July 2022, after receiving it through its Environmental and Social Grievances Protocol on 1 July 2022. Given the characteristics and context of the Request, the MICI performed both the Eligibility and Assessment phases virtually. During the Assessment, it had multiple exchanges with IDB Management and the Group of Requesters. The Mechanism did not have any contact with the Executing Agency because, as Management had reported, the executing unit had been dissolved, the operation had closed in 2021, and there was no active contractual relationship between the Bank and the borrower.
- 3.6 While the Eligibility of the Request was being determined and it was processed in the MICI Consultation Phase Assessment process, the IDB Group was going through a transition period. The new President took office on 19 December 2022, after several months with a President a.i. serving in that position. Moreover, the Vice Presidencies and other strategic technical positions relevant to a potential Consultation Phase process took office in June 2023.
- 3.7 Due to the specific characteristics of the complaint, and this transition process for the IDB Group, the MICI asked the Board of Executive Directors for two extensions for the Assessment stage. The final deadline is 2 August 2023.

B. Perspectives of the Parties

- 3.8 In line with the definition in the MICI-IDB Policy, the Parties to the Consultation Phase process are the Requesters, the Executing Agency, and/or IDB Management. However, as IDB Management reported, the Executing Agency was dissolved after the operation had closed. Moreover, as communicated to the MICI, there is not currently a contractual relationship with the State of Rio de Janeiro. Therefore, this case includes only the perspectives of the Group of Requesters and IDB Management.
- 3.9 **Group of Requesters.** The allegations of the Group of Requesters fall into two main areas: First, there are the allegations of damage related to abandoning the Project, machinery, and materials in the public square. According to the Requesters, the situation had negative impacts on the environment and the health of the population living in the area. The Group of Requesters adds that the machinery and materials were removed six months after they had been abandoned. Second, there are allegations related to the loss of livelihood resulting from Project activities.

¹⁵ Ibid.

¹⁶ See: <https://www3.tjrj.jus.br/consultaprocessual/#/consultapublica?numProcessoCNJ=0011100-11.2018.8.19.0003>

- 3.10 Indeed, during the talks with the MICI, the Group of Requesters said on several occasions that its main concern was the need to restore its livelihood, which had been affected by the partial sinking of the boat in 2016. The Group of Requesters commented that the boat was rendered inoperable, making it impossible to engage in its only economic activity.
- 3.11 The Requesters said that in order to restore their standard of living they took on debt to repair the boat. Despite repairing the boat, they say they had to sell it to pay off the debt they had taken on. Moreover, they said that, since the sale in 2018, they had not been able to regain the standard of living they had before the incident. In addition, the Group of Requesters said that by not having the income from the boat other areas of their everyday life were impacted, such as not being able to pay family members' medical bills and impacts on their mental health.
- 3.12 The Group of Requesters repeatedly indicated that from the time they contacted Management in 2018 through to today, they felt their concerns had not been heard. As a result, the Requesters said that they were very frustrated. They told the MICI they had contacted different entities on multiple occasions, including the Contractor, the authorities, and IDB Management. Specifically, they said that the Contractor had promised to pay for "everything." However, they told the MICI that they had not received a satisfactory response from any of the entities they contacted.
- 3.13 Consequently, they mentioned that "after seven months of waiting on the promise [from the Contractor], [a member of the Group] decided to turn to the Office of the Ombudsperson, which opened a case".¹⁷ The Group of Requesters indicated there was a case in the State Court of Justice in Rio de Janeiro. Nonetheless, as reported to the MICI, the Requesters are not sure how long that case could take.
- 3.14 Lastly, despite expressing its exhaustion and frustration on multiple occasions, the Group of Requesters said it was willing to begin a dispute resolution process facilitated by the MICI, to explore solutions with IDB Management to the issues raised in the Request.
- 3.15 **IDB Management.** Management noted that the Project had been designed in accordance with the social and environmental safeguards established in Operational Policies OP-703, OP-704, and OP-765. It also mentioned that the communities were actively involved in the discussions organized by the state government during Project preparation, as well as during the execution phase when, according to Management, changes were made to address local concerns. In addition, Management indicated that technical, financial, and economic feasibility studies had been conducted. Likewise, it added that it included specific conditions for execution of the Project in keeping with those required by current environmental legislation for environmental licensing. These included preparing, pursuant to Operational Policy OP-765, a degraded area recovery plan and a program for managing awareness campaigns. The latter were implemented partially due to cancellation of the Project.
- 3.16 Management added that it conducted a safeguards supervision mission to the Program from 3 to 5 June 2019. During that trip, it supervised the status of the

¹⁷ See: Original Request and annexes. MICI-BID-BR-2022-0189.

works under way at that time and coordinated preparation of corrective action plans, where needed, for the canceled works. As a result of that trip, Management said that it had requested from the Executing Agency a mapping of the canceled operations and corrective action plans, to be delivered by 30 June 2020. Moreover, Management said that the Executing Agency, at Management's request, sent a descriptive and photographic report on the status of Project execution on 24 May 2018.

