



PUBLIC
SIMULTANEOUS DISCLOSURE

DOCUMENT OF THE INDEPENDENT CONSULTATION
AND INVESTIGATION MECHANISM

URUGUAY

**MICI-CII-UR-2022-0199
CONSULTATION PHASE ASSESSMENT REPORT**

**TACUAREMBÓ-SALTO GREEN TRANSMISSION LINE – REQUEST II
(12220-01)**

This document was prepared by Martin Packmann, Consultation Phase Specialist; Esteban Tovar, Registration and Eligibility Specialist; and Gastón Aín, Consultation Phase Coordinator, under the supervision of Andrea Repetto Vargas, MICI Director.

Under the Access to Information Policy, this document is being released to the public and distributed to the Bank's Board of Executive Directors simultaneously.

CONTENTS

EXECUTIVE SUMMARY	I
I. BACKGROUND	1
A. Geographic and social context.....	1
B. The project	1
C. The Request.....	3
D. MICI process up to eligibility determination.....	4
II. CONSULTATION PHASE	5
A. Policy framework	5
B. Assessment Stage timeline	5
C. Assessment methodology.....	6
III. ANALYSIS OF CONDITIONS.....	6
A. Issues and current context.....	6
B. Parties and their perspectives.....	10
C. Obstacles to starting a Consultation Phase or Dispute Resolution process	13
IV. CASE CLOSURE IN THE CONSULTATION PHASE AND TRANSITION TO THE COMPLIANCE REVIEW PHASE	14

LINKS	
1.	Policy of the Independent Consultation and Investigation Mechanism of the IIC (document CII/MI-1-4) https://www.iadb.org/document.cfm?id=EZSHARE-525549286-362
2.	MICI-IIC public registry file for Request MICI-CII-UR-2022-0199 https://www.iadb.org/en/mici/request-detail-iic?ID=MICI-CII-UR-2022-0199&nid=35191
3.	Original Request MICI-CII-UR-2022-0199 https://idbg.sharepoint.com/teams/ez-MICI/cases/_layouts/15/DocIdRedir.aspx?ID=EZSHARE-375034721-41
4.	IDB Invest Management's Response to Request MICI-CII-UR-2022-0199 regarding the Tacuarembó-Salto Green Transmission Line Project (12220-01) https://idbg.sharepoint.com/teams/ez-MICI/cases/_layouts/15/DocIdRedir.aspx?ID=EZSHARE-375034721-62
5.	Eligibility Memorandum MICI-CII-UR-2022-0199 https://www.iadb.org/document.cfm?id=EZSHARE-375034721-66
6.	IDB Invest website for the Tacuarembó-Salto Green Transmission Line Project (12220-01) https://idbinvest.org/en/projects/tacuarembó-salto-green-transmission-line
7.	Summary of environmental and social review for the Tacuarembó-Salto Green Transmission Line Project (12220-01) https://idbinvest.org/sites/default/files/2022-03/LAT%20Tacuarembó-Salto%20-%20Environmental%20and%20Social%20Review%20Summary%20%28ESRS%29_1.pdf
8.	Environmental and social action plan for the Tacuarembó-Salto Green Transmission Line Project (12220-01) https://idbinvest.org/sites/default/files/2022-03/LAT%20Tacuarembó-Salto%20-%20Environmental%20and%20Social%20Action%20Plan%20%28ESAP%29_2.pdf
9.	Environmental impact assessment progress report for the Tacuarembó-Salto Green Transmission Line Project (12220-01) https://idbinvest.org/sites/default/files/2019-11/Informe%20de%20Avance%20de%20EsIA_Vf.docx.pdf
10.	UTE environmental management plan https://idbinvest.org/sites/default/files/2019-11/Plan%20de%20Manejo%20Ambiental%20UTE.pdf
11.	Report on the inspection of Estancia del Buen Retiro-Castillo Morató (only available in Portuguese) https://idbinvest.org/sites/default/files/2022-11/PRESERVAR%20-%20RELAT%C3%93RIO%20DA%20VISTORIA%20NA%20EST%C3%82NCIA%20BUEN%20RETIRO%202022-05-11_0.pdf

ABBREVIATIONS

Bank or IDB	Inter-American Development Bank
Client, UTE, or executing agency	Administración Nacional de Usinas y Transmisiones Eléctricas
IDB Invest	Formerly, the Inter-American Investment Corporation
MICI	Independent Consultation and Investigation Mechanism
MICI-IDB Invest Policy	Policy of the Independent Consultation and Investigation Mechanism of the IIC (document CII/MI-1-4)
Parties	The Requesters, Management, the borrower, the client and/or the executing agency, if applicable
Project	Tacuarembó-Salto Green Transmission Line

EXECUTIVE SUMMARY

IDB Invest became involved through the Tacuarembó-Salto Green Transmission Line Project (“the Project”), a loan operation approved by the Board of Executive Directors of the Inter-American Investment Corporation (IIC) on 22 September 2020. The operation’s sponsor is Administración Nacional de Usinas y Transmisiones Eléctricas (UTE or “the Client”), and the borrower is Fideicomiso Financiero Línea de Transmisión Tacuarembó Salto, a special-purpose trust. The project consists of the design, construction, operation, and maintenance of a 350-km 500-kV high-voltage line, among other work, and is now in the implementation stage.

On 17 November 2022, the Independent Consultation and Investigation Mechanism (MICI) received a Request from two residents and owners of a 3,175-hectare property in the department of Paysandú, Uruguay. The Request alleges potential harm to the property arising from the construction and installation of around 20 lattice towers that are 48 meters in height for the high-voltage electric transmission line envisaged under the project. This property, which includes the site known as Estancia Buen Retiro-Castillo Morató, was declared a Departmental Historical Heritage Site in 2020 and a National Historical Monument of Uruguay in 2022. Specifically, the Group of Requesters allege that (a) the project impacts were not fully analyzed and identified, especially in relation to the protection of historical monuments; (b) a complete analysis of alternatives was not performed; (c) proper procedures for protecting sites of cultural significance were not followed; (d) a timely and proper public consultation process was not conducted; and (e) there is a lack of publicly available information on the project and its construction stages. Importantly, the Requesters had filed a [first complaint](#) with the MICI in March 2022, but the Request was not registered because there had been no prior contact with IDB Invest Management, and the Requesters proceeded to interact with the IDB Invest Management Grievance Mechanism (MGM).

