



PUBLIC
SIMULTANEOUS DISCLOSURE

DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-BID- AR-2019-0148
ELIGIBILITY DETERMINATION MEMORANDUM

RECONQUISTA RIVER BASIN ENVIRONMENTAL SANITATION PROGRAM

(AR-L1121)

(3256/OC-AR)

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

NOTE

On the MICI Registration Process, Eligibility Determination Analysis, and Public Registry

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

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

Once it receives the Response, the MICI starts the eligibility determination process, which involves reviewing the Request against the eligibility criteria established in its Policy to determine whether or not the Request is eligible and whether it can be accepted for processing. This eligibility determination is neither an assessment of the merits of the Request or the issues raised, nor a determination of the IDB Group's compliance or noncompliance with its Relevant Operational Policies.

If declared eligible, the Request will be transferred to the phase selected by the Requesters; otherwise, the process will be deemed concluded.

All Requests received by the MICI and their processing will be recorded in its online [Public Registry](#). Case files will disclose all public information generated in processing a case.

The MICI does not award compensation, damages, or similar benefits. It is not empowered to halt disbursements or suspend operations.

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| 2. | Original Request MICI-BID-BR-2019-0148 and annexes http://www.iadb.org/document.cfm?id=EZSHARE-447996201-161 http://www.iadb.org/document.cfm?id=EZSHARE-447996201-160 http://www.iadb.org/document.cfm?id=EZSHARE-447996201-90 http://www.iadb.org/document.cfm?id=EZSHARE-447996201-91 |
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EXECUTIVE SUMMARY

The Reconquista River Basin is located in the Province of Buenos Aires, Argentina, and is comprised of 134 watercourses within an area of approximately 1,670 square kilometers, spanning 18 municipios with a total population of more than 4.6 million. The basin is divided into three sections: (i) the upper basin, from the headwaters west of the municipalities of General Rodríguez to the Roggero dam (San Francisco Lake); (ii) the middle basin, from the dam to Las Catonas and Morón stream; and (iii) the lower basin, from the stream to its mouth at the Luján River in the municipality of Tigre.

The **Reconquista River Basin Environmental Sanitation Program (AR-L1121)**, which gives rise to the Request, is financed by the Inter-American Development Bank (IDB) through a sovereign guaranteed US\$230-million multiple works program with US\$57.5 million in local counterpart funding, with the Argentine Republic acting as guarantor. The borrower is the Province of Buenos Aires and the executing agency is the Ministry of Economy's States and International Credit Agencies Coordination Branch (SCEOCI). The operation was approved by the Board of Executive Directors on 23 July 2014 and is currently in implementation.

This program, which is the third financed by the IDB in the Reconquista River Basin, aims to restore the environmental quality of the basin by implementing a Reconquista River Basin Comprehensive Management Plan (PGICRR) that prioritizes investments targeting residents of areas where there are health risks, which will help: (i) increase water, sewer, and wastewater treatment coverage; (ii) enhance integrated solid waste management, primarily by closing open air dumps; (iii) improve connectivity and access to outlying neighborhoods located in hard-to-reach areas; and (iv) strengthen the operational management capacity of the Reconquista River Basin Committee (COMIREC) by developing management tools.

On 7 May 2019, the Independent Consultation and Investigation Mechanism (MICI) received a Request regarding the program from six individuals acting on their own behalf, all of whom reside in municipios located in the Reconquista River Basin. Later, on 25 July, an additional document was sent to the MICI to supplement the original Request, providing further details on the allegations of potential harm, and another eight residents of the basin added their names to the Request. The Request is therefore being submitted to the MICI by 13 individuals acting on their own behalf.

The Request alleges that the Bank has failed to comply with its Operational Policies and with current Argentine law because program execution had started without giving consideration to the basin as a territorial unit, without a comprehensive management plan for the Reconquista River Basin, and without accounting for the river's real capacity as a receiving body. In particular, it alleges that there has been no environmental impact study, no avenues for public input, and no validated, up-to-date public information system on the environmental and social impact of the COMIREC's actions.

The information provided indicates that the basin's current, highly polluted state not only causes environmental harm, but also poses serious health risks for the residents of the islands of the Paraná Delta (San Fernando and Tigre), because what happens in the Reconquista's waters affects the Luján, Carapachay, and Paraná Rivers. The Requesters point out that these rivers are the only source of water for island residents, who lack a water supply network.

