DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-CII-GU-2018-0136

COMPLIANCE REVIEW REPORT
REVISED VERSION

GENERADORA SAN MATEO S.A. AND GENERADORA SAN ANDRÉS S.A. PROJECTS (GU3794A-01 AND GU3798A-01)

This document was prepared by Arantxa Villanueva, Compliance Review Phase Coordinator; Mariana Clemente Fábrega, Lead Case Officer; Andrea Guevara Mantilla, Case Officer; María Elisa Dugo, Case Analyst; and Julio Vázquez Aguilar, Case Assistant. It was prepared with input from experts David Nyheim, Jay Wagner, and Jean-Roger Mercier, under the supervision of Andrea Repetto Vargas, Director of the Independent Consultation and Investigation Mechanism of the IDB Group (MICI).

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 IDB Group employees. The document will be disclosed and made available to the public upon approval.
ABOUT THE MICI COMPLIANCE REVIEW PROCESS

Specific objectives. The purpose of a Compliance Review is to investigate allegations by requesters that their rights or interests have been and/or could be directly harmed by actions or omissions of the Inter-American Development Bank Group that may constitute a failure to comply with one or more of its Relevant Operational Policies in relation to a particular operation or that arise from gaps in those policies. The Compliance Review investigation is aimed at establishing whether any action or omission of IDB Invest with respect to an operation financed by the Corporation has resulted in noncompliance with its Relevant Operational Policies and has contributed or could contribute to a direct and substantial harm to the Requesters.

General objective. A Compliance Review is a tool designed to assist the Board of Executive Directors in promoting compliance with the Corporation's operational policies, support positive development outcomes in IDB Invest-financed operations, and foster institutional learning.

Scope of MICI’s work and application. MICI is the Independent Consultation and Investigation Mechanism of the IDB Group, and its scope of work covers the Relevant Operational Policies of the IDB Group. A Compliance Review only addresses IDB Invest’s compliance with the Relevant Operational Policies and does not draw any conclusions with respect to the actions of any other party in connection with the relevant operation financed by the Corporation. MICI has no authority over judicial proceedings and is not a substitute for judicial or regulatory proceedings of any kind in the host countries. MICI is not a judicial or law enforcement mechanism. MICI’s reports are not intended to be used in local judicial or regulatory proceedings or for the purpose of attributing causation or liability. MICI’s reports focus on the applicability of the IDB Group’s Relevant Operational Policies to the project that is the subject of the Request.
ACKNOWLEDGEMENTS

The Independent Consultation and Investigation Mechanism is grateful for the support of the Requesters and their representatives in the Q’anjob’al, Popti, Chuj, Akateko, and Mestizo Plurinational Ancestral Government, the Interamerican Association for Environmental Defense (AIDA), and the International Platform Against Impunity, IDB Invest Management, the Client, and the Board of Executive Directors of IDB Invest during this investigation process. This effort would not have been possible without their cooperation.

We thank the Requesters for their trust in MICI and their cooperation during the various stages of the process, as well as for their assistance with logistics and in making arrangements for numerous meetings during the Compliance Review mission to Guatemala.

We thank IDB Invest Management, and particularly the projects team, for their willingness to participate in the meetings requested and to provide information relevant to this investigation.

MICI would also like to acknowledge the Client’s cooperation and assistance with logistics and meeting arrangements during the Compliance Review mission in Guatemala. It also appreciates the assistance of the various consultants involved in the projects, national authorities, communities in the project area, and other third parties involved. We thank them all for their willingness to be interviewed by MICI and to share their valuable perspectives.

We thank the chair for Guatemala at the Inter-American Development Bank Group for their invaluable support and constant availability.

The Independent Consultation and Investigation Mechanism acknowledges the environment of collaboration, support, and institutional maturity at IDB Invest that enabled it to conduct this investigation and hopes that its findings further enrich IDB Invest’s contributions to the region of Latin America and the Caribbean.
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### Abbreviations

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<tr>
<td>ASMI</td>
<td>Agreement for Peace and Development in San Mateo Ixtatán</td>
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<td>BAP</td>
<td>Biodiversity Action Plan</td>
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<td>CAP</td>
<td>Corrective Action Plan</td>
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<td>CIA</td>
<td>Cumulative Impact Assessment</td>
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<td>COCODE</td>
<td>Community Urban and Rural Development Councils</td>
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<td>Company or Client</td>
<td>Empresa Energía y Renovación Holding S.A., or Promoción y Desarrollos Hidricos S.A. or PDH</td>
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<td>CRP or Phase</td>
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<td>CSO</td>
<td>Civil society organizations</td>
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<td>ECT</td>
<td>Environmental Consulting and Technology</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>ESAP</td>
<td>Environmental and Social Action Plan</td>
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<td>ESCR</td>
<td>Environmental and Social Compliance Report</td>
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<td>ESDD</td>
<td>Environmental and social due diligence</td>
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<td>ESIA</td>
<td>Supplementary Environmental and Social Impact Assessment</td>
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<td>ESMP</td>
<td>Environmental and Social Management Plan</td>
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<td>ESMR</td>
<td>Environmental and Social Management Report by CASI</td>
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<td>EMSMS</td>
<td>Environmental and Social Management System</td>
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<tr>
<td>ESRS</td>
<td>Environmental and Social Review Summary for projects, published on the IDB Invest website</td>
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<tr>
<td>FFP</td>
<td>Fund for Peace</td>
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<td>FTN</td>
<td>Franja Transversal del Norte</td>
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<td>GDI</td>
<td>Gender and Diversity Division of the IDB</td>
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<td>GSA</td>
<td>Generadora San Andrés S.A.</td>
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<td>GSM</td>
<td>Generadora San Mateo S.A.</td>
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<tr>
<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>IDB</td>
<td>Inter-American Development Bank</td>
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<tr>
<td>IDB Invest or Corporation</td>
<td>IDB Group institution that supports the private sector, formerly IIC(^1)</td>
</tr>
<tr>
<td>IDBG or Group</td>
<td>The IDB Group, composed of the Inter-American Development Bank, IDB Invest, and IDB Lab (formerly MIF)</td>
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<tr>
<td>IESC</td>
<td>Independent Environmental and Social Consultant</td>
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<tr>
<td>IECP</td>
<td>Internal and External Communication Plan</td>
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<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
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<td>IIC</td>
<td>Inter-American Investment Corporation, now IDB Invest</td>
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<tr>
<td>IECP</td>
<td>Internal and External Communication Plan</td>
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\(^1\) In November 2017, the IIC was rebranded and is now referred to as IDB Invest (in English) and BID Invest (in Spanish, French, and Portuguese).
Management
The manager(s), executive(s), or division chief(s) of the IIC (now IDB Invest) in charge of the relevant IIC-Financed Operation, or any delegate thereof.

