



DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-BID-CH-2017-0115

RECOMMENDATION FOR A COMPLIANCE REVIEW AND TERMS OF REFERENCE

REVISED VERSION

ALTO MAIPO HYDROELECTRIC POWER PROJECT

**(CH-L1067)
(3008A/OC-CH, 3008B/OC-CH)**

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This document contains confidential information relating to one or more of the ten exceptions of the Access to Information Policy and will be initially treated as confidential and made available only to Bank employees. The document will be disclosed and made available to the public upon approval.

INFORMATION NOTE
GUIDELINES FOR THE COMPLIANCE REVIEW PHASE

These guidelines for the Compliance Review Phase have been prepared in accordance with paragraphs 36 to 41 of the Policy of the Independent Consultation and Investigation Mechanism (MICI) (document MI-47-6).

A Compliance Review is a fact-finding process to determine whether Management at the Inter-American Development Bank (IDB) has complied or failed to comply with the Relevant Operational Policies for the operation(s) in question and whether the alleged Harm is related to failure by the Bank to comply with the Relevant Operational Policies.

A Compliance Review by the MICI is subject to authorization by the IDB Board of Executive Directors, which receives a Recommendation from the MICI for consideration once the latter, within a maximum period of 21 business days, has reviewed the main documents relating to the operation, the information provided by Management, the Request, and the Relevant Operational Policies. In its Recommendation, the MICI states its decision to recommend or not to recommend an investigation considering the value added for the specific case, and for the Bank in general, in terms of relevance, impact, and efficiency.

For those cases in which an investigation is recommended, the MICI includes the Terms of Reference in the Recommendation, solely to provide guidance for the Compliance Review Phase and inform the interested parties about what to expect, including the following information:

- The objectives of the investigation.
- The scope of the investigation, including the proposed investigative questions. In all cases, the investigation is limited in scope to the allegations made in the Request and focuses exclusively on Bank acts or omissions in the context of the operation(s) relevant to the case, in relation to compliance with the Relevant Operational Policies.
- The methodology to be used, including the proposed investigative method(s), the activities to be carried out, and the deliverables.
- The investigative team, which is made up of the Compliance Review Phase Coordinator serving as panel chair, as well as two members selected from the Roster of experts. The selection of these experts is based on their expertise in the technical areas involved in the investigation and on their availability to participate in the investigation within the required timeframe. These experts are retained only after the Board of Executive Directors approves the investigation, and their contributions are incorporated into the Compliance Review Report.
- The timeline for the investigation, generally not to exceed a maximum period of six calendar months from the date of establishment of the panel. If a longer period is needed, the Recommendation will indicate the required timeline and the corresponding rationale.
- The estimated budget for the investigation.

Prior to being presented to the Board of Executive Directors, a preliminary draft of the Recommendation is circulated to Management and the Requesters, and both parties have the opportunity to submit comments in writing to the MICI. The MICI reviews the comments and accepts those it deems relevant. The comments received from the two Parties are included as annexes to the Recommendation. The final version of the Recommendation is submitted to the Board of Executive Directors for consideration by Short Procedure. The

investigation is considered approved if by the end of the period established for approval by Short Procedure, the procedure has not been interrupted by any members of the Board of Executive Directors. However, if an Executive Director interrupts the procedure, the item is placed on the agenda for discussion by the Policy and Evaluation Committee and subsequent consideration by the Board of Executive Directors.

The Recommendation is a public document, and the Requesters, Management, and the general public are notified about the decision taken by the Board of Executive Directors with respect to the Recommendation through the MICI Public Registry (www.iadb.org/mici).

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ABBREVIATIONS

CAO	Office of the Compliance Advisor/Ombudsman
CIEL	Center for International Environmental Law
ECR	Environmental classification resolution
EIA	Environmental impact assessment
ERM	Environmental Resources Management, consulting firm
ESHSAP	Environmental, social, health, and safety action plan
ESMP	Environmental and social management plan
ESMR	Environmental and social management report
IFC	International Finance Corporation
MICI	Independent Consultation and Investigation Mechanism
OP-102	Access to Information Policy
OP-703	Environment and Safeguards Compliance Policy
OP-704	Disaster Risk Management Policy
OP-710	Operational Policy on Involuntary Resettlement
OP-761	Operational Policy on Gender Equality in Development
OPIC	United States Overseas Private Investment Corporation
PHAM	Proyecto Hidroeléctrico Alto Maipo [Alto Maipo Hydroelectric Power Project]

I. EXECUTIVE SUMMARY

This is a Recommendation from the Independent Consultation and Investigation Mechanism (MICI) to the IDB Board of Executive Directors to conduct a Compliance Review of the Alto Maipo Hydroelectric Power Project (loan CH-L1067, operations 3008A/OC-CH and 3008B/OC-CH), in relation to claims made by a group of Requesters alleging that the construction and operation of the project would have a series of environmental and social impacts on them.

The Alto Maipo Hydroelectric Power Project (known by its Spanish-language acronym, PHAM) consists of the construction, operation, and maintenance of two run-of-the-river hydroelectric plants¹ in the area of Cajón del Maipo, a National Tourist Interest Zone located approximately 50 kilometers from Santiago, Chile. The hydroelectric plants would have a combined installed capacity of 531 MW and would capture the water flows from three basins that form from tributaries of the Maipo River, and then return the water to that river. The project calls for the construction of 67 kilometers of tunnels, two powerhouses, four siphons to cross streams, and two surge tanks, as well as 31 kilometers of access roads, four new bridges, and 17 kilometers of transmission lines. The project also includes improvements to existing roads, electrical substations, intakes, and raceways, and the construction of temporary camps and storage areas.

The IDB is participating under an A/B loan structure, which its Board of Executive Directors approved as a US\$200 million non-sovereign guaranteed loan operation on 16 October 2013. In addition, the project has financing of US\$150 million from the International Finance Corporation (IFC); US\$250 million from the United States Overseas Private Investment Corporation (OPIC); and US\$600 million from other bilateral and commercial banks. The Project was classified as a category “A” operation because of its potential environmental and social impacts. Currently, the project is being administered by IDB Invest as part of the IDB’s preexisting non-sovereign guaranteed portfolio, and has been in a technical default status since July 2017.

On 23 January 2017, the MICI received a Request regarding the PHAM from a group of 23 people, mainly area residents who live and work in the San José de Maipo district, many in the tourism industry, alleging that the project is adversely impacting them. The Requesters are represented before the MICI by Marcela Mella of Coordinadora Ciudadana No Alto Maipo [No Alto Maipo Coordinating Committee] and Juan Pablo Orrego of Ecosistemas, with advisory support from staff of the Washington, D.C.-based Center for International Environmental Law (CIEL). The Requesters detailed a series of socioenvironmental impacts arising from the alleged lack of comprehensive assessment of the project’s impacts and the resulting lack of effective mitigation measures, as well as noncompliance with a series of environmental and social commitments assumed by the Client. They highlighted social, environmental, tourism-related, and other impacts that had already arisen as a result of activities associated with project construction, such as closing access to tourist areas; detonation of explosives without warning in grazing and hiking areas; and a large worker migration to the town of San José de Maipo, which they claim had altered the town’s social dynamics with an outsized impact on women and girls. Likewise, the Requesters alleged potential impacts that include decreased water flows of the rivers targeted during the PHAM’s operation stage with the resulting impact on water

¹ This type of hydroelectric project does not require the creation of a reservoir or the construction of a dam to regulate the water flow that enters the powerhouses. The electrical stations capture the water and then return it to the tributaries.

uses and users, and a decline in the area's tourism industry, on which a large percentage of the population relies financially. Lastly, the Requesters emphasized that they have not been consulted properly, since thus far they have not received full enough information to understand all of the project's impacts and planned mitigation measures.

As part of the eligibility determination process, the MICI received the Management Response to the Request on 17 March 2017. From 10 to 14 April 2017, a team from the MICI conducted a mission to Santiago and the Cajón del Maipo area along with a delegation from the IFC's accountability mechanism, the Office of the Compliance Advisor/Ombudsman (CAO). This mission included visits to the works accompanied by the Client, as well as meetings with the Requesters and residents of San José de Maipo, company officials responsible for the project, local authorities, staff from the Country Office, and other major stakeholders.

On 1 May 2017, an Eligibility Memorandum was issued, which concluded that this Request was eligible because it met the eligibility criteria of the MICI Policy (document MI-47-6). Since the Requesters only chose to participate in the MICI Compliance Review Phase, the case was transferred to that phase. Because of the many different issues raised in the Request and the public information that the MICI has about the firm's alleged technical default, which may have a bearing on the content of the Recommendation for a Compliance Review and the future of the project, the MICI asked the Board of Executive Directors for a longer time frame than established in the Policy to prepare this Recommendation.²

In accordance with MICI Policy, a preliminary version of this document was sent to the Requesters and Management for their comments. The MICI received comments from both Parties, which were carefully reviewed. This final version reflects that review, and its content has been adjusted as the MICI deemed relevant. The comments can be consulted in the annexes section of this document.

In accordance with paragraph 41 of the MICI Policy and as discussed in detail in this document, a Recommendation is made to the Board to authorize the MICI to conduct a Compliance Review of the project, for the purpose of performing an impartial and objective investigation of some of the allegations made by the Requesters regarding potential noncompliance by the Bank with Operational Policy OP-703, those actions or omissions under Operational Policy OP-703 with a bearing on Operational Policy OP-102 in the area of information disclosure, and Operational Policy OP-761, and if the findings confirm the allegations, determining whether that caused or could cause the alleged Harm.³ Regarding the issues raised by the Requesters related to potential noncompliance with Operational Policies OP-704, OP-710, and OP-708, the MICI believes that the facts and evidence are insufficient to propose a Compliance Review process.

In addition, two judicial proceedings related to the Alto Maipo project, brought by third parties, are currently under way in Chile. The MICI has reviewed the public documentation available on these proceedings and determined, in accordance with the MICI Policy, that the following issues are to be excluded from the Compliance Review: (i) the potential

² During the period for preparation of the Recommendation document, three extensions were requested from the Board of Executive Directors and were granted. The Parties were notified of these extensions as soon as they were approved.

³ Pursuant to the MICI Policy, the Harm may be actual or potential.

impacts on the sedimentation regime of the Maipo River; and (ii) the potential impacts on the water rights of third parties.

Considering that this project is at the construction stage, the MICI believes that an investigation should be conducted to determine compliance with the cited Bank Operational Policies, and if noncompliance and associations with the alleged Harm are found, to create an avenue for their redress and/or correction.

This document has five sections and two annexes. Section I gives a brief overview of the Bank-financed project; Section II summarizes the allegations made by the Requesters; Section III summarizes the Management Response to the allegations made by the Requesters; Section IV describes MICI activities to date; and Section V presents the reasoning behind the Recommendation to investigate and the proposed terms of reference for the Compliance Review: proposed rationale, scope, methodology, timeline, team, and budget.

