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AND INVESTIGATION MECHANISM

**MICI-BID-CR-2016-0112
ELIGIBILITY MEMORANDUM**

REVENTAZÓN HYDROELECTRIC PROJECT - REQUEST II

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

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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 and Information Addendum http://www.iadb.org/document.cfm?id=40807762 http://www.iadb.org/document.cfm?id=40807761
2.	IDB-IIC Management's Joint Response and Annexes to Request MICI-BID-CR-2016-112 in relation to the "Reventazón Hydroelectric Project, Costa Rica" http://www.iadb.org/document.cfm?id=40853391
3.	IDB-IIC Management's Joint Response and Annexes to Request MICI-BID-CR-2016-110 in relation to the "Reventazón Hydroelectric Project, Costa Rica"
4.	http://www.iadb.org/document.cfm?id=40733628
5.	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)
6.	http://www.iadb.org/Document.cfm?id=36971330
7.	Project Profile – Reventazón Hydroelectric Project (CR-L1056) http://www.iadb.org/Document.cfm?id=36683842
8.	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
9.	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
10.	Environmental and Social Management Report (ESMR) for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056) http://www.iadb.org/Document.cfm?id=36879354
11.	Environmental Impact Assessment for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056). http://www.iadb.org/Document.cfm?id=36447344

EXECUTIVE SUMMARY

On 7 December 2016, the MICI received a request from four Requesters who are members of a family living in the area of Siquirres, Limón Province, Costa Rica, and owners of a farm adjoining the reservoir of the Reventazón Hydroelectric Project, alleging they were being affected by the Project.

The Request alleges three main types of harm: (i) economic harm from the expropriation of a part of the farm, which they say would cut off access to the water system used for dairy cattle (source of the family's economic livelihood), as well as from the compensation received, which they allege did not reflect market prices; (ii) potential environmental harm due to the risk of hilltop landslides as a result of removal of materials from the hillsides near the Reventazón River, as well as the decomposition of unremoved vegetation in the reservoir area, now covered with water; and (iii) harm to biodiversity due to damage to the Lagunas Lancaster wetlands¹ as a result of the construction, operation, and maintenance of the Project.

The Requesters ask that the Request be processed through both phases of the MICI process: the Consultation Phase and the Compliance Review Phase.

The Reventazón Hydroelectric Project, located in the Reventazón River basin in Limón Province, 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. The IDB Group participates in the Project through five sovereign guaranteed and non-sovereign guaranteed loan operations together with other lenders. The construction phase of the project has been completed, and the plant is now 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, concludes that this Request is **not eligible**, as it does not meet one of the eligibility criteria established in **paragraph 22(d)** of the MICI Policy. Specifically, Management has not been given a chance to address the issues raised in the Request. Since the MICI is a last-resort mechanism, it finds that this step has not yet been taken, and so will proceed to forward the Request to be addressed by Management.

Additionally, a court proceeding remains open on the issue of fair price for expropriation raised in the Request. Therefore, in any case, neither the Consultation Phase nor the Compliance Review Phase would apply to the central issue that in the court proceeding, in observance of exclusion 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.

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 the notifications have been sent, the MICI process is considered closed for Request MICI-BID-CR-2016-0112. As established in the

¹ For more information on this claim, see request form MICI-BID-CR-2016-0110 in the MICI's Public Registry.

MICI Policy, the Requesters are being advised of their right to refile their Request, if they believe their concerns have not been addressed by Management.

I. THE PROJECT²

- 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 non-sovereign guaranteed loan (CR-L1056). The first loan was executed directly by the Instituto Costarricense de Electricidad (ICE) [Costa Rica Power Authority] 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	Additional environmental studies, Reventazón Hydroelectric Project	Nonreimbursable technical cooperation	12 May 2011	0.47	19 Jun 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 Jun 2012	250.00	Under implementation
3	CR-L1056 2806 A/OC-CR 2806 B/OC-CR	Reventazón Hydroelectric Project	Non-sovereign guaranteed loan	19 Oct 2012	673.00	12 May 2016
4	CR-U0001 2804/OC-CR	Reventazón Hydroelectric Project	Guarantee	19 Oct 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 Dec 2012	0.74	5 Aug 2016

² Information extracted from the Bank website and public documents on operations. These documents are available in the electronic links section of this Memorandum.

- 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.
- 1.4 The executing agency for the Project is the Instituto Costarricense de Electricidad (ICE) [Costa Rica Power Authority], 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 adverse 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 Subcorridor, and direct, cumulative impacts on the Reventazón River.
- 1.7 The Bank identified 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 aquatic natural habitat of the Reventazón River as a result of project construction and operation; (iii) adverse impacts on the economic potential of at least 16 vulnerable households; and (iv) possible adverse impacts on the sensitive Parismina–Tortuguero hydrobiological system during plant operation.³
- 1.8 According to the Environmental and Social Management Report (ESMR), 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 As part of the conditions set for the financing, ICE had to comply with the measures included in the Environmental and Social Action Plan (ESAP). The Bank would actively oversee 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 REQUEST⁴

- 2.1 On 7 December 2016, the MICI received a request from four Requesters who are members of a family living in the area of Siquirres, Limón Province, Costa Rica, and owners of a farm adjoining the reservoir of the Reventazón Hydroelectric Project

³ Information taken from the Environmental and Social Management Report of the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056).