Management’s Response
Response of IDB Invest Management to the Request submitted to MICI, pursuant to paragraph 21 of the MICI Policy.

MICI or Mechanism
Independent Consultation and Investigation Mechanism of the IDB Group.

MICI Policy
Policy of the Independent Consultation and Investigation Mechanism of the IIC (CII/MI-1-1).

NTL
Innovación Noroccidente transmission line.

OCG
On Common Ground.

OP-703
Environment and Safeguards Compliance Policy.

OP-761
Operational Policy on Gender Equality in Development.

OP-765
Operational Policy on Indigenous Peoples.

Operations
Corporate loan operations GU3794A-01 and GU3798A-01 from IDB Invest to the Client.

Parties
The Requesters and IDB Invest Management.

PIP
Policies on indigenous peoples (OP-765 and PS7).

Projects

PS
IFC Performance Standards.

PS1
Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts.

PS2
Performance Standard 2: Labor and Working Conditions.

PS3
Performance Standard 3: Resource Efficiency and Pollution Prevention.

PS4

PS6
Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources.

PS7

PS8
Performance Standard 8: Cultural Heritage.

Request
A communication submitted by the Requesters to MICI alleging harm due to the failure of IDB Invest to comply with its operational policies in connection with the Projects.

Requesters
Group of people from the Ixquisis microregion who filed the Request with MICI.

ROP
Relevant Operational Policies.

SCG
Social Capital Group.

SMI
San Mateo Ixtatán.

SMS/P
Security Management System and Plan.
EXECUTIVE SUMMARY

A. The Projects

The Generadora San Mateo S.A. (GSM) and Generadora San Andrés S.A. (GSA) projects are two run-of-river hydroelectric projects with installed capacities of 20 MW and 10.65 MW, respectively. The hydropower plants, located in the municipality of San Mateo Ixtatán and built simultaneously, will use the waters of the Negro and Pojom rivers for GSM and the Primavera, Varsovia, and Tercer Arroyo (or Palmira) rivers for GSA, and are being developed by Energía y Renovación S.A., IDB Invest’s Client. The Projects include the construction of a transmission line (NTL) and several electrical substations.

IDB Invest supports the Projects through two loan operations approved by the Board of Executive Directors of the IIC (now IDB Invest) on September 25, 2013. Construction formally began in July 2013, although most of the work was performed between mid-2015 and the end of 2016. However, the works were suspended at various times in 2014, 2015, and 2017 due to acts of violence and sabotage against the facilities and machinery. The construction of the hydropower plants has been suspended since January 2017 and the construction of the transmission line has been suspended since September 2018.

B. The Request

Allegations of environmental, social, security, and gender-based impacts due to inadequate assessment and supervision

On August 6, 2018, MICI received a request related to the Projects from local authorities and individuals from Ixquisis (or Yich K’isis), belonging to the Maya Chuj and Maya Q’anjob’al indigenous peoples, from the communities of Bella Linda, Yulchen Frontera, Nuevo San Mateo, Pojom Nueva Concepción, and Caserío San Francisco, all in the municipality of San Mateo Ixtatán, represented by the Q’anjob’al, Popti, Chuj, Akateko, and Mestizo Plurinational Ancestral Government. The Requesters also have the support of the Interamerican Association for Environmental Defense (AIDA) and the International Platform against Impunity.

The Request alleges that the Projects have had environmental, social, security and gender-based impacts that have adversely affected the residents of the area of influence, particularly the indigenous populations. It specifically describes various effects on the Requesters’ living conditions, mainly due to the absence of an adequate and complete assessment of the Projects’ environmental and social impacts and the failure to take appropriate prevention or mitigation measures. It also describes the Requesters’ strong fear of reprisals as a consequence of filing the Request before MICI because community members who oppose the Projects have faced persecution. For this reason, they asked MICI to keep their identities confidential.
C. The Compliance Review

Eight topics for a thorough investigation

On June 3, 2019, the Board of Executive Directors approved by short procedure the Recommendation for a Compliance Review and Terms of Reference (Document CII/MI-17-4) to investigate compliance with the IDB Invest’s operational policies in relation to the following topics:

1. Identification of the affected population as indigenous.
2. Differentiated impacts based on gender.
3. Information disclosure and community participation mechanisms.
4. The increase in conflict, violence, and deterioration of the social fabric of the community.
5. Assessment of impacts on cultural heritage and potential impacts on indigenous sacred sites.
6. Assessment and identification of environmental impacts, in particular, water pollution, impacts on ecosystem services, and impacts on critical natural habitats.
7. Assessment of cumulative impacts.
8. Environmental and social categorization of the Projects.

The Compliance Review Panel consisted of three independent environmental, social, and security experts and was assisted by the CRP team. The coordinator of the Compliance Review Phase served as chairperson. The investigation took place between August 2019 and April 2021 and involved a detailed document review and meetings in Washington, DC, and Guatemala, where meetings were held in the communities about the Projects. This allowed the team to meet with multiple requesters, IDB Invest officials, consultants, environmental and social experts, the Client, national and local authorities, international organizations, and individuals and civil society organizations directly or indirectly related to the Projects.

Under the MICI Policy, a preliminary draft of this report was sent to Management and the Requesters for comments on April 19, 2021. The Mechanism has reviewed these comments and made adjustments where appropriate in this final version. The comments from both parties are attached to this document. In addition, since many of the documents reviewed by MICI are confidential, the full information that enabled the Mechanism to make its determinations in this case is attached to this document. Because it contains confidential information, this annex is shared only with Management and the IIC’s Board of Executive Directors for their consideration of the report.
D. Findings of the investigation

Applicable standards
The eight topics investigated in this case relate to the compliance of IDB Invest with its Environmental and Social Sustainability Policy, the Disclosure of Information Policy, operational policies OP-703 (Environment and Safeguards Compliance), OP-765 (Indigenous Peoples), and OP-761 (Gender Equality in Development); and Performance Standards 1 (Assessment and Management of Environmental and Social Risks and Impacts), 3 (Resource Efficiency and Pollution Prevention), 4 (Community Health, Safety, and Security), 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources), 7 (Indigenous Peoples) and 8 (Cultural Heritage) of the International Finance Corporation.