The current Request was declared eligible on 13 December 2022, launching the Assessment Stage of the Consultation Phase. The objective of the Assessment Stage is to determine whether the conditions exist for initiating a dispute resolution process. Although the time frame for the Assessment is 40 business days, the Consultation Phase team conducted an expedited process due to the long time that had passed between when the Requesters had originally filed the complaint with the MICI in March 2022 and when they returned a second time in November 2022 following interactions between the Requesters and the IDB Invest MGM. The MICI also learned that work to install the towers had already begun on the Morató family’s land. Between 14 and 20 December 2022, the MICI held six bilateral meetings with the Requesters, IDB Invest Management, and the Client. Based on the document review and bilateral meetings, three major issues were identified that could have been part of a Consultation Phase process: (a) possible impacts on cultural and historical heritage, including archeological and landscape considerations; (b) potential economic impacts, especially related to tourism enterprises that the Requesters wished to develop on the property; and (c) lack of access to information on the project and technical studies.

Based on the analysis, and especially considering the actions that occurred between the time the original complaint was received and the current Request, it is important to highlight three background developments that have contributed to the finding of the assessment of potential for dialogue, as well as the development of the dispute itself. These elements are:

- **Process of addressing the complaint via the IDB Invest Management Grievance Mechanism (MGM).** Between March and November 2022, the Requesters and IDB Management had a series of exchanges via the IDB Invest MGM. As part of this process, they agreed to a field visit with an expert in Performance Standard 8 of the International Finance Corporation (IFC), who could review the allegations related to potential impacts on historical and cultural heritage. A site visit to Estancia Buen Retiro and Castillo Morató in April 2022 included the Requesters, IDB Invest, the expert engaged by IDB Invest, and UTE staff. Based on this visit, the expert was to produce a report with her analysis of the allegations and recommendations pertaining to compliance with IFC Performance Standard 8, including mitigation measures, if necessary. After more than six months had passed since the site visit, the Requesters indicated that they had not received the expert's report, and, moreover, works had commenced on their land. Since they continued to have concerns, which had only intensified as the works progressed, in November 2022 they decided to return again to the MICI to reinstate the processing of their complaint.
- **Conclusions of the study commissioned by IDB Invest to review the allegations related to IFC Performance Standard 8 at Estancia Buen Retiro.** In late November 2022, after the Requesters' new complaint was registered, IDB Invest Management published the study by the expert engaged to review the allegations related to IFC Performance Standard 8 at Estancia Buen Retiro. Among the study's conclusions, the expert noted: "there are no heritage features on the property that can be considered critical under Performance Standard 8, other than Castillo Morató and the stone walls (fence and pasture)."¹ Considering the risks of negative impacts, the expert engaged by IDB Invest outlined a series of preventive and mitigation measures. These included "relocation and distancing of the route of the towers to the east, to more than 500 meters from the mission structure, the larger pasture's stone wall."² The IDB expert also stated in her conclusions that "there is no impediment to the construction of the line through Estancia Buen Retiro, provided that the mitigation measures suggested in this document are taken."³
- **Legal and administrative processes.** The Requesters have presented their grievances via several channels. However, both the administrative remedies sought against UTE and the relief sought in the courts have been denied. The last of these was an "amparo" proceeding for constitutional relief, to suspend the works on the Morató property, while imposition of the easement could be reconsidered in light of declaration of the property as an Historical Heritage Site. This amparo action was rejected because the procedural time limits for contesting the imposition of the easement had elapsed.

Although the main objective of the complaint is to protect the Historical Heritage Site, the perspective of the Requesters encompasses several dimensions of interest: the property's historical significance; its landscape and archeological considerations; and the site's tourism and educational potential. In addition, the Requesters indicated that, despite having had exchanges with UTE, in their view these did not lead to a genuine dialogue or results-oriented actions to resolve their complaint. Regarding the process pursued via the IDB Invest MGM, the Requesters expressed frustration with: (a) how long the process has taken;

¹ Study "Relatório da vistoria na Estância Buen Retiro–Castillo Morató," page 37.

² Idem.

³ Idem.

(b) IDB Invest's decision to not take tangible action to address the issues until authorities had ruled on the administrative and legal processes; (c) their inability to access the study produced by the expert engaged by IDB Invest for more six months; and (d) the project's failure to implement the preventive and mitigation measures suggested by the expert. Despite their frustration and distrust, the Requesters said they were willing to engage in a conversation facilitated by the MICI.

The representatives of UTE stated that, in their view, the project was progressing in full compliance with Uruguay's legal and regulatory requirements. Moreover, they said the outcomes of the legal and administrative proceedings have confirmed their view by supporting UTE's position on several occasions. The officials also indicated that UTE had prepared a proposal to modify the route of the line in response to some of the concerns raised, but the Morató family had not responded to this proposal for approximately one year, while proceeding to initiate legal actions. The UTE representatives told the MICI during bilateral meetings that the cement foundations of the towers had already been built on the Morató family's land, making it very difficult to change the route of the line in any way. Lastly, the UTE representatives' view was that there were limited opportunities to dialogue with the Requesters because, from the Client's perspective, the actions of the Requesters and their advisors were not conducive to the creation of a space for conciliation.

The IDB Invest representatives appreciated the steps UTE had taken to address the issues raised by the Requesters, especially the proposal to move the route of the towers near the pasture's stone wall 250 meters to the east of the current route. Management also said its position was to not influence ongoing legal proceedings. Regarding its willingness to initiate a dialogue process, their view is that this decision rests with the Client. Management would support the position taken by UTE about whether a dispute resolution process would be advisable.

