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DOCUMENT OF THE INDEPENDENT CONSULTATION  
AND INVESTIGATION MECHANISM

**COSTA RICA**

**MICI-BID-CR-2017-0125**

**ASSESSMENT AND CONSULTATION PHASE REPORT**

**REVENTAZÓN HYDROELECTRIC PROJECT**

**(CR-L1049, CR-L1056, CR-U0001, CR-T1086)**

**(ATN/OC-12720-CR, 2747/OC-CR, 2806 A/OC-CR, 2806 B/OC-CR,  
2804/OC-CR, ATN/OC-13556-CR)**

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## **NOTE TO THE BOARD OF EXECUTIVE DIRECTORS**

Under the MICI Policy (document MI-47-6), the Consultation Phase has three consecutive stages: Assessment, Consultation Phase Process, and Monitoring.

From March to August 2017, prior to the Declaration of Eligibility of the Request in question, IDB Management engaged in an extensive exchange with the Requesters culminating in satisfactory outcomes that partially resolved the subject of the complaint.

At the Parties' request, the MICI twice extended the eligibility process, to give IDB Management and the Requesters an opportunity to reach a consensus-based agreement on the identified issues. Some disagreements remained at the end of the extension period, and the Requesters asked to resume the MICI process. On 1 February 2018, after declaring the Request eligible, the case was moved to the Consultation Phase.

Considering the extensive exchange with the Parties prior to the declaration of eligibility, as well as the stated willingness of all stakeholders to find a solution expeditiously through dialogue, on this occasion the MICI proposed skipping the assessment stage and moving directly into the Consultation Phase.

Having made that procedural decision, this report focuses on issues related to the assessment of prior conditions that would normally be presented for information in the Assessment Report, as well as information on the conduct of the Consultation Phase, the agreements reached, and the next steps in the process, as prescribed for the Consultation Phase Report submitted to the Board of Executive Directors via the short procedure.

<b>ANNEXES</b>	
I.	Agreement Addressing the Ability to Access Water for Livestock and Irrigation (confidential document)
II.	Monitoring Plan and Preliminary Timeline (confidential document)

## LINKS

1. Original Request MICI-BID-CR-2017-0125  
<http://www.iadb.org/document.cfm?id=EZSHARE-1210845122-36>
2. Joint IDB-IIC Management Response to the MICI-BID-CR-2017-0125 Request regarding the "Reventazón Hydroelectric Project in Costa Rica" – Request IV  
<http://www.iadb.org/document.cfm?id=EZSHARE-1210845122-97>
3. Public registry file for Request MICI-BID-CR-2016-0112  
<https://www.iadb.org/es/mici/detalle-de-la-solicitud,19172.html?ID=MICI-BID-CR-2016-0112>
4. Loan proposal – Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project and Other Investments) (CR-L1049)  
<http://www.iadb.org/Document.cfm?id=36971330>
5. Project abstract – Reventazón Hydroelectric Project (CR-L1056)  
<http://www.iadb.org/Document.cfm?id=36683842>
6. Resolution 115/12 of the Board of Executive Directors on Loan and Guarantee 2804/OC-CR – Reventazón Hydropower Project (CR-L1056, CR-U0001)  
<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=37022851>
7. Technical cooperation profile – Studies and Support for the Environmental and Social Strategy of the Reventazón Hydropower Project (CR-T1086)  
<http://www.iadb.org/Document.cfm?id=37418876>
8. Technical cooperation document – Study and Support for the Environmental and Social Strategy of the Reventazón Hydropower Project (CR-T1086)  
<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=37418803>
9. Environmental and social action plan (ESAP) included as the sole annex to the Loan Contract for the Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005, Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project (RHP) and Other Investments) (CR-L1049)  
<http://www.iadb.org/Document.cfm?id=36864764>
10. Environmental and social management report (ESMR) for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056)  
<http://www.iadb.org/Document.cfm?id=36879354>
11. Environmental impact assessment for the Reventazón Hydroelectric Project (CR-L1049 and CR-L1056)  
<http://www.iadb.org/Document.cfm?id=36447344>
12. Captación y almacenamiento de agua de lluvia. Opciones técnicas para la agricultura familiar en América Latina y el Caribe [Rainwater harvesting and storage. Technical options for family farms in Latin America and the Caribbean]. FAO, Santiago, Chile. April 2013.  
<http://www.fao.org/docrep/019/i3247s/i3247s.pdf>
13. Acuerdo para atender la oportunidad de acceso y uso al agua para consumo humano [Agreement addressing the ability to access and use water for human consumption] (Confidential document)  
[REDACTED]
14. Análisis de oportunidad de acceso al agua para riego y abrevadero de animals [Analysis of the ability to access water for irrigation and livestock], study commissioned by the IDB from the consulting firm ERM. (Confidential document) [REDACTED]
15. Análisis de la factibilidad de abastecimiento con agua de lluvia [Feasibility analysis for a rainwater supply system], study commissioned by the MICI (Confidential document).  
[REDACTED]

