

MEMORANDUM

MICI-BID-PE-T1258 & PE-T1276

Date: July 12, 2018

To: Victoria Márquez-Mees, MICI Director

From: Andrew Robert Morrison, Division Chief, SCL/GDI

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Re: Management Response to Request MICI-BID-PE-2018-0138 in reference to “Isolated Indigenous Peoples Reservations Regularization” – (PE-T1258 & PE-T1276).

I. Introduction and Basic Project Information

1. The purpose of this memorandum is to present the Response of the Bank’s Management (hereinafter, “Management”) to the document “Notification of Request Registration and Request for Management Response” (hereinafter, “Notification”) sent by MICI to Management by email on June 18,

2018, in connection with case MICI-BID-PE-2018-0138 concerning the “Isolated Indigenous Peoples Reservations Regularization” technical cooperation projects (hereinafter, “THE TECHNICAL COOPERATION”).

II. Background

2. The total budget of the two technical cooperation projects was US\$ 1,250,000, of which US\$ 1,000,000 was a non-reimbursable IDB contribution: US\$ 400,000 from the Gender and Diversity Fund (GDF) and US\$ 600,000 from the Infrastructure Fund (IPF); the remaining US\$ 250,000 was an in-kind contribution from the Peruvian government and is represented by the human resources used to implement the project.

3. Both technical cooperation projects were approved in December 2012 and had an implementation period of 33 months from the start date. The deadline for the last disbursement of the cooperation was extended to January 16, 2018. The obligations of the parties in relation to the cooperation were set forth in a Technical Cooperation Agreement (hereinafter, the “Agreement”) between the Republic of Peru and the Inter-American Development Bank (IDB) which provided that the IDB would transfer the abovementioned funds to the Executing Agency on a non-reimbursable basis; the Executing Agency, for its part, undertook to execute the Project in accordance with the terms and conditions set forth in said agreement. The Executing Agency for the cooperation was the Ministry of Culture, through its Vice Ministry of Intercultural Affairs.

4. In the Peruvian Amazon there are Peoples in Isolation and Initial Contact (PIIC). The distinguishing characteristic of these peoples is that they have made the decision to live without establishing contact with the national society because of their vulnerable conditions, the transmission of contagious diseases, and confrontations that have affected their populations.

6. Currently, there are five territorial reserves recognized by the Peruvian State whose level of protection was intended to be strengthened through their formal adaptation to indigenous reserves pursuant to Law No. 28736 “Law for the Protection of Indigenous or Native Peoples in Isolation and Initial Contact.” This law resulted from one of the agreements between the Bank and the Government of Peru to make the Camisea Project viable. At that time, there were also five requests for recognition as peoples in isolation and initial contact and their subsequent categorization as indigenous reserves.

7. In accordance with Law No. 28736 and the regulations thereto, the Vice-Ministry of Intercultural Affairs called for the adaptation of territorial reserves to indigenous reserves. In this context, in 2012, the relevant Multisectoral Commission prepared the preliminary recognition studies for the Territorial Reserve of the Kugapakori, Nahua, Nanti and others (RTKNN), the Isconahua Territorial Reserve, the Murunahua Territorial Reserve, the Madre de Dios Territorial Reserve, and the Mashco Piro Territorial Reserve. The first phase of the adaptation procedure was thus completed, and the Supreme Decree that would recognize PIIC was in the process of being issued, after which additional categorization studies would need to be conducted.

8. The objective of the technical cooperation was to support the Republic of Peru in making substantial progress in the process of protecting PIIC through the regularization of their reserves. This included four components: i) PIIC recognition studies and adaptation studies of indigenous reserves; ii) Communication and awareness raising strategy; iii) Pilot protection project in the field; and iv) Analysis of deforestation prevented by the creation of PIIC reserves.

9. During the implementation phase, it was noted that one of the five Territorial Reserves that formed part of this technical cooperation, RTKNN, already had protection mechanisms implemented and administered by the Peruvian State that guaranteed the inviolability of this reserve. This was a consequence of the protection measures agreed upon by the Bank and the Government of Peru as part of the Camisea Project, which was financed by the IDB. This protection was formalized on August 7, 2003, by Supreme Decree No. 028-2003-AG, through which the Peruvian Government expanded this area's level of protection by designating it as a State Territorial Reserve with an area of 456,672 hectares, according to the descriptive report and map presented in the annex to the Supreme Decree.¹

III. Request to MICI

11. On June 18, 2018, the director of MICI sent Management the Notification of Request Registration and Request for Management Response, request MICI-BID-PE-T1258 and PE-T1276, regarding the technical cooperation "Isolated Indigenous Peoples Reservations Regularization." The request was submitted by the Inter-Ethnic Association for the Development of the Peruvian Amazon - AIDASEP, representing 9 decentralized regional organizations located in the north, center, and south of the Peruvian Amazon. It is made up of 109 local federations, representing 55 indigenous peoples and 1809 native communities, who are owners and holders of ancestral territories in the Peruvian Amazon.