Their concerns regarding potential harm from this program are based on the harm they allege to have experienced after the Drainage Canal/National Rowing Course works, which were also financed by the IDB through an earlier operation. Those works altered water flows in the lower basin, bringing the Reconquista's waters to higher grounds than the original outfall. This situation poses harm to their health and quality of life because the delta is the final destination of the discharge of these highly polluted waters. Rising water levels often cause floods in certain parts of the municipios on San Fernando and Tigre islands. Additionally, the Requesters allege that those works brought harm to aquatic wildlife, vegetation, terrestrial fauna, and the wetlands as an ecological system as a whole.

In their opinion, the lack of a comprehensive management approach and complete information means that this program is merely replicating unsuccessful projects from earlier operations that have failed to clean up the Reconquista River, thereby exacerbating the harm that is currently afflicting communities in the delta.

In the additional information, the Requesters state their interest in the MICI managing their Request through both the Consultation Phase and the Compliance Review Phase, if deemed eligible.

Following an analysis of the relevant documentation, the MICI Director, in accordance with section G of the MICI-IDB Policy (document [MI-47-6](#)), concludes that **this Request is eligible** because it meets all eligibility criteria established in the MICI-IDB Policy.

However, the eligibility determination finds that only 9 of the 13 Requesters¹ have raised allegations that fit the definition of harm set forth in the MICI-IDB Policy. Therefore, any processing of the Request by the MICI would be limited to potential noncompliance associated with those allegations in particular.

This Memorandum was sent on 2 August 2019 directly to the Requesters and to Management for information. It will be distributed to the Board of Executive Directors of the IDB for information, and any interested third parties through the [Public Registry](#), once the English version is available. As requested by the Requesters, the MICI Director will transfer the case to begin processing under the Consultation Phase.

¹ It is important to note that the MICI considers that the Request has not provided enough information to classify the Requesters from the upper and middle basins (see table 1) as parties who may be directly harmed, based on the definition of harm set forth in the MICI policy. Therefore, the processing of this Request will focus on the allegations of potential direct harm raised by the other Requesters.

I. THE PROGRAM²

A. Geographic and social context

- 1.1 The Reconquista River Basin is located in the Province of Buenos Aires, Argentina, and is comprised of 134 watercourses within an area of approximately 1,670 square kilometers, spanning 18 municipios with a total population of more than 4.6 million. The basin is divided into three sections: (i) the upper basin, from the headwaters west of the municipalities of General Rodríguez to the Roggero dam (San Francisco Lake); (ii) the middle basin, from the dam to Las Catonas and Morón stream; and (iii) the lower basin, from the stream to its mouth at the Luján River in the municipality of Tigre. Rural activities are predominant in the upper basin, while urban activities, including small, medium-sized, and large industrial enterprises, are prevalent in the middle and lower sections of the basin.

Figure 1.
Map of the Reconquista River Basin



Source: Environmental and Social Management Report

- 1.2 Under Argentina's institutional legal framework, provinces have original dominion over the natural resources within their respective territories and, pursuant to the Municipal Act, powers are delegated to municipios for them to attend to their local interests and provide services. In the Province of Buenos Aires, the Provincial Agency for Sustainable Development (OPDS) is the socioenvironmental regulatory and administrative authority. Management of water resources is the responsibility

² Information retrieved from the Bank's website and from public documents on the operation. These documents are available in the links section.

of the Ministry of Infrastructure. In the specific case of the Reconquista River Basin, the most significant actor is the Reconquista River Basin Committee (COMIREC), created by law in 2001, which has power and authority to perform actions aimed at managing the use of water resources and the basin as a specific economic-social whole within the province.

- 1.3 Along with the Matanza River, the Reconquista River is considered one of Argentina's most severe cases of pollution, because the watercourse has become a receiving body for industrial and household effluents (mainly due to a lack of sewer services) and urban solid waste produced in the inhabited and industrialized areas of the river basin, due to the presence of 30 open air dumps and the country's largest sanitary landfill, which serves 22 municipios in the Autonomous City of Buenos Aires and its metropolitan area.
- 1.4 In the area of industrial pollution, the pollutants that have the highest impact are organic in nature, caused by effluents discharged from slaughterhouses (for cows, sheep, pigs, and poultry), dairies, tanneries, and textile, alcoholic beverage, and soft drink manufacturers. The main sources of inorganic pollution are tanneries (chromium), electroplating (chromium, copernicium, cadmium, and nickel), rechargeable battery factories (lead), and chemical manufacturers (phenols, mercury, complex organic compounds, and acids and bases that alter the pH of the receiving watercourse).