## ABBREVIATIONS

Bank or IDB	Inter-American Development Bank
CAO	Office of the Compliance Advisor/Ombudsman
ESG	Environmental Safeguards Unit of the IDB
ESMR	Environmental and social management report
FAO	Food and Agriculture Organization of the United Nations
IDB Group or IDBG	The IDB Group consists of the Inter-American Development Bank, IDB Invest, and the Multilateral Investment Fund
Harm	Any direct, material damage or loss. Harm may be actual or reasonably likely to occur in the future.
ICE	Instituto Costarricense de Electricidad [Costa Rica Power Authority]
IDB Invest	Formerly the Inter-American Investment Corporation (IIC)
IFC	International Finance Corporation
MICI or the Mechanism	Independent Consultation and Investigation Mechanism
MICI-IDB Policy	The Policy, approved by the IDB Board of Executive Directors in December 2014 and revised in 2015, governing MICI operations for Requests related to IDB-financed or MIF-financed operations (document MI-47-6)
MW	Megawatts
Parties or Stakeholders	The Requesters, Management, borrower, client, and/or executing agency, as applicable
Project or RHP	Reventazón Hydroelectric Project

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## EXECUTIVE SUMMARY

The Reventazón Hydroelectric Project (RHP) consists of the design, construction, operation, and maintenance of a hydroelectric power plant with an installed capacity of 305.5 megawatts and the construction of a 130-meter-high dam, an 8 square-kilometer reservoir, as well as substations, transmission lines, and adjacent roads. The Instituto Costarricense de Electricidad [Costa Rica Power Authority] (ICE) is the executing agency for the project. The estimated total cost of the RHP was US\$1.4 billion. The IDB Group's involvement in the Project is through a series of sovereign guaranteed and non-sovereign guaranteed loan operations.

On 7 August 2017, the MICI received a Request regarding the RHP from a family of three (the "Requesters") who own land adjoining the RHP reservoir. The Requesters alleged that their living conditions were affected when 4.7 hectares of their farm were expropriated by the RHP. According to the Requesters, there were two water sources on the expropriated land that supplied water for their farming activities, particularly dairy cattle, which are the family's main economic livelihood activity.

The Request was registered by the Independent Consultation and Investigation Mechanism (MICI) on 10 August 2017, and the MICI twice extended the eligibility process, to give IDB Management and the Requesters an opportunity to reach an agreement prior to MICI intervention. The Parties were unable to reach an agreement on how to reestablish the ability to access water for livestock and irrigation. The Request was therefore declared eligible on 1 February 2018, initiating the Consultation Phase.

Considering the time spent since 10 August 2017 exploring solutions to the problem, as well as a certain level of frustration of the Parties stemming from the difficulties in resolving the dispute, the MICI proposed an abbreviated methodology consisting of a small number of one-day facilitated meetings attended by outside experts brought in to help identify technical solutions.