As a result of the meetings held and material reviewed during the Assessment, a series of obstacles were identified that make it difficult to initiate a dispute resolution process. These challenges are summarized below:

- **Time elapsed and narrowing window of opportunity.** As indicated above, before contact with the MICI in November 2022, there had been a series of conversations including bilateral conversations between the Requesters and UTE and interactions via the IDB Invest MGM. It is important to emphasize that these attempts not only failed to produce an agreement but raised the level of distrust between the Parties, damaged personal relationships even more, and delayed the potential involvement of an impartial third party to facilitate the dialogue. It should also be noted that in early 2022 the works had not yet begun on the Morató property, so a more varied menu of resolution options was available. However, when the assessment stage of the MICI Consultation Phase began in December 2022, the tower foundations had already been built at Estancia Buen Retiro. These factors have further entrenched the Parties in their positions and have increased animosity, since as more time passes, more opportunities arise for new disputes, and the disagreement becomes harder to resolve, as there are fewer feasible resolution options available.
- **Impacts of parallel administrative and legal proceedings on a potential dispute resolution process.** Pursuing claims through several different venues, which is the strategy followed by the Requesters in this case, can impact each Party's calculus as to whether or not a dispute resolution process facilitated by an impartial third party would be advisable. Specifically, the perception that the same issue is being addressed

through several different forums can reduce the Parties' incentives for initiating a voluntary dialogue process. It must also be considered that some of the administrative and/or legal proceedings may have been resolved, at least temporarily, and these resolutions may also affect the Parties' calculus, based on their relative position of strength vis-à-vis the other as a result of the rulings.

- **Lack of trust between the Parties.** In this case, the perception of lack of consultation and/or information, frustrated exchanges while attempting to seek solutions, delays in processing the complaint prior to the MICI's involvement, and the initiation of litigation in the courts are factors that not only have contributed to distrust but have also served to solidify, at every turn, the increased animosity between the Parties. These phenomena contribute to a climate with very limited conditions for dialogue. In this case it was not possible to identify personal, informal, or other channels of communication that had not been affected by the conditions described here.

Based on its meetings and review of the available material, the MICI shared a potential road map for a dialogue process with the Parties. That road map consisted of three main issues that could form the backbone of a MICI-facilitated dispute resolution process, as well as a methodological framework including expedited processing, a mission scheduled promptly for the end of December, and a plenary session to address the issues identified. However, in addition to the three significant obstacles identified—time elapsed and narrowing window of opportunity, parallel legal proceedings, and extreme distrust between the Parties—on 16 December 2022 the Client stated in an email that it “does not consider it advisable to arrange an in-person meeting to pursue a transactional agreement.”

Pursuant to paragraph 29 of the MICI-IDB Invest Policy, given the decision made by the Client and the obstacles identified during the Assessment Stage, the MICI determines that initiating a dispute resolution process is not feasible. Under the MICI-IDB Invest Policy and the Guidelines for the Consultation Phase, the processing of the case in the Consultation Phase has been concluded, and the case will be transferred to the Compliance Review Phase.

I. BACKGROUND⁴

A. Geographic and social context

- 1.1 The Tacuarembó-Salto Green Transmission Line Project is being built between the cities of Salto and Tacuarembó. It traverses the departments of Salto, Paysandú, Río Negro, and Tacuarembó through low population density areas and avoiding forest stands.
- 1.2 According to information from Uruguay's Ministry of Industry, Energy, and Mining, the country has experienced a steady increase in per capita electricity consumption since the early 2000s. Meanwhile, public policies have been implemented to ensure this growing demand for energy is increasingly met by a supply generated using renewable energy technologies, such as biomass, solar, wind, and hydropower.