Explanatory note:

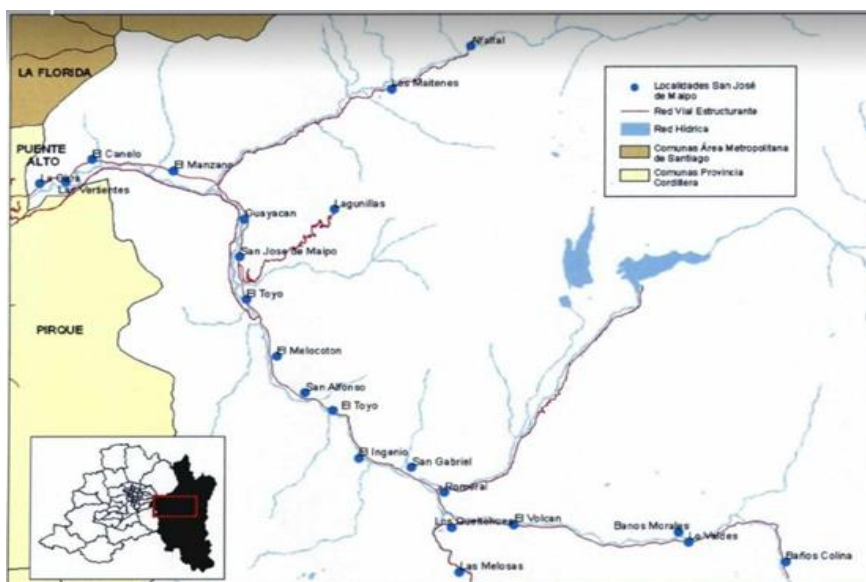
This Recommendation is being presented in a context of uncertainty regarding the project, which is in technical default. However, Management states that the project's lenders have been communicating with the Client to find a viable way of continuing the project.

II. THE PROJECT⁴

A. Geographic and social context⁵

- 2.1 The San José de Maipo district, which has a semirural character, is located on the eastern edge of Santiago's Metropolitan Region, 48 kilometers from Chile's capital. It is in the upper Maipo River Basin in the foothills of the Andes.
- 2.2 The district is made up of territories with scenic, cultural, and environmental value, and an urban system that includes various towns with a pattern of scattered settlements. It is one of the region's most important tourist destinations, declared a National Tourist Interest Zone in 2001 by the National Tourism Service.
- 2.3 There are many rivers, estuaries, and streams in the area, notably the Maipo River's tributaries: the Olivares, Colorado, El Yeso, and Volcán rivers. One of the main drinking water reservoirs for Santiago's Metropolitan Region is located within its borders.
- 2.4 San José de Maipo is divided into 23 towns: La Obra, Las Vertientes, El Canelo, El Manzano, Los Maitenes, El Guayacán, San José de Maipo, Lagunillas, El Toyo, El Melocotón, San Alfonso, El Ingenio, Bollenar, San Gabriel, El Romeral, Embalse El Yeso, Los Queltehues, Las Melosas, El Volcán, Baños Morales, El Morado, Lo Valdés, and Baños Colina. The district's capital is the town of San José de Maipo. The spaces occupied by residents (valley and foothills) are related to the location of the terraces of the Maipo River and its tributaries.

Figure 1. Map of San José de Maipo district



Source: District land use plan for San José de Maipo

⁴ Information taken from the Bank's website and public documents on operations. These documents are available in the electronic links section of this Recommendation.

⁵ The information was supplemented with the contents of the district land use plan for San José de Maipo.

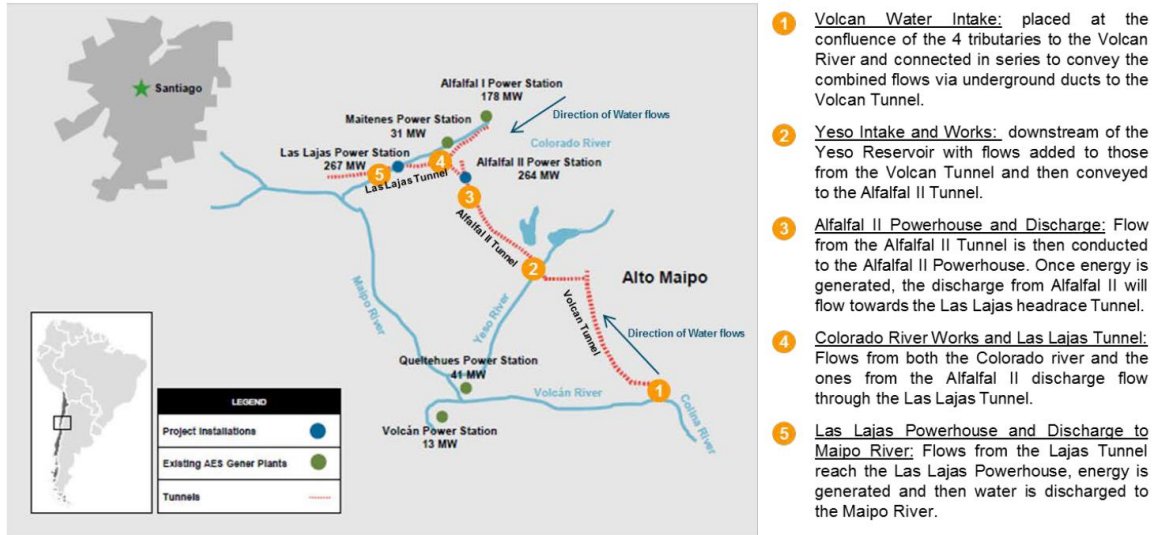
- 2.5 The backbone of the district's road system is Route G-25, also known as the Road to El Volcán, which is the only access from Puente Alto and therefore, from Greater Santiago. This road goes to the town of San Gabriel, from where it divides toward El Yeso Reservoir and the Lo Valdés area. Since this road runs through the town of San José de Maipo, it has become a transit route for the district.
- 2.6 San José de Maipo has a population of 18,189, according to the 2017 census, accounting for 0.22% of the region's total population and 2.56% of the total population of Cordillera province. San José de Maipo district has the province's smallest population, even though it covers the region's largest area.
- 2.7 The area's economic activities are tourism, mining, hydroelectric power generation, agriculture, and cattle raising. In terms of mining, sand and gravel extraction as well as lime, limestone, and gypsum mining are important activities. The district has five hydropower plants in operation (Alfalfal I, Queltehues, Maitenes, Volcán, and El Yeso Reservoir), all owned by AES Gener, S.A. Lastly, according to the 2010 San José de Maipo District Development Plan, the main tourism activities are climbing, rafting, horseback riding, hiking, fishing, and kayaking. Growth is also being reported in restaurant and hotel services.

B. The Alto Maipo Hydroelectric Power Project

- 2.8 The Alto Maipo Hydroelectric Power Project (known by its Spanish-language acronym, PHAM, or the project) consists of the construction, operation, and maintenance of two run-of-the-river hydroelectric plants⁶ (Alfalfal II plant and Las Lajas plant) with a combined net installed capacity of 531 MW. These plants capture the upper-basin water flows from the Volcán and El Yeso rivers, as well as water from the middle to lower reaches of the Colorado River, and then return the water to the Maipo River.
- 2.9 The project calls for the construction of works, chiefly (90%) the excavation of 67 kilometers of underground tunnels, the construction of two powerhouses, four siphons to cross streams, and two surge tanks. In addition, the project includes the construction of 31 kilometers of access roads, four new bridges, and 17 kilometers of transmission lines, as well as improvements to existing roads and electrical substations, intakes, raceways, temporary camps, and storage areas. Permanent surface works for the project are expected to occupy a total of 85 hectares and approximately 61 hectares for transmission lines.

⁶ The project does not require the creation of a reservoir or the construction of a dam to regulate the water flow that enters the powerhouses. The electrical stations capture the water and then return it to the tributaries.

Figure 2. Alto Maipo Hydroelectric Power Project Map



Source: Loan proposal (loan CH-L1067).

- 2.10 According to 2012 data, Chile’s energy matrix still relies on a high percentage of thermoelectric power followed by hydroelectric sources, and a small percentage comes from nonconventional renewable energy sources. Chile’s government is working to increase the share of the latter in the energy matrix,⁷ but thus far the country largely depends on large hydroelectric projects, particularly run-of-the-river plants. The project’s objective is to increase Chile’s hydroelectric capabilities and to decrease its dependence on thermoelectric power and fossil fuels.
- 2.11 Development of the PHAM project concept began in 1992, and its preliminary design was ready in 2000. In May 2008, AES Gener submitted the project’s environmental impact assessment (EIA), excluding transmission lines, for approval to Chile’s Environmental Assessment Service. In March 2009, an environmental classification resolution (ECR) was issued approving construction. From the beginning, the project has reported opposition from the area’s civil society groups and from national environmental organizations.

Timeline of the Alto Maipo Hydroelectric Power Project

1992	Initial project concept
2000	Preliminary design
2002	Basic engineering
2003	Basic engineering
2004	ECR and citizen participation
2005	EIA
2006	Citizen participation
2007	Citizen participation
2008	Social agreement signed

⁷ According to the publication “Electric Power Outlook 2018: Slow Recovery, Bright Future,” from the Electric Power Intelligence Series of BN Americas, Chile currently leads the transition toward clean energy in South America, which would involve a progressive decrease in thermoelectric power.

2008	Citizen participation/ECR
2009	ECR approved (31 March)
2011	Start of preliminary works
2012	IDB mandate letter issued
2012	Start of preliminary works (October)
2013	Main contracts notification issued
2013	Loan approved by the IDB's Board of Executive Directors (16 October)
2014	Start of construction
2016	Sponsorship from Antofagasta Minerals ended
2017	Financial restructuring
2017	Contractor CNM left project
2017	Alto Maipo entered technical default
2018	Estimated date to begin operations (information from ESMR)
2019	Revised date to begin operations (information from Alto Maipo website)

Source: Alto Maipo website and project documents.

- 2.12 The IDB, through its private-sector window—the Structured and Corporate Financing Department (SCF)—began due diligence for this operation with the signature of the mandate letter in April 2012, which culminated in approval of a non-sovereign guaranteed loan of US\$200 million by the Board of Executive Directors on 16 October 2013 as the Alto Maipo Hydroelectric Power Project (loan CH-L1067) for the project’s design, construction, operation, and maintenance stages. At the time of approval, the project’s construction phase was expected to last five years.
- 2.13 Total project cost at that time was estimated at US\$2 billion. The borrower is Alto Maipo SpA, a company created specifically for the project whose original sponsors were AES Gener, the Chilean subsidiary of U.S. company AES Corporation, with a 60% shareholding; and Antofagasta Minerals, a subsidiary of Antofagasta PLC, with 40%.
- 2.14 In addition to the IDB loan and capital contributions from sponsors, the financing structure included the following sources: an A loan for US\$150 million from the International Finance Corporation (IFC); US\$250 million from the United States Overseas Private Investment Corporation (OPIC); and a US\$600 million investment from six multilateral and commercial banks, including Corpbanca, Banco de Crédito e Inversiones, Banco Itaú Chile, Banco del Estado de Chile, KfW Ipex-Bank, and DNB Bank ASA.
- 2.15 In March 2017, when Antofagasta Minerals abandoned the project, a financial and corporate restructuring for the project was announced, to be carried out by AES Gener, which “included the purchase by AES Gener of the entire shareholding of Minera Los Pelambres (MLP) in the company Alto Maipo SpA (Alto Maipo); the addition of Strabag SpA, the project’s prime contractor, as a minority shareholder of Alto Maipo, with an approximate stake of 7%; the amendment of power supply

- contracts signed by Alto Maipo and AES Gener with MLP; and modification of the terms and conditions of the project's current senior financing."⁸
- 2.16 In June 2017, Alto Maipo SpA reported that it had terminated one of the project's construction contracts, with Constructora Nuevo Alto Maipo (CNM), due to an alleged breach of contract, leading to arbitration proceedings in Chilean and international courts. In addition, in late July the company reported that this contract termination had triggered a technical default on the financing contracts under which the project operates. Therefore, the company has been unable to request disbursements from the lenders until it takes corrective action. Alto Maipo SpA has reported that it is still in the process of restructuring the PHAM construction contract to ascertain the project's total cost and completion date.
- 2.17 As of January 2018, the project reported that 61.1% of the construction has been completed.⁹
- 2.18 The operation was classified as a category "A" under the Environment and Safeguards Compliance Policy (Operational Policy OP-703), due to its large scale and the significance of its potential adverse environmental and social impacts, with an emphasis on its potential implications for water management in the Alto Maipo River Basin. Adverse impacts were identified for the project's construction and operation phases, related to "large-scale construction activities in a predominantly tourist outdoor recreation area, including two protected areas below which the project will drill tunnels, raising potential issues of groundwater contamination and deterioration of attractiveness of the area for tourism activities;"¹⁰ as well as potential "changes during project's operation in hydrological conditions (including sediments) in the rivers intercepted by the project, including the Upper Volcán River, the Upper Yeso River, the Colorado River, and indirectly some sections of the Maipo River, raising issues of water flow in the diverted reaches of those rivers, potential damages due to erosion on structures located downstream of the water discharge back into the Maipo River, and potential adverse impacts on recreational uses of the rivers in the diverted reaches."¹¹
- 2.19 The project's environmental and social management report (ESMR) stated that community groups and civil society organizations had already expressed opposition to the project in 2013, given the potential adverse environmental and social impacts, particularly in terms of hydrology, erosion, water rights, and tourism activities, as well as a lack of timely and proper disclosure of information after the ECR was issued. This opposition has been ongoing, with public demonstrations, social network campaigns, and legal proceedings.
- 2.20 Based on the risks identified and the environmental classification, the Bank indicated that the project's Relevant Operational Policies are: Access to Information Policy

⁸ Press release, "AES Gener concluye exitosamente reestructuración financiera de Alto Maipo" [AES Gener successfully concludes financial restructuring of Alto Maipo], March 2017. <http://www.aesgener.cl/SalaPrensa/Paginas/AES-Gener-concluye-exitosamente-reestructuraci%C3%B3n-financiera-de-Alto-Maipo.aspx>.