Due diligence, plans, and studies
The Corporation’s involvement with the Projects began in March 2013. Due diligence (ESDD) was conducted between March and June 2013. Based on its recommendations, an environmental and social action plan (ESAP) was prepared, in which, among other measures, the Client was asked to provide a supplemental environmental and social impact assessment (ESIA) to consider previously unaddressed environmental and social issues. The Client was also asked to prepare an environmental and social management plan (ESMP) including measures to prevent, mitigate, and manage the environmental and social aspects of the Projects.

Identification and supervision failures, and a mere formal monitoring
MICI considers that IDB Invest generally failed to comply with several aspects of its assessment and supervision obligations regarding the safeguards that protect the areas under investigation. First, it failed to ensure that the assessments and processes for identifying certain environmental and social impacts complied with the requirements of the Relevant Operational Policies. Second, in its environmental and social supervision, it has failed to closely monitor many of the formal requests made to the Client in the environmental and social action plan (ESAP) or in the corrective action plans (CAP) to ensure that the Projects comply with the Relevant Operational Policies. Thus, supervision has often been treated as a mere formality that has resulted in compliance “on paper,” limited to disclosing documents or including measures in the project management programs, with no subsequent verification that the assessments and measures comply with the ROP or that they have been effectively implemented. This has resulted in deficient or insufficient supervision by the IDB Invest, in which many of the formal requirements have not been satisfied.

Improvement in 2020, although significant gaps remain
MICI found that, in 2020, IDB Invest included new environmental and social requirements and more specifically and concretely reiterated past requirements, several of which were linked to the issues addressed in the Request before MICI. In the environmental and social supervision of these requirements, conducted in November 2020, many of the Projects’ instances of noncompliance with the Relevant Operational Policies were addressed. These new or more specific requirements are a significant improvement in terms of including environmental and social considerations that had not been previously incorporated into the Projects or had not been
adequately monitored. Nevertheless, today, over seven years after the Operations were approved, there are still important gaps to be addressed.

Specific findings by topic of analysis:

**IDB Invest verified inadequate characterization of indigenous peoples**

Regarding the characterization of the affected population, MICI has determined that, despite ample information pointing to the indigenous identity of the majority of the population in this area of Guatemala, the EIA and the due diligence report concluded that the communities directly related to the Projects are Ladino, i.e., nonindigenous. These conclusions were made in reference to only three communities out of the many that are part of the Projects’ area of influence. **IDB Invest validated the position** that the directly affected population is predominantly Ladino, which kept the applicable policies on indigenous peoples (PIP) from being triggered. As a result, the specific safeguards that the IDB Group provides for indigenous peoples were not required. However, the studies characterizing the population as Ladino contain several limitations, contradictions, and omissions in their analysis that are inconsistent with the definitions of indigenous communities in the PIPs. In addition, the analysis of many aspects considered in these studies, such as language, dress, and religion, reveal the existence of indigenous traits in the population, which would have needed to be considered and assessed under the PIPs, especially in projects that affect natural resources vitally important to indigenous peoples. The characterization of the population as Ladino was not the result of a technical and systematic assessment that took into account the self-determination and perspective of the potentially indigenous communities in order to characterize them during the preparation phase of an operation, as required by the PIPs. Therefore, MICI concludes that **IDB Invest failed to comply with its Sustainability Policy, the Operational Policy on Indigenous Peoples (OP-765), and PS7 (Indigenous Peoples).**

**Insecurity and access to water: lack of gender-differentiated impact analysis**

Concerning gender-differentiated impacts, MICI found that the Projects lacked a gender-differentiated approach, both during the initial environmental and social assessment and during subsequent supervision. The population in the area where the Projects are located is 51% women (mostly indigenous), who bear the brunt of the local communities’ situation of vulnerability. The project documents provide evidence of impacts that, given the common and traditional practices of women in the area, could affect them in a differentiated or aggravated manner. These include impacts on ecosystem services and access to water, as well as insecurity and the possibility of gender violence due to the influx of outside workers to the area and the stationing of police and army detachments because of increased social unrest surrounding the Projects. Nevertheless, **IDB Invest failed to ensure that an assessment was conducted to identify potential gender-differentiated impacts on women and girls in the area,** as required by the Operational Policy on Gender Equality in Development (OP-761), so the most appropriate prevention and mitigation measures could be adopted. The intersection of the failure to identify the population as indigenous and the absence of a gender perspective in the Projects may have exacerbated the consequences of this lack of gender impact assessment.
**Supervision of gender equity limited to labor issues**

As part of the Projects, IDB Invest called for ensuring the equitable participation of women in consultations and benefits and for a gender equity policy in the hiring of labor. However, its supervision of these requirements has been limited to the issue of gender equity in the workplace. IDB Invest has also validated the consultation processes without evidence that efforts have been made to consult or ensure the equitable participation of women through gender-sensitive processes, as required by the ROPs. These processes should consider the formats and the time and space requirements best suited to the sociocultural characteristics of the women in the area. Nor is there any record of any particular measures having been required, until 2019, regarding the risk of gender-based violence, despite the potential risk posed by the labor influx and the deployment of security forces in small and remote communities. MICI therefore concludes that, in terms of the assessment and management of gender-differentiated impacts, **IDB Invest failed to comply with its Sustainability Policy, the Operational Policy on Gender Equality in Development (OP-761), and PS1 on Assessment and Management of Environmental and Social Risks and Impacts.**

As of 2020, several actions have been taken to correct these instances of noncompliance. However, IDB Invest has yet to ensure the effective implementation of these gender-related requirements, particularly in terms of conducting a differentiated impact assessment and determining, designing, and implementing the appropriate prevention or mitigation measures.

