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DOCUMENT OF THE INDEPENDENT CONSULTATION
AND INVESTIGATION MECHANISM

MICI-CO-2015-0096

ELIGIBILITY DETERMINATION MEMORANDUM

PORCE III HYDROELECTRIC POWER PLANT

**(CO-L1005)
(1664/OC-CO)**

This document was prepared by Victoria Márquez Mees, ICIM Director.

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

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ELECTRONIC LINKS

1. Original Request
<http://www.iadb.org/document.cfm?id=40033708>
2. [Testimonial video 1*](#)
3. [Testimonial video 2*](#)
4. [Testimonial video 3*](#)
5. Management Response
<http://www.iadb.org/document.cfm?id=40105675>
6. Project concept document, Porce III Hydroelectric Power Plant
<http://www.iadb.org/Document.cfm?id=383941>
7. Loan proposal, Porce III Hydroelectric Power Plant
<http://www.iadb.org/Document.cfm?id=614882>
8. Environmental and social management report (ESMP), Porce III Hydroelectric Power Plant
<http://www.iadb.org/Document.cfm?id=565334>
9. Project completion report, Porce III Hydroelectric Power Plant
<http://www.iadb.org/Document.cfm?id=37531886>

* Given the file size, videos will take some time to download.

EXECUTIVE SUMMARY

On 24 November 2015, Mr. Nelson de Jesús Guerra submitted a Request to the Independent Consultation and Investigation Mechanism (ICIM) on behalf of more than 2,000 people in the municipios de Amalfi, Anorí, Guadalupe, Gómez Plata, and several neighboring communities, supported by a series of testimonial videos.

In it, the Requesters allege that project CO-L1005, “Porce III Hydroelectric Power Plant,” has adversely impacted the lives of those living in the region due to the terms of the involuntary displacement, which have seriously impoverished the community. The Requesters further allege that they were removed by force and, consequently, now live in absolute poverty after losing everything they had in the region.

In his Request, the Representative also reports contacting the Bank’s Management in September and October 2011.

The project is a sovereign guaranteed loan operation approved by the Board of Executive Directors on 5 October 2005 by regular procedure, on which the last disbursement was made on 9 December 2012.

The ICIM Director, in accordance with Section G of the ICIM Policy (document MI-47-3) and upon review of the relevant documentation, has concluded that this Request is **not eligible**, since it does not meet the eligibility criteria of the Policy as they relate to the exclusions established in it. Specifically, the Request is declared ineligible because it was filed with the ICIM more than 24 months after the last disbursement (exclusion 19.f).

This determination of eligibility is not 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.

Notice of this determination is given directly to the Requesters, Management, and the Board of Executive Directors by means of this Memorandum, and to interested third parties through the Public Registry.

I. THE PROJECT¹

- 1.1 Project CO-L1005, “Porce III Hydroelectric Power Plant,” was a sovereign guaranteed investment loan for the energy sector, approved on 5 October 2005 by the IDB Board of Executive Directors by regular procedure in the amount of US\$200 million. The borrower was the Republic of Colombia, and the executing agency was Empresas Públicas de Medellín (EPM).
- 1.2 The project objective was to help meet Colombia’s growing demand for electric power by efficiently and sustainably utilizing hydraulic resources from the Porce River. To this end, the project supported construction of the Porce III hydroelectric power plant and its entry into service, while also helping to maintain and gradually consolidate the institutional performance and efficiency of EPM.
- 1.3 The site of the project is on the Porce River, approximately 147 km northeast of the city of Medellín, in the department of Antioquia, within the jurisdiction of the municipios of Amalfi, Anorí, Gómez Plata, and Guadalupe.
- 1.4 The project had three components:
- 1.5 **Component 1. Construction of the Porce III Hydroelectric Power Plant.** This component supported construction of the Porce III Hydroelectric Power Plant, which would have a capacity of 660 MW and ensure firm generation of 3,105 GWh/year, and average generation of 4,254 GWh/year.
- 1.6 **Component 2. Implementation of a corporate development action plan for EPM.** This component sought to gradually consolidate EPM’s institutional performance and efficiency by financing action plans and yearly corporate development plans.
- 1.7 **Component 3. Implementation of the project’s environmental and social management plans (ESMPs).** This component involved measures in areas of: (i) prevention and mitigation of physical or biotic impacts and compensation for them; (ii) prevention and mitigation of social impacts and compensation for them; (iii) programs to implement environmental management measures; and (iv) an external socioenvironmental audit to determine whether all these commitments have been met and allow for adoption. This is the component involving involuntary resettlement.
- 1.8 The project has been classified as category “A” under the Environment and Safeguards Compliance Policy (Operational Policy OP-703). Based on the project documentation, the operational policies triggered by the project were the Operational Policy on Involuntary Resettlement (OP-710), Access to Information Policy (OP-102), and Environment and Safeguards Compliance Policy (OP-703).
- 1.9 According to the Bank systems, the last disbursement under the operation was made on 9 December 2012, and the project completion report was released on 20 February 2013.