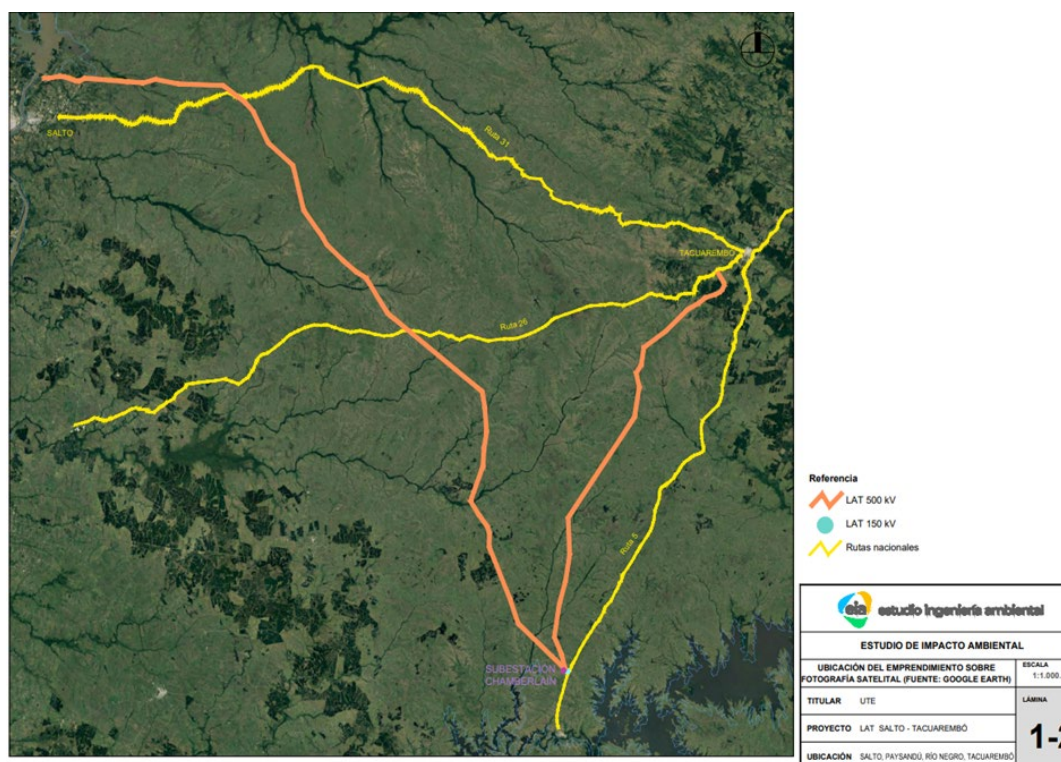
B. The project

- 1.3 IDB Invest became involved through a loan operation approved by the Board of Executive Directors of the Inter-American Investment Corporation (IIC) on 22 September 2020. The operation's sponsor is Administración Nacional de Usinas y Transmisiones Eléctricas (UTE or "the Client"), and the borrower is Fideicomiso Financiero Línea de Transmisión Tacuarembó Salto, a special-purpose trust. The estimated total cost of the project is US\$285.2 million, which is projected to be financed through a long-term A loan of US\$114 million from the IDB Group, a B loan of US\$114 million, and equity contributions from the sponsor for 20% of the total costs (approximately US\$57 million). Notably, the borrower planned to issue certificates of participation, 20% of which would be held by UTE, and the remaining 80% by institutional and individual investors through an initial public offering.
- 1.4 The project objectives include: (i) to ensure the current and future reliability of the national electricity system in Uruguay; and (ii) to support the integration of increased renewable energy production by expanding the electricity network. According to public information, the project is now in execution, and its construction phase is expected to last 42 months.
- 1.5 The project consists of the design, construction, operation, and maintenance of a 350-km 500-kV high-voltage line through the construction of a substation in the Chamberlain area, reinforcement of the Salto substation, and auxiliary services that will interconnect substations in the departments of Tacuarembó and Salto. This project, which represents approximately 6.6% of the existing high-voltage transmission network and 32% of the 500-kV system, has been certified as a green transmission line (IDB Invest GTL certification).⁵
- 1.6 The line splits into two sections that will connect at the Chamberlain substation: one running between Tacuarembó and Chamberlain (120 km) and one running from Chamberlain to Salto (230 km). The project also includes two segments of 150-kV lines that will connect the Chamberlain substation to an existing 150-kV high-voltage line that runs between Bonete and the Palmatir Wind Farm.

⁴ Information taken from the Bank website and public documents on the related operations.

⁵ Information taken from the IDB Invest website: <https://idbinvest.org/en/projects/tacuarembó-salto-green-transmission-line?language=es>.

Figure 1. Project area



Source: Environmental impact assessment progress report for the Tacuarembó-Salto high-voltage line, November 2019.

- 1.7 According to the operation's public information, the project includes plans to install some 1,000 to 1,100 towers spaced between 350 and 400 meters apart, as well as an easement strip of 40 meters on each side of the 500-kv line and an easement strip of 30 meters on each side of the 150-kv line. Project documents indicate that these easements would partially affect 263 registered rural properties.
- 1.8 IDB Invest determined that the following Performance Standards of the International Finance Corporation (IFC) would apply to the project: Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts; Performance Standard 2: Labor and Working Conditions; Performance Standard 3: Resource Efficiency and Pollution Prevention; and Performance Standard 4: Community Health, Safety, and Security. In this context, the project was classified as a Category "B" operation under the IDB Invest Environmental and Social Sustainability Policy, because it was determined that the identified risks could be mitigated with readily available measures that could be feasibly implemented in the context of the operation. To address those risks, IDB Invest prepared a project-specific environmental and social action plan.

C. The Request

- 1.9 On 17 November 2022,⁶ the Independent Consultation and Investigation Mechanism (MICI) received a Request from two residents and owners (“the Group of Requesters”) of a property in the department of Paysandú, Uruguay, who are being represented by two attorneys and an environmental expert for the purposes of the MICI process. The public information is available in the MICI Public Registry (case file of Request [MICI-CII-UR-2022-0199](#)).
- 1.10 The Request alleges potential harm to registered property 610, which is owned by the Group of Requesters, arising from the construction and installation of around 20 lattice towers that are 48 meters in height for the high-voltage electric transmission line envisaged under the project. This harm, the Requesters say, is the direct result of IDB Invest’s noncompliance with its Environmental and Social Sustainability Policy, with a number of IFC Performance Standards, and with national regulations in this area.
- 1.11 According to information provided in the Request, the abovementioned property was declared a Departmental Historical Heritage Site in 2020 and a National Historical Monument of Uruguay in 2022. The property includes the site known as Estancia Buen Retiro-Castillo Morató, an estate that sits on 3,175 hectares in the community of Tres Árboles in the department of Paysandú, between the Corrales stream, the Queguay River, and a rural access road that connects Route 25 to Route 26. Structures on the property that are considered cultural heritage landmarks include the building known as Castillo Morató, erected between 1902 and 1904, and several stone walls or fences that were built before the nineteenth century.⁷
- 1.12 Specifically, the Group of Requesters claims that the project impacts were not fully analyzed and identified, especially in relation to the protection of historical monuments. They also allege that a complete analysis of alternatives was not performed. Furthermore, they state that proper procedures for protecting sites of cultural significance were not followed, such as: verification with a specialist to ensure the project will not cause any harm, preparation of a sociocultural assessment, establishment of measures to mitigate adverse impacts, and preparation of harm prevention plans.
- 1.13 Regarding the current situation in the area, the Group of Requesters told the MICI that the construction works had begun with the excavation of pits and the pouring of concrete for installation of the towers. From their perspective, this work had been done without ensuring that archeological conservation procedures were in place to safeguard artifacts that may be present in the subsoil. Likewise, in later messages, the Group of Requesters indicated that the safety protocols for excavations were not being followed, which had resulted in accidents involving animals living on the property. They also said that the construction workers had not been coordinating

⁶ Since the current MICI Policy entered into effect, 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 marked as 6 November 2022.

⁷ Resolution 40/022, Declaration of National Historical Monument, adopted by the Ministry of Education and Culture of Uruguay.

- with the owners to access the property and that several heads of livestock had escaped due to carelessness.
- 1.14 The Request also includes allegations that a timely and proper public consultation process that included all those who could potentially be impacted by the project works in the area was not conducted, and there was a lack of publicly available information on the project and its construction stages.
 - 1.15 Regarding previous contact with Management, the Request shares information about several in-person and virtual interactions with IDB Invest Management since March 2022, including via the IDB Invest Management Grievance Mechanism (MGM). Despite a willingness to dialogue, however, the Requesters indicate that this contact did not lead to a timely resolution of their concerns, and that the project works began while they were interacting with IDB Invest Management, to the detriment of the impacts alleged by the Group of Requesters.
 - 1.16 Specifically, the Requesters describe a visit by the IDB Invest project team along with a cultural heritage specialist and UTE staff in April to conduct an archeological diagnostic assessment of the property. As of the time they submitted their Request to the MICI, the Group of Requesters said they had not yet received the findings of that report. The report was posted on the project website and made available to the Group of Requesters during the eligibility determination period.⁸
 - 1.17 Lastly, with respect to the MICI process, the Group of Requesters expressed its desire for the MICI to process the Request, if deemed eligible, through both phases of the MICI process: the Consultation Phase and the Compliance Review Phase.

