



PUBLIC
SIMULTANEOUS DISCLOSURE

DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-BID-PE-2018-0134
ELIGIBILITY MEMORANDUM

**REGULARIZATION OF ISOLATED PEOPLES RESERVATIONS AND
REGULATION OF ISOLATED INDIGENOUS PEOPLES RESERVATIONS**

(PE-T1258, PE-T1276)
(ATN/OC-13627-PE, ATN/OC-13628-PE)

This document was prepared by Victoria Márquez Mees, MICI Director, with support from Eva Heiss, Senior Specialist, and Martin Packmann, Consultation Phase Case Officer.

This document is being released to the public and distributed to the Bank's Board of Executive Directors simultaneously.

INFORMATIONAL NOTE

ON THE MICI REGISTRATION PROCESS, ELIGIBILITY ANALYSIS, AND PUBLIC REGISTRY

The Registration process begins when the Independent Consultation and Investigation Mechanism (MICI) receives a Request sent by Requesters who allege that they have been or may be harmed due to actions or omissions of the Inter-American Development Bank Group (IDB Group) that may constitute a failure to comply with one or more of its Relevant Operational Policies within the context of an IDB Group-financed operation.

In the Registration Phase, which lasts five business days, the MICI verifies that the Request contains all information required for processing and that it is not clearly associated with any of the exclusions that limit the MICI's actions. Following the registration of the Request, Bank Management has an opportunity to provide its perspective about the allegations in the Request. Its response must be sent to the MICI within 21 business days after registration in the form of a document called "Management's Response."

Once the Response is received, the MICI starts the eligibility analysis, which involves reviewing the Request against the eligibility criteria established in its Policy to determine whether the Request is eligible and whether it can be accepted for processing. This determination is neither an assessment of the merits of the Request or the issues raised therein, nor a determination of the IDB Group's compliance or noncompliance with its Relevant Operational Policies.

Requests determined to be eligible are transferred to begin the phase selected by the Requesters, while Requests declared ineligible are submitted for administrative closure. If the Request is declared ineligible, the process will be deemed concluded.

All Requests received by the MICI and their processing will be reported to the Requesters, Management, and the Board of Executive Directors, and publicly disclosed through the Mechanism's virtual [Public Registry](#). Every Request has a file in the Public Registry, which discloses all public information generated during case processing.

The MICI does not award compensation, damages, or similar benefits, nor does it have the authority to stop disbursements or suspend operations.

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LINKS
<ol style="list-style-type: none">1. Original Request MICI-BID-PE-2018-0134 and Annexes http://www.iadb.org/document.cfm?id=EZSHARE-918981711-742. Management's Response to Request MICI-BID-PE-2018-0138 regarding the "Regularization of Isolated Peoples Reservations"-- (PE-T1258 and PE-T1276) and Annexes http://www.iadb.org/document.cfm?id=EZSHARE-918981711-99 http://www.iadb.org/document.cfm?id=EZSHARE-918981711-100 http://www.iadb.org/document.cfm?id=EZSHARE-918981711-101 http://www.iadb.org/document.cfm?id=EZSHARE-918981711-102 2.a "Law to Protect Indigenous or Native Peoples in Isolation and Initial Contact," Law 28736 http://www.leyes.congreso.gob.pe/Documentos/Leyes/28736.pdf 2.b Letter of Agreement on Nonreimbursable Technical Cooperation between the Republic of Peru and the IDB for operations ATN/OC-13627-PE and ATN/OC-13628-PE http://www.congreso.gob.pe/Docs/comisiones2017/Comision_de_Relaciones_Exteriores/files/reuni%C3%B3n_asesores/29.11.17/tie_70.pdf3. Public Registry File for the Request https://idblegacy.iadb.org/es/mici/detalle-de-la-solicitud.19172.html?ID=MICI-BID-PE-2018-01344. Technical Cooperation Document for PE-T1258/PE-T1276 https://www.iadb.org/Document.cfm?id=396087605. Technical Cooperation Operation PE-T1258/PE-T1276, Annex I – Country Letter of Request https://www.iadb.org/Document.cfm?id=372776566. Technical Cooperation Operation PE-T1258/PE-T1276, Annex II – Terms of Reference https://www.iadb.org/Document.cfm?id=372799097. Technical Cooperation Operation PE-T1258/PE-T1276, Annex III – Procurement Plan https://www.iadb.org/Document.cfm?id=37279902

EXECUTIVE SUMMARY

The Peruvian Amazon is home to Indigenous Peoples in Isolation and Initial Contact (PIACI), who have decided to live without establishing contact with external parties due to the potential impact on their physical survival. The Peruvian State has a duty to protect the rights of PIACI and create conditions for safeguarding territories where PIACI reside in Peru.