**Meetings, surveys, and assemblies with limited participation, no meaningful consultation**

Regarding the information disclosure and community participation mechanisms, MICI has ascertained that the Projects conducted local perception surveys, and held community assemblies or informational meetings, as reflected in meeting minutes and letters of endorsement. **IDB Invest validated these processes**, carried out between 2008 and 2014, as consultation processes in line with the ROPs. However, these meetings do not reflect community consultations and participatory processes designed based on a comprehensive and systematic identification of all stakeholders. Nor do they reflect two-way discussions in which the communities have been informed of the either the adverse impacts or the benefits of the Projects. There was no finding that the minimum information required by PS1 had been disseminated or disclosed to the communities or that feedback, opinions and comments from the affected communities had been heard and considered, as required by the ROPs. The records show that the meetings validated by IDB Invest as consultation processes were informational sessions that mainly dealt with the construction process and the benefits of the Projects. Therefore, MICI finds that, although IDB Invest formally required the design and implementation of consultation processes, community participation mechanisms, and the availability of a project-level grievance mechanism, **IDB Invest failed to ensure that the consultations were meaningful in practice and that the community engagement processes and grievance mechanism complied with the requirements of the ROPs** (in terms of engagement with the population that opposes the...
Projects, the availability and disclosure of information, and the adaptation to the specific circumstances and context of the area).

In this case in particular, the community participation mechanisms and social assessments of the Projects failed to adequately consider the opinion of the sectors that opposed the Projects. IDB Invest made efforts and funded a study to determine whether the Projects enjoyed broad community support. Although this study found that such support existed, it also found that it was not informed support and that it was largely based on the expectation of benefits. Therefore, this study did not remedy the absence of meaningful consultation. Furthermore, during its supervision of the Projects, IDB Invest has not ensured that the grievance mechanism is being implemented as required by the ROP, especially in terms of community outreach and adaptation to the adverse risks of the Projects. Therefore, MICI concludes that **IDB Invest failed to comply with its Sustainability Policy, Directive B.6 of its Environment and Safeguards Compliance Policy (OP-703), and PS1.**

MICI further concludes that **IDB Invest did comply with its Disclosure of Information Policy regarding the category B project requirements,** as it published the summary of the environmental and social review on its website and, exercising the discretion granted by this policy, published some of the Projects’ EIAs.

**A complex historical context of insecurity and violence exacerbated by the projects**

With regard to impacts on social cohesion, violence, and insecurity, MICI has found that the Projects are being implemented in a complex environment in which multiple underlying drivers of conflict interact. Since their startup, the level of conflict has escalated, affecting social cohesion within the communities. Since 2014, there have been a number of serious acts of violence associated with the Projects. These include five instances of sabotage, which involved the burning of machinery and the toppling of transmission line poles (2014, 2016, 2017, and 2018); the murders of at least seven people, one of them during a demonstration against the Projects; and multiple allegations of injuries, arrests, threats, and intimidation, as well as gender-based violence.

**Insufficient, untimely, and incomplete review of identified risks**

In relation to these facts, MICI has determined that, although the environmental and social assessment identified the risks of social conflict, the IDB Invest's review and supervision has been insufficient, untimely, and incomplete. Despite the fact that the area where the Projects are being implemented has historically been—and is—characterized by a level of insecurity and polarization that would have warranted special attention from IDB Invest, the risk analyses failed to assess the real and specific risks of violence that the Projects could bring to the area. These analyses instead focused on the risks that social conflicts could pose to the execution of the Projects, rather than the risks that the Projects could create for the communities.

**A security plan and a consultant specializing in human rights**

Specifically, regarding security measures for the Projects, IDB Invest required a security plan to be developed. Following the acts of violence and sabotage in 2014, IDB Invest also hired a
consultant specializing in security and human rights issues to advise and support the development and implementation of this security plan and the other requirements of the ROPs. In 2015, this consultant identified a number of important gaps in security safeguards and made several recommendations; but then IDB Invest failed to perform a close, ongoing, on-the-ground verification of the implementation of these recommendations, or at least did not do so with the urgency that the situation warranted. Thus, most of the adjustments that have been made have been limited to formal and late compliance. While the supervision of these issues has improved since 2020, MICI concludes that, after more than eight years of limited compliance and serious security incidents related to the Projects, IDB Invest has failed to ensure that the preventive and security control measures of the Projects were aligned with international good practice, as required by the ROPs.

MICI additionally finds that there was no proper assessment or supervision of the Projects’ capacity to manage social risks. The Client’s ability to implement the Corporation’s social safeguards was not reviewed prior to the approval of the Operations, as required by the ROPs; and although it was required that the Projects have a trained social manager, IDB Invest did not review compliance with this requirement between 2017 and 2019. This fundamentally affected the ability to efficiently manage social risks, such as the social conflicts that materialized around these Projects.

Therefore, MICI concludes that IDB Invest failed to comply with its assessment and supervision obligations in relation to assessing and taking measures to prevent and mitigate social conflicts, and to assess and supervise risks and measures associated with the Projects’ capacity to manage social impacts and meet the safety and security requirements set out in the Sustainability Policy, OP-703 Directive B.4, PS1, and PS4 (Community Health, Safety, and Security).

An archaeological site protected but without consultation with local communities
With regard to cultural heritage, the area where the Projects are being implemented is rich in archaeological remains. Since the beginning, it was identified that one of the hydroelectric plants, Generadora San Mateo (GSM), would affect the Ixquisis archaeological site. IDB Invest complied with the requirement of demanding that measures be taken to protect this cultural site and asked for a chance finds procedure to be implemented for the management of possible additional discoveries. However, contrary to the requirements of the ROP, the local and indigenous communities were never consulted on the intangible (cultural or spiritual) value they assign to this archaeological site. Their perspective could have been considered, both in analyzing the degree of impact and in designing the respective prevention or mitigation measures. Potential impacts on other sites in the project area that are part of the cultural heritage of these communities could also have been identified. The studies on the archaeological remains in the area of Ixquisis focus on the historical and archaeological value of the site for the whole country, but do not assess the value it may have for the local or indigenous communities. This lack of consultation on cultural heritage has also prevented the communities from knowing the plans and procedures for the management of archaeological finds, which may have led to many of the allegations of theft of archaeological material in this case. MICI concludes that IDB
Invest complied with its Sustainability Policy, OP-703 Directive B.9, and PS8 (Cultural Heritage), in terms of requiring measures for the conservation and protection of the archaeological site but failed to require that the affected communities be consulted on this cultural heritage. Specifically, regarding the indigenous population in the project area, IDB Invest also failed to comply with OP-765 (Indigenous Peoples) and PS7 (Indigenous Peoples).