D. MICI process up to eligibility determination

- 1.18 Table 2 presents the MICI's main actions from the time the Request was received up to the determination of eligibility.

Table 1. Timeline of MICI actions during the period

Date	Actions
2022	
17 November	Request received
18 November	Video call with Group of Requesters and their Representatives
22 November	Request registered and notifications sent to Requesters and IDB Invest Management
22 November to 13 December	Document review and desk work
8 December	IDB Invest Management Response received
13 December	Eligibility Memorandum issued

⁸ Document available in the links section of this document.

II. CONSULTATION PHASE

A. Policy framework

- 2.1 The Independent Consultation and Investigation Mechanism (MICI) is governed by the MICI-IDB Invest Policy (document MI-1-4), approved by the Bank's Board of Executive Directors on 15 December 2015 and updated on 27 April 2021. Pursuant to that policy, Requesters may choose the Consultation Phase, the Compliance Review Phase, or both. When both options are selected, the Process begins with the Consultation Phase.
- 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. It is based on a series of methods that foster unbiased, equitable treatment of 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 Invest Policy, particularly paragraphs 24 to 35, by supplementing and operationalizing the Policy provisions.
- 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 the 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, this stage seeks to identify individuals who could play the role of representing the Parties and their methodological preferences for a potential process.

B. Assessment Stage timeline

- 2.4 Pursuant to paragraph 29 of the MICI-IDB Invest Policy, the maximum term of the Assessment Stage is 40 business days, running from the eligibility determination date, which for this case was 13 December 2022. Therefore, the deadline to complete the Assessment Stage is 16 February 2023.
- 2.5 As has been the practice since the COVID-19 pandemic began, the MICI conducted its assessment virtually through a series of bilateral meetings with the Parties.
- 2.6 The activities during the Assessment Stage of this case were the following:

Table 2. Timeline of activities during Assessment Stage

Date	Actions
2022	
14 December	Start of Assessment Stage of the Consultation Phase
14 to 20 December	Document review and desk work
14 December	Meeting with IDB Invest Management
14 December	Meeting with IDB Invest Executive Director for Uruguay
15 December	Video call with UTE and IDB Invest Management
15 December	Video call with Requesters

16 December	Video call with Requesters
16 December	Video call with UTE and IDB Invest Management
19 December	Video call with Requesters
2023	
7 February	Consultation Phase Assessment Report issued

C. Assessment methodology

- 2.7 Pursuant to the MICI-IDB Invest Policy and the Guidelines for the Consultation Phase, the assessment included a document review and a series of bilateral meetings with the Parties. Due to the long time that had passed between the original filing of the complaint with the MICI in March 2022 and when it was received again in November 2022, as well as the progress of the works on the Morató family's property, the Consultation Phase team conducted an expedited assessment of conditions, to determine whether it could proceed with a dispute resolution process.
- 2.8 Between 13 December, when the Eligibility Memorandum was issued, and 20 December, the MICI held six bilateral meetings with the Requesters, IDB Invest Management, and the Client. In this sense, it is important to recognize that all Parties demonstrated considerable flexibility and speed in responding to the MICI's requests for meetings.
- 2.9 In light of the above, and since the working methodology must always be adapted to the specific features of each case, it was essential to consider the limited time frame available to assess whether conditions existed for a dialogue, and especially to analyze the possible agenda of issues and resolution options in the context of this short time frame. Therefore, the MICI sought to explore the following issues with the Parties: (a) a possible agenda of issues to be addressed in a dialogue process; (b) a short time frame to conduct an expedited dialogue process; and (c) the willingness of the Parties to begin a dialogue based on the list of issues identified and the time frame available for the process. If consensus could be reached on these three issues, then other parts of the methodological framework could be identified, such as the location of dialogue meetings, how records of the Process would be kept, the membership of the delegation representing each Party, and other points.

III. ANALYSIS OF CONDITIONS

A. Issues and current context

- 3.1 **Issues.** Based on the document review and bilateral meetings, three major issues can be identified as the subject of an alternative dispute resolution process: (a) impacts on cultural and historical heritage; (b) economic impacts; and (c) lack of access to information on the project, technical studies, and analyses of alternatives.
- 3.2 Regarding potential impacts on cultural and historical heritage, the allegations focus on the impacts that installation of the high-voltage line would have on a territory that has been declared, in its entirety, as a historical heritage site. The Requesters repeatedly emphasized the history of Estancia Buen Retiro, its productive, social, and political significance at different times in Uruguay's history, and the tremendous

value of old structures that include not only Castillo Morató but also the stone and wire fences and other features.

- 3.3 An important element of the allegation pertaining to the impacts on cultural and historical heritage is associated with the project's impacts on the landscape. The Requesters thus consistently indicated that the alleged impacts must be understood in terms of these two distinct, yet related, dimensions: the landscape dimension and the archeological dimension. According to the allegations, the land would be divided in two by an easement strip and the presence of towers and cabling, all of which would alter the physiognomy of the property. Moreover, there are allegations related to the manner in which the works are being build, which could endanger remains or structures of archeological value. As alleged during the conversations, the protocols pertaining to the archeological oversight of the works and the presence of an archeologist and curator of works during excavations for the tower foundations were not being adequately followed.
- 3.4 The second issue identified is associated with potential economic impacts. This was a central issue for the Requesters: not only would the project affect the territory's integrity and historical and cultural value, it could also have future economic impacts. From their perspective, these impacts were related: not only could the works associated with the project impact their livestock production, the presence of towers changing the landscape and physiognomy of the territory could also affect the development of tourism enterprises the Requesters wished to undertake on the property.
- 3.5 Regarding the issue of access to information, the Requesters said they did not have adequate information on the project, its route, and other points of interest during the stages prior to the start of work. They also said IDB Invest had hired an archeologist to analyze the condition of their property in relation to Performance Standard 8, and that study was not shared with the Requesters until they resubmitted to the MICI. Specifically, they said they had waited approximately six months after the archeologist visited their property for IDB Invest to send them the study's findings. Management would later make the study publicly available in November 2022.
- 3.6 **Background and current context**
- 3.7 **Process of addressing the complaint via the IDB Invest Management Grievance Mechanism (MGM).** The Group of Requesters had originally contacted the MICI in March 2022, and their complaint was processed under case file [MICI-CII-UR-2022-0186](#). In the Registration phase, the MICI found that the Group of Requesters had not previously contacted IDB Invest Management to address the issues raised in the Request, and that they intended to initiate such contact. The MICI proceeded to not register the Request, so that this interaction could occur with the IDB Invest MGM.
- 3.8 The IDB Invest team therefore made contact with the Requesters. Their goals included a field visit with an expert in IFC Performance Standard 8, who could review the allegations related to potential impacts on historical and cultural heritage.
- 3.9 A site visit to Estancia Buen Retiro and Castillo Morató in April 2022 included the Requesters, IDB Invest, the expert engaged by IDB Invest, and UTE staff. Based on this visit, the expert was to produce a report reflecting her perception of the concerns raised by the Requesters as they related to IFC Performance Standard 8 and the