B. The Bank's involvement

- 1.5 The IDB's involvement in the Reconquista River Basin dates back to 1993, when the Board of Executive Directors approved the "Reconquista River Sanitation" project (operation AR-0038, loan 797/OC-AR), completed in 2006. That operation was for US\$150 million and included US\$75 million in cofinancing from the Government of Japan. It had three main objectives: (i) flood control; (ii) decreased industrial and household pollution; and (iii) improved management and regulation of the Reconquista River Basin. Flood control activities were carried out under that operation, and an action plan to control industrial pollution was prepared under the pollution control component, but its scope was smaller than planned. Due to a lack of financing, the planned wastewater treatment plants were not built. The program also developed a legal framework for creating the COMIREC, but it did not manage to set up a basin management system.
- 1.6 Later, the Province of Buenos Aires requested IDB support through a technical cooperation operation, "Program for the Sustainable Management of the Reconquista River Basin" (operation AR-T1083, technical cooperation funding ATN/OC-12571-AR), approved by the Board of Executive Directors in December 2010, to produce technical studies for a future program in the Reconquista River Basin. More specifically, the operation entailed the preparation of terms of reference and documents to develop the Reconquista River Basin Comprehensive Management Plan (the "PGICRR"); an environmental and social evaluation for a future program; technical, economic, institutional, and socioenvironmental viability studies for the projects; and an institutional strengthening plan for COMIREC.

C. The program

- 1.7 The Reconquista River Basin Environmental Sanitation Program (operation AR-L1121) (the "program") is financed by the Bank through a US\$230-million

- multiple works program** with US\$57.5 million in local counterpart funding, with the Argentine Republic acting as guarantor. The borrower is the Province of Buenos Aires and the executing agency is the Ministry of Economy's States and International Credit Agencies Coordination Branch (SCEOCI). The operation was approved by the Bank's Board of Executive Directors on 23 July 2014 and is currently in implementation.
- 1.8 The operation was designed on the basis of two criteria: (i) address the priorities for the basin identified by the Province of Buenos Aires; and (ii) supplement and expand the actions not carried out under loan 797/OC-AR. To address these criteria, the program focused on developing the PGICRR under the shared-vision method, with broad participation by the basin's stakeholders at all stages of the plan's preparation (diagnostic assessment, selection of alternatives, and final approval). In its final form, the PGICRR will set out prioritized actions for the basin, aligned with the objective of restoring the basin's environmental quality, adopting criteria discussed and approved by the various stakeholders, including nongovernmental organizations (NGOs) and civil society, with a time horizon of at least 15 years. The selected actions for the first five years will be financed using program resources. The projects prioritized by the Province and that comprise the project sample should be included in the priority actions for the first five-year cycle. The program planned to implement these projects simultaneously with the preparation of the PGICRR to demonstrate the Province's commitment to environmental rehabilitation and to the needs of the disadvantaged population. Following this approach, the program will also help the COMIREC consolidate its institutional structure and provide the necessary tools for comprehensive management of the basin. In addition, it will support the COMIREC through a water resource information system, an environmental monitoring plan, a communications strategy, and training, in line with the lessons learned. The Bank's long-term objective is to support the implementation of the entire PGICRR.
- 1.9 According to the loan proposal, the program consists of four components, set forth below:
- 1.10 **Component I. Water and sanitation (US\$58.3 million).** This component finances the construction and rehabilitation of water supply networks and sanitary sewer systems, including wastewater collection, transport, and treatment.
- 1.11 **Component II. Solid waste (US\$7.2 million).** This component finances the development of comprehensive management plans for the basin's municipios and the closing and remediation of three open air dumps. Based on these plans, education, public awareness raising, and waste collection, transport, transfer, recovery, recycling, and final disposal initiatives will be financed.
- 1.12 **Component III. Roadways, accessibility, and drainage (US\$93.3 million).** This component finances investments in road infrastructure and supplementary works, including road construction, engineering works, lighting, signage, multipurpose paths, paving, repaving of intra-urban streets, and waterworks for storm drainage.
- 1.13 **Component IV. Environmental and social management (\$73 million).** This component finances environmental and social management actions, which include: (i) the consulting assignment for preparing the **Reconquista River Basin Comprehensive Management Plan** and the industrial and urban pollution

abatement actions to be given priority during the plan's preparation, as well as the implementation of water, sediment, and air quality monitoring and early warning systems; (ii) resettlement of approximately 750 households, of which 315 will be affected by the works of Component I and 435 live in areas susceptible to floods or other risks; (iii) the rehabilitation and upgrade of some 400 residences partially affected by the works, to make resettlement unnecessary; and (iv) training for municipal staff to implement the management plans.

