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**MICI-BID-CR-2016-0110
DETERMINATION OF ELIGIBILITY MEMORANDUM**

REVENTAZÓN HYDROELECTRIC PROJECT

**(CR-T1074, CR-L1049, CR-L1056, CR-U001, CR-T1086)
(ATN/OC-12720-CR, 2747/OC-CR, 2806A/OC-CR, 2806B/OC-CR, 2804/OC-CR,
ATN/OC-13556-CR)**

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CONTENTS

EXECUTIVE SUMMARY	1
I. THE PROJECT.....	2
II. THE REQUEST	3
III. MANAGEMENT’S RESPONSE	5
IV. MICI ACTIONS	8
V. DETERMINATION OF ELIGIBILITY	12
VI. CONCLUSION.....	15

ELECTRONIC LINKS

1. Original Request
<http://www.iadb.org/document.cfm?id=40684701>
2. IDB-IIC Management's Joint Response to Request MICI-BID-CR-2016-110 in relation to the Reventazón Hydroelectric Project, Costa Rica <http://www.iadb.org/document.cfm?id=40733628>
3. Loan Proposal - Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project and Other Investments) (CR-L1049)
<http://www.iadb.org/Document.cfm?id=36971330>
4. Project Profile – Reventazón Hydroelectric Project (CR-L1056)
<http://www.iadb.org/Document.cfm?id=36683842>
5. Technical Cooperation Profile - Studies and Support for the Environmental and Social Strategy of the Hydropower Project (CR-T1086) <http://www.iadb.org/Document.cfm?id=37418876>
6. Environmental and Social Action Plan (ESAP) included as the sole annex to the Loan Proposal for the Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project and Other Investments) (CR-L1049)
<http://www.iadb.org/Document.cfm?id=36864764>
7. Environmental and Social Management Report for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056) <http://www.iadb.org/Document.cfm?id=36879354>
8. Environmental Impact Assessment for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056) <http://www.iadb.org/Document.cfm?id=36447344>

EXECUTIVE SUMMARY

On 16 September 2016, the Independent Consultation and Investigation Mechanism (MICI) received a Request from a group of Requesters who own [REDACTED] naturally forested properties located at the tail of the reservoir associated with the Reventazón Hydroelectric Project (RHP), and who claim to have been affected by the Project. The group of Requesters have asked the MICI to keep their identity confidential.

The Request consists of three main claims: (i) the economic harm suffered by the owners as a result of the expropriation by the Costa Rica Power Authority (ICE) of one third of the total area of the Finca (63 hectares); (ii) the harm to the biodiversity of the Finca, and potentially the Barbilla-Destierro Biological Sub-Corridor, as a result of the gradual expropriation of the Finca and the potential drop in water levels of the Lancaster Lagoon owing to the alleged excavation of its supporting slopes; and (iii) the potential for environmental harm resulting from the alleged failure to remove flora prior to the filling of the reservoir.

In the Request, the Requesters asked for the filling process to be managed under the Compliance Review Phase.

The Reventazón Hydroelectric Project (RHP), located in the Reventazón River basin, in the Province of Limón, Costa Rica, consists in the design, construction, operation, and maintenance of a hydroelectric power plant with an installed capacity of 305.5 megawatts, and the construction of a 130-meter-high dam, an 8-square-kilometer reservoir, substations, transmission lines, and adjacent roads. The IDB Group participated in the Project through five sovereign guaranteed and nonsovereign guaranteed loan operations together with other lenders. The construction phase of the project has been completed, and the plant is on line.

The MICI Director, in accordance with Section G of the MICI Policy (document MI-47-6) and upon review of the relevant documentation, has concluded that this Request **is eligible**, as it meets the eligibility criteria of the Policy, with the exception of the fair price for expropriation, which is subject to the exclusion provided in paragraph 19(d) for issues or matters that are under arbitral or judicial review.

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. Lastly, under no circumstances does this determination imply that the Bank will suspend the Project or disbursements, inasmuch as the MICI is not authorized to make such a decision.

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. Following this notification, the Compliance Review Phase will begin.