At these work sessions on 1 March and 4 and 12 April 2018, outside experts presented studies that offered options for resolving the issues raised in the Request. Building on the partial agreements reached at the first dialogue session, the MICI engaged an independent expert engineer, who prepared a proposal to analyze the feasibility of developing an option additional to the ones originally proposed in the process pursued by Management that would comprehensively address the ability to access water for livestock and irrigation. The proposal was accepted by the Parties at a third meeting and formalized in an agreement signed on 12 April, which, at the Parties' request, is confidential. The agreement provides for activities to be implemented in the short term, once the agreement is signed, and the MICI proposes to monitor compliance with the agreement based on a Monitoring Plan, subject to the no objection of the Board of Executive Directors.

## I. BACKGROUND

### A. Geographic and social context<sup>1</sup>

- 1.1 The Province of Limón is one of seven provinces making up Costa Rica and is located at the country's eastern edge, bordering Nicaragua to the north, Panama to the south, the Caribbean Sea to the east, and to the west, the provinces of Heredia, San José, Cartago, and Puntarenas.
- 1.2 Limón is approximately 163 kilometers from the country's capital, San José, with mountainous areas descending to plains until they reach the Caribbean Sea. This topography is favorable for agricultural activities: principally bananas, cacao, and African palm oil, as well as cattle. Additionally, with its national parks, tourism is also an important economic activity for the province.



**Figure 1: Map of Costa Rican provinces**

Source: National Statistics and Census Institute (INEC)

- 1.3 The Province of Limón is made up of six cantons: Limón, Pococí, Talamanca, Matina, Guácimo, and Siquirres, with this last canton being the location of the Reventazón Hydroelectric Project (RHP).
- 1.4 The Canton of Siquirres has six districts: Siquirres (with the largest population), Pacuarito, Florida, Germania, Cairo, and Alegría. According to 2011 Census data, Siquirres has an area of 860 square kilometers and a population of 57,780, or 14% of the provincial population and 1.36% of the national population.

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<sup>1</sup> Information taken from the National Statistics and Census Institute, and the Local Human Development Plan of Siquirres Canton.



**B. The Project<sup>2</sup>**

- 1.5 El Reventazón Hydroelectric Project consists of the design, construction, operation, and maintenance of a hydroelectric power plant with an installed capacity of 305.5 megawatts and the construction of a 130-meter-high dam, an 8 square-kilometer reservoir, as well as substations, transmission lines, and adjacent roads. The Instituto Costarricense de Electricidad [Costa Rica Power Authority] (ICE) is the executing agency for the project.
- 1.6 The Project is part of Costa Rica’s Electric Power Generation Expansion Plan 2012-2024, which aims to increase the country’s power generation capacity by some 1,714 megawatts, with 98% based on renewable energy sources.
- 1.7 The projected total cost of the RHP was US\$1.4 billion and, in addition to the IDB funding, included a combination of the ICE’s own funds and financing from commercial banks in Costa Rica, as well as the International Finance Corporation (IFC) and the European Investment Bank (EIB) through the Central American Development Bank.
- 1.8 The IDB Group’s involvement in the project is through a series of sovereign guaranteed and non-sovereign guaranteed loan operations, as well as technical cooperation. Table 1 lists the five IDB Group operations, their amounts and approval dates, and other relevant information.

**Table 1.**  
**Reventazón Hydroelectric Project – List of operations financed by the IDB Group**

	Project number/ Operation	Name	Operation type	Approval date	Operation amount in US\$ millions	Date of last disbursement
1	CR-T1074 ATN/OC-12720-CR	Additional environmental studies Reventazón Hydroelectric Project	Nonreimbursable technical cooperation	12 May 2011	0.47	19 Jun 2014
2	CR-L1049 2747/OC-CR	Second Individual Operation under the Conditional Credit Line for Investment Projects CR-X1005 – Power Sector Development Program 2012-2016 (Reventazón Hydroelectric Project (RHP) and Other Investments)	Sovereign guaranteed loan	25 Jun 2012	250.00	Under implementation
3	CR-L1056 2806 A/OC-CR 2806 B/OC-CR	Reventazón Hydroelectric Project	Non-sovereign guaranteed loan	19 Oct 2012	673.00	13 May 2016
4	CR-U0001 2804/OC-CR	Reventazón Hydroelectric Project	Guarantee	19 Oct 2012	98.00	N/A
5	CR-T1086 ATN/OC-13556-CR	Costa Rica: Studies and Support for the Environmental and Social Strategy of the Reventazón Hydroelectric Project	Nonreimbursable technical cooperation	4 Dec 2012	0.74	5 Aug 2016

<sup>2</sup> Information taken from the Bank’s website and public documents on the operations. These documents are available in the electronic links section.