- 1.14 At the time of its approval, the program was classified as a category "A" operation due to the need to resettle families living in flood-prone areas. It was determined that the following operational policies are applicable: the Environment and Safeguards Compliance Policy (Operational Policy OP-703), the Disaster Risk Management Policy (Operational Policy OP-704), the Involuntary Resettlement Policy (Operational Policy OP-710), and the Access to Information Policy (Operational Policy OP-102).
- 1.15 According to Bank systems, 30.89% of projected program resources have been disbursed as of the date of this memorandum.

II. THE REQUEST³

- 2.1 On 7 May 2019,⁴ the Independent Consultation and Investigation Mechanism (MICI) received a Request regarding the program from six⁵ individuals acting on their own behalf, all of whom reside in municipios located in the Reconquista River Basin. The Request and its annexes are available for consultation in the MICI Public Registry under case file [MICI-BID-AR-2019-0148](#).
- 2.2 Later, on 25 July, an additional document was sent to the MICI to supplement the original Request, providing further details on the allegations of potential harm, and another eight residents of the basin added their names to the Request. In all, 13 individuals, acting on their own behalf, submitted the Request, and their names are listed in table 1 below:

³ The Request, its annexes, and the additional information submitted are available in the links section of this document.

⁴ The Requesters submitted the Request to the MICI on 8 April 2019. However, because of technological incompatibility, the Outlook system sent it to the spam folder, and it was not identified by the MICI until 7 May.

⁵ One of the individuals who had signed the Request decided to withdraw due to a potential conflict of interest.

Table 1
List of individuals submitting the Request

| | Name | Location |
|----|-------------------------|-----------------|
| 1 | Jorge López Jorand | Upper basin |
| 2 | Adriana Córdoba | Middle basin |
| 3 | Horacio Ale | |
| 4 | Teresa Malalan | |
| 5 | Martín Nunziata | |
| 6 | Claudia Siena de Brom | Lower basin |
| 7 | Fernando J. Del Giudice | |
| 8 | Luis A. Cancelo | |
| 9 | Yamile Attara | |
| 10 | Pablo Cremona | |
| 11 | Sebastián Arena | |
| 12 | Nancy Nacaratto | |
| 13 | Liliana G. Leiva | |

- 2.3 The Request alleges that the Bank is failing to comply with its Operational Policies and with current Argentine law because program execution had started without giving consideration to the basin as a territorial unit, without a comprehensive management plan for the Reconquista River Basin, and without accounting for the river's real capacity as a receiving body. In particular, it alleges that there has been no environmental impact study, no avenues for public input, and no validated, up-to-date public information system on the environmental and social impact of the COMIREC's actions.
- 2.4 The Requesters allege that the few projects that have started, after delay, have targeted household sewer waste, not industrial waste, and have not given due consideration to the state of the Morón stream in the middle basin, all of which has adversely impacted the inhabitants of the lower basin in particular. They also say there is no available information on or monitoring of the pollutants that industries dump into the river, nor are there any sanction or remediation systems for major polluters.
- 2.5 The information provided indicates that the entire basin's current, highly polluted state not only causes environmental harm, but also poses serious health risks for the residents of the islands of the Paraná Delta (San Fernando and Tigre), because what happens in the Reconquista's waters affects the Luján, Carapachay, and Paraná Rivers. The Requesters point out that these rivers are the only source of water for island residents, who lack a water supply network.
- 2.6 Their concerns regarding potential harm from this program are based on the harm they allege to have experienced after the Drainage Canal/National Rowing Course works financed by operation 797/OC-AR, which altered water flows in the lower basin, bringing the Reconquista's waters to higher grounds than the original outfall. This situation poses harm to their health and quality of life because the delta is the final destination of the discharge of these highly polluted waters. Rising water levels often cause floods in certain parts of the municipios on San Fernando and Tigre islands. Additionally, the Requesters allege that those works brought harm to aquatic wildlife, vegetation, terrestrial fauna, and the wetlands as an ecological system as a whole.