protection of cultural sites. Additionally, IDB Invest told the Requesters that it would wait for the ongoing legal and administrative processes to conclude (see paragraph 3.14) before indicating to the Client and the Requesters how it would proceed with respect to the allegations.

- 3.10 After more than six months had passed since the site visit to Estancia Buen Retiro, the Requesters indicated that they had not received the report from the expert engaged by IDB Invest to assess the situation of the property. They also said the works had commenced, and work was already being done on their land. Therefore, since they continued to have concerns, which had only intensified since the works had commenced on their property, in November 2022 they decided to return again to the MICI to reinitiate the processing of their complaint.
- 3.11 **Conclusions of the study commissioned by IDB Invest to review the allegations related to IFC Performance Standard 8 at Estancia Buen Retiro.** In late November 2022, after the Requesters' new complaint was registered, IDB Invest Management published on its website the study by the expert engaged to review the allegations related to IFC Performance Standard 8 on the historical heritage/cultural sites at Estancia Buen Retiro.
- 3.12 Among the report's conclusions, the expert notes: "based on the information available, and following the site visit, there are no heritage features on the property that can be considered critical under Performance Standard 8, other than Castillo Morató and the stone walls (fence and pasture)."⁹ Therefore, based on the "risks of negative impacts arising from installation of the Salto Grande-Chamberlain 500-Kv high-voltage line on the property,"¹⁰ the expert outlines a series of preventive and mitigation measures. These measures are transcribed below:
1. As a mitigation measure, the expert indicates the "relocation and distancing of the route of the towers to the east, to more than 500 meters from the mission structure, the larger pasture's stone wall."^{11 12}
 2. In terms of preventive measures, the expert indicates, among others, "the systematic implementation of archeological survey activities on the surface and subsoil in the area of installation of the transmission line."¹³ The expert also outlines the steps that must be followed, if a finding is made during the archeological survey activities.
- 3.13 Importantly, the expert engaged by IDB Invest states in her conclusions that "there is no impediment to the construction of the line through Estancia Buen Retiro, provided that the mitigation measures suggested in this document are taken."¹⁴
- 3.14 **Legal and administrative processes.** The Requesters have presented their grievances to relevant authorities via several channels. Briefly, based on the

⁹ Study "Relatório da vistoria na Estância Buen Retiro-Castillo Morató," page 37.

¹⁰ Idem.

¹¹ Idem.

¹² Currently, the distance between the tower nearest to the larger pasture's stone wall is approximately 170 meters, according to bilateral conversations with IDB Invest.

¹³ Study "Relatório da vistoria na Estância Buen Retiro-Castillo Morató," page 37.

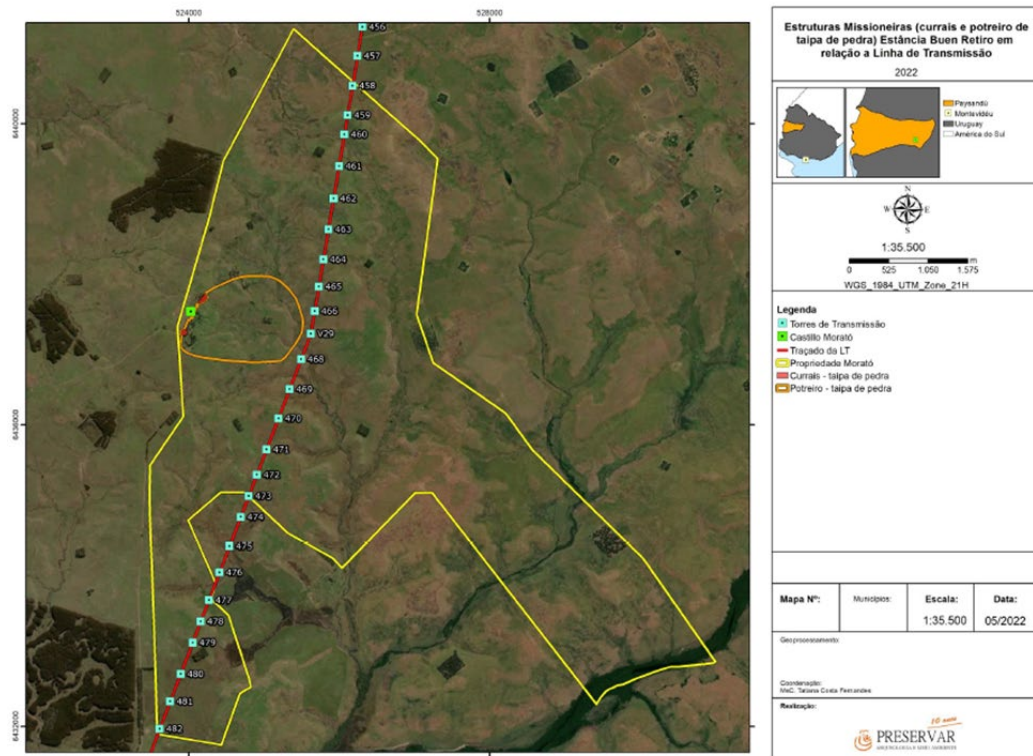
¹⁴ Idem.