I. THE PROJECT¹

- 1.1 The Reventazón Hydroelectric Project (RHP), located in the Reventazón River basin, in the Province of Limón, Costa Rica, consists in the design, construction, operation, and maintenance of a hydroelectric power plant with installed capacity of 305.5 megawatts and the construction of a 130-meter-high dam, an 8-square-kilometer reservoir, substations, transmission lines, and adjacent roads.
- 1.2 The IDB Group has participated in the RHP through the five financing operations listed in Table 1. In addition to technical cooperation operations to support environmental and social studies, the IDB's support has been provided in two parts: a sovereign guaranteed loan under the CCLIP CR-X1005 included in operation CR-L1049 and a nonsovereign guaranteed loan (CR-L1056). The first loan was executed directly by ICE and the second loan under the Trust.

Table 1
Reventazón Hydroelectric Project - List of operations financed by the IDB Group

	Project Number/ Operation	Name	Operation type	Approval date	Operation amount in US\$ millions	Date of last disbursement
1	CR-T1074 ATN/OC-12720-CR	Complementary environmental studies, Reventazón Hydroelectric Project	Nonreimbursable technical cooperation	12 May 2011	0.47	19 June 2014
2	CR-L1049 2747/OC-CR	Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project and Other Investments)	Sovereign guaranteed loan	25 June 2012	250.00	Under implementation
3	CR-L1056 2806 A/OC-CR 2806 B/OC-CR	Reventazón Hydroelectric Project	Nonsovereign guaranteed loan	19 October 2012	673.00	12 May 2016
4	CR-U0001 2804/OC-CR	Reventazón Hydroelectric Project	Guarantee	19 October 2012	98.00	N/A
5	CR-T1086 ATN/OC-13556-CR	Costa Rica: Studies and support for the environmental and social strategy for the Reventazón Hydroelectric Project	Nonreimbursable technical cooperation	4 December 2012	0.74	5 August 2016

- 1.3 The Project is part of Costa Rica's Electric Power Generation Expansion Plan 2012-2024, which aims to increase the country's power generation capacity by 1.7 megawatts, with 98% based on renewable energy sources.

¹ Information extracted from the Bank website and public operation documents. These documents are available in the electronic links section of this memorandum.

- 1.4 The executing agency for the Project is the Instituto Costarricense de Electricidad (ICE), which is the official agency in charge of renewable energy resources, the electricity grid, and power distribution, as well as ensuring balance between power supply and demand in Costa Rica.
- 1.5 The total cost of the RHP is estimated at US\$1.4 billion and, in addition to the IDB funding, includes a combination of funding from ICE and commercial banks in Costa Rica, as well as the International Finance Corporation (IFC) and the European Investment Bank (EIB) through the Central American Development Bank.
- 1.6 The Project was classified as a category “A” operation since it has the potential to cause significant negative environmental impacts and associated social impacts, as well as profound implications for natural resources. The Project was expected to have a negative impact on the connectivity of the Barbilla-Destierro Biological Sub-Corridor, and direct, cumulative impacts on the Reventazón River.
- 1.7 The Bank noted that the environmental and social impacts of the Project would be significant if not mitigated and addressed in advance. It pointed out that the main environmental and social impacts and risks include: (i) a loss of connectivity along the Barbilla biodiversity corridor (Jaguar Corridor), a critical natural habitat, caused by the new reservoir; (ii) significant direct cumulative impacts on the natural aquatic habitat of the Reventazón River as a result of project construction and operation; (iii) negative impacts on the economic potential of at least 16 vulnerable homes; and (iv) possible adverse effects on the sensitive Parismina–Tortuguero hydro-biological system during plant operation.²
- 1.8 According to the Environmental and Social Management Report, the mitigation strategy included addressing the main risks and impacts associated with the Project and restoring the connectivity of the corridor at the tail of the reservoir; supporting the conservation of an ecologically similar fluvial system; and significantly improving ICE’s land acquisition, compensation, and involuntary resettlement practices.
- 1.9 Under the conditions precedent for providing the financing, ICE had to comply with the measures included in the Environmental and Social Action Plan (ESAP). The Bank actively oversees compliance with the ESAP.
- 1.10 The Project was inaugurated on 16 September 2016 when the full installed capacity of the hydroelectric plant came on line.