- 2.7 In their opinion, the lack of a comprehensive management approach and complete information means that this program is merely replicating unsuccessful projects from earlier operations that have failed to clean up the Reconquista River, thereby exacerbating the harm that is currently afflicting communities in the delta.
- 2.8 Regarding contact with Management, the Request describes the interactions that have taken place between the Requesters and various Management teams between October 2016 and December 2017. It also mentions two in-person meetings where the Requesters voiced their concerns: one that took place in February 2017 in the municipio of Ituzaingó (located in the middle basin) and another that took place in February 2018 at the IDB's Country Office in Argentina. The Requesters, who had been serving as civil society representatives to the COMIREC at the time, withdrew from the committee because their concerns were not addressed. The Requesters also say they invited IDB Management to visit the lower basin, but, at the time of writing, they were unaware if it had done so.
- 2.9 Lastly, in the additional information provided, the Requesters state their interest in the MICI processing their Request through both the Consultation Phase and the Compliance Review Phase, if deemed eligible.

III. MANAGEMENT RESPONSE⁶

- 3.1 On 14 May 2019, IDB Management was notified of the registration of Request MICI-BID-AR-2019-0148, and on 13 June it submitted its Response to the MICI. Its contents are summarized below, and the full text can be consulted in the links section.
- 3.2 In its Response, Management explains that, from the beginning, the executing agency had agreed to adjustments to program component IV: the number of families that would be resettled was changed from 750 to 400, the number of residences that would be rehabilitated and upgraded was changed from 400 to 200, and social management actions and community infrastructure works were added.
- 3.3 Regarding program execution, Management notes that the operation planned for the execution of certain projects prioritized by the Province of Buenos Aires and included in the operation's sample projects while the PGICRR was being developed. The Response reports that, to date, execution is underway for 16 subprojects in the middle basin, which are related to the lack of access to safe drinking water, sewers, rainwater drainage, road connectivity for residents, environmental education, and industrial inspection and remediation. It also says bidding processes are underway for approximately 10 works related to the primary and secondary sewer systems and one rainwater drainage work, and a series of works are in the preliminary preparation stage, which will address sewer service access, urban containment in flood-prone areas and nature reserves, riverside paths, solid waste management, and the cleanup of watercourses and banks.
- 3.4 As to the development of the PGICRR, the Response says the contract to develop the plan had not been awarded and signed until March 2019, and within 18 months the following items will be produced: sector diagnostic assessments, a

⁶ The Management Response document is available in the links section.

hydrodynamic model for the basin, a geographic information system, an alternatives assessment, the PGICRR, an information and management system, a dashboard, a communications and engagement plan, and three final project designs for priority works. It also says workshops will be held in the second half of 2019 with the community and main stakeholders to develop the PGICRR.

- 3.5 Management also states that it held various meetings with national and provincial agencies, municipios, universities, civil society organizations, and industrial groups between November 2018 and May 2019, for purposes of explaining the PGICRR development process and its scope and requesting information to produce an integrated diagnostic assessment for the Reconquista River Basin. It notes that two reports have already been produced: (i) an insights report, which laid out a work plan for the COMIREC to create the PGICRR and an initial outline of the communications and engagement plan to develop a participatory process; and (ii) Progress Report 1, which includes comments from COMIREC specialists on the insights report and progress made on sector diagnostic assessments.
- 3.6 Management's Response also describes several actions taken to address the Requesters' concerns and, from its perspective, ensure compliance with Bank requirements. These actions are listed in table 2 below.