**Adequate supervision of measures to prevent pollutants and sediments, but deficient water quality monitoring**
With regard to environmental impacts, the assessments identified that the Projects could create risks of river pollution and impacts on the quality of water sources used by the local communities. This is due, among other reasons, to wastewater, possible oil spills, and erosion. To address these potential impacts, the Projects’ environmental management plans included several prevention and mitigation measures, and IDB Invest complied with the requirement to request specific measures for water quality control, erosion control, and the management of pollutants. MICI finds that IDB Invest adequately monitored the measures related to pollutants and sediment entrainment, identifying cases of noncompliance, and requesting corrective actions from the Projects when necessary. Nevertheless, the Projects’ monitoring of water quality control mechanisms has been inconsistent and deficient, and IDB Invest did not succeed, until 2020, in supervising all the agreed requirements effectively. Therefore, regarding impacts on water sources, MICI concludes that IDB Invest complied with the Sustainability Policy, with Directive B.5 of OP-703, and with PS1 and PS3 (Resource Efficiency and Pollution Prevention); but it failed to comply with the Sustainability Policy and Directive B.7 of OP-703.

**Inadequate assessment of impacts on ecosystem services**
Although the Projects’ environmental and social due diligence identified that the environmental assessments did not address potential impacts on ecosystem services, the assessments submitted and accepted by IDB Invest to address this gap do not meet the requirements of the ROPs for these types of impacts: (i) they do not identify ecosystem services comprehensively; (ii) they do not identify the indigenous peoples’ differential uses; (iii) they did not involve consultations with communities to identify priority services; and (iv) they included no determination as to the effects of the Projects‘ intervention in the rivers or relevant mitigation measures. Therefore, MICI concludes that IDB Invest failed to ensure that the Projects included an adequate assessment of the impacts on ecosystem services, failing to comply with its Sustainability Policy, Directives B.5 and B.6 of OP-703, and PS1 and PS6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources).

**Improper identification of critical natural habitats and risks to these habitats**
Initial environmental assessments of the Projects identified that the transmission line could affect the Cuchumatanes mountain range and the Los Ángeles-Soloma-Todos Santos mountains, which are internationally recognized areas. Due diligence indicated the need for a critical natural habitat study, which was required of the Projects by IDB Invest. The Projects submitted an assessment that IDB Invest initially considered partially satisfactory; but, in 2020, it was found to lack several ROP requirements because it failed to properly identify critical natural habitats.
and internationally recognized areas and to establish the risks and direct impacts on them. To date, these requirements have not been met, despite the fact that this gap was first identified in 2013. MICI finds that IDB Invest did not ensure compliance with these requirements and therefore failed to comply with its Sustainability Policy, OP-703 Directives B.5, B.7, and B.9, and PS1 and PS6.

**Change of opinion on the need to assess cumulative impacts**

The environmental and social assessments of the Projects do not include an assessment of the potential cumulative impacts. Initially, IDB Invest’s environmental and social review identified the need for a cumulative impact assessment in light of other projects planned in the Projects’ area of influence. However, it was later agreed that such an assessment would be necessary only if another hydroelectric project was developed in the area. This was a change to the initial environmental requirement (which referred to other projects in the area and not only to hydroelectric projects), with no rationale or assessment having been provided. Therefore, MICI concludes that IDB Invest failed to comply with its Sustainability Policy, OP-703 Directives B.5 and B.7, and PS1, by failing to ensure that the Projects included an assessment of cumulative impacts linked to the presence of other projects in the area, so that suitable mitigation measures could be established if such risks or impacts were encountered.

**Improper categorization with repercussions on requirements**

Regarding the environmental and social categorization of the Projects, they were classified by IDB Invest as category B projects. This category corresponds to projects with impacts that can be prevented or mitigated by following generally recognized performance standards, guidelines, or design criteria. However, the documents examined by IDB Invest during the categorization stage reveal potentially significant impacts that would correspond to category A projects. This is due to: (i) the presence of indigenous communities; (ii) a high social risk, in an area with a historically high-risk context and a vulnerable population; and (iii) potential impacts on the Cuchumatanes mountain range and the Los Ángeles-Soloma-Todos Santos mountains, all considered critical natural habitats in the area of influence of the transmission line. In fact, Management has indicated that it considers the Projects to be category A and has treated them as such internally. MICI considers that this internal treatment jeopardizes the assurance of compliance with all the requirements for a category A project because those requirements have not been formally imposed and their application is at IDB Invest’s discretion, thus it is not sufficient to correct the Projects’ categorization error. Therefore, the Mechanism concludes that IDB Invest failed to comply with the Sustainability Policy and Directive B.3 of OP-703, by when it assigned a category B to these Projects, which presented significant potential risks or impacts typical of a category A project.

**Noncompliance may have contributed to harm**

Finally, in relation to the harm alleged, MICI has determined that the noncompliance observed in this case may have contributed to actual or potential harm to the Requesters. The absence of complete and adequate environmental and social assessments, appropriate measures to prevent and mitigate impacts, meaningful consultation, and adequate supervision by IDB Invest means that the safeguards it has designed to prevent or mitigate the environmental and
social impacts of its operations have not been applied, and therefore the risk of such impacts remains.

E. Recommendations

Redirect project compliance and strengthen IDB Invest’s performance
Based on the findings of this Compliance Review Report, MICI proposes, for consideration by the Board of Executive Directors, a number of recommendations for corrective actions to bring the projects into compliance with the operational policies that have not been complied with. It also includes institutional actions intended for IDB Invest, with the aim of preventing the recurrence of such noncompliance in other IDB Invest-financed operations, thus strengthening the environmental and social safeguards system. Below is a simplified summary of these recommendations, which are described in more detail in Chapter IV of this report.