The Inter-American Development Bank (IDB) has supported the Peruvian government in PIACI protection efforts by financing two technical cooperation projects, “Regularization of Isolated Peoples Reservations” (PE-T1258) and “Regulation of Isolated Indigenous Peoples Reservations” (PE-T1276), both approved in December 2012. These technical cooperation projects finance: (i) PIACI identification and classification studies; (ii) a domestic PIACI awareness campaign and communication strategy; (iii) a pilot program in the field to protect the Madre de Dios territorial reserve; and (iv) an analysis of deforestation avoided in PIACI reserves. The executing agency for both technical cooperation projects is the Ministry of Culture, through its Vice Ministry for Intercultural Affairs.

On 11 June 2018, the Independent Consultation and Investigation Mechanism (MICI) received a Request from the Asociación Interétnica de Desarrollo de la Selva Peruana [Interethnic Association for the Development of the Peruvian Rainforest] (AIDESEP) on behalf of the Kugapakori, Nahua, Nanti and other PIACI, with advice from the organization Derecho, Ambiente y Recursos Naturales (DAR). The Request warns that the IDB-supported territorial regularization would impact PIACI territorial rights, namely, those of the Kugapakori, Nahua, and Nanti Territorial Reserve (RTKNN), whose current classification provides more comprehensive territorial rights than the ones envisioned by the technical cooperation projects. The Request explains that this change to the regulations would directly impact the way of life of these PIACI, whose traditional livelihood, heritage, and culture depend on their territory. The Request also describes the potential health risks that the impending external contact entails for PIACI because of their immune systems, which are vulnerable due to their isolation. Lastly, the Request claims that such a change to the territorial classification would potentially result in environmental damage associated with future deforestation and ecosystem degradation. As for the MICI process, the Requesters state that they wish to apply both the Consultation Phase and the Compliance Review Phase if their Request is determined to be eligible.

On 12 July 2018, the MICI received Management’s Response, which stated that despite the initial inclusion of the RTKNN in the technical cooperation projects, the Peruvian government and the IDB agreed in 2015 that any activity associated with the reserve would be excluded from these projects, since the current legal status of the RTKNN (granted via Executive Order 028-2003-AG) already afforded the protections that the technical cooperation projects sought to provide. Therefore, the Bank decided not to finance any activities in the RTKNN. Additionally, Management notes in its Response that it received communications from AIDESEP and DAR in March and May 2018. The Bank replied with a report on the progress and outcomes of the technical cooperation projects, in which it emphasized that the objective of the projects was to support PIACI protection through regularization of reservations and clarified that no resources were disbursed for RTKNN-related activities.

During the determination of eligibility period for this Request, the MICI remained in contact with the Requesters' representatives, met with Bank Management, and reviewed relevant documentation. Subsequently, the MICI Director, pursuant to Section G of the MICI-IDB Policy (document MI-47-6) determined that this Request **was not eligible** since it does not meet one of the criteria established in paragraph 22 of the MICI Policy. It is the MICI's understanding that the RTKNN-related activities that were initially covered by the technical cooperation projects **were excluded from the financing**. Therefore, we have not identified any actions or omissions of the Bank in breach of its Relevant Operational Policies associated with the Requesters' allegations.

This determination of eligibility is neither an assessment of the merits of the Request and the issues raised therein, nor is it a determination of the Bank's compliance or noncompliance with its Relevant Operational Policies.

This memorandum directly informs the Requesters, Management, and the Board of Executive Directors of this determination, which will be disclosed to interested third parties through the Public Registry after the memorandum has been distributed to the Board of Executive Directors. After the parties have been notified, the MICI will consider the administrative process for request MICI-BID-PE-2018-0134 concluded.