⁹ Information provided in January 2018 by the IDB Invest project team.

¹⁰ ESMR for the Alto Maipo Hydroelectric Power Project (loan CH-L1067), September 2013, paragraphs 1.2 and 1.3.

¹¹ ESMR for the Alto Maipo Hydroelectric Power Project (loan CH-L1067), September 2013, paragraph 1.3.

(OP-102); Environment and Safeguards Compliance Policy (OP-703); Disaster Risk Management Policy (OP-704); Operational Policy on Involuntary Resettlement (OP-710); and Operational Policy on Gender Equality in Development (OP-761).

III. THE REQUEST¹²

- 3.1 On 23 January 2017, the MICI received a Request from 23 people impacted by the Alto Maipo Hydroelectric Power Project (PHAM) and represented in the matter by Marcela Mella of Coordinadora Ciudadana No Alto Maipo [No Alto Maipo Coordinating Committee] and Juan Pablo Orrego of Ecosistemas, with advisory support from staff of the Washington, D.C.-based Center for International Environmental Law (CIEL).
- 3.2 The group of Requesters is comprised of area residents, who live and work mainly in the San José de Maipo district. They allege that they have suffered or are likely to suffer Harm in connection with the project, during both its construction stage and operation. Below is a summary of the Request and additional information submitted to the MICI. These documents are available in the MICI Public Registry ([case file MICI-BID-CH-2017-0115](#)) and in the electronic links section of this document.
- 3.3 Regarding the construction phase, the Requesters allege that the project has already affected them, adversely impacting their way of life and financial condition, and increasing physical insecurity for them and their families. They believe these are the result of noncompliance with local laws and regulations and with the IDB Group's environmental and social safeguards.
- 3.4 Given the area's focus on tourism, the Requesters indicated that the company's noncompliance with coexistence agreements and commitments has meant a decline in the number of visitors to the area. They also report a significant increase in vehicle and truck traffic that has deterred tourism, as well as an increase in the number of vehicles from the project parked irregularly by the side of the road. Therefore, they allege that there has been an increase in the number of traffic accidents on roads that used to have normal travel as well as fatalities involving grazing animals and pets.
- 3.5 This traffic increase has also taken a toll on their livelihoods, which are mainly tourism-related, since visitors who used to travel to Cajón del Maipo are avoiding the area because these transportation problems and the intensity of the work have made the area less attractive.
- 3.6 In addition, the project works have blocked access to various roads, traditional routes, and highland areas in Cajón del Maipo that were used by mule drivers, hikers, campers, and others involved in tourism and/or sporting activities. They state that this has also adversely impacted tourism.
- 3.7 Regarding the issue of difficult access, the Request specifically mentioned that the El Alfalfal community has been cut off by a perimeter wall built for the PHAM's

¹² The Request and Annexes are available in the electronic links section of this document. This section includes information received by the MICI directly from the Requesters during the mission to Santiago and the Cajón del Maipo area.

construction work. According to the Requesters, this wall impacts their access to water hydrants and cuts off emergency escape routes.

- 3.8 The Request also discusses the explosives used to excavate tunnels for the project, which the Requesters believe have been mishandled. Specifically, they stated that the ground transportation of explosives is taking place without following proper safety procedures, making the already congested local roads more unsafe for the community in general. In addition, they warned about the adverse impact of explosives detonating at all hours, seven days a week. They note that this not only affects their quality of life but also endangers their safety and that of tourists, as well as their cattle and sheep, which graze in areas where the PHAM is being built and have occasionally been injured by explosions.
- 3.9 They further allege that mining activities for construction of the project's underground sections may be causing environmental Harm in the Cajón area in two main ways. First, they state, improper handling of the waste generated from the extraction of materials is polluting the waters of the Colorado, El Yeso, Volcán, and Maipo rivers, as well as the mountain and estuary wetlands in Las Arenas and El Yeso valleys, where the PHAM is located. Second, there is a risk that extraction materials may seep into groundwater tables. They allege that the pollution of these water bodies is already creating problems both for their health and that of tourists who practice watersports like rafting, as well as their cattle, which drink that water.
- 3.10 The Requesters also highlighted the impact the project has had on the social fabric in the various towns that make up Cajón del Maipo. They emphasized the effect of the large migration of construction workers,¹³ most of whom are not from the community, and some of whom are renting rooms in private homes. This has disrupted social dynamics in a small town and has led to an increase in physical violence, theft, and selling of alcohol and drugs, as well as prostitution in areas close to work sites. These situations have an outsized impact on women and girls. Likewise, social conflicts have been pitting neighbor against neighbor, for or against the project. They perceive that this has created a greater sense of violence and instability in the region, which used to be peaceful.
- 3.11 Regarding the community's relationship with the company, the Request stated that several agreements made between the Alto Maipo company and various district territorial organizations as part of the project's environmental and social measures, on such issues as water use and resettlement of residents (mainly in the El Alfalfal area), have not been fulfilled thus far. These commitments range from obligations made to resettle families in El Alfalfal to agreements for construction operations to be managed in such a way that activities can continue in the area.
- 3.12 The Request also alleged potential environmental Harm tied to the future operation of the PHAM, mainly through adverse impacts due to the lack of water available and the reduced flow of the rivers targeted by the project. The Requesters stated that the environmental assessment and other studies have been insufficient and incomplete, since they: (i) omit the impacts of the project on the hydrological regime

¹³ The project projected that 2,500 jobs would be created during the construction phase. Currently, the company reports having close to 5,000 employees, in a community with a population of 14,464 (8,715 urban and 5,749 rural), according to the 2012 Census. 2012 Census: Results of the 18th Population Census, National Institute of Statistics of Chile, page 48.

- in a larger area of influence than originally identified, which would affect drinking water supplies; and (ii) do not consider the differentiated effects of the PHAM on each water user as far as quantity, quality, and availability to meet their needs given their activities.
- 3.13 In terms of the impact on the water flows of the targeted rivers, the Requesters allege that because the project transfers water from the Volcán, Colorado, and El Yeso rivers to the Maipo River 100 kilometers downstream, the actual impact on those tributaries is uncertain. They alleged that this impacts their future investment decisions, mainly for tourism activities that require certain water flow volumes. Any unforeseen change in the availability of water would lead to significant losses for their businesses.
- 3.14 Throughout the Request, they repeatedly mentioned the lack of information available or of public consultations with the community regarding the project's current and future impacts.
- 3.15 The Requesters stated that the Harm described had been the result of the Bank's noncompliance with the provisions of the Environment and Safeguards Compliance Policy (OP-703); the Disaster Risk Management Policy (OP-704); the Public Utilities Policy (OP-708); the Operational Policy on Involuntary Resettlement (OP-710); and the Access to Information Policy (OP-102).
- 3.16 Lastly, the Requesters stated that they had also submitted a complaint to the IFC's independent accountability mechanism, the Office of the Compliance Advisor/Ombudsman (CAO). According to information published by that office, the complaint is currently in the evaluation stage of the IFC's environmental and social due diligence for the project in question, to determine whether a compliance investigation of the IFC's performance related to the project is merited.¹⁴
- 3.17 As part of the process to prepare this Recommendation, in accordance with the MICI Policy, the Requesters provided comments on the draft Recommendation, which included both information updates and specifics on the project and their allegations regarding impacts. They also noted subjects that, from their perspective, should be part of the Recommendation. The MICI reviewed the Requesters' comments and made adjustments as deemed relevant.¹⁵

IV. MANAGEMENT PERSPECTIVE

- 4.1 As part of processing this Request, the MICI has been in constant contact with IDB and IDB Invest Management, to hear their perspectives on the allegations, learn what steps Management has taken to address them, and obtain updated information about the project, given the various events that happened in 2017. This has involved several meetings, document review, and virtual communication.

¹⁴ CAO Assessment Report. Regarding the first complaint and concerns in relation to the IFC's Alto Maipo project (#31632) in Cajón del Maipo, Chile. (<http://www.cao-ombudsman.org/cases/document-links/links-1255.aspx>).

¹⁵ The Requesters' comments are in the annexes section of this document.

- 4.2 In addition, two documents were prepared pursuant to the MICI process: (i) the Management Response,¹⁶ received on 17 March 2017 as part of the eligibility stage, in which Management provided its perspective on the issues raised in the Request; and (ii) Management's comments on the draft of this Recommendation.¹⁷ A summary of these documents follows.
- 4.3 Management provided a brief summary of the Alto Maipo Hydroelectric Power Project (PHAM) and explained that there is a supervision structure that includes local authorities as well as an independent environmental and social consultant, as required by the financing institutions.¹⁸
- 4.4 Management also stated that the PHAM has an environmental, social, and occupational health and safety management system to identify and correct deviations from the construction activity management plans in a timely manner.
- 4.5 Regarding the allegations of Harm, Management stated that several of those issues have been identified and addressed under this system, for example, those related to road safety that were within the scope of the company's authority and responsibility.
- 4.6 Regarding the impact on current and future surface water rights, Management stated that the project had previously assessed the impact of potential scenarios of diminished flows due to effects already present in the area caused by desertification and climate change. Likewise, studies were done on the potential impact of climate change on the project, and the project's operation will have to be adjusted for those changes, ensuring that the pre-established environmental flow rates are respected at each intake point.
- 4.7 Additionally, the sediment monitoring program adopted by the project will track hydraulic profiles downriver, so that control measures can be activated to guarantee water flow.
- 4.8 Regarding subsurface waters, the project's EIA evaluated the potential impact on groundwater tables without finding impacts that would endanger their availability. A groundwater monitoring system has also been implemented upstream and downstream from muck collection sites¹⁹ and has not detected any change in water table levels thus far.
- 4.9 Management also stated, in reference to the El Alfalfal community, that the ECR required the construction of a wall to address the noise and dust from nearby works. In addition, Furthermore, it states that none of the access routes to El Alfalfal have been blocked, and on subsequent supervision visits it will determine whether this wall is creating adverse impacts.
- 4.10 Regarding future impacts on tourism, Management reported that there had been assessments of protected areas and minimum water flows for recreational boating/rafting, to determine the project's impact. The conclusion from these

¹⁶ The document "Joint Response of IDB-IIC Management to Request MICI-BID-CH-2017-0115 referring to the Alto Maipo Hydroelectric Power Project" (CH-L1067) is included in the electronic links section.