<table>
<thead>
<tr>
<th>Characterization of the affected communities as indigenous</th>
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<tbody>
<tr>
<td><strong>Recommendation 1</strong> Establish a social baseline of the affected communities, including their identification as indigenous, based on the requirements established in the report.</td>
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<td><strong>Recommendation 2</strong> Strengthen IDB Invest’s environmental and social safeguards unit in the area of indigenous peoples to ensure that its staff understand and are able to apply the ROPs on indigenous peoples, based on the requirements in the report.</td>
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<td><strong>Recommendation 3</strong> Integrate the IDBG’s indigenous specialists into investment projects in areas of the region with a high indigenous population, beginning at the screening stage.</td>
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<th>Gender-differentiated impacts</th>
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<td><strong>Recommendation 4</strong> Conduct a gender-differentiated impact assessment, including the requirements established in the report.</td>
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<td><strong>Recommendation 5</strong> Mainstream a gender perspective into the Projects’ communication strategy (external and internal) and in their grievance mechanism, which should include the characteristics stated in the report.</td>
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<td><strong>Recommendation 6</strong> Design, incorporate into the Projects’ ESMP, and implement a Sexual and Gender-Based Violence Prevention Protocol that includes the requirements established in the report.</td>
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<td><strong>Recommendation 7</strong> Strengthen IDB Invest staff’s understanding, competence, and capacity to implement the gender safeguard requirements, as stated in the report.</td>
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<td><strong>Recommendation 8</strong> Establish a blanket zero tolerance policy toward gender-based violence as part of IDB Invest’s environmental and social safeguard policies, which should include the requirements established in the report.</td>
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<td>Recommendation</td>
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<tr>
<td><strong>Information disclosure and community participation mechanisms</strong></td>
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<td>Recommendation 9</td>
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<td>Recommendation 10</td>
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<td>Recommendation 11</td>
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<tr>
<td><strong>Impacts on social cohesion, violence, and insecurity</strong></td>
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<td>Recommendation 12</td>
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<td>Recommendation 21</td>
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<tr>
<td><strong>Cultural heritage</strong></td>
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<td>Recommendation 22</td>
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<td>Recommendation 23</td>
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<tr>
<td><strong>Environmental impacts</strong></td>
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<td>Recommendation 24</td>
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<td>Recommendation 25</td>
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<tr>
<td><strong>Cumulative impacts</strong></td>
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<td>Recommendation 26</td>
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<tr>
<td><strong>Environmental and social categorization of the Projects</strong></td>
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<td>Recommendation 27</td>
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<td>Recommendation 28</td>
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<tr>
<td><strong>Recommendation for an action plan</strong></td>
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<td>Recommendation 29</td>
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I. BACKGROUND AND CONTEXT

A. Geographic and social context

1.1 Two hydroelectric projects and a transmission line in San Mateo Ixtatán. The Generadora San Mateo S.A (GSM) and Generadora San Andrés S.A. (GSA) hydroelectric projects and the Innovación Noroccidente transmission line (NTL) are located in the northern part of the municipality of San Mateo Ixtatán (SMI), in the department of Huehuetenango in northwestern Guatemala, near the Mexican border and 425 km from Guatemala City. These projects involve the Pojom, Negro, Primavera (later renamed Yalwitz), Varsovia, and Tercer Arroyo rivers, which are part of the drainage basin that empties into the Gulf of Mexico.

1.2 A small, predominantly agricultural municipality with a rural and indigenous population. The municipality of SMI has a population of 43,810 inhabitants, spread across villages and hamlets in high mountain areas in the Cuchumatanes mountain range. This area is well suited for farming crops such as maize, beans, cardamom, and coffee, among others, as well as forestry development for economic and sustenance purposes. Villagers also practice traditional mining and carry out artisanal, agricultural,

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4 EIA, Pojom II, 2010 pp. 35, 236; EIA, Pojom II Final Layout Determination, 2012, p. 83; EIA, San Andrés Final Layout Expansion, 2013, p. 1; EIA, San Andrés, 2012 p. 1. This EIA clarifies that Tercer Arroyo is a stream adjacent to the Varsovia River that is not named in the maps used, p. 81. In some documents, this river is identified as Palmira.
5 INE Census, 2018.
and livestock activities, which are their main sources of income. The population of the municipality of San Mateo Ixtatán is mostly rural and of indigenous origin.

Table 1.1
Demographic indicators of San Mateo Ixtatán

<table>
<thead>
<tr>
<th>INE Census</th>
<th>Population (inhab.)</th>
<th>Area</th>
<th>Ethnic Group/Ethnicity</th>
<th>Sex</th>
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<tr>
<td></td>
<td>Year Total Rural Urban Indigenous/ Maya Nonindigenous/ Ladino Women Men</td>
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<td>2002 29.993 69% 31% 96% 4% 51% 52%</td>
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<tr>
<td></td>
<td>2018 43.810 66% 34% 98% 2% 49% 48%</td>
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1.3 Social indicators of poverty and marginalization. The municipality has poor educational coverage, low electrification rates, and limited access to health programs. This is reflected in its socioeconomic indicators, which show a high level of marginalization. In all, 41.2% of the population lives in extreme poverty, 80% is malnourished, 76% is illiterate, 68.1% has no access to electricity for lighting, and only 2.03% has access to electricity for cooking (97.12% uses firewood). The most rural municipalities of Huehuetenango, such as San Mateo Ixtatán, have the highest poverty rates in the department, are the most remote, and have the largest indigenous population.

1.4 Complex historical context of violence and insecurity. The municipality of San Mateo Ixtatán has been historically marked by conflicts of various types and by the aftermath of the violence that occurred during Guatemala’s internal armed conflict (1960-1996). This period exacted a heavy toll on the region and its population, which suffered systematic executions, massacres, and forced disappearances and migration. The conflict and violence led to a deep sense of injustice in the community that prevails to this day. Many of the divisions caused by the armed conflict spilled over into other areas such as conflicts over land ownership, distrust of state security forces, and problems due to the lack of basic public services. Because of its location near the Mexican border, the region also faces considerable insecurity due to criminal organizations, smuggling, and high levels of migration. More recently, in this and other

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7 The INE Census of 2002 only provides numerical data; the percentage data were calculated by MICI.
8 Reflects official census data available at the time of the Corporation’s involvement and the latest update.
neighboring municipalities, social conflict has intensified due to the rejection of hydroelectric and mining projects in the area.10

1.5 Social organization. The social organizations and traditional authorities of the past were eliminated during the armed conflict, destroying the existing social fabric. The communities have adopted other organizational forms, such as Community Urban and Rural Development Councils (COCODE), which mirror the structures of the State or of the development organizations operating in the area. The population is also influenced by various religious groups and different ancestral practices and forms of organization.11

B. The Projects

1.6 The hydroelectric plants. The loan operations to Generadora San Mateo S.A. (GSM) and Generadora San Andrés S.A. (GSA) finance the construction of two run-of-river hydroelectric projects with installed capacities of 20 MW12 and 10.65 MW, respectively. The GSM hydroelectric plant will use the waters of the Negro and Pojom rivers and will have an annual generation capacity of 120,087 MWh, with two turbines of 10 MW each. GSA will use the waters of the Primavera, Varsovia, and Tercer Arroyo rivers with a generation capacity of 44,300 MWh per year, with two turbines of 5 MW each.13 The plants, located adjacent to each other in San Mateo de Ixtatán, are being developed by IDB Invest’s Client Energía y Renovación S.A., and their construction was planned simultaneously.