I. THE PROJECT¹

A. Context

- 1.1 The Peruvian Amazon is home to Indigenous Peoples in Isolation and Initial Contact (PIACI). The defining characteristic of these groups is their decision to live without establishing external contact because of the potential associated risks to their physical survival due to their immunological, territorial, demographic, and sociocultural vulnerability.
- 1.2 The Peruvian Ministry of Culture, through the Vice Ministry of Intercultural Affairs, is responsible for protecting PIACI rights through the creation of conditions to defend those parts of Peruvian territory where PIACI reside. This will be done through the promotion and subsequent management of areas classified as indigenous reservations, as part of the “National PIACI Protection System” implementation strategy.
- 1.3 The Peruvian State currently has five territorial reserves and wishes to strengthen their level of protection by formally reclassifying them as indigenous reservations pursuant to Law 28736. Five groups have also submitted requests for recognition as PIACI and subsequent classification as indigenous reservations.
- 1.4 The Kugapakori, Nahua, Nanti, and Others Territorial Reserve (RTKNN) has protection mechanisms that are implemented and managed by the Peruvian State. These mechanisms were formalized on 7 August 2003 through Executive Order 028-2003-AG, because of the reserve protection measures agreed to by the Inter-American Development Bank (IDB) and the Peruvian government as part of the Camisea project.

B. Technical cooperation projects PE-T1258 and PE-T1276

- 1.5 The objective of the project financed by the IDB through the technical cooperation projects entitled “Regularization of Isolated Peoples Reservations” (PE-T1258) and “Regulation of Isolated Indigenous Peoples Reservations” (PE-T1276) is to support the PIACI protection process through the regularization of their reservations. Originally, the project entailed four components: (i) PIACI identification and classification studies; (ii) a domestic PIACI awareness campaign and communication strategy; (iii) a pilot program in the field to protect the Madre de Dios territorial reserve; and (iv) an analysis of deforestation avoided in PIACI reserves.
- 1.6 The Ministry of Culture, through its Vice Ministry for Intercultural Affairs, is responsible for executing the technical cooperation resources.
- 1.7 This was classified as a Category “C” operation based on the determination that it would have minimal or no potential adverse environmental impacts, including associated social impacts. However, the Bank mobilized its Environmental and Social Safeguards Unit to supervise the implementation of its Indigenous Peoples Policy (OP-765).
- 1.8 Information retrieved from the Bank’s systems reports that the technical cooperation projects were funded for a combined total of US\$1 million (US\$400,000 from the

¹ Information taken from the Bank’s website and public documents on the project. These documents are available in the links section.

Gender and Diversity Fund and US\$600,000 from the Infrastructure Fund)² and approved on 13 December 2012. The projects are currently being implemented, and the last funds were disbursed in January 2018.

II. THE REQUEST³

- 2.1 On 11 June 2018, the MICI received a Request concerning the aforementioned technical cooperation projects. The Request was submitted by the Asociación Interétnica de Desarrollo de la Selva Peruana [Interethnic Association for the Development of the Peruvian Rainforest] (AIDESEP) on behalf of the Kugapakori, Nahua, Nanti and other PIACI. The organization Derecho, Ambiente y Recursos Naturales (DAR) acted as AIDESEP's technical adviser. The Request was entered into the MICI registry under number [MICI-BID-PE-2018-0134](#).
- 2.2 The Kugapakori, Nahua, Nanti, and other peoples traditionally reside in the territory that is currently known as the Echarate district (La Convención province) and the Sepahua district (Atalaya province) in the Cuzco and Ucayali departments, respectively. These territories are located in "Federal Territorial Reserve for the Kugapakori, Nahua, Nanti, and Other Ethnic Groups in Voluntary Isolation and Initial Contact."
- 2.3 The Requesters claim that the technical cooperation projects will cause harm by curtailing the protections currently afforded to the Peoples that reside in the RTKNN. According to the Request, the RTKNN has a high level of protection pursuant to Executive Order 028-2003-AG, which grants its status as a Territorial Reserve. Article 3 of this Executive Order guarantees the territorial, ecological, and economic integrity of the Peoples that inhabit the RTKNN and prohibits the awarding of new natural resource exploitation rights. The Requesters allege that the reclassification of the reserve as an Indigenous Reservation according to the provisions of Law 28736 would impact the inviolability of indigenous territories, given that Article 5 of that law would allow new natural resource use rights to be issued in Indigenous Reservations when the State considers natural resource exploration or exploitation a public necessity.
- 2.4 The Requesters claim that the PIACI that reside in the RTKNN would be harmed by the legal setback entailed by the reclassification of this Reserve from a Territorial Reserve to an Indigenous Reservation. This rollback of RTKNN legal protections would allow the expansion of extraction activities, which would negatively impact territorial inviolability. This reclassification could also harm the health of the indigenous communities, since PIACI populations have highly vulnerable immune systems, and any sort of contact has a direct impact on their lives. According to the allegations in the Request, these situations potentially constitute noncompliance with the IDB Operational Policy on Indigenous Peoples (OP-765).
- 2.5 The Requesters also believe that such a failure to protect PIACI rights would violate the international treaties signed by the Peruvian State as well as its own domestic legislation. They maintain that the authorization of natural resource exploration and

² The technical cooperation projects also involve a local counterpart contribution of US\$250,000 from the Peruvian State, provided in kind and in human resources.