¹⁷ Management's comments on this Recommendation are provided in the annexes section of this document.

¹⁸ The consulting firm Environmental Resource Management (ERM) was retained to perform this function.

¹⁹ "Muck" in this context refers to mining extraction residue from tunneling.

assessments is that, once the PHAM was operational, there would be minimal impact due to its small surface footprint, and water flows would be sufficient to maintain the levels required for kayaking and rafting. In December 2016, Management requested a recreational boating study on the rivers affected by the project. The preliminary findings are that the adverse impact is small. Management stated that “an adaptive management method will be used during the project’s operation, including, if necessary, additional flow releases in order to guarantee the recreational uses of the rivers.”²⁰

- 4.11 In its comments on the draft Recommendation, Management confirmed the position presented in its Response to the Request, as summarized above. Specifically regarding the draft of the Recommendation and Terms of Reference, Management: (i) suggested reformulating the investigative questions established by the MICI; (ii) stated its position on the inclusion of the Operational Policy on Gender Equality in Development (OP-761) in the Recommendation, indicating that, in its view, the Requesters had not raised issues related to this policy during previous stages of the process; and (iii) presented its opinion on the interpretation of paragraph 19(d) of the MICI Policy, related to the eligibility stage. Management described three legal proceedings under way at the national level²¹ and a series of issues that, from its perspective, should be excluded from the investigation because they are being reviewed as part of those proceedings.²²

V. MICI ACTIONS

- 5.1 The MICI would first like to thank IDB and IDB Invest Management, as well as the Requesters, for providing information and attending the meetings held during preparation of the Recommendation for a Compliance Review. This process has required more time than called for in the MICI Policy to analyze the various issues raised in the Request and consider what has occurred with the project at various points this past year.
- 5.2 In accordance with the MICI Policy, the processing of the Request followed the timeline below:

Table 1
Timeline of main MICI actions from 23 January 2017 to 30 January 2018

Date	Actions
2017²³	
23 January	Receipt of Request and meeting with representatives of the Requesters regarding MICI process.
30 January	Requesters given up to 10 business days to submit the additional information needed to process the Request.

²⁰ Joint Response of IDB-IIC Management, page 9.

²¹ Three proceedings were mentioned in Management’s comments in the annexes section of this document, page 2. The MICI’s conclusions on the comments made by the Requesters and Management is addressed in later sections of this Recommendation.

²² See Management’s comments in the annexes section of this document.

²³ The representatives of the Requesters traveled to Washington, D.C. in 2015 to meet with Management of the IDB, the IFC, and OPIC, as well as with the mechanisms of each of these institutions.

Table 1
Timeline of main MICI actions from 23 January 2017 to 30 January 2018

Date	Actions
2 February	Conference call with CAO staff, who had also received a Request.
15 February	Registration of Request.
16 February	Conference call with representatives of the Requesters.
6 March	Meeting with IDB staff.
17 March	Receipt of IDB-IDB Invest Management Response.
24 March	Conference call with representatives of the Requesters.
3 April	Conference call with IDB Representative in Chile.
4 April	Meeting with IDB-IDB Invest Management in charge of the operation.
10 April	Meeting with IDB-IDB Invest Management in charge of the operation.
10-14 April	Mission to Santiago and Cajón del Maipo for eligibility determination. The delegation consisted of representatives from the MICI (IDB) and the CAO (IFC).
17 April	Conference call with IDB Representative in Chile.
	Meeting with IDB-IDB Invest Management in charge of the operation.
	Submission of a "Request for Extension for the Determination of Eligibility" to the Bank's Board of Executive Directors for consideration.
21 April	Approval of the "Request for Extension for the Determination of Eligibility."
26 April	Conference call with officials of Chile's Ministry of Energy.
1 May	Eligibility Memorandum issued.
13 June	First notification of deadline extension to prepare the Recommendation.
15 June	Conference call with representatives of the Requesters.
27 June	Meeting with IDB-IDB Invest Management in charge of the operation.
28 June	Conference call with the Requesters dedicated to rafting activities, representatives of channel users (<i>canalistas</i>), and the San José de Maipo Tourism Board.
28 July to 13 August	Meeting with IDB-IDB Invest Management in charge of the operation.
28 July	Original date to send the Recommendation and Terms of Reference to the Parties for their comments.
28 July	Second notification of deadline extension to prepare the Recommendation.
13 August	Third notification of deadline extension to prepare the Recommendation.
2 November	Meeting with IDB-IDB Invest Management in charge of the operation.
20 November	Recommendation and Terms of Reference distributed to the Parties for their comments.
8 December	Meeting with IDB-IDB Invest Management in charge of the operation.
13 December	Management's comments received.
19 December	Requesters' comments received.
2018	
2 to 5 January	In-person meetings and conference calls with IDB-IDB Invest staff.

Table 1
Timeline of main MICI actions from 23 January 2017 to 30 January 2018

Date	Actions
4 January	Conference call with the Requesters.
24 January	Meeting with IDB Invest staff.
30 January	"Recommendation for a Compliance Review" and annexes sent for translation, to be distributed to the IDB Board of Executive Directors.

Source: MICI.

- 5.3 Since the Requesters only asked the MICI to process their Request through the Compliance Review Phase, the case was transferred to that phase after the Eligibility Memorandum was distributed to the Board of Executive Directors on 17 May 2017. Because of the multiple issues raised in the Request and the need for more detailed analysis of each issue to determine the scope of the proposed investigation, the MICI requested from the Board of Executive Directors more time than originally called for in the Policy to prepare the Recommendation, enabling it to sharpen the focus to specific issues.
- 5.4 Additionally, the MICI requested several extensions from July 2017 onward, because the project entered into technical default, and it became extremely important to know its progress in order to determine the scope and time frame for any investigation being proposed to the Board.
- 5.5 In accordance with MICI Policy, a preliminary version of this document was sent to the Requesters and Management for their comments on 20 November 2017. On 13 and 19 December 2017, respectively, the MICI received written comments from Management and the Requesters, which were carefully reviewed. This final version reflects that review, and its content has been adjusted as the MICI deemed relevant. The comments can be consulted in the annexes section of this document.
- 5.6 Separately, the MICI would like to point out that on 2 January 2018, it discovered that the draft Recommendation for a Compliance Review had been leaked to the Chilean press by the representatives of the Requesters, even though they were on notice that due to its draft status it should only be shared with the Requesters. Since this act violates the good faith principle that governs the MICI process, the MICI Director told the representatives of the Requesters that this was a very serious incident and informed them that she reserves the right to take any measure she deems necessary to ensure the integrity of the MICI process and its objectives during subsequent stages, including the possibility of recommending to the Board to suspend the process. In terms of this Recommendation, the Director believes it is possible to move ahead with an investigation, subject to implementing certain specific precautionary measures regarding the potential handling of the process with the media that guarantee the investigation's impartiality, transparency, and solidity. Pursuant to the MICI mandate, if approved by the Board, the investigation of facts would focus on determining whether Bank acts or omissions have constituted a failure to comply with its Relevant Operational Policies regarding the allegations made. In that sense, the Compliance Review is an internal process for the IDB Group.

VI. RECOMMENDATION FOR A COMPLIANCE REVIEW

- 6.1 As indicated in the section on the content of the Request, the Requesters allege that the Harm described is the result of the Bank's noncompliance with the Environment and Safeguards Compliance Policy (Operational Policy OP-703) in relation to environmental Harm, their health and safety, and the impact on their livelihoods, as well as the lack of public consultations; the Disaster Risk Management Policy (OP-704) in relation to environmental Harm and the risks associated with the project's construction and operation; the Public Utilities Policy (OP-708) in relation to impacts from the lack of water access and availability; the Operational Policy on Involuntary Resettlement (OP-710) in relation to impacts on their livelihoods and failure to honor resettlement agreements with community members; and the Access to Information Policy (OP-102) in relation to the lack of information provided to the impacted population.
- 6.2 As indicated in Section II, the involvement of the IDB (and of other lenders) began in 2012, several years after the national environmental authorities issued an environmental authorization (the environmental classification resolution (ECR) had been issued in 2009) and at a time when the project already had a final design and the first works had started. During due diligence, the Bank and other lenders identified a series of gaps between their environmental and social requirements (established in the Operational Policies) and those established in national regulations. Therefore, they required additional studies to be done based on Bank standards.
- 6.3 The MICI, pursuant to its mandate, has performed a preliminary analysis of certain documentation regarding the Bank's obligations starting with its involvement in the project in 2012. It has also reviewed what Management has stated regarding the issues it claims are currently under judicial review in Chile's court system, as occurred in the eligibility stage.
- 6.4 Therefore, pursuant to paragraphs 39 to 41 of the MICI Policy (document MI-47-6), the MICI is submitting this Recommendation to conduct a Compliance Review of the allegations made, exclusively with respect to the Bank's compliance or noncompliance with its Relevant Operational Policies, to the IDB Board of Executive Directors for consideration.
- 6.5 Accordingly, **the MICI proposes to conduct an investigation solely with respect to Operational Policies OP-703 and OP-761.** In relation to the obligations under Operational Policy OP-703 with a bearing on Operational Policy OP-102, the Bank's compliance will be investigated as it relates to the directives requiring information disclosure.
- 6.6 **The MICI determines that the scope of the proposed investigation will focus on five of the issues alleged by the Requesters:**
- (1) Deterioration in the economic activities of the area, particularly tourism and recreation;
 - (2) Change in the water flows of the targeted rivers, particularly as this relates to the area's recreational and economic activities;

- (3) Heavy migration of workers, with emphasis on the differentiated impacts based on gender;
- (4) Harm to the residents of the town of El Alfalfal;
- (5) Absence of adequate consultation processes, as well as dissemination of information on impacts and their management.

6.7 The scope of the investigation would not include:

- (1) Impacts on the sedimentation regime of the Maipo River, since this matter is the subject of a judicial proceeding in Chile (Case 13,218-2012, 4th Civil Court of Santiago);
- (2) Impacts related to the water rights of third parties, since this matter is the subject of a judicial proceeding in Chile (Case 2,456-2014, 28th Civil Court of Santiago); and
- (3) The allegations of noncompliance with Operational Policies OP-704, OP-710, and OP-708, since insufficient facts and evidence were found to propose a Compliance Review process.

6.8 The MICI believes that conducting an investigation to determine whether the Bank has failed to comply with the two Operational Policies mentioned above—OP-703 and OP-761—in a construction project offers the opportunity to ensure the sustainability of the operation in the event of a determination of noncompliance that may cause the alleged Harm.

A. Rationale

Regarding compliance with the Environment and Safeguards Compliance Policy (OP-703)

6.9 The Requesters claimed that the project's impacts were not fully assessed, and effective mitigation measures were not implemented, disregarding the area's focus on tourism. They reported that several different impacts have been felt during construction of the Alto Maipo Hydroelectric Power Plant (PHAM), and tourism in the area has declined considerably, which has financially impacted the population. Representatives of the Tourism Board told the MICI that they estimate tourism grew at a rate of approximately 12% from 2009 and 2014. However, since project construction began, there has been a negative trend, with sales declining between 5% and 7%. In addition, the Requesters reported to the MICI about: (i) closings of paths and roads used for hiking, horseback riding, access to tourist areas, and climbing, due to the construction of works; (ii) detonation of explosives without warning in areas dedicated to grazing and hiking; and (iii) deterioration of social dynamics and greater fear for personal safety as a result of a large worker migration to the area.