¹ The information in this section has been drawn from the following documents: project profile, loan proposal, environmental and social management report (ESMR), and project completion report (PCR).

II. THE REQUEST²

- 2.1 On 24 November 2015, Mr. Nelson de Jesús Guerra submitted a Request to the ICIM on behalf of more than 2,000 people in the municipios de Amalfi, Anorí, Guadalupe, Gómez Plata, and several neighboring communities.
- 2.2 In it, the Requesters allege that the region's residents have suffered harm due to the terms of the involuntary displacement, which they claim have seriously impoverished the community and denied them basic rights. Consequently, the Requesters allege, they now live in absolute poverty after losing everything they had in the region.
- 2.3 The Requesters allege that no adequate census was taken of the region's residents, since not all residents were counted, and their basic rights were denied.
- 2.4 Regarding the negotiations between EPM and the communities affected by the project, the Requesters allege that the communities were forced to accept the compensation offered by EPM, which they claim left them impoverished after losing everything they had in the region, as well as denied their basic rights. They also alleged that actions associated with prohibited practices occurred, which were referred to the Office of Institutional Integrity.
- 2.5 Additionally, the Requesters allege that they were removed by force through physical and verbal abuse, adding that law enforcement and outlaw groups were also involved in their eviction.
- 2.6 Regarding contact with Management, the Requesters describe in the Request that they met with the Bank's Management in October 2011 to present the complaint against EPM, but received no response.
- 2.7 In his Request, the Representative stated that he did not seek to keep his identity confidential. He did, however, request confidentiality for one Requester who also served as representative.
- 2.8 Lastly, the Requesters stated that they wished for the Request to be considered for both the Consultation Phase and Compliance Review Phase of the ICIM process.

III. MANAGEMENT RESPONSE³

- 3.1 In accordance with paragraph 21 of the ICIM Policy, IDB Management was given notice of registration of Request MICI-CO-2015-0096 on 18 December 2015. On 22 January 2016, within the 21-day time limit established in the Policy, the ICIM received Management's response setting out its views on the issues raised in the Request. The Response is summarized briefly below and can also be consulted in the electronic links section of this document.
- 3.2 After reviewing the Request, Management responded at length to the allegations made by the Requesters. Management notes that: (i) it complied with the operational policies, including the Environment and Safeguards Compliance Policy

² The Request and testimonial videos submitted to the ICIM are available in the electronic links section of this document.

³ Management's response is available in the electronic links section of this document.

- (OP-703) and the Operational Policy on Involuntary Resettlement (OP-710); (ii) the case was under judicial review; and (iii) the Request was filed 34 months after the last disbursement for the operation.
- 3.3 Regarding compliance with the Relevant Operational Policies, Management states that during project preparation and supervision activities, the IDB verified that EPM had a Resettlement Plan to identify and minimize the negative impact on the communities and individuals affected by the project, conducting eight technical, environmental, and social visits to the project areas and ten environmental audits. Furthermore, under Operational Policy OP-710, EPM conducted a baseline survey to identify the affected individuals and communities, and evaluated the inclusion of new individuals based on the information received.
 - 3.4 In terms of the compensation for involuntary resettlement, Management states that EPM provided a comprehensive compensation and rehabilitation package to minimize the project's adverse impacts. The solutions offered, which it notes were agreed upon with the affected individuals and communities in a participatory manner, included: (i) resettlement to a similar area; (ii) resettlement to the main towns of the area; and (iii) direct cash compensation. Management also states that support was provided to the resettled families, and the Bank supervised the appropriate implementation of the resettlement process.
 - 3.5 Management goes on to state that the Requesters approached the IDB team during program execution. The Project Team Leader met with them on 25 October 2011, to hear their complaints about the alleged EPM noncompliance with Operational Policies OP-703 and OP-710. The Project Team Leader redirected the complaints to the EPM Project Implementation Unit, which under Bank policy is responsible for addressing requests of this kind. On 1 November 2011, an aide-mémoire with the results of the meeting with the interested individuals was shared with them (CCO-2863/2011) and EPM (CCO-2864/2011); neither the Requesters nor the client made any further request of the team.
 - 3.6 Regarding the judicial process, Management states that one of the Requesters had filed suit against EPM, alleging issues similar to those in the Request.
 - 3.7 Lastly, Management adds that the Request was filed 34 months after the last disbursement, made on 9 December 2012.
 - 3.8 In conclusion, Management considers that the project complied with all relevant safeguard policies, including the Environment and Safeguards Compliance Policy (OP-703) and Operational Policy on Involuntary Resettlement (OP-710).