Table 2.
Summary of actions taken by Management

| |
|---|
| <ol style="list-style-type: none">1. Publication of the loan proposal on 2 July 2014.2. Publication of the socioenvironmental documents, including: two versions of the Resettlement Plan, on 27 May 2011 and 15 May 2014, respectively; the environmental and social impact report for the program as a whole, on 7 May 2013; and the environmental and social impact study for the Camino de Borde pilot area, on 19 March 2018.3. Updating of socioenvironmental documents in 2018 to accurately reflect the program's environmental and social issues. Management mentioned that the following documents were being prepared: (i) an updated version of the environmental and social impact report for the program as a whole (which includes the consultation plan, the resettlement plan, and the complaints procedure); and (ii) an environmental and social management framework for the program as a whole.4. Consultations with various key actors between 2010 and 2013, including: the presentation of the program in October 2010, the public consultation processes for the resettlement plan in May 2011, and the consultations regarding the environmental and social impact report for the program as a whole in June 2013. Management also says consultations were held in upper, middle, and lower basin communities regarding specific drainage, water supply, sewer mains, and sewer network projects in 2017 and 2018.5. Response to messages from the Requesters in October and December 2017 and in February and April 2018. Management also says it met with the Requesters in February 2017 and February 2018. The Response includes the letters responding to the Requesters' messages as annexes. |
|---|

- 3.7 Regarding the content of the Request, Management indicates in its Response that it is of the opinion that no environmental harm has resulted from program interventions to date, and that it has taken all necessary measures to ensure that the program is executed correctly, holding several consultation processes and sharing information as appropriate, following Bank policies.

- 3.8 Lastly, Management mentions that there are two ongoing legal proceedings: (i) one before the San Isidro I Federal Criminal Court (case number FSM 65812/2014) and (ii) another before the Province of Buenos Aires Supreme Court of Justice (case number I-72832),

IV. MICI ACTIONS

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

Table 3.
Timeline of MICI actions during the period

| Date | Actions |
|---------------------|--|
| 2019 | |
| 7 May | Request received |
| 10 May | Phone call with the Requesters |
| 14 May | Request registered and notifications sent to the Requesters and IDB Management |
| 7 June | Phone call with the Requesters |
| 11 June | Meeting with project team |
| 13 June | Management Response received |
| 14 June to 2 August | Document review and desk work |
| 27 June | Request for an extension to the eligibility determination period submitted to the Board of Executive Directors for approval by short procedure |
| 7 July | New deadline for the eligibility determination period approved by the Board of Executive Directors |
| 15-18 July | Eligibility determination analysis mission to the city of Buenos Aires and communities in the Province of Buenos Aires in the middle and lower Reconquista River Basin to meet with the Requesters, the executing agency, and Management |
| 23 July | Phone call with the Requesters |
| 25 July | Receipt of additional information supplementing the Request |
| 2 August | Eligibility Memorandum issued |

- 4.2 Following receipt of the Request, in addition to reviewing the relevant documents for that stage, several phone conversations and in-person meetings were held with the Requesters and IDB Management to better understand the operation and the allegations raised in the Request, as well as the way Management had addressed the complaint before it reached the MICI.
- 4.3 From 15 to 18 July 2019, the MICI conducted a mission to the city of Buenos Aires to meet with the project team, the executing agency, and the IDB Country Office in Argentina. The mission team also met with the Requesters, who joined them on a tour of the upper, middle, and lower Reconquista River Basin.
- 4.4 The MICI is grateful to all involved for their willingness to meet with the team and provide the necessary information for this eligibility determination.

Visit to the Reconquista River Basin

Upper basin



Middle basin





Lower basin



Source: MICI photo archive

V. ELIGIBILITY DETERMINATION ANALYSIS

- 5.1 As part of the eligibility determination process, the MICI considered the information submitted with the Request, Management's Response, other program documents associated with the Request, other relevant documents,⁷ and information gathered during the mission.
- 5.2 Pursuant to paragraph 22 of the Policy, a Request will be deemed eligible by the MICI if it is determined that it meets all of the following criteria:
- a. The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the Bank-financed Operation is implemented. If the Request is filed by a representative, the identity of the Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.
 - b. The Request clearly identifies a Bank-financed Operation that has been approved by the Board, the President, or the Donors Committee.
 - c. The Request describes the Harm that could result from potential noncompliance with one or more Relevant Operational Policies.
 - d. The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
 - e. None of the exclusions set forth in paragraph 19 apply.
- 5.3 In the case of Request **MICI-BID-AR-2019-0148**, the analysis of eligibility criteria established in the Policy is as follows:
- 5.4 The Request was filed by 13 individuals, acting on their own behalf, who are residents of the Reconquista River Basin (see table 1) located in the Province of Buenos Aires, Argentina. Additionally, the MICI has a list containing the contact information for the Requesters. Consequently, **Criterion 22(c) has been met.**
- 5.5 The Request identifies the **Reconquista River Basin Environmental Sanitation Program (operation AR-L1121)**, approved by the Board of Executive Directors on 23 July 2014. Consequently, **Criterion 22(b) has been met.**
- 5.6 The Request alleges potential environmental harm to all inhabitants of the Reconquista River Basin and, specifically, harm to the health of a subgroup of Requesters caused by increased pollution of water sources stemming from a failure to take into account the program's potential impact, because there was no environmental impact assessment or consultations regarding the basin's comprehensive management plan or the priority actions. Consequently, **Criterion 22(c) has been met.**
- 5.7 The MICI-IDB Policy defines Harm as any direct, material damage or loss that has actually occurred or is reasonably likely to occur in the future. In the case of this Request and with that definition in mind, the MICI is of the opinion that only 9 of