- 3.17 Regarding the allegation of loss of livelihood, and as mentioned under "Background," Management became aware of the incident in 2018 when it was contacted by a member of the Group of Requesters. However, Management stressed that at that time "there was no direct communication between the Bank and any beneficiary or potential affected party of the Project."¹⁸ and that it had requested the relevant documentation from the Executing Agency.
- 3.18 According to Management, "The documents submitted (...) presented diverse and inconclusive perspectives, which is why Management continued to insist that the Executing Agency provide complete information regarding the case."¹⁹ In this regard, it indicated that the Requester has stated that the Contractor had loaded the boat with more than the agreed weight, which caused the partial sinking of the boat on 14 July 2016. However, Management added that the Contractor had indicated that the boat had specific characteristics that enabled it to carry up to seven tons per trip and that it offered aid when the boat partially listed. According to Management, the Contractor had ensured that the boat was fully operational after the incident.
- 3.19 In addition to the foregoing, Management indicated that it received a communication from a member of the Group of Requesters on 1 June 2022 inquiring about the incident. In response, Management reported that it communicated with the person and said it would request updated information from the Executing Agency. According to Management, the Executing Agency re-sent the documents it had previously submitted and stated that "there is a Civil Inquiry by the Public Prosecution Service of Rio de Janeiro related to the subject in question, and a lawsuit for Compensation for Material Damage (...) is underway in the Court of Justice of Rio de Janeiro."²⁰
- 3.20 In Management's exchanges with the MICI during the Assessment stage, Management underscored its willingness to send to the MICI any information or documentation on the Program and Project. However, Management reiterated on several occasions that, since there was no active contractual relationship with the Executing Agency, it was not possible to explore solutions to the issues raised in the Request, particularly the allegations relating to loss of livelihood. As a result, participation in a Consultation Phase process would not be effective, given the constraints to exploring solutions to the central issue raised by the Group of Requesters.

¹⁸ See: Management's Response. Case MICI-BID-BR-2022-0189.

¹⁹ Ibid.

²⁰ Ibid.

C. Obstacles to initiating a Consultation Phase or dispute resolution process

3.21 Untimeliness for establishing an appropriate forum for exploring solutions.

When the MICI received the complaint, a long period of time had elapsed during which the Project, Program, and context changed significantly, and the situation of the Group of Requesters may have deteriorated. Moreover, the partial sinking of the boat and subsequent loss of livelihood occurred in 2016—six years before the complaint was lodged with the MICI. Likewise, construction was suspended in early 2017, the contract was rescinded in 2018, and the Program closed in July 2021. While the MICI Policy allows complaints to be processed up to 24 months after the last disbursement, in this case the passage of time coupled with the absence of an active Project and of an active relationship with the Borrower were factors that contributed to closing the window of opportunity for exploring solutions to the issues raised in the Request.

3.22 High levels of frustration. The MICI identified that the passage of time, together with the lack of an effective response from the multiple channels through which the Group of Requesters had presented its concerns, had caused a very high level of frustration among the Group. Although this factor would not constitute an obstacle for starting a potential Consultation Phase process, it would have created an additional layer of complexity. This could have been addressed through a short Consultation Phase process, if the conditions for such a process were present.

3.23 Absence of channels of communication. The MICI found that there were no channels of communication between the Parties. While a member of the Group of Requesters contacted IDB Management in 2018 to express concern about the loss of livelihood, Management said that at the time “there was no direct communication between the Bank and any beneficiary or potential affected party of the Project.” As a result, it tried to address the issue by requesting information from the Executing Agency. As communicated to the MICI the second time a member of the Group of Requesters attempted to make contact, there was a response, but it was limited to requesting documentation from the Executing Agency. Despite attempts to better understand what happened under the Project, the MICI Consultation Phase team found that there were limited efforts to establish and maintain channels of communication and explore the possibility of resolving the issue.

3.24 Difficulty addressing the core issue in the Request and exploring potential solutions. During the Assessment stage, IDB Management indicated that it would have difficulty addressing the allegations of loss of livelihood that, as mentioned earlier, were the core issue in the Request. Although the MICI held multiple meetings with different areas of Management, analyzed with Management the different scenarios and shared ideas for designing a potential Consultation Phase process, the different areas of the Bank maintained that the lack of an Executing Agency, of an active operation, and of an active relationships with the Borrower were decisive constraints to their participation in addressing and exploring solutions to the issue of loss of livelihood.

IV. CLOSE OF THE CASE IN THE CONSULTATION PHASE AND TRANSFER TO THE COMPLIANCE REVIEW PHASE

- 4.1 In accordance with paragraph 29 of the MICI Policy, based on the obstacles identified in the Assessment stage and in light of the constraint expressed by Management to exploring solutions to the main issue in the Request, the MICI determines that it is not feasible to initiate a dispute resolution process.
- 4.2 In consideration of the foregoing, the MICI hereby notifies the IDB Board of Executive Directors and the interested parties that the processing of Case MICI-BID-AR-2022-0189 in the Consultation Phase is closed. In accordance with the provisions of the MICI Policy and the Guidelines for the Consultation Phase, the case file will be transferred to the MICI's Compliance Review Phase to enable the relevant team to begin to process the Request.