³ The Request and its Annexes are available in the links section of this memorandum.

- exploitation in ancestral territories would have a negative impact on the self-determination of these peoples and their decision to remain in isolation. The cultural integrity of these PIACI would also be disrupted. Furthermore, the Requesters think that the environmental risk classification of these technical cooperation projects (Category “C”) is inadequate, because it fails to account for the direct and indirect risks and impact that these projects present to the health of the PIACI. Therefore, the Requesters believe that the technical cooperation projects violate the Environment and Safeguards Compliance Policy (OP-703).
- 2.6 With regard to previous communication with Management, the Requesters report that they expressed their concerns and requests in person and in writing to IDB Management and the executing agency in March and April 2018.
- 2.7 They specifically refer to a letter sent to IDB Management on 27 March 2018 in which they requested that disbursements for these technical cooperation projects be suspended. IDB Management responded to AIDESEP’s letter on 25 April 2018. Upon receiving that reply, the Requesters reiterated their request to suspend and/or cancel disbursements in a letter dated 11 May 2018. The Requesters claim that they had not received a response to this second letter as of the date they submitted their Request to the MICI.⁴
- 2.8 The Requesters asked that the MICI process the case through both the Consultation Phase and the Compliance Review Phase if it is deemed eligible.

III. MANAGEMENT’S RESPONSE⁵

- 3.1 On 18 June, pursuant to paragraph 21 of the MICI Policy, IDB Management was notified of the registration of Request [MICI-BID-PE-2018-0134](#). Management submitted its Response to the MICI on 12 July.
- 3.2 IDB Management states in its response that, although the RTKNN was originally included in the technical cooperation projects, the Peruvian government and the IDB agreed in 2015 that any activities associated with the RTKNN reserve would be excluded from the projects, because: “its current legal status (granted by Executive Order 028-2003-AG) provides the RTKNN the necessary protections.⁶” Management clarifies that the Bank chose not to finance any activities within the RTKNN, and specifically did not finance studies on Indigenous Reservation reclassification. Management states that it believes that such reclassification could infringe upon the current level of protection of the RTKNN.
- 3.3 Management also emphasizes that the protection mechanisms that have been implemented and managed by the Peruvian government through the Executive Order protect the inviolability of the RTKNN.

⁴ References to: Letter 080-2018-DAR dated 27 March 2018, in which DAR, acting in its capacity as the technical adviser to AIDESEP, asks the IDB to suspend and/or cancel disbursements of funds for the technical cooperation projects due to the possible significant legal setback to the PIACI protection process that the projects may entail. On 11 May 2018, AIDESEP sent Letter 132-2018-AIDESEP to the IDB reiterating DAR’s request.

⁵ Management’s Response to Request MICI-BID-PE-2018-0138 on the “Regularization of Isolated Peoples Reservations” (PE-T1258 and PE-T1276) is available in the links section.

⁶ Management’s Response, p. 4.

- 3.4 IDB Management has presented the following documentation as evidence that activities involving the RTKNN have been excluded from these technical cooperation projects:
- a. Official memo from the Vice Minister of Intercultural Affairs, requesting that the IDB approve an updated Procurement Plan that explicitly states that activities involving the RTKNN have been excluded;
 - b. The IDB's no objection to the Procurement Plan; and
 - c. The project Final Evaluation Report, approved by the executing agency and the IDB, which expressly states that the RTKNN has been excluded from the project and none of the planned activities were financed.
- 3.5 Management also indicates in its response that it received communications from AIDSEP and DAR in March and May 2018. Responses to those messages were issued in April and July 2018, when the IDB Representative in Peru provided information about the progress made by the technical cooperation projects as well as their outcomes and emphasized that the project objective was to support the PIACI protection process through the regularization of PIACI reservations. The reply also clarified that no funds were disbursed for RTKNN-related activities.
- 3.6 Management concludes by stating that no IDB-financed activity associated with these technical cooperation projects has any direct or indirect relation with the potential reclassification of the RTKNN.