- 1.9 The Project was classified as environmental category “A,” since it had the potential to cause significant adverse environmental impacts and associated social impacts and has profound implications for natural resources. According to the environmental and social management report (ESMR), the mitigation strategy included significantly improving ICE’s land acquisition, compensation, and involuntary resettlement practices.
- 1.10 The Project was commissioned in September 2016. As of the date of this report, ICE is implementing an action plan to repair a crack that allowed water to leak into the rock mass beneath the spillway.

### **C. The Request**

- 1.11 On 7 August 2017, the MICI received a Request regarding the RHP from a family of three (the “Requesters”) living in Siquirres Canton, Limón Province, who own land adjoining the RHP reservoir. The Requesters alleged that their living conditions were affected when part of their farm was expropriated by the PHR. As part of the expropriation program established for the RHP, 4.7 hectares of land were expropriated from their farm of approximately 14 hectares.
- 1.12 The Requesters alleged that they lost access to two sources of water located on the expropriated land. These aquifers supplied water to the property for their farming activities, particularly dairy cattle, which are the family’s main economic livelihood activity. They therefore consider that that aforementioned action was in violation of the IDB Group’s Operational Policies.
- 1.13 Without access to these water sources, the Requesters had to use drinking water for their animals and irrigation, which is not permitted by law in Costa Rica. Furthermore, they had to travel a distance no less than 400 meters to provide this water for the animals and irrigation. The Requesters alleged that having to transport the water every day has caused economic harm, as well as harmed their health as a result of the physically demanding activity involved in hauling the water. They also alleged psychological harm due to the uncertainty of the situation they have faced since January 2016, when the land was expropriated.
- 1.14 The Requesters expressed their desire for the MICI to process the Request through both the Consultation Phase and the Compliance Review Phase.
- 1.15 It should be noted that in December 2016, the IFC’s independent accountability mechanism, the Office of the Compliance Advisor/Ombudsman (CAO), received a similar claim from the Requesters that it is currently in the investigation stage.

### **D. The MICI process to date**

- 1.16 Table 2 shows the principal milestones reached during the MICI Process, from receipt of the Request up to the present.<sup>3</sup>

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<sup>3</sup> For more information on the initial stage of the process, see the Eligibility Memorandum, and Section II of this Report for the Assessment stage and Consultation Phase Process.

**Table 2**  
**Timeline of the MICI process and principal milestones reached to date**

<b>Date</b>	<b>Actions</b>
<b>2017</b>	
7 August	Receipt of Request
10 August	Registration of Request
11 September	Receipt of IDB-IDB Invest Management Response
12 September	MICI Response to IDB-IDB Invest Management on request for suspension of the eligibility determination process
12 October	Extension request to the IDB Board of Executive Directors for determination of eligibility
19 October	Approval by Board of Executive Directors of the extension request for determination of eligibility Notification to the parties of the new deadline for issuing the Eligibility Memorandum
15 November	Second extension request to the IDB Board of Executive Directors for determination of eligibility
22 November	Approval by the Board of Executive Directors of the second extension request for determination of eligibility Notification to the parties of the new deadline for issuing the Eligibility Memorandum
<b>2018</b>	
1 February	Issuance of Eligibility Memorandum
1 February	Start of the Consultation Phase Process
1 March	First Joint Dialogue Session with the participation of the Requesters, IDB, and ICE, facilitated by the MICI
4 April	Second Joint Dialogue Session with the participation of the Requesters, IDB, and ICE, facilitated by the MICI
12 April	Third Joint Dialogue Session with the participation of the Requesters, IDB, and ICE, facilitated by the MICI. Signature of the agreement
10 May	Issuance of the Assessment and Consultation Phase Report. Start of the Monitoring Stage

Source: MICI.