6.10 The Requesters emphasized that they have not been consulted properly, since thus far they have not received full enough information to understand all of the project's impacts and planned mitigation measures. Among the Requesters, adventure tourism operators, members of the San José de Maipo Tourism Board, and channel users stated that they have not been contacted for the preparation of the additional environmental studies required by the lenders after the gap analysis, and that they are not aware of the results of these studies. Some of the Requesters stated that

they did not participate in the meetings held as part of the Participatory Monitoring Program that was established. Those who participated are unsatisfied with the way the meetings are being held, since they lack a structure in which they can actively participate, ask questions, and establish a constructive dialogue that enables them to obtain answers to the concerns expressed by the public.

6.11 Moreover, the Requesters noted that major social and cultural impacts in the area were not assessed and are not being managed. They expressed concern about the serious deterioration of social ties in their community as a result of changes in social dynamics and a large worker migration to the area, as well as the polarized environment that the project has created among the population. The Requesters also expressed concern about safety conditions, particularly for children, and public health problems resulting from increased drug use and prostitution. They attributed this reality to the number of workers who have migrated and “flooded” the towns. Lastly, during the mission to the project area, the Requesters mentioned that there were several incidents of violence against women by the project’s workers, and emphasized that these have not been addressed and pose a risk for the area’s women and girls.

6.12 In its response to the Request, Management stated that during the project’s assessment process, additional environmental studies of its potential impacts were requested. These studies concluded that the anticipated minimum flows downstream from the project’s water intake points are sufficient to preserve the ecological integrity of the bodies of water and levels of water required for recreational boating (rafting), although they could diminish the “recreational experience” during a few critical months of the year. [REDACTED]

[REDACTED]

6.13 Operational Policy OP-703 establishes that the Bank will only finance operations and activities that comply with the directives of this policy and are consistent with the relevant provisions of other Bank policies. The Bank will also require the borrower for that operation to ensure that it is designed and carried out in compliance with environmental laws and regulations of the country where the operation is being implemented. In addition to risks posed by environmental impacts, the Bank will identify and manage other risk factors that may affect the environmental sustainability of its operations. These risk factors may include elements such as the governance capacity of executing agencies/borrower and of third parties, sector-related risks, and risks associated with highly sensitive environmental and social concerns.

6.14 Operational Policy OP-703 further establishes that a Bank-reviewed EIA process should include, as a minimum, screening and scoping for impacts, and giving due consideration to direct, indirect, regional, or cumulative impacts, using adequate baseline data as necessary; impact mitigation and management plans presented in an environmental and social management plan (ESMP); the incorporation of environmental assessment findings into project design; and measures for adequate

- follow-up of the ESMP's implementation. It also calls for EIAs and ESMPs to be disclosed to the public within specific timeframes and consistent with the Disclosure of Information Policy (Operational Policy OP-102). For operations that are already under construction, the Bank will finance them only if the borrower can demonstrate that the operation complies with all relevant provisions of this policy. In addition, OP-703 establishes that Bank-financed operations will include, as appropriate, measures to prevent, reduce, or eliminate pollution emanating from their activities.
- 6.15 Moreover, OP-703 establishes that affected parties in Category "A" operations will be consulted at least twice during project preparation, during the scoping phase of the environmental assessment or due diligence processes, and during the review of the assessment reports. For consultation purposes, appropriate information will be provided in location(s), format(s), and language(s) to allow for affected parties to be meaningfully consulted, to form an opinion, and to comment on the proposed course of action. Environmental impact assessment (EIAs) and/or other relevant environmental analyses will be made available to the public consistent with the Bank's Access to Information Policy (Operational Policy OP-102). During execution, affected parties should be kept informed of those project-related environmental and associated social mitigation measures affecting them, as defined in the ESMP.
- 6.16 The policy also states that the Bank will monitor the executing agency/borrower's compliance with all safeguard requirements stipulated in the loan agreement and project operating or credit regulations, and that Category "A" projects will be reviewed at least annually to assess safeguard compliance. The Bank will not support operations that, in its opinion, significantly convert or degrade critical natural habitats or that damage critical cultural sites, unless: (i) there are no feasible alternatives acceptable to the Bank; (ii) comprehensive analysis demonstrates that overall benefits from the operation substantially outweigh the environmental costs; and (iii) mitigation and compensation measures acceptable to the Bank are included and adequately funded, implemented, and monitored.
- 6.17 In this case, the MICI found that, as a result of the due diligence process undertaken once the Bank became involved in the project, [REDACTED].²⁵ As a result of this process, the Client was asked to conduct additional studies on issues that included the project's potential impacts on the ecological flow and water uses and users.²⁶
- 6.18 In 2012 and 2013²⁷ the Client prepared a series of studies, as required by the lenders. However, the MICI found that the ESMR stated that, despite additional studies being conducted, "some uncertainties remain on a few issues due to their inherent technical complexity," including optimum flows for maintaining recreational uses of the Maipo River.²⁸ [REDACTED]

²⁵ Environmental and Social Due Diligence of the Alto Maipo Hydropower Project AM-CO328, IDB, IFC, OPIC, August 2013.

²⁶ See public documents for the project at http://www.iadb.org/es/proyectos/project-information-page_1303.html?id=CH-L1067.

²⁷ Environmental and Social Due Diligence of the Alto Maipo Hydropower Project AM-CO328, IDB, IFC, OPIC, August 2013, page 4.

²⁸ ESMR, 1.4.

██████████²⁹ The MICI conducted a preliminary review of the studies conducted since the IDB became involved. However, the MICI believes that experts need to perform a thorough analysis to clarify the actions taken by the Bank and whether they met the standards of Operational Policy OP-703, relating to compliance with the requirements established in the Bank's safeguards; identify the project's impacts in due time and manner; and validate the design and implementation of effective mitigation measures.³⁰

6.19 The MICI also notes that the Requesters emphasized the existing uncertainty regarding the PHAM's impacts and the proposed mitigation measures, given the lack of meaningful consultations and disclosure of information for the project after the environmental authorization was issued in 2009. The MICI found that rafting operators and representatives of the San José de Maipo Tourism Board, an association representing more than 30 businesses,³¹ said that they were unaware of, and had not been considered during the preparation of additional studies to assess the potential impacts directly affecting them.³² Based on a preliminary review of these studies, the MICI did not find information indicating that these people had been consulted. ██████████

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6.20 The MICI also found that, among the requirements established during due diligence, the lenders called for the implementation of a Participatory Monitoring Program.³⁴ This program is part of the obligations taken on by the company in the environmental, social, health, and safety action plan (ESHSAP).³⁵ Based on the information that various members of the community provided to the MICI, there seem to be serious questions about this venue for participation and monitoring of agreements. Some Requesters have reported that, because they do not have the

²⁹ Management's presentation, July 2017. Available in the electronic links section of this document.

³⁰ ██████████ See studies in the electronic links section of this document.

³¹ Based on information provided by the Requesters, the following organizations are members of the Tourism Board: Alto del Canelo, Cafetería La Estrella, Calypso, Casa Bosque, Cascada de las Ánimas, Casona de San José, Donde Tío Pepe, El Sauce, El Tucán, Entre Gauchos y Huasos, Fundo el Toyo, Hostal de Antaño, Hotel Qamaqi, La Bella Durmiente, La Calchona, La Oveja Negra, Lomitas de Guayacán, Los Baqueanos, Los Cuernos de Toro, Los Nogales de Roan Jasé, Millahue, Mirador del Maipo, Pailalén, Rancho El Añil, Rubén Castillo Restaurante, Santuario del Río, Sureste, Turismo Rural El Ingenio, Villa Azul, Restaurante Cajón del Maipo, and Tambo del Valle.

³² Specifically, regarding two studies required by the lenders: Subject 1: Identification and assessment of potential impact on water uses and users and Whitewater Recreational Boating Study draft report.

³³ Whitewater Recreational Boating Study draft report, January 2017, page 3. Available in the electronic links section of this document. See also Management presentation to the MICI, 27 June 2017. Available in the electronic links section of this document.

³⁴ ESMR, 3.13 et seq.

³⁵ The program's objectives include monitoring, along with interested parties, the changes in water flow, sediment, and groundwater, and collecting relevant socioeconomic information. See ESMR, draft 15 of ESHSAP. Available in the electronic links section of this document.

- minutes from the meetings, they are unable to verify that these minutes reflect the commitments made.³⁶ Given this, the MICI believes that a Compliance Review could look into whether the disclosure, consultation, and participation processes have followed the provisions of OP-703, as well as OP-102 as applicable and Directives B.5 and B.6 of OP-703, and how the Bank has supervised compliance with the social commitments made by the Client as part of the measures to offset the foreseen impacts.
- 6.21 The Cajón del Maipo region was declared a Tourist Interest Zone³⁷ in 2001.³⁸ Consistent with that designation, according to the San José de Maipo District Development Plan, the main tourism activities are hiking (46%), rafting (33%), horseback riding and tours (18%), fishing (2%), and kayaking (1%). This is relevant because the Requesters stated to the MICI that the project had already impacted tourism in the area because of various activities connected to the construction. These include blocking roads used by mule drivers, hiking guides, and climbers, and detonating explosives without warning, which they said have impacted tourists and traditional activities of mule drivers.³⁹ Mule drivers indicated that animals have already been injured by these explosions.⁴⁰ On this issue, the MICI found that domestic and foreign organizations and businesses devoted to adventure sports activities are concerned about the potential irreversible impacts on the Cajón del Maipo area and the closing of access to sports enthusiasts,⁴¹ such as the International Rafting Federation.⁴² In this regard, taking into account the strategic importance of the project's area of influence for tourism in the region and the arguments mentioned above, the MICI believes that a Compliance Review would help clarify the uncertainties that remain about the project's impact on tourism and the proposed mitigation, management, and compensation measures, as far as the Requesters' allegations.
- 6.22 The MICI also notes that the Requesters claimed that the El Alfalfal community is suffering strong impacts caused by noise, vibration, and pollution during construction, which have not been mitigated by the wall surrounding the town. They alleged that their use of land and access to resources have been restricted, and that they have been deprived of community spaces and other spaces including sites for

³⁶ [REDACTED]

³⁷ Tourism Interest Zones are public-private management instruments to promote tourism activities, which are implemented through the participatory preparation, coordination, and commitment to execution of an action plan in a certain territory within an execution period of two years.

³⁸ Pursuant to the Tourism Law (Law 20423 of 2010), Tourist Interest Zones are "district territories, interdistrict territories, or certain areas within them that possess special conditions as tourist attractions and that require conservation measures and comprehensive planning to promote private sector investments" (Article 13). In addition, the law states that "Tourism Interest Zones will have priority in the execution of public programs and projects to promote the development of such activity, as well as for the allocation of resources for necessary infrastructure plant and equipment."

³⁹ During the eligibility mission, the MICI found road signs indicating that there would be explosives detonating at all hours, seven days a week.

⁴⁰ The Requesters representing mule drivers also informed the MICI that they tried to establish a dialogue with the company and reported to national authorities the impact on their traditional activities, but that they have not received proper responses.

⁴¹ See video by Patagonia, "Defiende Maipo." Available at <https://www.youtube.com/watch?v=XRhR9gYBjyE>.