IV. MICI ACTIONS

- 4.1 In accordance with Section G of the MICI Policy and the eligibility criteria set out in paragraph 22, the admission and determination of eligibility process for the Request followed the timeline below:

Table 1
Timeline of MICI actions from 11 June to 16 August 2018

Date	Actions
11 June	Receipt of Request
18 June	Registration of Request and notification of Requesters and Management
18 June	Telephone call with the Requesters' representatives
11 July	Meeting with IDB Management
12 July	Receipt of IDB Management's Response
16 August	Eligibility Memorandum Issued

V. ELIGIBILITY ANALYSIS

- 5.1 As part of the determination of eligibility process, the MICI considered the information presented in the Request, Management's Response, several Bank documents on the project associated with the Request, and other relevant documents.⁷
- 5.2 In accordance with paragraph 22 of the MICI Policy, a Request will be deemed eligible if it is determined that it meets all of the following criteria:
- a. The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the Bank-Financed Operation is implemented. If the Request is filed by a representative, the identity of the Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.
 - b. The Request clearly identifies a Bank-Financed Operation that has been approved by the Board, the President, or the Donors Committee.
 - c. The Request describes the Harm that could result from potential noncompliance with one or more Relevant Operational Policies.
 - d. The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
 - e. None of the exclusions set forth in paragraph 19 of this Policy apply.
- 5.3 In the case of Request **MICI-BID-PE-2018-0134**, the eligibility of the request according to the established eligibility criteria was analyzed as follows:
- 5.4 The Request was submitted by AIDASEP on behalf of the PIACI that reside in the RTKNN. Mr. Lizardo Cauper Pezo, Chair of the AIDASEP Board of Directors, acts as their representative before the MICI, and DAR is acting in its capacity as technical adviser. **Criterion 22(a) was met.**
- 5.5 The Request identifies technical cooperation projects PE-T1258 and PE-T1276, both of which were approved by the IDB in December 2012. **Criterion 22(b) was met.**
- 5.6 The Request **alleges harm** that may be linked to a breach of the Operational Policy on Indigenous Peoples (OP-765) and the Environment and Safeguards Compliance Policy (OP-703), because a potential reclassification of the RTKNN as an Indigenous Reservation would imply a setback to the PIACI protection process. The reclassification would entail the possibility of natural resource exploitation in the territory where the PIACI reside, directly impacting their way of life and self-determination, violating their territorial safety, and threatening their survival.
- 5.7 However, the official documentation provided by IDB Management reveals that the activities concerning the RTKNN that were initially covered by the technical cooperation projects **were excluded from the financing**. Therefore, we have not identified any Bank actions or omissions in breach of its Relevant Operational

⁷ The documents the MICI analyzed are available in the links section of this memorandum.

Policies associated with the Requesters' allegations. **Consequently, Criterion 22(c) was not met.**

- 5.8 With regard to previous contact with Management, AIDSEP describes its interactions with Management in which the organization expressed its concerns about the Project. **MICI has concluded that Criterion 22(d) was met.**
- 5.9 Regarding the exclusions provided in paragraph 19, **the MICI concludes that none of the exclusions contained in subparagraphs 19(a), 19(b), 19(c), or 19(d) apply**, since the Request does not raise issues beyond the scope of the MICI; does not omit the names of the Requesters; and does not address issues previously reviewed by the MICI, and the issues raised therein are not the subject of current arbitral or judicial review.
- 5.10 Furthermore, **none of the exclusions set forth in subparagraphs 19(e) or 19(f) apply** because the associated technical cooperation projects were approved on 13 December 2012 and the last disbursement of Project funds was made in January 2018, less than 24 months prior to the MICI's receipt of the Request.

VI. CONCLUSION

- 6.1 After completing the pertinent analysis, the MICI Director, pursuant to Section G of the MICI-IDB Policy (document MI-47-6) determined on 16 August 2018 that this Request **is not eligible** since it does not meet all the criteria established in paragraph 22 of the MICI Policy.
- 6.2 This determination of eligibility is neither an assessment of the merits of the Request and the issues raised therein, nor is it a determination of the Bank's compliance or noncompliance with its Relevant Operational Policies.
- 6.3 The MICI hereby directly informs the Requesters, Management, and the Board of Executive Directors of its decision via this memorandum and interested third parties through the Public Registry once this memorandum has been distributed to the Board of Executive Directors.
- 6.4 Upon the notification of the Board of Executive Directors, the MICI Director considers the MICI process for Request MICI-BID-PE-2018-0134 concluded.