II. THE REQUEST³

- 2.1 On 16 September 2016, the MICI received a Request from a group of Requesters who own [REDACTED] six naturally forested properties located at the tail of the RHP reservoir, and who claim to have been affected by the Project. The group of Requesters asked the MICI to keep their identity confidential.
- 2.2 The Requesters report that they have been present in the area since 1996, when they purchased the first farm for reforestation purposes inasmuch as the area was in a state of severe erosion; according to the environmental impact assessment, it

² Information extracted from the Environmental and Social Management Report of the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056).

³ The Request is available in the electronic links section of this document.

- is now a habitat that is rich in wildlife and home to endangered species. The Requesters saw Finca Lancaster as part of a comprehensive master plan to create a wildlife sanctuary and a 100% green development. There are four bodies of water within the Finca. The two largest bodies of water are the Lancaster Lagoons, which were declared wetlands on 21 February 1994 by Decree 23004 of the Costa Rican Ministry of Natural Resources, Energy, and Mines (MIRENEM).
- 2.3 For the reforestation work, the Requesters set aside a large area of the Finca for sustainable forestry uses and established payment for ecosystem services agreements with the Costa Rican National Forest Financing Fund, which helps support the Finca.
 - 2.4 The Request presents three main claims: (i) the economic harm suffered by the owners as a result of the expropriation by the Costa Rican Power Authority (ICE) of one third of the total area of the Finca (63 hectares); (ii) the harm to the Finca's biodiversity, and potentially the Barbilla-Destierro Biological Sub-Corridor, as a result of the gradual expropriation of the Finca and the potential collapse of the Lancaster Lagoon owing to the alleged excavation of its supporting slopes; and (iii) the potential environmental harm resulting from the alleged failure to remove flora prior to the filling of the reservoir.
 - 2.5 In the Request, the Requesters claim that immediate action is required in light of the imminent risk of a collapse of the lagoon wall, which they say is the result of the excavation of the hillside for material for the Project and the changes in the reservoir levels after it was filled.
 - 2.6 In addition, during the Determination of Eligibility Mission, it was observed that the expropriated areas included the forestry use area⁴ and the direct access road to the water tank. This activity is the main economic support for the Finca.
 - 2.7 The Requesters claim that the aforementioned harm resulted from the Bank's noncompliance with its supervision obligations and the environmental damages and disaster risk obligations provided for in the Environment and Safeguards Compliance Policy (OP-703) and in the Disaster Risk Management Policy (OP-704). They also claim that the Bank failed to comply with the provisions of the Strategic Resettlement or Improvement of Living Conditions Framework prepared for the land acquisition process of the Project.
 - 2.8 In terms of contact with Management, the Requesters claim to have sent their complaint to the IDB Country Office in Costa Rica on 9 February 2016 and that as a result, in April 2016, they were visited by a group of IDB and IFC specialists.
 - 2.9 In addition, the Requesters note that IDB Management allegedly offered to provide the services of a mediator to facilitate mediation between the group of Requesters and ICE. However, it did not yield positive results.
 - 2.10 The Requesters expressed their interest in having the MICI handle the case during the Compliance Review Phase if deemed eligible.
 - 2.11 Lastly, the Requesters informed the MICI that similar Requests would be submitted to the accountability mechanisms of the IFC and the EIB.

⁴ This led to the dismissal of 12 workers and the loss of revenue from payments for environmental services.