⁴² See <http://www.internationalrafting.com/conservation/top-10-most-threatened-rivers/>.

grazing and honey gathering. They questioned the impact management conducted by the company, which ended up dividing the community, and said that the project does not meet the goals of improving the quality of life in urban locations near its construction, nor does it preserve sites of cultural importance like El Alfalfal.⁴³

6.23 Regarding this, Management stated that the wall built around the town of El Alfalfal is temporary and will be removed after construction is completed, and that this wall is a requirement of the ECR and was expressly requested by the community. In addition, none of the community's access points have been blocked as a result of the wall. Management will verify on its next visit whether the wall in question is creating other kinds of impacts on the community.⁴⁴

6.24 Based on the information reviewed by the MICI, the wall built around the town was installed on a temporary basis as a sound barrier, pursuant to the ECR. However, project documents indicate that there is a need to supplement the existing Noise and Vibration Monitoring Program;⁴⁵

[REDACTED]

6.25 The MICI also found indications that community management efforts in El Alfalfal pitted neighbor against neighbor, for or against the project.

6.26 In this regard, the MICI believes that an investigation would help clarify whether the Bank has complied with the requirements of OP-703 as far as determining, in consultation with affected parties, mitigation measures for the impacts that project construction would have on the El Alfalfal community, including community relations programs.

6.27 The MICI also reviewed the allegations relating to the social impact caused by the deterioration of social dynamics as a result of the migration of workers to a small community for the project. The MICI found that the ESMR identified potential impacts caused by the migration of workers, including impacts on the local housing market,

⁴³ Original Request, pages 21-24. There are allegations relating to noncompliance with Operational Policy OP-710 as far as agreements on resettlement that the company reached with some residents of El Alfalfal. These have not been included in the recommendation for an investigation, since none of the Requesters in this case is a party to these agreements.

⁴⁴ Response to the Request, page 10.

⁴⁵ ECR, paragraphs 7.1.2.1, 7.1.2.7, 7.1.2.8, and 7.1.2.10; ESHSAP, item 28.

⁴⁶ ERM Q2-2016, Appendix A, Section 2. Standards, ruido y vibraciones [Standards, noise, and vibration]; ESHSAP compliance review, Appendix A, Q1-2016. ERM Q4-2016; ERM Q3-2016, pages 18 and 19; ERM Q4, pages 15 and 16 and Appendix A.

⁴⁷ ERM Q4, page 15 and Appendix A, Section 2.

⁴⁸ Alto Maipo, meeting minutes PHAM-PCD-06/F8 of 19 November 2014; ERM Q4, page 15 and Appendix A, Section 2; ERM Q2-2016, Appendix A, Section 28. Ruido y vibraciones [Noise and vibration]; ERM Q2-2016, Appendix A, Section 28. Ruido y vibraciones [Noise and vibration]; ERM Q4-2016.

⁴⁹ Alto Maipo, meeting minutes PHAM-PCD-06/F8 of 19 November 2014; ERM Q4, Appendix A, Section 2.

- 6.32 Lastly, the Requesters described how the project has clearly divided the members of the community who are for or against the PHAM project, disrupting the social fabric of this small community.⁶⁰
- 6.33 Given the significance of the allegations described regarding the project's social impacts, the MICI believes that a Compliance Review would help assess whether the Bank ensured that these social impacts were evaluated according to the guidelines of Operational Policy OP-703, and whether effective and appropriate mitigation measures were implemented for these impacts. Likewise, it would determine whether the Bank has met its supervision obligations regarding implementation of these measures.
- 6.34 In addition to this, the MICI believes it is important to remember that the time frame for the construction stage and entry into operation has changed substantially from the original, resulting in an extension of the construction period and potentially of the impacts from that stage of the project. Thus far, the MICI does not have an estimate of the duration of this stage, since the project is still in a technical default status that began in the middle of last year, even though a potential resolution of the issues that caused this in the short term is foreseen.
- 6.35 In summary, based on the foregoing considerations, the MICI finds that a Compliance Review would help to clearly establish the actions taken by the Bank regarding the issues mentioned, and to analyze how these actions have or have not complied with the requirements of Operational Policy OP-703, as far as the allegations that the MICI considers relevant to the investigation at this time.

Regarding compliance with the Operational Policy on Gender Equality in Development (OP-761)

- 6.36 The Requesters stated that, since the start of construction on the project, social dynamics have deteriorated and become strained with an outsized impact on women and girls. In this regard, they mentioned that the migration of construction workers to a small community like San José de Maipo's has led to an increase in incidents of aggression and gender violence, as well as a marked increase in prostitution in the area.⁶¹
- 6.37 The objective of Operational Policy OP-761 is to promote gender equality and the empowerment of women and for the Bank to contribute to compliance with international agreements on gender equality.⁶² This policy identifies two lines of

⁶⁰ The ESMR also mentioned that the total population of the district where San José de Maipo is located was approximately 10,753 in 2002, and was expected to increase by some 8% between 2002 and 2012. ESMR, page 26. According to the District Development Plan, that population was 13,376. See <http://www.sanjosedemaipo.cl/documents/4/TOMO I PLADECO San Jose 1.pdf>.

⁶¹ See original Request, page 17 and annex for allegations presented, page 10. The information was expanded through testimony from the community obtained by the MICI during the eligibility mission of April 2017.

⁶² The policy mentions international instruments such as the Universal Declaration of Human Rights (1948); the Convention on the Elimination of All Forms of Discrimination against Women or CEDAW (1979); the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (1994); the Programme of Action of the International Conference on Population and Development (1994); the Platform for Action of the Fourth World Conference on Women (1995); and the Millennium Development Goals (2000).

action for the Bank: proactive and preventive action.⁶³ Proactive action calls for direct investment in areas strategic to gender equality, as well as mainstreaming the gender perspective in development interventions, seeking to have gender equality and the needs of women and men be heard and addressed in the design, implementation, monitoring, and evaluation of the Bank's interventions, with special emphasis on public- and private-sector loan operations. The policy also recognizes that inequality has a larger impact on women and that gender inequalities interact with other inequalities that are based on socioeconomic, ethnic, and racial factors, exacerbating the barriers and vulnerabilities for some groups of women.⁶⁴

6.38 The policy establishes that preventive action calls for the Bank to conduct its financial operations so as to identify and address adverse impacts and the risk of gender-based exclusion; include women and men in consultation processes; and comply with applicable legislation relating to equality between men and women. In designing its operations, the Bank will introduce measures to prevent, avoid, or mitigate any adverse impacts and/or risks of gender-based exclusion identified in the project risk analysis. In addition, in its public consultation processes, the Bank will seek the equitable participation of women and men, and in project-related consultations, the Bank will seek the inclusion of the women and men affected in a gender-sensitive and socioculturally appropriate manner.⁶⁵

6.39 [REDACTED]

6.40 Based on the foregoing, the MICI finds that a Compliance Review will help to determine the actions taken by the Bank on this issue and whether they complied with the provisions of Operational Policy OP-761 to prevent, avoid, or mitigate any adverse impacts and/or risks of gender-based exclusion for women and girls in the Alto Maipo project's area of influence.

B. Scope

6.41 This Recommendation to the Board of Executive Directors is for an investigation of the operation to determine whether or not the Bank complied with Operational Policies OP-703 and OP-761 in terms of the allegations made by the Requesters.

⁶³ OP-761, Section IV, 4.1.

⁶⁴ OP-761, Section IV, 4.4.

⁶⁵ OP-761, Section IV, B.

⁶⁶ Environmental supervision report, July 2017, C.8. Available in the electronic links section of this document. The MICI found that the company has confirmed that, at present, at least 5,000 people are working. See media article of 5 January 2018 at <http://www.nuevamineria.com/revista/alto-maipo-logra-60-de-avance-y-bid-definiria-en-febrero-si-abre-investigacion/>.

⁶⁷ [REDACTED]. See ARCADIS, Project-Induced In-Migration Plan, 27 March 2014. Available in the electronic links section of this document.

- 6.42 The output of this investigation is a Compliance Review Report on the operation, presenting the findings of the investigation and the conclusions based on the evidence of compliance or noncompliance with the Relevant Operational Policies. Moreover, if noncompliance is found, the report will seek to determine whether it is associated with the Harm alleged by the Requesters. The report will include details on the methodology used by the investigation team and could include case-specific recommendations and general recommendations on relevant systemic issues.
- 6.43 Considering the information that Management has already provided to the MICI, the investigation will focus on answering the following questions:⁶⁸
- 6.44 In relation to the requirements of Operational Policy OP-703:
- Did the Bank require an assessment and description of the project's potential direct, indirect, and cumulative environmental and social impacts, particularly relating to impacts on the landscape and productive activities of the region and its productive potential, the El Alfalfal community, and the migration of workers to the San José de Maipo district, and has all of that resulted in timely, effective consultations supported by effective disclosure of information? Was the environmental information subject to mandatory disclosure made public in due time and manner as established by the Policy? Did the Bank require the implementation of effective social and environmental measures to avoid, minimize, offset, and/or mitigate the impacts and risks of the issues mentioned? Did the Bank ensure that management and mitigation plans were established for the impacts mentioned, as well as measures for the effective monitoring of their implementation?
 - Did the Bank ensure that other risk factors identified were managed, particularly governance capacity and community relations, as well as the risks associated with extremely complex environmental and social concerns, such as the project's outsized impact on women and girls and the strain on the social fabric in general, and specifically as a result of the migration of workers? Were appropriate measures designed to manage these risks? Did the Bank ensure that the affected parties are kept informed of those environmental and social mitigation measures that impact them during project execution?
 - If the requirements of OP-703 were not met in relation to the investigated issues, did the Harm alleged by the Requesters occur?
- 6.45 In relation to the requirements of Operational Policy OP-761:
- Did the Bank ensure that measures were established to prevent, avoid, or mitigate any adverse impacts and/or risks of gender-based exclusion for women and girls in the Alto Maipo project's area of influence, pursuant to the provisions of OP-761?
 - If the requirements of OP-761 were not met in relation to the investigated issues, did the Harm alleged by the Requesters occur?

⁶⁸ The purpose of the investigative questions is to guide the process of investigating and gathering relevant data that may apply to the case in question. With these questions, the team will be able to determine how or why a Bank act or omission could have resulted in noncompliance with the operational policies in question, and if so, whether this caused or may cause Harm.

C. Proposed methodology

- 6.46 The proposed investigation would review the documentary record and conduct targeted interviews as the primary method of inquiry regarding the Bank's actions from the beginning of its involvement in the project until the investigation's completion date. The findings would be compared against the Relevant Operational Policies to make a determination of compliance or noncompliance. Lastly, in the case of a finding of noncompliance, a causal analysis would be conducted to determine whether there were any links between the noncompliance and the alleged Harm.
- 6.47 If the International Finance Corporation's accountability mechanism, the Office of the Compliance Advisor/Ombudsman (CAO), decides to launch a compliance investigation regarding the Request that they also received, the MICI will make an effort to coordinate and efficiently manage the use of resources, in accordance with the principles of the MICI Policy. The above steps will take place while maintaining the MICI's independence, impartiality, and objectivity at all times.
- 6.48 Based on this, the MICI would conduct the following activities:
- (i) **Engage the experts who will constitute the Investigation Panel, along with the MICI's Compliance Review Phase Coordinator.**
 - (ii) **Conduct one-on-one interviews with the following stakeholders:**
 - Bank and IDB Invest staff involved in the operation at Headquarters and the Country Office in Chile.
 - Responsible staff at the company.
 - Expert consultants and organizations engaged by the project.
 - Requesters and other community members.
 - National and municipal authorities in Chile.
 - Former staff of the IDB Group and the company who are relevant to the investigation.
 - Staff from other financial institutions involved in the project.
 - Any other individuals identified as relevant during the investigation.
 - (iii) **Review documentation.**
 - Review of IDB Group documents related to the operation that are relevant to the scope of the investigation, both public and confidential.
 - Review of documents prepared by the Client and other third parties pursuant to their contract requirements with the Bank.
 - Review other relevant third-party reports and studies.
 - (iv) **Send the Investigation Panel on a mission to Chile to obtain context and be in contact with parties that include the Requesters, the Client, Bank staff in the Country Office, and local authorities.**
 - (v) **Review reports prepared by experts.**
 - (vi) **Perform a comparative analysis and determine the main findings.**
 - (vii) **Prepare the preliminary report.**