information shared with the MICI, the main points are as follows: (i) one of the key elements of the allegations has been that the high-voltage line passes through a territory that has been declared a Departmental Historical Heritage Site by the Departmental Board of Paysandú (2020) and a National Historical Monument by the Ministry of Education and Culture (11 February 2022), which would contravene national laws protecting these types of sites and territories; (ii) the easement to establish the high-voltage line on the Familia Morató's territory was imposed in January 2020 and in June 2020 under Board Resolution R20-40;¹⁵ (iii) in July 2020 the Requesters asked UTE to revoke the imposition of the easement via administrative proceeding, and UTE denied the request; the Requesters did not appeal this denial to the Court of Administrative Litigation; and (iv) after Estancia Buen Retiro was declared an Historical Heritage Site, the Requesters reinitiated judicial "amparo" proceedings for constitutional relief, to suspend the project until the high-voltage line's route could be reconsidered in light of the subsequent declaration of Estancia Buen Retiro and Castillo Morató as a protected site. This amparo action was rejected on 12 September 2022 because the procedural time limits for contesting the imposition of the easement had elapsed.

- 3.15 **Current context.** Upon receiving the Request in November 2022, the MICI conducted an accelerated Registration and Eligibility process, given its prior knowledge of the case and the urgency required by the progress of the works. At the start of the Assessment Stage of the Consultation Phase, the MICI confirmed through bilateral meetings and shared photographs that the construction work for installation of the high-voltage line towers had already begun on the Morató family's property. The photos below show that 14 of the 23 towers that will be installed at Estancia Buen Retiro are near the walls that are relevant in the framework of heritage protection (Photo 1). They also show the work being done on the family's property (Photo 2).

¹⁵ Information obtained from the IDB Invest Management Response during the Eligibility process. Additionally, a court ruling cited in the response specifies that Resolution R20-40 was adopted on 30 January 2020.

Photo 1 – Number and distribution of the high-voltage towers to be installed at Estancia Buen Retiro



Notes: The red line indicates the route of the high-voltage line; the blue squares are the towers to be installed; the green square is Castillo Morató; and the orange circle is the pasture's stone fence.

Source: Relatório da vistoria na Estância Buen Retiro–Castillo Morató.

Photo 2 – Progress on installation of towers at Estancia Buen Retiro as of 16 December de 2022



Source: Photo taken by the Requesters and shared with the MICI.

B. Parties and their perspectives

3.16 **Requesters.** The Requesters' perception is that their views and interests have not been considered throughout the project's development. On numerous occasions they raised the issue of lack of consultation, the fact that Client did not visit the

- property during the design phase to assess it and speak with the owners, and that they have not had full information on the high-voltage line.
- 3.17 It is important to note that, in conversations with the MICI, the Requesters said their main concern is the protection of a site that they consider unique and that had been declared a Departmental and National Historical Heritage Site. This protection would allow them to preserve a valuable asset and testimony of their history, and to develop tourism, educational, and cultural activities through the promotion of this asset. It therefore follows that there are different dimensions of interest: the property's historical significance; its landscape and archeological dimensions, which, although distinct, are related to the historical and cultural issues; and the site's tourism and educational potential.
- 3.18 The Requesters indicated that, although they had at least one meeting with three managers from UTE, their views had not been considered. Simply put, in their view, the grievances they presented to the Client did not lead to a genuine dialogue or effective negotiation.
- 3.19 According to the Requesters, they were told in these meetings that moving the entire line would be very costly. However, they indicated that UTE had suggested it might be possible to distance the high-voltage line towers from the pasture fence, but that this would involve a greater number of towers. According to the family's analysis at that time, this would not solve the problem because the line would still pass through the land, practically dividing it in two.
- 3.20 The Requesters also believed that the legal proceedings undertaken to defend their rights had not yet concluded. According to what they told the MICI, they had the option of continuing to pursue legal remedies to determine what impact the declaration of the property as a National Historical Heritage Site, and the protections stemming from this declaration, might have on previous actions (such as imposition of the easement).
- 3.21 Regarding the process pursued via the IDB Invest MGM, the Requesters expressed frustration with how long it had taken, as well as IDB Invest's decision to not take tangible action to address the issues while the administrative and legal processes were under review by the relevant authorities.
- 3.22 The Requesters also expressed their displeasure with what they consider to be a lack of transparency in the nondisclosure of the study by the expert engaged by IDB Invest. In addition, once this study was made publicly available more than six months after the site visit to Estancia Buen Retiro, they said the project was not implementing the required protective measures identified by the expert.
- 3.23 Regarding the start of work on their land, the Requesters said their perception was that the works had commenced precisely in the areas closest to the pasture fence.
- 3.24 In this context, and despite their frustration and distrust, the Requesters said they were willing to engage in a conversation facilitated by the MICI. They even shared with the MICI a brief list of issues they thought could be addressed as part of a dialogue.
- 3.25 Client. The representatives of UTE repeatedly stated that, in their view, the project was progressing in full compliance with Uruguay's legal and regulatory

requirements. Moreover, they said the legal and administrative proceedings have confirmed their view by supporting UTE's position on several occasions.

- 3.26 In addition, the officials said they had attempted to interact with the Requesters several times, but those attempts had not been productive. Specifically, they said UTE had prepared a proposal to modify the route of the line in response to some of the concerns raised, but the Morató family had not responded to this proposal for approximately one year. According to the Client, not only had the family not responded to the proposal but they proceeded to launch the aforementioned legal actions.
- 3.27 The Client also indicated that the work is of national interest and that, given the outcomes of the legal proceedings, they had actively progressed with construction of the high-voltage line. They confirmed that the foundations or bases of the all the towers on the Morató family's land have already been completed.
- 3.28 UTE representatives also indicated that, prior to the MICI process, they had not had access to the findings of the study conducted by the technical expert engaged by IDB Invest. Their understood this to be the result of IDB Invest's decision to not influence the ongoing administrative and legal proceedings.
- 3.29 Lastly, the UTE representatives' view was that there were limited opportunities to dialogue with the Requesters, and that it could have been feasible to make some changes until June 2022. They therefore stated that, from their perspective, the actions of the Group of Requesters and their advisors were not conducive to the creation of a space for dialogue and working together.
- 3.30 IDB Invest Management. IDB Invest Management underscored the importance of the project in terms of Uruguay's electricity grid and highlighted the work done by the Client throughout its collaboration with the Bank.
- 3.31 The IDB Invest representatives also mentioned the steps UTE had taken to address the issues raised by the Requesters, especially the proposal to move the route of the towers near the pasture's stone wall 250 meters to the east of the current route. Regarding the ongoing legal proceedings and how these might have influenced the processing of the complaint filed with IDB Invest, Management said the intention was to not influence ongoing administrative and legal proceedings, and to wait until the relevant authorities had made their determinations before IDB Invest took further steps to address the issues.
- 3.32 According to IDB Invest, it must be understood that, from a technical perspective, it is not possible to change the route of the high-voltage line to distance it from the fence and/or Castillo Morató by moving only a small number of towers (for example, five or seven towers close to the fence). This is because each tower can only change the direction by a maximum of three degrees, so any alteration would require moving a larger number of towers.
- 3.33 Regarding its willingness to initiate a dialogue process, the Bank's view is that this decision rests with the Client. Management would support the position taken by UTE about whether or not a MICI-facilitated dispute resolution process would be advisable.