## **II. CONSULTATION PHASE**

### **A. Regulatory framework**

- 2.1 The Independent Consultation and Investigation Mechanism (MICI) is governed by the MICI Policy (document MI-47-6), approved the IDB Board of Executive Directors on 16 December 2014. This Policy establishes the processes, stages, and timelines to be observed in the management of a MICI case. Under the MICI Process, a Requester has two possible options to choose from for processing its Request: Consultation Phase and Compliance Review Phase. If both options are selected, the process begins with the Consultation Phase.
- 2.2 MICI has developed “Guidelines for the Consultation Phase” to facilitate the effective application of Section H of the MICI-IDB and MICI-IIC Policies, particularly paragraphs 24 through 35, complementing and operationalizing the policy rules (document MI-74).
  1. **Definition of the Consultation Phase**
- 2.3 The Consultation Phase provides an opportunity for the Parties to address the issues raised by the Requesters in a flexible, consensus-based manner. The Consultation Phase is based on a set of methodologies that promote unbiased and equitable treatment of all Parties involved in the process. This Phase looks at the specific issues raised in the complaint by the Requesters, related to harm caused by the Bank’s failure to comply with one or more of its Relevant Operational Policies (MICI Policy, paragraph 24). The MICI acts as an independent facilitator for the process.
- 2.4 The Consultation Phase is a voluntary process, so the Parties may withdraw at any time.

## 2. Stages of the Consultation Phase

- 2.5 The Consultation Phase has three consecutive stages: Assessment, Consultation Phase Process, and Monitoring. The Policy establishes the purpose and time frames for each stage. The objective of the Consultation Phase Process is to reach an agreement between the Parties in response to the issues raised in the Request and addressed in the course of the MICI Process, reinforcing the Bank’s commitment to comply with its Relevant Operational Policies.
- 2.6 A variety of methods may be employed during the Consultation Phase, depending on the following factors: urgency, type of Harm, corrective actions sought, and the likelihood that the process will have positive results. The methods for analysis and alternative dispute resolution to be used include: situational and conflict analysis, scenario building, structured dialogue, mediation, negotiation, and facilitation, under different formats. These methods can be used simultaneously or sequentially (see paragraph 4.4, “Guidelines for the Consultation Phase”).
- 2.7 Upon completion of the Consultation Phase Process, the MICI will prepare a Final Consultation Phase Report on the results of the process. The report will be distributed to the IDB Board of Executive Directors for consideration. Following this procedure, the report will be made available to the Requesters and published in the Public Registry.
- 2.8 Regarding the Monitoring stage, the Policy states that, “when applicable, the MICI will develop, in consultation with the Parties, a monitoring plan and time frame for the agreement reached, which will be included in the Consultation Phase Report” (see paragraph 35). The monitoring plan will indicate whether there is direct or outside monitoring of any agreement reached by the Parties, and what measures will be adopted to determine whether such agreement is being implemented appropriately.
- 2.9 The Monitoring Plan will be considered by the IDB Board of Executive Directors and will have a duration of no more than five (5) years from the signature date of the agreement. The MICI will prepare and deliver a Monitoring Report to the IDB Board of Executive Directors annually for information.

### B. Consultation Phase timeline

**Table 3.**  
**Consultation Phase Process – Principal milestones and activities for Request MICI-BID-PE-2015-0094**

Date	Actions
<b>2018</b>	
1 February	Start of the Consultation Phase Process
9 February	MICI conference call with Requesters to validate the proposed methodology for the Consultation Phase Process
14 February	MICI-ESG meeting to validate methodology and prepare for dialogue sessions
27 February	MICI-ICE meeting to validate methodology and prepare for First Dialogue Session
28 February	MICI-Requesters meeting to prepare for First Dialogue Session
1 March	First Joint Dialogue Session with the participation of the Requesters, IDB, and ICE, facilitated by the MICI
2 April	MICI visit with independent specialist to the Requesters’ farm
3 April	MICI-Requesters meeting to prepare for Second Dialogue Session
4 April	Second Joint Dialogue Session with the participation of the Requesters, IDB, and ICE, facilitated by the MICI
12 April	Third Joint Dialogue Session with the participation of the Requesters, IDB, and ICE, facilitated by the MICI. Signature of Agreement
10 May	Issuance of the Assessment and Consultation Phase Report. Start of the Monitoring Stage

Source: MICI.