ANNEX I

MANAGEMENT'S COMMENTS ON THE PRELIMINARY VERSION OF THE RECOMMENDATION FOR A COMPLIANCE REVIEW

Joint Response of IDB-IDB Invest Management to the Terms of Reference and Recommendation for a Compliance Review for the Alto Maipo Hydroelectric Power Project in Chile (Request MICI-BID-CH-2017-0115)

I. GENERAL

- 1.1 IDB-IDB Invest Management ("Management") thanks the Independent Consultation and Investigation Mechanism ("the MICI") for seeking its input on the terms of reference (TORs) and sharing the Recommendation for a Compliance Review for the Alto Maipo Hydroelectric Power Project in Chile, which originated with the Request registered as MICI-BID-CH-2017-0115 ("the Request").
- 1.2 Management acknowledges the MICI's efforts in creating certain avenues for discussion of the issues contained in the draft TORs mentioned above. However, it also believes that these opportunities should have been offered prior to the distribution of the TORs in question to both Management and the Requesters, so that a more precise, clearer approach could be defined for the investigation, while at the same time complying with the provisions of the MICI Policy (paragraph 39), which requires that the TORs are prepared "in consultation with Management and the Requesters."
- 1.3 Management, as requested, offers the comments included below in the spirit of constructively contributing to the MICI's efforts to define an appropriate framework for the Compliance Review process. Management further notes that these comments do not contain responses to the substance of the allegations made in the Request, since these were clearly included in Management's response of 17 March 2017 sent to the MICI as part of the eligibility process (see <http://www.iadb.org/document.cfm?id=40863162>).

II. SCOPE OF THE INVESTIGATION IN RELATION TO COMPLIANCE WITH OPERATIONAL POLICIES OP-703 AND OP-761

- 2.1 Management would like state that disagrees with the MICI on the interpretation of paragraph 19(d) of the MICI Policy. The MICI Policy establishes that "particular issues or matters raised in the Request that are under arbitral or judicial review in an IDB member country" are excluded from any review. As indicated in Section 4 of Management's Response to the Request, it is Management's opinion that the allegations included in the Request that are under judicial review should not have been declared eligible. Specifically, those issues are as follows: (i) availability of water in the Maipo River and its impact on water use rights, flora and fauna, and environmental subsistence (Case 2456-2014); (ii) sedimentation and erosion of the watercourse (Case 13218-2012); (iii) impact on a lowland area; unauthorized construction activities inside a restricted area; illegal cutting of trees; lack of representation on micro routes; failure to implement rainwater wells; problems with

industrial liquid residue and water treatment; bridge built over the Manzanito River without authorization; vehicle travel during prohibited times; no mitigation measures applied to address the impact of blasting for the construction of the tunnels; environmental impact of the transmission lines; blasting done without a monitoring program; disposal of residual water outside the winter season; failure to mitigate the environmental impact of the incremental water volume generated in the tunnels (Case 0-001-2017).

By declaring the entire Request eligible, the MICI seems to have required the parties to be identified (that the parties in the litigation and the Requesters are similar or the same) before applying paragraph 19(d). It is Management's opinion that this requirement may not be drawn from paragraph 19(d), and such interpretation runs counter to the intent of paragraph 19(d), which is to prevent MICI investigations from being able to influence arbitral or judicial decisions, and to avoid the duplication of a pending arbitral or judicial proceeding when it deals with a matter related to a MICI case, regardless of the parties involved. Therefore, Management believes that the investigation should not proceed on the matters addressed in the court proceedings, and that the TORs should reflect this.

- 2.2 In general, Management agrees that a compliance review of the Alto Maipo Hydroelectric Power Project ("the project" or "PHAM") with the Environment and Safeguards Compliance Policy (Operational Policy OP-703) may be in order, to resolve several of the questions and concerns raised in the Request, on those issues that align with paragraph 19(d) of the MICI Policy, that is, excluding the issues listed in paragraph 2.1.
- 2.3 In terms of a compliance review of the PHAM with the Operational Policy on Gender Equality in Development (OP-761), and reiterating that Management takes matters of gender equality in IDB Group-financed projects very seriously, it is important to note that none of the issues related to the application of OP-761 are part of the Request submitted to the MICI, nor have they been previously submitted to Management for consideration. Perhaps the sentence in the Request that could in some way relate to the gender issue is the one that states: "The PHAM has also led to an increase in crime, prostitution, and drug trafficking as a result of the massive influx of outsiders."
- 2.4 Management believes that, although the sentence quoted does appear in the Request, the Requesters have not provided any information to support the allegation in question and have not raised this issue with Management, as required under paragraphs 14(f) and 22(d) of the MICI Policy, which respectively require "a clear explanation of the alleged Harm and its relation to the noncompliance of the Relevant Operational Policy in a Bank-Financed Operation, if known;" and "a description of the efforts by or on behalf of the Requesters to address the issues in the Request with Management, and the results of those efforts, or an explanation of why contacting Management was not possible."
- 2.5 The draft TORs prepared by the MICI state that "the MICI has acknowledged the allegations about a disruption in social dynamics, said to have had a differentiated impact on women, boys, and girls, and considered one of the project's main social impacts" and that "the migration of construction workers to a small community like San José de Maipo's has led to an increase in incidents of aggression and violence

against women, as well as a marked increase in prostitution in the area.” The document in question states that “the MICI has been informed about cases of sexual violence against women in the camps, which, according to the Requesters, have not been duly addressed by the company or its contractors.”

- 2.6 For Management, it is unclear which arguments support these two statements, since: (i) Management has not received any complaint from the Requesters regarding the issues raised; and (ii) the issues in question are not reflected at all in the Request submitted to the MICI. In this regard, Management wishes to state that in accordance with current rules and procedures: (i) any Compliance Review must be based on the Request presented; and (ii) additional issues that have not followed due process should not be added to the case. Therefore, Management wishes to state that it is fully ready and willing, if so requested, to address those issues directly with the Requesters.

III. INVESTIGATIVE QUESTIONS FOR REVIEW OF THE APPLICATION OF OPERATIONAL POLICY OP-703

- 3.1 Management wishes to acknowledge the MICI’s efforts to focus the proposed investigative questions set forth in paragraph 6.41 of the draft TORs. However, it is Management’s opinion that they are too broad and should be more focused on specific issues, to then provide a clear scope of the issues to be investigated. Notwithstanding the remarks in the following paragraphs, we reiterate Management’s opinion that the issues described in paragraph 2.1 should be excluded from the review. Accordingly, Management offers the remarks below.
- 3.2 **First set of questions:** Did the Bank require an assessment and description of the project’s potential direct, indirect, and cumulative environmental and social impacts, particularly relating to impacts on the landscape and productive activities of the region and its productive potential, the El Alfalfal community, and the migration of workers to the San José de Maipo district, and did it require timely, effective consultations supported by effective disclosure of information?
- 3.3 Management believes that the scope of this question needs to be more clearly defined. It is thus surprising that the project’s impact on the landscape is to be assessed, when more than 90% of the works are underground, so their visible footprint will be extremely small. Management has been very clear in stating that the PHAM has not impacted and will not negatively impact the region’s productive attributes, precisely because its surface footprint will be virtually zero.
- 3.4 Regarding the issue of the El Alfalfal community, the proposed questions, in our opinion, do not make it possible to establish what is meant to be investigated. Therefore, we suggest the following questions as a better framework for the investigation: (i) Was the El Alfalfal community invited to participate in the project’s consultation process in a timely manner and without any type of restrictions?; (ii) Did these consultations address such issues as the need to build a temporary wall between the community and the Colorado River to alleviate the noise and dust that would be caused by construction activities?; and (iii) Was it indeed the community itself that, as a majority, requested that this temporary wall be expanded to surround the entire town?

- 3.5 Regarding the impact that the migration of workers could be having on the San José de Maipo district, Management recommends replacing the questions with the following: (i) Were these impacts identified? (ii) Are the management measures included in the corresponding studies and plans adequate? and (iii) Has the environmental and social management system adopted by the PHAM been robust enough to efficiently identify and manage any gaps that may exist between what was initially planned and the project's conditions at a given time?
- 3.6 **Second set of questions:** Did the Bank require the implementation of effective social and environmental measures to avoid, minimize, offset, and/or mitigate the impacts and risks of the issues mentioned? Did the Bank ensure that management and mitigation plans were established for the impacts mentioned, as well as measures for the effective monitoring of their implementation?
- 3.7 Management also believes that this set of questions is too broad. As such, it could focus on those impacts related to tourism, migration to the San José de Maipo community, and potential problems caused in the El Alfalfal community. Under this premise, the questions perhaps should be changed to the following: (i) Are the measures included in the corresponding management plans adequate to avoid, mitigate, or eliminate any adverse impacts on factors related to tourism, migration to the San José de Maipo community, and problems caused in the El Alfalfal community? and (ii) Is the environmental and social management system adopted by the PHAM robust enough to identify and effectively manage any discrepancies arising between what was initially planned and the project's conditions at a given time?
- 3.8 **Third set of questions:** Did the Bank ensure that other risk factors identified were managed, particularly governance capacity and community relations, as well as the risks associated with extremely complex environmental and social concerns, such as complaints of violence against women and the strain on the social fabric in general, and specifically as a result of the migration of workers? Were appropriate measures designed to manage these risks? Did the Bank ensure that the affected parties are kept informed of those environmental and social mitigation measures that impact them during project execution?
- 3.9 These questions seem to refer to the requirements of Directive B.4 of Operational Policy OP-703, Other Risk Factors, which are challenging to assess, and not always within the control of the borrower or the Bank. It is important to remember that Directive B.4 of OP-703 clearly establishes that: "Depending on the nature and the severity of the risks [identified], the Bank will engage with the executing agency/borrower and relevant third parties to develop appropriate measures for managing such risks."
- 3.10 Regarding the part of the question referring to complaints of violence against women, in line with Section II of this document, these allegations are not included in the original Request presented by the Requesters. Management therefore asks the MICI to recommend that the Requesters channel these complaints first through Management before incorporating them into the compliance review process.
- 3.11 **Fourth set of questions:** Did the Bank ensure compliance with the requirements established in the action plan, to resolve matters still pending at the time of project

- approval, to comply with IDB policies, particularly relating to estimation of water flows for recreational uses, consultations and dissemination of information to the community, and management of community relations?
- 3.12 We believe it is appropriate to confirm that Management has been monitoring the established action plan and its fulfillment. However, it appears that this question intends to refer to the requirements of Directive B.7 of Operational Policy OP-703, Supervision and Compliance. It must therefore be emphasized that this directive **does not require the Bank to ensure** compliance with all the requirements established in the action plan and other contractual documents (because the borrower/Client is responsible for these tasks). Instead, the Bank is required to analyze, assess, and report on compliance with those safeguard commitments, for which the borrower/Client is responsible.
- 3.13 **Fifth set of questions:** If the requirements of OP-703 were not met, were the Requesters harmed?
- 3.14 With the understanding that the MICI will first determine whether there was noncompliance in the application of any of the environmental and social policies mentioned in the Request, Management regards this question as relevant and has no additional comments.

Annex II
REQUESTERS' COMMENTS ON THE PRELIMINARY VERSION OF THE
RECOMMENDATION FOR A COMPLIANCE REVIEW

Tuesday, 19 December 2017 – Santiago, Chile

Requesters' Comments to the MICI/IDB Draft Recommendation for a Compliance Review and Terms of Reference for the Alto Maipo Project.