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

the 13 Requesters⁸ have raised allegations of harm compatible with that definition. Therefore, any processing of the Request by the MICI would be limited to potential noncompliance associated with those allegations.

- 5.8 Regarding prior contact with Management, the Request provides information on the interactions between the Requesters and Management, which took the form of both letters and meetings in 2017 and 2018, and the responses sent by Management. Management confirmed this in its Response and attached its replies as annexes. MICI considers that **Criterion 22(d) has been met**.
- 5.9 Regarding the exclusions provided in paragraph 19, **the MICI concludes that none of the exclusions established in paragraphs 19(a), 19(b), 19(c), 19(e), and 19(f) applies** because the Request does not raise issues beyond the scope of the MICI, does include the Requesters' data; and the operation in question was approved in 2014 and is currently in execution.
- 5.10 In relation to **exclusion 19(d)**, which states that neither the Consultation Phase nor the Compliance Review Phase would apply to particular issues or matters raised in a Request that are under arbitral or judicial review in an IDB member country, the following review was conducted:
- 5.11 The MICI was informed by IDB Management of two active legal proceedings. Available information on each case was analyzed to determine whether exclusion 19(d) applied. Table 4 summarizes the information on those cases, which was drawn from public information from the Judicial Branch of the Province of Buenos Aires and a website managed by the complainant.

Table 4.
Summary of active legal proceedings

| Case | Court | Issue | Claimant / Respondent |
|----------------|---|--|---|
| FSM 65812/2014 | San Isidro Federal Criminal Court | Allegation of procedural fraud in loan AR-L1121's execution of the following works: bridges, access routes, drainage systems, paving, and other planned services. | Francisco Javier de Amorrortu / COMIREC President and Executive Secretary |
| I-72832 | Province of Buenos Aires Supreme Court of Justice | Direct appeal to the Supreme Court concerning the constitutionality of the Provincial authorities' coordination of the Reconquista River Basin Environmental Sanitation Program, approved by decree 3002/2006. | Francisco Javier de Amorrortu / Province of Buenos Aires |

- 5.12 The MICI found that the two ongoing legal proceedings concerned matters related to provincial authorities' loan approval process and civil servants' responsibilities in the process of approving the loan's proceeds. Since those issues are not the ones raised in the Request, **the MICI concludes that exclusion 19(d) does not apply**.

⁸ It is important to note that the MICI considers that the Request has not provided enough information to classify the Requesters from the upper and middle basins (see table 1) as parties who may be directly harmed, based on the definition of harm set forth in the MICI policy. Therefore, the processing of this Request will focus on the allegations of potential direct harm raised by the other Requesters.

VI. CONCLUSION

- 6.1 The MICI Director, in accordance with section G of the MICI Policy (document [MI-47-6](#)), concludes that this Request **is eligible** because it meets all eligibility criteria established in the MICI Policy.
- 6.2 This eligibility determination is neither an assessment of the merits of the Request and the issues raised therein, nor is it a determination of the IDB's compliance or noncompliance with its Relevant Operational Policies. It is only the starting point of the MICI process, which does not suspend or halt disbursements under the program.
- 6.3 This Memorandum was sent on 2 August 2019 directly to the Requesters and to Management for information. It will be distributed to the Boards of Executive Directors of the IDB for information, and any interested third parties through the [Public Registry](#), once the English version is available.
- 6.4 Upon notification to the Board of Executive Directors, the MICI Director will transfer the case to the Consultation Phase, as requested by the Requesters and established in the Policy, to begin processing the Request under that phase.