## **C. Consultation Phase Process: Context, methodology, and action taken**

### **1. Context**

- 2.10 During the expropriation of 4.7 hectares from the farm for construction of the RHP, the Requesters received compensation from the ICE in accordance with national laws, as determined by the court in response to a demand for appraisal of the land. In December 2016 the Requesters sent a first Request to the MICI (MICI-BID-CR-2016-0112), but it was declared ineligible at that time since IDB Group Management had not been given an opportunity to address the allegations in it. The Requesters were told that they were required to seek a resolution to their concerns with Management, as a first step.
- 2.11 Between March and August 2017 (when the new Request was received), the Parties engaged in ongoing dialogue. At the Parties' request, the MICI twice extended the eligibility determination date, to give Management and the Requesters an opportunity to resolve the concerns raised.
- 2.12 As part of this exchange, the ICE arrived at a solution regarding the ability to access drinking water for human consumption on the farm owned by the Requesters. Management reached an agreement with the Requesters to conduct a technical and economic feasibility study on water supply for agricultural use, with a technical report delivered in December 2017 by the consulting firm ERM. The report analyzed three options, on which the Parties ultimately could not reach agreement. The Request was thus registered on 10 August 2017 under number MICI-BID-CR-2017-0125 and declared eligible on 1 February 2018, initiating the Consultation Phase.
- 2.13 Given the extensive dialogue between the Parties prior to launching the MICI Consultation Phase, the demonstrated willingness of the different stakeholders to participate in a Consultation Phase Process, and the urgency expressed by the Parties of reaching a consensus-based solution, the MICI decided, in agreement with the Parties, to initiate the Consultation Phase Process immediately, bypassing the Assessment Stage. The Assessment Stage seeks to understand the Harm related to potential policy noncompliance raised by the Request, identifying and gathering information relevant to the process, and determining whether the Parties would agree to seek a resolution using consultation methods.

### **2. Methodology**

- 2.14 As stated in the MICI Policy and the Guidelines for the Consultation Phase (document MI-74), the Consultation Phase Process is intended to be flexible, consensus-based, and tailored to the issues raised in the Request. It makes sense to adapt the method on a case-by-case basis, according to the needs of the process, always in line with the provisions of the Policy and the Guidelines.
- 2.15 As a result of the efforts described above, the Parties agreed that the Consultation Phase Process should be abbreviated, given the necessity of finding a prompt solution to the issues raised. The work therefore focused on a small number of dialogue sessions facilitated by MICI staff (see Section II.C.3). These meetings were separated by a reasonable period of time, to either weigh and improve the existing options for settling the dispute, or consider new possibilities, if possible. Each of the meetings was documented in detailed minutes that were then distributed to the Parties, so they would have the same record of what took place at the dialogue sessions.

- 2.16 Throughout the process, the MICI held prior bilateral conversations with the Parties to prepare each of them for the dialogue sessions.
- 2.17 The activities took place at the Requesters' farm, to facilitate the participation of all family members in the dialogue sessions.
- 2.18 The MICI recommended the participation of outside parties as independent experts, to provide professional advisory support during the process on the available technical options for finding a solution to the issues raised in the Request.