IV. ICIM ACTIONS

- 4.1 In accordance with Section G of the ICIM Policy and the eligibility criteria of paragraph 22, the process for determination of eligibility followed the timeline below:

Table 1
Timeline of MICI Actions

Date	Actions
24 November 2015	Receipt of Request.
25 November 2015	Telephone call with Requesters regarding Request and ICIM process.
3 December 2015	Up to 10 business days granted to the Requesters, to submit additional information required to process the Request.
17 December 2015	Receipt of additional information requested from the Requesters.
18 December 2015	Registration of the Request and notice to the Parties.
22 January 2016	Receipt of Management Response.
23 February 2016	Eligibility Memorandum issued.

- 4.2 In the eligibility determination process, the ICIM considered the information presented in the Request and the additional information provided by the Requesters, as well as Management’s Response and the relevant Bank documents.⁴
- 4.3 The ICIM wishes to point out that in October 2011 the Policy Establishing the Independent Consultation and Investigation Mechanism had already been approved by the Board of Executive Directors for over a year, and it would have been helpful for the Project Team to inform the Requesters of the Mechanism’s existence, in addition to forwarding the complaint to the executing agency, since paragraph 32(c) of the Policy then in effect (document GN-1830-49) establishes that “Requests may be delivered to the ICIM Office at the address that follows or to any IDB Office (attention ICIM Office), which shall direct the Request to the ICIM Office.”

V. DETERMINATION OF ELIGIBILITY

- 5.1 Under paragraph 22 of the Policy, a Request will be deemed eligible by the ICIM 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.

⁴ The documents reviewed are available in the electronic links section of this document.

- 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.
- 5.2 Upon review of the relevant documentation, the ICIM Director has determined that Request MICI-CO-2015-0096 is **not eligible**, since it does not meet one of the eligibility criteria established in paragraph 22 of the Policy (paragraph 22(e)).
- 5.3 Paragraph 22(e) establishes that a Request is considered eligible if none of the exclusions set forth in paragraph 19 apply. Specifically, paragraphs 19(d) and 19(f) establish that neither the Consultation Phase nor the Compliance Review Phase will be applied to matters subject to arbitral or judicial proceedings (paragraph 19(d)), or Requests that are filed more than 24 months after the last disbursement (paragraph 19(f)).
- 5.4 It was verified in Bank records that the project's last disbursement was made on 9 December 2012. Since the Request was received on 24 November 2015, the Request was filed more than 24 months after the date of the last disbursement.
- 5.5 According to the information provided by Management, there is a judicial proceeding open in relation to the Request, which is grounds for exclusion. This information was not verified by the ICIM.
- 5.6 This determination of eligibility is not 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.
- 5.7 Importantly, the ICIM considers that the allegations of harm made by the Requesters merit inquiry, in particular to identify whether the Operational Policy on Involuntary Resettlement (OP-710) is meeting its objective to "minimize the disruption of the livelihood of people living in the project's area of influence."⁵

VI. CONCLUSION

- 6.1 The ICIM Director, in accordance with Section G of the ICIM Policy (document MI-47-3), has concluded that this Request is **not eligible**, since it does not meet one of the eligibility criteria of the Policy.
- 6.2 Notice of this determination is given directly to the Requesters, Management, and the Board of Executive Directors by means of this Memorandum, and to interested third parties through the Public Registry, once distributed to the Board of Executive Directors. The processing of Request MICI-CO-2015-0096 is concluded with this action.

⁵ Involuntary resettlement: operational policy and background paper. IDB. October 1998.