C. Obstacles to starting a Consultation Phase or Dispute Resolution process

- 3.34 **Time elapsed and narrowing window of opportunity.** According to the Parties, there had been a series of conversations and attempts to reach an agreement before the case was presented to the MICI in November 2022. Some of these were direct conversations between the Morató family and UTE, and others were under the auspices of IDB Invest Management once the original complaint that the MICI received in March 2022 was transferred to Management for handling under the IDB Invest MGM.
- 3.35 It is important to emphasize that these previous attempts not only failed to produce an agreement but raised the level of distrust between the Parties (see paragraph 3.39) and delayed the potential intervention of an impartial third party to facilitate the dialogue. It should also be noted that in early 2022 the works had not yet begun on the Morató property, so a more varied menu of resolution options was available. However, when the assessment stage to evaluate the conditions for the MICI Consultation Phase began in December 2022, the tower foundations had already been built at Estancia Buen Retiro. Moreover, the works' progress also created new sources of tension, such as the alleged failure to apply the standards and procedures tied to archeological protection when installing the tower foundations. These factors have further entrenched the Parties in their positions and have increased animosity, since as more time passes, more opportunities arise for new disputes, distrust deepens, and the disagreement becomes harder to resolve, as there are fewer feasible resolution options available. Logically, in this vein, any proposal to redesign parts of infrastructure work will be more costly and complex once the work has begun than prior to initiating the works on the land in question.
- 3.36 **Impacts of parallel administrative and legal proceedings on a potential dispute resolution process.** In this case, the Requesters lodged their grievances through several available mechanisms. In 2020, they attempted via UTE to revoke the imposition of the easement, and also initiated legal proceedings over the project's potential impacts. Simultaneously, they set processes in motion with the MICI and the IDB Invest MGM.
- 3.37 In this context, it can be noted that the use of this wide range of mechanisms can impact each Party's calculus as to whether or not a dispute resolution process facilitated by an impartial third party would be advisable. Specifically, the perception that the same issue is being addressed through several different forums can reduce the Parties' incentives for initiating a voluntary, genuine, and flexible dialogue process. It must also be considered that some of these administrative and/or legal proceedings may have been resolved, at least temporarily, and these resolutions may affect the Parties' calculus as to whether it would be advisable to initiate a dialogue process, based on their relative position of strength vis-à-vis the other as a result of the administrative or judicial rulings.
- 3.38 Additionally, the awareness that the issues are being addressed in several venues that are different in nature and carry different implications can create some unease on the part of the respondents. In addition, some tend to regard this flurry of ongoing actions as stemming from supposed ill intent or unwillingness to negotiate, which causes those who do not see the right conditions for facilitated dialogue to become more entrenched in their position.

- 3.39 **Lack of trust between the Parties.** Extreme distrust between social actors is a characteristic of social conflict in Latin America and the Caribbean. In this case, distrust has grown in the past nearly three years because of the differences caused by the establishment of the project. The perception of lack of consultation and/or information, frustrated exchanges while attempting to seek solutions, delays in processing the complaint prior to the MICI's involvement, and the initiation of litigation in the courts are factors that not only have contributed to distrust but have also served to solidify, at every turn, the increased animosity between the Parties. For example, the initiation of legal proceedings, on one hand, is evidence of existing distrust and the perception that the dialogue route is not yielding the desired outcomes while, on the other hand, it also contributes to feeding this basic distrust.
- 3.40 In turn, this phenomenon of growing distrust creates a climate with very limited conditions for dialogue. Each Party attributes negative intent to any action, response, or comment from the other Party, which tends to reinforce attribution biases of hostile intent. A series of mutual accusations and a reinforcement of stigmas between the actors have also been identified. In contexts such as this, it is normal to see reduced communication between the Parties, although informal channels of communication or personal connections can also be found that may serve as a foundation to create conditions for dialogue. In this case it was not possible to identify any such personal, informal, or other channels of communication that had not been affected by the conditions described here.
- 3.41 That being so, based on its meetings and review of the available material, the MICI shared a potential road map for a dialogue process with the Parties. That road map consisted of three main issues that could form the backbone of a MICI-facilitated dispute resolution process, as well as a methodological framework including expedited processing, a mission scheduled promptly for the end of December, and a plenary session to address the issues identified. However, in addition to the three significant obstacles already identified—time elapsed and narrowing window of opportunity, parallel legal proceedings, and extreme distrust between the Parties—on 16 December 2022 the Client stated in an email that it “does not consider it advisable to arrange an in-person meeting to pursue a transactional agreement.”

IV. CASE CLOSURE IN THE CONSULTATION PHASE AND TRANSITION TO THE COMPLIANCE REVIEW PHASE

- 4.1 Pursuant to paragraph 29 of the MICI-IDB Invest Policy, given the decision made by the Client and the obstacles identified during the Assessment Stage, the MICI determines that initiating a dispute resolution process is not feasible.
- 4.2 Therefore, the MICI informs the IDB Invest Board of Executive Directors and the parties involved that the processing of Case MICI-CII-UR-2022-0199 in the Consultation Phase has been concluded. Under the MICI-IDB Invest Policy and the Guidelines for the Consultation Phase, the case will be transferred to the MICI Compliance Review Phase for that team to begin processing the Request.