### 3. Actions

- 2.19 **Desk review.** A series of documents relevant to the case were reviewed, to get a clear understanding of the Project, the context in which it is implemented, and the Harm alleged by the Requesters. This review during the Consultation Phase is key to facilitating meetings between the Parties and building consensus to address the issues raised in the Request.
- 2.20 The MICI reviewed the Request submitted by the family, as well as other documents shared by the Requesters during the process.
- 2.21 The project documents consulted were the loan proposal, the project profile, the environmental and social action plan, and the environmental and social management report. Other documents reviewed were the terms of reference and the analysis report on the ability to access water for livestock and irrigation commissioned by Management from the consulting firm ERM.
- 2.22 Reports prepared by United Nations agencies such as the Food and Agriculture Organization (FAO) that were relevant to the issues in question were also reviewed.
- 2.23 The MICI contracted an expert to look at rooftop rainwater harvesting as an alternate option to those presented by ERM in its report, on which the Parties had been unable to agree. The preliminary and final reports prepared by the expert engaged by the MICI were reviewed by the MICI and shared with the Parties. The MICI accompanied the civil engineer in charge of this study during his visit to the farm to take measurements, study the topography, and prepare a proposal that included an integrated water system.
- 2.24 **Interviews with relevant stakeholders.** The MICI team conducted a series of face-to-face and telephone interviews with the Requesters, as well as with the IDB project team and IDB Invest (since the RHP financing operations include an IDB non-sovereign guaranteed operation), IDB Group environmental and social specialists, and ICE officials.
- 2.25 The MICI held bilateral meetings with the Parties before and after the dialogue sessions to review the progress made and challenges faced in the process. The MICI team's work included scenario building and projecting possible outcomes of the process with the Requesters.
- 2.26 Given the importance of having an independent, outside technical perspective, the MICI interviewed four professionals from Costa Rica, to identify one who met the needs of the case.
- 2.27 **Missions and dialogue sessions.** During the Consultation Phase Process, the MICI conducted three missions to Costa Rica for face-to-face meetings with the Parties and facilitation of the dialogue sessions.
- 2.28 The First Dialogue Session, held 1 March 2018, was attended by representatives of the ICE, the Environmental Safeguards Unit (ESG) of the IDB, as well as the Requesters and the MICI team. This session to launch the Consultation Phase Process was to review the study, "Análisis de oportunidad de acceso al agua para riego y abrevadero de animales" [Analysis

of the ability to access water for irrigation and livestock], conducted by the consulting firm ERM at the request of the IDB. One of the authors of the study, hydrogeologist Randall Alpízar, was present at this meeting. In his presentation, he described the study's objectives, outcomes, and recommendations, which was followed by an extensive question and answer period facilitated by the MICI. The goal of this first session was to fully understand the report and identify all viable options for settling the dispute. The Parties expressed their openness and interest in investigating options not included in the ERM report, such as rooftop rainwater collection. Based on this partial agreement, the MICI commissioned an independent expert to analyze the feasibility of implementing a rooftop rainwater collection strategy, including a general design of the system with the required collection surface, storage requirements (number of tanks and location), and system for transporting water to the storage tanks and livestock watering troughs.

- 2.29 Prior to the Second Dialogue Session, the MICI team took part in a visit to the Requesters' farm along with the independent expert commissioned to conduct the study on the rooftop rainwater harvesting system, which resulted in the study "Análisis de la factibilidad de abastecimiento con agua de lluvia" [Feasibility analysis for a rainwater supply system].<sup>4</sup> The independent specialist presented this study at the Second Dialogue Session. Following the presentation, there was time for a facilitated exchange between the Parties. At the end of the meeting, an agreement in principle was reached regarding the comprehensive solution to reestablish the ability to access water for livestock and irrigation on the Requesters' farm. However, the Parties requested one week to thoroughly review the information presented in the study.
- 2.30 Lastly, the MICI prepared a draft agreement which took into consideration the exchanges and partial agreements reached during the first two dialogue sessions, as well as the information provided by the independent expert engaged by the MICI. This agreement was sent to the Parties for review. During the third mission to Costa Rica, bilateral meetings were held to review the 18 clauses comprising the draft agreement, in order to find a comprehensive solution to the issues raised in the Request. After numerous conversations and exchanges facilitated by the MICI, the Parties proceeded to sign the final agreement (see Annex I) as part of the Consultation Phase.