⁴ The Request and Information Addendum are available in the electronic links section of this document.

- (RHP), alleging they were being affected by the Project. At MICI's request, on 22 December the Requesters sent supplementary information.
- 2.2 The Request alleges that the family is being affected by the expropriation of around one third of their farm's total area (5 hectares), where the springs are located that supply their livestock operations, mainly dairy cattle. The Requesters say that, as a result of this, they must now use vehicles and/or pack animals to supply water, entailing additional costs and lower production volume. They state that this has affected their finances and lifestyle.
- 2.3 The Requesters also state that the expropriation process did not reflect market prices, as local law requires, since they say the final price offered for the expropriated area was significantly lower than what the market would bear.
- 2.4 The Request also alleges harm to biodiversity and the environment caused by the Project, due principally to three factors: (i) vegetation said not to have been removed before the RHP reservoir was filled; (ii) a part of their property that could collapse because material was allegedly extracted from the base of a hillside for the Project; and (iii) the harm caused by the potential resulting collapse of the Lagunas Lancaster wetlands.
- 2.5 The Requesters stated that such harm would mean that the Bank has failed to comply with its Involuntary Resettlement Policy (OP-710) as it relates to restoring living conditions. They likewise claim a possible failure to comply with the "Strategic Framework for Resettlement or Improved Living Conditions" for the Project's land acquisition process. Lastly, they state that the Bank has failed to comply with the Environment and Safeguards Compliance Policy (OP-703) and the Disaster Risk Management Policy (OP-704) as they relate to environmental harm and disaster risk.
- 2.6 As far as contact made with Management, the Requesters told the MICI that they sent their Request to the project team on 14 December 2016, along with additional information on 20, 21, and 22 December. Finally, on 29 December, the Requesters contacted the MICI to ask how long they were to wait for Management, as the previous day they had received an email stating that Management would contact them soon.
- 2.7 The Requesters expressed their interest in having the MICI process the case through both the Consultation Phase and the Compliance Review Phase, if deemed eligible.
- 2.8 Lastly, the Requesters informed the MICI that a similar Request would be submitted to the IFC's accountability mechanism.

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-2016-0112 on 29 December 2016. On 30 January 2017, the MICI received Management's Response setting out

⁵ IDB-IIC Management's Joint Response to Request MICI-BID-CR-2016-112 in relation to Reventazón Hydroelectric Project, Costa Rica, is included in the electronic links section.

its views on the issues raised in the Request. The Response is summarized below and can also be consulted in the electronic links section of this Memorandum:

- 3.2 Regarding the allegation of environmental harm, Management comments that the responses presented in the document "IDB-IIC Management's Joint Response and Annexes to Request MICI-BID-CR-2016-110"⁶ can also be considered for the purposes of Request MICI-BID-CR-2016-112, as the allegations are similar.
- 3.3 In relation to the alleged harm resulting from the failure to remove vegetation prior to filling the reservoir, Management comments that complete removal of such material is not necessary in all cases and, in certain circumstances, could cause undesired environmental impacts that could lead to erosion and collapse of the river banks. Likewise, the linkage is unclear between failure to remove biomass from the Reventazón River and adverse impacts for the Requesters.
- 3.4 Regarding the adverse impact that the Project might have on Lagunas Lancaster, Management responds as follows:
- 3.5 In relation to the risk of collapse of the slopes supporting Lancaster Lagoon because of the Project's excavation works, Management gives assurances that the April 2016 mission found no evidence that the Project had damaged the stability of the lagoon or that material had been removed from the banks of Reventazón River. In addition, it comments that the executing agency believes that "although the risk of landslide is high in this area, it cannot be attributed to, and has not been worsened by, the Project." Management further asserts that the lagoons are outside of the direct area of influence of the Project reservoir and at a higher elevation, so they are unlikely to be affected by changes in the reservoir water levels.
- 3.6 In relation to the possible adverse impact on the ecosystem of Lagunas Lancaster and the species of the area, Management notes that the potential for harm to the Barbilla-Destierro Biological Subcorridor had been identified at the project planning stage, so a mitigation strategy and master plan for implementing the strategy were developed by the Tropical Agricultural Research and Higher Education Center (CATIE). The master plan, according to the document, was described as "appropriate and relevant" by an independent environmental and social consultant and by a biodiversity advisory group. In addition, the document states that its actual implementation was monitored by Panthera, a civil society organization devoted to wild cat species.
- 3.7 In this regard, Management reports that implementation of the Master Plan has progressed satisfactorily, and the milestones required in the Environmental and Social Action Plan (ESAP) to initiate the filling of the reservoir were met.
- 3.8 In relation to previous contact with the Requesters, Management states in its Response that it had no contact or communication with them prior to MICI's receipt of the Request, nor had it had an opportunity to meet with the Requesters to address their stated issues and concerns.
- 3.9 Lastly, in relation to the economic harm from expropriation regarding fair price for the land and compensation for lack of access to water resources, Management

⁶ 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.

notes that a lawsuit had been filed in the Costa Rican courts under case number 15-000263-1028-CA, in which the presiding court has issued Resolution 898-2016.