1.7 The distribution line and its substations. In addition, a transmission line and several substations (the Innovación Noroccidente Project) will be built to deliver energy to the national distribution system. Electricity will be transported from the power plants along approximately 6 km of underground line to a step-up substation to be built between Ixquisis and Nuevo San Mateo, and then about 26.14 km overhead to connect to the

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12 A run-of-river project captures water at a riverbank through an intake, which may involve diverting a portion of the river. It transports the water to a sand trap and then to a surge chamber. From there, it is conveyed through a pipe to the powerhouse, where the moving water’s potential energy is transformed into kinetic energy (it loses force and gains speed). As the water reaches the powerhouse and moves the hydraulic turbine, the kinetic energy is converted into mechanical rotational energy that moves the shaft of the turbine, producing electrical energy through a generator controlled by a computer system. Finally, at a substation, this energy is transformed, transported, and distributed to consumers. UNDP, Fundación Solar and GEF, Centrales hidroeléctricas de pequeña escala, la experiencia de la Fundación Solar en Guatemala [Small-scale hydropower plants, the experience of Fundación Solar in Guatemala], January 2013, pp. 14-15. The original estimated production capacity of 23 MW was adjusted to 20 MW. EIA, Pojom II, 2010, p. 26; EIA, Pojom II Final Layout Determination, 2012, p. 2.
national power system in the municipal capital. The transmission line (NTL) will also be
developed by the Client and will be financed by the same hydroelectric operations. The
different substations will occupy a construction area of approximately 1,637.25 km² and
the total length of the NTL will be 32.6 km, with an easement of 12.5 m on each side (25
m wide). Its construction is under the responsibility of Empresa de Transmisión del Norte
S.A. (ETN), which was created for this purpose. The Projects were classified as
category B.

1.8 Loan approval. On 25 September 2013, the Board of Executive Directors of the then
Inter-American Investment Corporation (IIC), now IDB Invest, approved two loan
operations to support these projects:

<p>| Table 1.2 |</p>
<table>
<thead>
<tr>
<th>Loan Operations</th>
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<tbody>
<tr>
<td>Project</td>
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<tr>
<td>Generadora San Mateo S.A.</td>
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<td>Generadora San Andrés S.A.</td>
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1.9 Startup of works, interruptions due to sabotage, and suspension. Construction work
formally began in July 2013, although most of the work was carried out between mid-
2015 and the end of 2016. During 2014, 2015, and 2017, the Projects suspended work
at different times because of violent actions and sabotage against the facilities and
their machinery. Work on the hydroelectric plants and the transmission line has been
suspended since January 2017 and September 2018, respectively.

C. The Request

1.10 Who and when. On 6 August 2018, MICI received a request related to the Projects from
local authorities and individuals from Ixquisis (or Yich K’isis), belonging to the Maya
Chuj and Maya Q’anjob’al indigenous peoples, from the communities of Bella Linda,
Yulchen Frontera, Nuevo San Mateo, Pojom Nueva Concepción, and Caserío San
Francisco, all in the municipality of San Mateo Ixtatán, represented by the Q’anjob’al,
Popti, Chuj, Akateko, and Mestizo Plurinational Ancestral Government. They also
have the support of the Interamerican Association for Environmental Defense (AIDA)
and the International Platform against Impunity (“the Requesters”).

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14 EIA, Innovación Noroccidente, 2011, p. 4; EIA, Innovación Noroccidente, 2015, pp. 4, 5, 23, p. 4/12.
15 The loan contracts were signed in May 2015. There are also two IDBG technical cooperation projects associated
with these projects: (i) technical cooperation operation (TC) GU-T1270 on Public-Private Strategies for the
Development of Huehuetenango and Other Departments with a Large Mayan Population, approved by the IDB on 8
December 2017 and currently being implemented. Its objective is to develop a strategy to address social conflict,
coordinating public and private interventions and strategies to generate comprehensive and sustainable human
development for the communities of the municipality of San Mateo Ixtatán; and (ii) technical assistance operation
KORTF106, approved by the IIC in 2013 to perform technical due diligence and supervision of the construction, testing,
1.11 Allegations. The Request alleges that the Projects have generated environmental, social, security, and gender-related impacts that have adversely affected the residents in the area of influence, especially its indigenous populations. The Request specifically describes various adverse effects on the Requesters’ living conditions and environment, mainly due to the absence of an adequate and complete assessment of the Projects’ social and environmental impacts and the failure to take the appropriate mitigation measures.

1.12 The Requesters specifically allege: (i) pollution of water sources that serve as a supply for domestic and agricultural use; (ii) adverse impacts on flora and fauna species in the Ixquisis microregion; (iii) adverse impacts on indigenous peoples’ culture and traditional way of life, including damage to sacred sites and archaeological sites near the Projects; and (iv) lack of adequate forms of participation for the area’s population and of access to information about the Projects. They also report heightened risk and insecurity in the area and describe a breakdown of the family and community fabric, which they attribute to the development of the Projects. They allege human rights violations and violence that has resulted in at least seven deaths associated with the conflict surrounding the Projects. The Requesters add that all of these impacts have had a differentiated effect on women in the region.

1.13 Confidentiality for fear of reprisals. The Requesters have expressed to MICI a great fear of reprisals as a consequence of filing the Request before the Mechanism, and due to the persecution faced by community members who oppose the Projects. For this reason, they asked MICI to keep their identities confidential.

II. THE COMPLIANCE REVIEW

A. MICI Process

2.1 Eligibility process and determination. The Request was received by MICI on 6 August 2018; it was registered on 13 August, and Management’s Response was received on 19 September 2018. As part of the eligibility determination process, a MICI team carried out a mission to Guatemala, from 20 to 26 January 2019, which included visits to Guatemala City, Ixquisis, Santa Cruz Barillas, and Huehuetenango. The team held meetings with the Client, the facilitators of the Roundtable for Peace and Development, religious authorities, UN officials, representatives of the communities in favor of the Projects, civil society organizations (CSO), and the communities that submitted the Request to MICI. On 31 January 2019, the MICI director declared the Request eligible, except for the issue of compliance with the requirement of free, prior, and informed consultation, as provided for in ILO Convention 169 for projects affecting indigenous communities, as it is the subject of ongoing domestic legal proceedings.
2.2 **The Compliance Review.** On 15 February 2019, the case was transferred to the Compliance Review Phase (CRP). On 19 March 2019, MICI distributed to Requesters and Management (“the Parties”) the draft Recommendation for a Compliance Review and Terms of Reference for their comments, which were received on 30 April 2019. The final version was submitted to the Board of Executive Directors for consideration on 24 May 2019.