#### **D. Outcomes of the Consultation Phase Process**

- 2.31 The Consultation Phase Process sought to reestablish minimum levels of trust between the Parties, and create new avenues for communication and sharing of information, to promote results-oriented dialogue. The MICI facilitated a dispute settlement process intended to reach a consensus-based comprehensive solution to reestablish the ability of the Requesters to access water for livestock and irrigation.
- 2.32 A key aspect of the process has been the in-depth analysis of each of the options available to provide a solution to the identified issues, including the technical studies presented to the Parties by qualified, established professionals. The involvement of outside specialists and the facilitated meetings for exchanges between the Parties were valuable in providing important information to reach a consensus-based solution.
- 2.33 The agreement is structured around a comprehensive solution to the issues identified in the Request that includes the proposal set out in the independent study commissioned by the MICI. Additionally, this comprehensive solution includes enrolling the Requesters in the Sustainable Farm Management Program run by the ICE with farmers and ranchers in the

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<sup>4</sup> Available in the links section.

Reventazón River basin, particularly activities related to pasture improvement and waste management.

- 2.34 In accordance with paragraph 34 of the MICI Policy, the agreement reached will be confidential, as agreed by the Parties. For this reason, Annex 1 will be removed from the public version of this document, and only a summary will be published in the MICI Public Registry.
- 2.35 Unless the Board of Executive Directors objects, the duration of the Monitoring Stage will be compatible with the timeline of activities stipulated in the agreement. MICI's presence is intended to maintain trust between the Parties, monitor compliance with agreements, and support the Parties in execution of the work plan, which must be jointly formulated for the construction work. Progress will be reported to the Board of Executive Directors through monitoring reports. Once the agreed activities have been completed, the MICI will terminate the monitoring process and proceed to close the case.
- 2.36 In accordance with paragraph 35 of the MICI Policy, the Monitoring Plan and time frame for the agreements reached by the Parties will be considered by the Board of Executive Directors via the short procedure. If the Board has no objection to the monitoring plan, the MICI will begin the commitment monitoring activities and deliver the first monitoring report to the Board of Executive Directors in April 2019.

### **III. NEXT STEPS**

#### **A. MICI actions under the Monitoring Plan**

- 3.1 Under the agreement reached, the Parties will formulate a Work Plan to carry out the activities mutually agreed upon in the Consultation Phase Process. At the Parties' request, the MICI will collaborate in the monitoring of full compliance with this Work Plan, and therefore the agreements reached.
- 3.2 The MICI may carry out a set of activities as part of monitoring the agreements, including work meetings of the Parties called and facilitated for implementation of the agreements; ongoing monitoring by the MICI team through face-to-face meetings or meetings held by telephone, email, and videoconference; the organization of at least one monitoring mission agreed upon in advance with the Parties; and the preparation of monitoring reports.

#### **B. Resources required by the MICI**

- 3.3 The Consultation Phase team will need to conduct at least one mission to Costa Rica, to assess progress on the agreements in the field, and another mission to conclude the process. These missions may take place in either San José or Siquirres, where the Reventazón Hydroelectric Project (RHP) and the Requesters' farm are located.
- 3.4 Since the Parties have agreed that the MICI has the authority to call specific monitoring meetings in the event of disputes regarding the performance of a specific agreement, or disagreement concerning the level of progress made in meeting the commitments, there is a possibility that missions may be conducted to address such situations face-to-face with the Parties.
- 3.5 If a status meeting or closing meeting is necessary for the monitoring process, a physical space will have to be rented with appropriate services for such meetings.



**C. Monitoring reports**

- 3.6 As stipulated in the MICI Policy, once the monitoring stage is in progress, the MICI will deliver a monitoring report to the IDB Board of Executive Directors “for information at least annually,” describing the progress made in the process.
- 3.7 Accordingly, provided that the Board of Executive Directors has no objection to MICI’s participation in this Monitoring Stage, the Board will receive the first monitoring report on Case MICI-BID-CR-2017-0125 in April 2019.
- 3.8 In addition, the MICI team will remain in regular, open contact with the IDB Executive Director for Costa Rica, the IDB Country Office in Costa Rica, the project team, and the Parties in general with respect to the handling of the case and preparation of these reports.