III. MANAGEMENT'S RESPONSE⁵

- 3.1 In accordance with paragraph 21 of the MICI Policy, IDB Management was given notice of the registration of Request MICI-BID-CR-2016-0110 on 23 September 2016. On 20 October 2016, the MICI 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 Memorandum.
- 3.2 In its Response, Management notes that "The Reventazón Hydroelectric Project (the "Project") has been carefully designed and implemented as a global model for sustainable infrastructure, taking advantage of the synergies between both public and private sector arms of the IDB Group. [Furthermore], during the two years of preparation of the Project, between 2010 and 2012, IDB's Technical Cooperation strengthened significantly the Project's environmental and social impact assessment."⁶
- 3.3 They note that the biodiversity mitigation programs designed and implemented for RHP is unprecedented for a hydroelectric power project in the Region, as has been recognized in various international media. "By focusing on the functional attributes of an area, rather than only its conservation status, the Jaguar Corridor Program is a first of its kind by aiming to restore and improve connectivity of a biodiversity corridor, using a variety of instruments such as payment for ecosystem services. The Aquatic Offset Program, which aims to protect another river system in compensation for the Project's adverse impact on the Reventazón River, is the first ever implemented in Latin America and the Caribbean and constitutes a model for future hydroelectric power developments in the Region."
- 3.4 In addition, they comment that the Lenders and the Independent Environmental and Social Consultant ("Consultant") have overseen the implementation of the environmental and social measures contained in the Environmental and Social Action Plan (ESAP) and are satisfied with the progress.
- 3.5 Management confirms that in February 2016 it received the complaint from the owners of [REDACTED]. In addition, it confirmed that it performed an IDB, IIC, IFC technical mission accompanied by the Consultant and as a result of that visit they "determined that direct dialogue between the parties would be necessary to evaluate and better understand the nature and scope of the issues raised in the complaint. Hence, the Lenders facilitated a dialogue process between the complainants and ICE, to generate a space in which the parties could provide each other with clarifications and further information as an attempt to help the parties come together and re-establish the once existing negotiations between them, and if possible, to reach an agreement."⁷ This process, according to Management, was terminated by the Requesters due to discrepancies in the issues addressed therein.

⁵ The IDB-IIC Management's Joint Response to Request MICI-BID-CR-2016-110 in relation to Reventazón Hydroelectric Project, Costa Rica, is included in the electronic links section.

⁶ "IDB-IIC Management's Joint Response to Request MICI-BID-CR-2016-110 in relation to Reventazón Hydroelectric Project, Costa Rica," paragraph 1.1.

⁷ Idem, paragraph 3.3.

- 3.6 Responding to the allegations of harm submitted by the Requesters, Management comments as follows:
- 3.7 In relation to the risk of collapse of the slopes supporting Lancaster Lagoon as a result of the Project's excavation works, Management gives assurances that during the April 2016 mission no evidence was found that the Project caused harm either to the stability of the Lagoon or that material had been removed from the banks of Reventazón River. In addition, they comment that the Executing Agency considered that "while the risk of landslide is high in this area, it cannot be attributed to and has not been exacerbated by the Project."⁸ Management also gives assurances that the lagoons are outside of the direct area of influence of the Project reservoir, and as they are located higher up than the reservoir, it is unlikely that they would be affected by changes in the reservoir water levels.
- 3.8 In relation to the possible effect on the ecosystem of the Lancaster Lagoons and the species of the area, Management notes that at the Project planning stage, the potential for harm to the Barbilla-Destierro Biological Sub-Corridor was detected, and in response a mitigation strategy was created, along with an implementation master plan designed by the Center for Tropical Agricultural Research and Education (CATIE). The master plan, as indicated therein, was described as "appropriate and relevant" by an independent environmental and social consultant and by a biodiversity advisory group.⁹ In addition, the document states that its effective implementation was monitored by Panthera, a civil society organization devoted to wild cats.
- 3.9 In this regard, Management reports "implementation of the Master Plan has progressed satisfactorily, and a key milestone required in the Environmental and Social Action Plan (ESAP) to initiate the filling of the reservoir was met."¹⁰ And: "the continuous implementation [of the Plan] will actually prevent any direct, material loss of or damage to the connectivity of the sub-corridor and, as confirmed by the evaluation of the Advisory Group on Biodiversity, is expected to achieve net positive gain over time."¹¹
- 3.10 It also confirms that Lancaster Lagoon is part of the priority area for the restoration of connectivity of the Barbilla-Destierro Biological Sub-Corridor at the tail of the Project's reservoir. The reservoir tail is defined in the Project's basic design parameters, and, therefore, its location cannot be changed.
- 3.11 In relation to the alleged harm resulting from the failure to remove vegetation prior to filling the reservoir, Management comments that full removal of such material is not necessary in all cases and that in certain circumstances, it could cause undesired environmental impacts that could lead to erosion and collapse of the river banks. Yet, Management notes, the Request does not clearly explain how the Requesters were materially affected by the failure to remove biomass from the Reventazón River.

⁸ Idem, paragraph 4.1.3.

⁹ Idem, paragraphs 4.2.1-4.2.3.

¹⁰ Idem, paragraph 4.2.2.

¹¹ Idem, paragraph 4.2.2.