12. AIDASEP alleges that the technical cooperation has been implemented in contravention of the Operational Policy on Indigenous Peoples (OP-765) and the Environment and Safeguards Compliance Policy (OP-703) because of its support for the reclassification of the RTKNN reserve.

13. This complaint had previously been submitted to Management by two organizations: the non-governmental organization *Derecho, Ambiente y Recursos Naturales* (DAR) and AIDASEP. The first communication from DAR, in its capacity as technical advisor to AIDASEP, was an email dated March 27, 2018, which called upon the IDB to suspend and/or cancel disbursements, especially to the RTKNN. The second letter was sent by AIDASEP on May 11, 2018, requesting the suspension or cancellation of the

¹ Article 2 of Supreme Decree 028 of 2003 establishes the RNKN as a "State Territorial Reserve for ethnic groups in voluntary isolation... that are present there... as joint beneficiaries..." Article 3 guarantees "the territorial, ecological, and economic integrity of the lands included within Reserve"... on behalf of these groups, and in this regard prohibits "the establishment of human settlements other than those of the aforementioned ethnic groups... within the territorial reserve, as well as the development of economic activities... and the granting of new rights involving the use of natural resources..." Article 3 also states that "the currently existing rights to use natural resources must be exercised with the utmost consideration to ensure that the rights of the indigenous populations living within the reserve are not affected..." In other words, it recognizes the right to exploit oil and gas in the Block 88 concession that existed at the time of the Decree's entry into force, and part of which is located within the RNKN, but prohibits the granting of new concessions in the remaining areas.

project disbursements, arguing that the re-categorization of the RTKNN would be a setback in the process of protecting PIIC.

14. The IDB Representative in Peru responded to both letters on April 25, 2018, and July 2, 2018, respectively, and provided information on the progress and results of the cooperation, emphasizing that its purpose was to support the Republic of Peru in making substantial progress in the process of protecting PIIC by regularizing their reserves. It was underscored in these communications that the tasks carried out under the project helped to improve the mechanisms for the protection of PIIC and raise society's awareness about their vulnerable situation and cultural wealth. It was also clarified that no funds were disbursed to carry out RTKNN-related activities.

15. **As far as the RTKNN is concerned, it is important to note that, although the reserve was originally included in the technical cooperation, the Government and the IDB agreed in 2015 that the TC would not finance any activity in the reserve because its current legal status (see paragraph 9) already provided the necessary protection. Therefore, the Bank chose not to finance any activity in the RTKNN and specifically did not finance studies on its adaptation to an indigenous reserve, which could have undermined the existing level of protection it enjoys.**

16. The fact that the technical cooperation did not finance any activities related to the RTKNN can be verified through the following information (see respective annexes):

(a) Official note from the Vice-Minister of Intercultural Affairs (Official Letter No. 145, 2015 MIC-MC) asking the IDB to approve the updated Procurement Plan,² which specifically excludes the enumerated activities that would not be carried out, particularly activity 1.2.1a, "Additional categorization studies for the existing territorial reserve RTKNN area (including anthropological, environmental, legal, and delimitation study component)," and additional categorization studies (Annex 1. Official Letter, pages 1 and 2, highlighted in yellow). The RTNKK is no longer included in this plan;

(b) The IDB's no objection to the executing agency's request that it not object to the updating of the Procurement Plan;

(c) Final Project Evaluation Report, approved by the executing agency and the IDB, indicating that the RTKNN was excluded from the project and that the planned activities were not financed (pp. 21-22);

² Section 12 of the letter of agreement between the Republic of Peru and the Inter-American Development Bank refers specifically to the Procurement Plan and establishes the terms and conditions for the respective implementation of the cooperation.

IV. Conclusions

1. The complaint to MICI focuses on the risk that the technical cooperation activities could undermine the existing categorization of the RTKNN; however, in agreement with the Peruvian State, the IDB excluded this reserve from the technical cooperation as a precautionary measure to avoid weakening the existing level of protection afforded to the RTKNN.
2. The Bank's involvement in the context of the CAMISEA project was precisely to ensure that the Peruvian State would expand the level of protection of the RTKNN in accordance with Supreme Decree 028 of 2003, which establishes the RNKN as a "State Territorial Reserve for ethnic groups in voluntary isolation."
3. No activity directly or indirectly related to the potential re-categorization of the RTKNN was financed by the Bank, as evidenced by the documentation in the various annexes.

ANNEXES:

Annex I: Official Note from the Vice-Minister of Intercultural Affairs (Official Letter No. 145, 2015 MIC-MC)

Annex II: The IDB's letter of no objection in response to the Government of Peru's request for no objection

Annex III: Final Project Evaluation Report