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 of the Request followed the timeline below:

Table 2
Timeline of MICI actions between
7 December 2016 and 1 March 2017

Date	Actions
2016	
7 December	Receipt of Request
12 December	Phone call with Requesters regarding Request and MICI process
13 December	Requesters given up to 10 working days to submit the additional information needed to process the Request
29 December	Registration of Request
2017	
5 January	Phone call with Requesters.
30 January	Receipt of IDC-IIC Management Response
1 February	MICI-CAO phone call on the Request received by both institutions
27 February	Phone call with Requesters.
1 March	Issuance of Eligibility Memorandum

- 4.2 As part of the process for determining eligibility, the MICI considered the information presented in the Request and the additional 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.⁷
- 4.3 The MICI also used the information for Request MICI-BID-CR-2016-110, currently in the Compliance Review Phase

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 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

⁷ The documents analyzed are available in the electronic links section of this document.

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-2016-0112, the analysis of eligibility criteria established in the Policy consisted of the following:
- 5.3 The Request is filed by **four Costa Rican Requesters, who are members of a family that owns a farm in the area of Siquirres, Costa Rica. Criterion 22(a) has been met.**
- 5.4 The Request identifies the **Reventazón Hydroelectric Project**, which is being financed by the IDB Group through **five sovereign guaranteed and non-sovereign guaranteed loan operations** (see Table 1). **Criterion 22(b) has been met.**
- 5.5 The Request presents **claims of economic and environmental harm and possible disaster risk, linking them** to the Bank's potential noncompliance with the monitoring obligations established in its **Operational Policies OP-703, OP-704, and OP-710.**
- 5.6 As noted in paragraph 4.3, the information collected to analyze Request MICI-BID-CR-2016-0110 was used to determine the eligibility of this Request. Based on this, it was possible to establish a plausible link between the allegations of harm in both Requests and the Operation (see paragraphs 5.6 and 5.7 of document MI-63). A link is therefore plausible between the alleged harm and noncompliance on the part of the Bank. **Criterion 22(c) has been met.**
- 5.7 Regarding efforts to address matters with Bank Management, the Requesters informed the MICI that on 14 December 2016 they sent their Request to the IDB Country Office in Costa Rica, along with additional information days later. The Country Office confirmed receipt on 28 December and informed the Requesters that it would begin to evaluate their stated concerns. As of the date of issue of this Memorandum, the MICI has no information on further communications between the Parties.
- 5.8 Considering that one of the MICI's objectives under its Policy is to be "a last-resort mechanism for addressing the concerns of Requesters, after reasonable attempts to bring such allegations to the attention of Management have been made," it is the Mechanism's conclusion that Management has not yet been given a chance to address the Requesters' concerns. Consequently, **Criterion 22(d) has not been met.**

- 5.9 With respect to the exclusions set out in paragraph 19, **the MICI's opinion is that none of the exclusions contained in subparagraphs 19(a), 19(b), 19(c), 19(e), or 19(f) fully applies.**
- 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 noted that a lawsuit had been filed with the 1028-Administrative and Civil Court of the Second Judicial Circuit of San José, case number 15-000263-1028-CA.
- 5.13 This lawsuit had been filed by ICE through its General Counsel against the owners of the farm. The resulting decision was Resolution 898-2016 on the amount of the corresponding compensation for the acquisition of the area expropriated, which is also before the 1120-Administrative and Civil Court of Appeals of the Second Judicial Circuit of San José.
- 5.14 In analyzing the applicability of **exclusion 19(d)**, 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. Among the issues presented in the Request, it seeks to have the market price declared the fair price for the area expropriated from the Requesters.
 - b. The suit concerns the determination of the fair price for the areas expropriated from the Requesters, although none of the proceedings has been initiated by them but rather by the executing agency.
 - c. The MICI Policy establishes that neither phase may apply to "particular issues or matters raised in the Request that are under arbitral or judicial review in an IDB member country."
- 5.15 **Thus, in reference to the legal case analyzed and exclusion 19(d), the Consultation and Compliance Review Phases would apply to all the issues raised in the Request with the exception of fair price.**
- 5.16 Lastly, upon review of the relevant documentation, the MICI Director has determined that Request MICI-BID-CR-2016-0112 **is not eligible**, since it fails to meet the eligibility criteria established in paragraph 22(d) of the MICI Policy, in addition to the limitations described above in paragraph 5.12 and 5.15.
- 5.17 Regardless, the MICI concludes that Management has not been given a chance to address the issues raised in the Request. Since the MICI is a last-resort mechanism, it finds that this step has not yet been taken, and so will proceed to forward the Request to be addressed by Management.
- 5.18 Lastly, it is important to note that, as established in the MICI Policy, the Requesters are being advised of their right to refile their Request, if they believe their concerns have not been addressed by Management.

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 not eligible** because it fails to meet one of the eligibility criteria of the 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 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. With this action, the MICI process for Request MICI-BID-CR-2016-0112 is considered concluded.