- 3.12 Lastly, as for economic harm caused by the expropriation, Management reports that according to provisions of the Project's Strategic Resettlement or Improvement in Living Conditions Framework, the owners [REDACTED] "were not considered as vulnerable to the risk of economic displacement [but] were eligible for cash compensation at full replacement cost following laws and regulations applicable in Costa Rica."¹²
- 3.13 In its Response, Management notes the existence of five legal cases pending in Costa Rica on matters concerning the Request, as indicated in Table 2. However, it must be noted that the second and fifth cases are the same. As a result, it would appear that there are four active legal cases.

Table 2
Legal action linked to the Request

File number	Court	Date	Status
15-000585-1028-CA	1028-JUZGADO CONTENCIOSO ADMINISTRATIVO Y CIVIL DE HACIENDA DEL II CIRCUITO JUDICIAL DE SAN JOSE (CPC)	08/06/2015	Ongoing
16-006528-1027-CA	1027-COURT CONTENCIOSO ADMINISTRATIVO DEL II CIRCUITO JUDICIAL DE SAN JOSE (CPC)	07/07/2016	Ongoing
15-000955-1028-CA	1028-JUZGADO CONTENCIOSO ADMINISTRATIVO Y CIVIL DE HACIENDA DEL II CIRCUITO JUDICIAL DE SAN JOSE (CPC)	07/09/2015	Ongoing
15-000956-1028-CA	1028-JUZGADO CONTENCIOSO ADMINISTRATIVO Y CIVIL DE HACIENDA DEL II CIRCUITO JUDICIAL DE SAN JOSE (CPC)	07/09/2015	Ongoing
16-006528-1027-CA	1027-TRIBUNAL CONTENCIOSO ADMINISTRATIVO DEL II CIRCUITO JUDICIAL DE SAN JOSE (CPC)	07/07/2016	Ongoing

Source: Management's Response.

¹² Idem, paragraph 4.4.2.

IV. MICI ACTIONS

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

Table 3
Timeline of MICI actions between
16 September and 23 November 2016

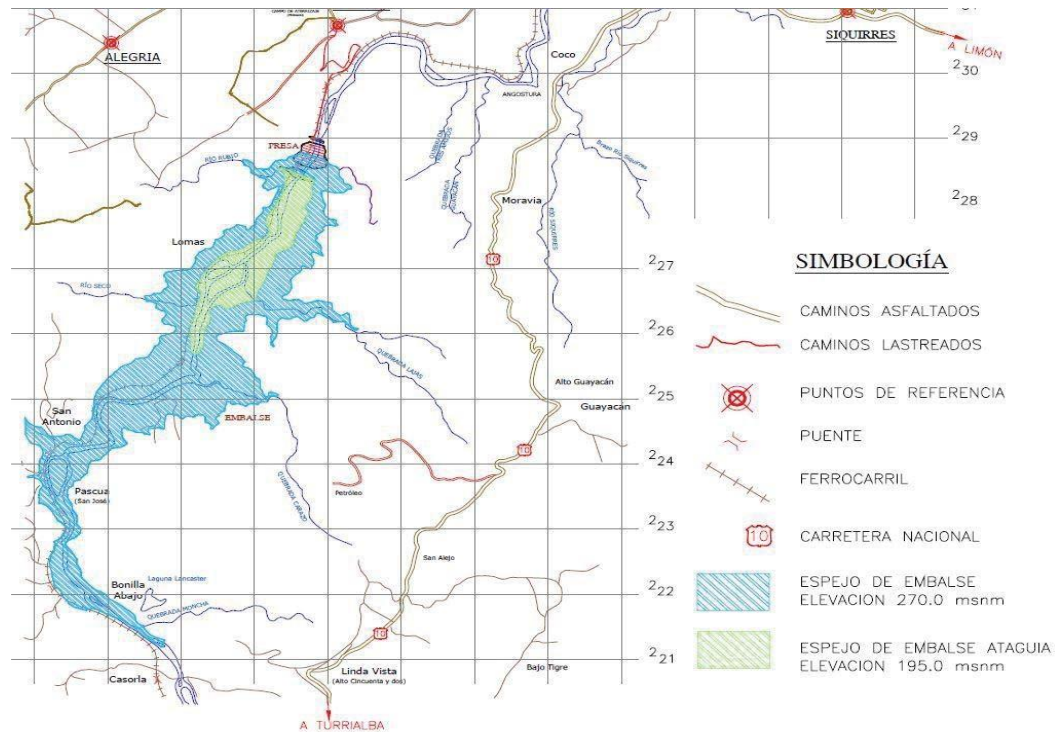
Date	Actions
16 September	Receipt of Request
18 September	The IFC's CAO accountability mechanism notifies the MICI of receipt of a similar Request
19 September	Meeting with Representatives of the Requesters at IDB Headquarters
22 September	Meeting with IDB Management responsible for the operation
23 September	Registration of Request
5 October	The EIB's Complaints Mechanism notifies the MICI of receipt of a similar Request
7 October	Joint telephone conference between MICI-CAO-CM and the Requesters
20 October	Receipt of IDC-IIC Management Response
27 October	Meeting with IDB and IIC Management responsible for the operations
13-18 November	Joint mission of MICI-CAO-CM to the city of San José, Costa Rica, and visit to Siquirres, where the RHP and Finca Lancaster are located
23 November	Issuance of Memorandum of Eligibility