Specific issues:

2.5 Wrong description of the basin. After the town of Romeral, the valley branches into three valleys: the Maipo River per se (Queltehues, Melosas), Volcán River, and El Yeso River. The MICI text only mentions the valleys of the Volcán and El Yeso rivers.

2.10 Wrong description of the Alto Maipo Hydroelectric Power Project (PHAM). The objective of the PHAM is not to “*increase the share of hydroelectric power in the energy matrix and decrease the dependence on fossil fuels,*” as the document states. The PHAM is not “in the public interest.” The PHAM is a private project whose objective is to generate and sell electricity, particularly to supply private mining projects, as demonstrated by its contract with Pelambres for 160 MW (30% of the project’s capacity). In the context of the PHAM’s financial restructuring, Alto Maipo’s executives announced to the press that they are actively seeking similar contracts with other mining companies, hopefully for similar amounts of power as delivered to Pelambres. It is clear that if possible, the PHAM’s executives would rather sell its output to a few large “free customers.” The PHAM is not a “philanthropic” project from any perspective.

2.10. It is unclear why the Chilean power data included is so outdated (2012). Currently, more than 20% of the power for the national energy matrix is generated from nonconventional renewable energy sources. The dependence on run-of-the-river plants for hydroelectric power generation is only 18.8% nationwide.

Section III. There is no mention of the risk of altering the water table flows in a significant, unpredictable manner.

There is no mention that the majority of larger towns in Cajón del Maipo obtain drinking water from deep wells. The high risk of groundwater contamination due to the drilling of tunnels is not mentioned, either.

Section III. The impact on tourism is related to the decreasing numbers of high-end domestic and foreign tourists with “special interests.” Various companies in Santiago that organize tours for this sector are avoiding Cajón del Maipo because of the traffic jams, the excessive number of vehicles and people, and the risks of the road. PHAM-related vehicles are too numerous to count and of all sorts, ranging from small trucks to high-tonnage trucks. Particularly when the latter operate, visitors and the local population suffer the consequences of extensive, prolonged traffic jams.

- There is no clear reference to the early warning issued by Coordinadora Ciudadana No Alto Maipo [No Alto Maipo Coordinating Committee] regarding the drought and desertification process happening in the Northcentral area and even the South of Chile. Coordinadora conducted pioneering research about the water resources and

their behavior during the past few decades at the watershed and microwatershed levels in Chile's Central area, clearly verifying the gradual but sustained decrease in water for that entire large region.

- There is no mention of our argument regarding the government's contradiction in creating various protected areas and other concepts and regulations to protect the Maipo Basin because of its socioenvironmental and cultural values, and then authorizing a megaproject like the PHAM, with a scope and technical characteristics that make it a highly invasive project, which massively impoverishes three sub-basins and greatly endangers everything that was protected before.

2.13. The initial estimated cost of the PHAM was US\$600 [million] and not US\$2 billion as the document shows. The estimated cost of the PHAM quadrupled in a few years. According to some analysts, the current estimated cost for the PHAM is US\$3 billion, meaning five times the initial estimated cost.

2.16. The document does not include the reason for the conflict between Alto Maipo and the CNM consortium (Hochtief and Ravenna), which the two companies announced to the public. Job safety and risk to life for workers in the tunnels are the basis of the legal conflict between CNM and Alto Maipo, which attempted to collect on the guarantee signed by CNM as if the work stoppage had happened on a whim.

5.2. There is no mention that the MICI requested the last deadline extension because of the "total uncertainty" surrounding the PHAM after its technical default, the new cost overruns revealed by the company, and the search for new financing became known, as MICI representatives told the Requesters during a conversation via Zoom in early October 2017.

General issues:

- The conditional language used in many cases in the draft, which describes facts and the company's responsibility in relative terms in cases like the construction of the wall surrounding the El Alfalfal community (**3.7**), as well as regarding breaches of the contract signed between the company and the community itself, is worrisome. Both irregularities reported in the complaints are a reality, as the MICI delegation was able to verify during its visit to Cajón del Maipo last April.
- It is surprising that as Requesters we have made all the information related to the PHAM and its impacts available to the MICI and the company. However, the counterpart is not acting with the same transparency. This draft has a lot of key information redacted, and therefore omits much background that should be transparent for the entire community, which today is suffering the adverse impacts of the construction of the works for the PHAM. We know that there will be claims of "confidentiality" and protection of sensitive corporate information. We do not think this is right. We think that protecting the rights of people and environmental justice must outweigh protecting the "rights" of corporations and private businesses.
- There are issues that despite having been reported and documented in the complaint submitted in January 2017 do not appear in this draft report from the perspective of the Requesters, but are included in the responses to them in Management's comments. These issues include the worrisome situation of the El Morado Glacier, the lack of studies projecting the effects of the PHAM in the context of the climate change that is impacting the area, etc.

- There is no mention of the fact that those affected, and the claimants have been reporting for years that the Alto Maipo project is extremely risky in financial terms. We know that the MICI does not get involved in that aspect of the project, but it should be included that in our complaint we revealed Alto Maipo's lack of financial viability, and that we were "prophetic" on this—in fact, by simply applying common sense. The PHAM is in financial turmoil and technical default: its continuity depends on the new contract with Strabag to continue works in the tunnels, but also on being able to have a new partner that contributes financial resources, and the subsequent approval of a new budget for these works by the banks, which cannot happen while the project is still under technical default. On top of that, there are these facts: (a) in a few years, the PHAM's estimated cost has quadrupled and more; (b) the price of electricity dropped to less than half; and (c) the costs of non-conventional renewable energy sources—solar and wind—have evened out with those from conventional sources and have strongly entered [sic] the Chilean market. The Requesters' argument is that the company has ignored these contexts in its eagerness to move forward with the business of the construction of the works at any price. We the Requesters are directly connecting the project's lack of technical viability with the lack of financial viability. They are two interrelated aspects that have fed back into one another. The lack of technical viability has resulted in cost overruns and a significant delay in the works. For the Requesters, both types of lack of viability demonstrate the precariousness of the studies that were conducted. This is a very important point that we have underscored again and again and that must be shown correctly in the draft.
- There is no adequate representation of the concerns expressed by many affected parties and Requesters about the risk to the safety and even the lives of the construction workers, especially in the tunnels, a reason that led to the termination of the contract with the construction companies for these works and to the current technical default situation for the project, with lawsuits before international financial courts. <http://www.revistaei.cl/2017/06/12/alto-maipo-termina-contrato-firma-constructora-tuneles/#>.
- An issue that the claimants repeatedly stated is not properly emphasized: the 14 charges (9 serious, 5 minor) for environmental noncompliance of the conditions set forth in the environmental classification resolution (ECR) of the PHAM, which were discovered by the Office of the Superintendent of the Environment in January 2017 ([See new complaints](#) and [sanctions](#)). We also complained about the lack of transparency of the company's compliance report on resolving those cases of noncompliance. On this issue, see the problems that Red Metropolitana No Alto Maipo [No Alto Maipo Metropolitan Network] recently complained about: <http://www.elciudadano.cl/medio-ambiente/alto-maipo-es-obligada-por-sma-a-entregar-informacion-clave/09/27/>.
- We the Requesters are extremely concerned about the impacts of Alto Maipo, both direct and indirect, on the sustainability of public and private protected areas that exist on the basin, particularly the El Morado national monument. See <http://www.economiaynegocios.cl/noticias/noticias.asp?id=402257>.
- The draft does not clearly mention the 10 consecutive years of drought in Chile's Central region, and specifically, in the Maipo River Basin, which the authorities have fully recognized, but the company does not accept or take into account.
- There is no good representation of the Requesters' argument that the company declared in the ECR that the works would end in 2016-2017. This is clearly not being met, given the negative consequences of the pseudo-assessment conducted by the company and

consulting firms about the complexity and difficulty of constructing a megaproject like Alto Maipo in such a strategic basin. The construction delay means sustaining for an indefinite period the various impacts that the project is having on the population and the environment, which in the meanwhile are not being evaluated. It is the opinion of the Requesters that the project should be brought to a standstill and reevaluated in its entirety, including all the variables and the social, economic, technical, and environmental contexts that were not considered. We the Requesters are convinced, without question, that if the PHAM were assessed based on comprehensive, qualified technical/scientific studies that were not manipulated, that the project would be flatly rejected. Today there are even more reasons than when it was assessed with irregularities years ago.

- In addition, the Requesters provide relevant information about recent processes relating to the PHAM:

Juan Pablo Orrego, Ecosistemas: Furthermore, in November 2017, the company Alto Maipo SpA requested from Chile's Environmental Assessment Service an authorization to expand the works. What they call "[Optimization of the management of excavation material](#)," "[Optimization of the management of industrial liquid waste](#)," "Expansion of the surface and capacity of muck collection sites and the volume of excavation material to be disposed in them."

The reasons the company is giving to request that authorization are noteworthy and again reinforce the Requesters' arguments about the extremely poor quality of the studies conducted. It is really unbelievable that for a project with supposedly 58% of progress, the company now claims that the detailed engineering designs are yielding higher estimates than the basic engineering designs as far as the volume of material excavated and other key variables of the PHAM.

That is, the company acknowledges that 58% of the PHAM was built based on basic engineering that has turned out to be wrong in many aspects. The mistakes that the company recognized are "not taking into consideration the 'swelling' of the material excavated in the muck collection sites," "underestimating the volume originating from the excavations," and "needing to have larger works for tunnel access to assemble tunnel-boring machines." Therefore, it is obvious that the rational and correct way to proceed would be to stop the construction of the PHAM and reevaluate it in its entirety. All the mistakes that the company has made have had direct impacts on the environment of the Maipo River Basin, as well as all local residents and the population of the Metropolitan Region. A project that was assessed and constructed so poorly poses various major risks for the environment and the population.

Marcela Mella, CCNAM: AES Gener submitted a relevant request to Chile's Environmental Assessment Service, in which it asks permission to make changes in the execution of the Alto Maipo project regarding what the authorities had already approved in its environmental classification resolution (ECR). It says that the changes are related to the detailed engineering designs executed by Alto Maipo "yielding higher estimates of the volume of material to be disposed versus the estimates from the basic engineering designs, and other aspects arising from construction needs."

This material comes from tunnel works that already happened, since the work requires collection sites to leave behind this soil and rock. Initially, the authorization was for 14 sites, and in the company's opinion their storage capacity needs to be increased.

In the document, Alto Maipo claims that thus far, the collection sites receiving material from tunnels and superficial works have capacity available, but “during more advanced construction stages, more storage capacity will be needed.”

On top of that, there is the need to have larger works for tunnel access compared to those estimated in the basic engineering designs, to assemble tunnel-boring machines.

This request made by Alto Maipo only confirms what we have been complaining about throughout the process to the MICI and CAO: that incomplete and insufficient information about the project was presented in its environmental impact assessment (EIA).

The project also faces a process of sanctions due to noncompliance with its ECR, and is now attempting to solve serious technical and geological problems through an administrative authorization, avoiding having to face a new environmental assessment. It seems unacceptable that AES Gener is attempting to make changes of this magnitude without an assessment of that additional impact.

- The draft does not include what was repeated during the meetings, that we the Requesters and affected parties said that because of the high socioenvironmental impacts and risks that the project’s works have caused and will cause, we will proactively keep the No Alto Maipo campaign going and will not give up on strengthening it domestically and internationally so that the PHAM does not happen. We will keep defending Cajón del Maipo as much as necessary and possible, for all the reasons stated in the complaint.
- Lastly, we would like to know why the MICI believes that there are insufficient elements to propose a Compliance Review process for the issues that we raised, tied to potential noncompliance with Operational Policies OP-704, OP-710, OP-708, and OP-102 [sic].