- 4.2 As part of the process for determining eligibility, the MICI considered the information presented in the Request, the supplemental information provided by the Requesters, as well as Management's Response and its annexes, various Bank documents, and other sources of information relevant to this analysis.¹³
- 4.3 In addition, a MICI delegation carried out a Determination of Eligibility Mission with delegations from the accountability mechanisms of the IFC (CAO) and EIB (CM). As part of the mission, a field visit was made to Siquirres, where the RHP and Finca Lancaster are located, to meet with the Requesters and to tour the area to get a better understanding of the current status of the Project and its impact area.
- 4.4 The MICI also held meetings with the IDB and IIC project team at the Country Office, as well as project officials from the Executing Agency, ministry officials, academics, and other individuals affected by the Project.
- 4.5 Because some of the allegations of harm needed to be assessed by an independent hydrogeological expert, the MICI contracted the services of Dr. Augusto Mendonça, who accompanied the mission to conduct his assessment and issue a technical opinion to help in the process to analyze the eligibility of the Request.

¹³ The documents analyzed are available in the electronic links section of this document.

- 4.6 The figures and images below show the location of the reservoir and the project status at the time of the mission to the RHP zone of influence. The photographic material was obtained by the MICI delegation during the mission to the site.

RHP reservoir location



Source: Environmental Impact Assessment RHP, pg. 362



Reventazón hydroelectric plant and reservoir



Banks of Reventazón River



Boundaries of the expropriated area of [REDACTED]



V. DETERMINATION OF ELIGIBILITY

- 5.1 In accordance with paragraph 22 of the Policy, a Request will be deemed eligible by the MICI 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.

- 5.2 In the case of Request MICI-BID-CR-2016-0110, the analysis of eligibility criteria established in the Policy consisted of the following:
- 5.3 The Request is filed by **four Requesters who own** [REDACTED]
[REDACTED]
[REDACTED] **The criterion is determined to be met.**
- 5.4 The Request identifies the **Reventazón Hydroelectric Project**, which is being financed by the IDB Group through **five sovereign guaranteed and nonsovereign guaranteed loan operations** (see Table 1). **The criterion is determined to be met.**
- 5.5 The Request presents **claims of economic and environmental harm and possible risk of disaster**, which it links to the Bank's possible noncompliance with the monitoring obligations established in its **operational policies OP-703, OP-704, and OP-710.**
- 5.6 Given the importance of the claim regarding the potential collapse of Lancaster Lagoon and its potential impact on the Project and adjacent communities, the MICI contracted an expert to help determine the plausibility of such an occurrence, and its possible links to the excavation of the river banks, as claimed by the Requesters. The expert report concluded that there did not appear to be any evidence to support a catastrophic scenario.
- 5.7 The expert also concluded that there did appear to be evidence of recent digging close to the river and that it could have negatively affected the stability of the hillsides, accelerating the natural landslide process. This would seem to contradict Management's Response. In this regard, there could be a link between the alleged harm and a possible omission by the Bank. **The criterion is determined to be met.**
- 5.8 The Request provides detailed information on contact with Bank Management, which also reports the same communication. **The criterion is determined to be met.**
- 5.9 With respect to the exclusions set out in paragraph 19, **the opinion of MICI is that none of the exclusions contained in subparagraphs 19(a), 19(b), 19(c), 19(e), or 19(f) apply.**
- 5.10 In relation to **exclusion 19(d)**, the MICI observes the following:
- 5.11 The Policy establishes that neither the Consultation Phase nor the Compliance Review Phase will be applied to particular issues or matters raised in a Request that are under arbitral or judicial review in an IDB member country.
- 5.12 Management's Response reports four active legal cases that must be analyzed in order to determine the applicability of the above-referenced exclusion.
1. Case 15-000585-1028-CA filed with 1028 - Administrative Court of the Second Judicial Circuit of San José on **8 June 2015** by ICE through its general agent. This is a special expropriation case opened by ICE against [REDACTED]
[REDACTED] which resulted in ICE taking possession of the expropriated area, and a settlement process is ongoing to determine a fair price. Once a settlement has been reached, both Parties have appeals.

2. Case 15-000955-1028-CA filed with 1028 - Administrative Court of the Second Judicial Circuit of San José on **7 September 2015** by ICE through its general agent. This is a special expropriation case started by [REDACTED] which resulted in ICE taking possession of the expropriated area, and an expert opinion is pending regarding a fair price. Once a settlement has been reached, both Parties have appeals before the administrative courts.
 3. Case 15-000956-1028-CA filed with 1028 - Administrative Court of the Second Judicial Circuit of San José on **7 September 2015** by ICE through its general agent. This is a special expropriation process started by ICE [REDACTED] which resulted in ICE taking possession of the expropriated area, and an expert opinion is pending regarding a fair price. Once a settlement has been reached, both Parties have appeals before the administrative courts.
 4. Case 16-0006528-1027-CA filed with 1027 - Administrative Court of the Second Circuit of San José on 7 July 2016 by [REDACTED] through its general agent. This procedure, initiated by the Requesters against ICE, requests that ICE grant access to the RHP case file. On 12 October 2016, the court hearing the case ruled that the information requested by the petitioner was public information as ICE had not proven otherwise and, pursuant to the decision of 24 October 2016, ordered that the respondent coordinate document access with the petitioner. However, on 16 November 2016, the petitioner informed the Court that the respondent was yet to provide access to all the case information requested and, therefore, once more requested that the information be provided. Therefore, the case is understood to be open.
- 5.13 In analyzing the applicability of **exclusion 19(d)** in the first three cases described above, the opinion of MICI is that in terms of **the price to be paid** for the expropriated land, this exclusion **DOES apply** for the following reasons:
- a. The Request asked for a fair price for the area occupied by Finca Lancaster.
 - b. The three abovementioned cases, in process, concern the determination of a fair price of the areas expropriated from the Requesters, though none of the procedures have been initiated by them but rather by the Executing Agency.
 - c. The MICI Policy establishes that neither the Consultation Phase nor the Compliance Review Phase will be applied to “particular issues or matters raised in the Request that are under arbitral or judicial review in an IDB member country.”
- 5.14 In the fourth case, the MICI considers that exclusion 19(d) **DOES NOT apply** since the subject of the petition is not included in the Request.
- 5.15 **In reference to the legal cases analyzed and exclusion 19(d), the Compliance Review Phase will apply to all the issues raised in the Request with the exception of fair price.**
- 5.16 Upon review of the relevant documentation, the MICI Director has determined that Request MICI-BID-CR-2016-0110 **is eligible**, inasmuch as it meets the eligibility criteria established in paragraph 22(d) of the MICI Policy, with the limitations described in paragraph 5.13 herein.

VI. CONCLUSION

- 6.1 The MICI Director, in accordance with Section G of the MICI Policy (document MI-47-6), concludes that this Request **is eligible**, inasmuch as it meets all the eligibility criteria of the Policy, with the exception of **the fair price for expropriation based on the application of exclusion 19(d)**.
- 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. Lastly, under no circumstances does this determination imply that the Bank will suspend the Project or disbursements inasmuch as the MICI is not authorized to make such a decision.
- 6.3 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.
- 6.4 After notifying the Board of Executive Directors, the MICI Director will transfer the case to the Compliance Review Phase as per the request of the Requesters.