2.3 **Recommendation, terms of reference, and focus.** On 3 June 2019, the Board of Executive Directors approved the Recommendation for a Compliance Review and Terms of Reference (document CII/MI-17-4). The investigation focuses on determining compliance with the Environmental and Social Sustainability Policy of the IIC (Sustainability Policy), the Disclosure of Information Policy, Operational Policies OP-703, OP-765, and OP-761, and Performance Standards 1, 3, 4, 6, 7, and 8 in the following areas: assessment and identification of social impacts, particularly regarding (i) the identification of the affected communities as indigenous; (ii) gender-differentiated impacts; (iii) information disclosure and community participation mechanisms; (iv) the rise in conflict, insecurity, and violence, coupled with community fragmentation; (v) cultural heritage; (vi) assessment and identification of environmental impacts, in particular, water pollution, impacts on ecosystem services, and impacts on critical natural habitats; (vii) assessment of cumulative impacts; and (viii) environmental and social categorization of the Projects.

2.4 The Compliance Review Panel consisted of Arantxa Villanueva, as chairperson, and independent experts Jay Paul Wagner (social component), Jean-Roger Mercier (environmental component), and David Nyheim (security and violence component), assisted by MICI’s CRP team. The investigation was conducted from August 2019 to April 2021.

2.5 **Preliminary report and comments.** A preliminary draft of this report was sent to Management and the Requesters on 19 April 2021. On 8 June 2021, MICI received the Parties’ written comments, which were carefully examined. This final version of the report includes adjustments on the basis of some of the observations that MICI found pertinent.

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16 The IIC’s 2005 Disclosure of Information Policy applies to these projects.
17 The expert passed away on 5 July 2020, so the MICI team was assisted by Luis Enrique Sánchez to confirm data in the final stage of the Compliance Review process.
18 The investigation process required several extensions of the deadlines established in the MICI Policy. The circumstances brought about by the COVID-19 pandemic, a transition process at MICI due to a change in directors, and the environmental and social supervision of the Operations in 2020, among others, resulted in the deadline for the issuance of the Preliminary Compliance Review Report being extended to 19 April 2021.
19 The documents submitted by the Parties with their comments are available in the annexes section. In its response to the preliminary version of this report, Management informed MICI about an environmental and social supervision conducted by the IESC in 2019. The Mechanism had not been informed before about this supervision. At the same time, the IESC’s report was sent to MICI for its consideration.
2.6 **Confidential information.** Much of the documentation reviewed by MICI is confidential; therefore, the complete information that enabled the Mechanism to make its determinations in this case is attached to this document as Annex I. Because it contains confidential information, this annex is shared only with Management and the IIC’s Board of Executive Directors for their consideration.

**B. Methodology of the Compliance Review**

2.7 **Applicable policy framework and time period.** The Compliance Review process is governed by paragraphs 36 to 49 of the MICI Policy (CII/MI-1-1). In this case, it covers the period of the Corporation’s involvement in the projects, from March 2013 to March 2021.

2.8 **Documentation reviewed: IDB Invest, the Parties, and others.** The investigation involved the detailed study of over 750 documents to which MICI had access, including IDB Invest documents related to the Projects and other relevant documentation provided by the Parties and other actors.20

2.9 **MICI mission to Guatemala: 70 meetings and 470 interviews.** The investigation team also conducted a mission to Guatemala,21 which made it possible to hold over 70 meetings in Guatemala City, Huehuetenango, Barillas, and in the communities of Ixquisis, Yulchén Frontera, and Bella Linda. The team interviewed approximately 470 people, including Requesters, IDB Invest staff, consultants and environmental and social experts involved in the Projects, the Client, national and local authorities, international organizations, and civil society organizations and individuals directly or indirectly related to the Projects.22

2.10 **MICI mandate and factors analyzed.** The MICI Policy calls for a determination as to whether any noncompliance found has caused or could cause harm. However, the Policy establishes that the Compliance Review process is not a judicial proceeding and that MICI does not award compensation, damages, or similar benefits. MICI’s mandate is to review the IDB Group actions in relation to a specific operation under the framework of the ROPs. Because a determination of harm is not intended to serve as the basis for awarding compensation to an individual, the standard of proof used to establish harm differs from the standard used in judicial proceedings. MICI’s determination is therefore based on the analysis of several factors, mainly: the testimony of the Requesters, the documents and evidence they provide, the potential impacts identified by the project documents, and the observations made during the Compliance Review Mission.

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20 The complete list of documents consulted is available in the links section of this report.
21 The mission took place from November 4 to 12, 2019. In addition to this mission, the independent experts joined the MICI team in Washington, DC, from October 31 to November 2 for interviews at the IDB Invest’s headquarters.
22 A detailed list of the meetings held during the Compliance Review is available in the links section of this report.
C. Relevant Operational Policies

2.11 **Sustainability Policy and obligations of IDB Invest.** Under the MICI Policy, the scope of the compliance review is governed by the **Sustainability Policy**, as these Projects are financed by IDB Invest (formerly IIC). This policy establishes the following **general obligations for IDB Invest**: assess the potential environmental and social risks of operations **prior to their approval**; supervise compliance with the environmental and social conditions of operations throughout the project cycle; and implement the policy and ensure that the operations it finances comply with it.

2.12 **Environmental and social safeguards.** The **environmental and social safeguards** referred to in the Sustainability Policy are the Operational Policies of the IDB, the Performance Standards on Social and Environmental Sustainability of the International Finance Corporation (PS), the World Bank Group/International Finance Corporation Environmental, Health, and Safety Guidelines (EHS Guidelines), and relevant industry sector guidelines.

2.13 **The Performance Standards: principal benchmarks used by IDB Invest.** In this case, MICI notes that the assessment and supervision obligations undertaken by IDB Invest have been carried out, mainly, based on the requirements of the PS. Thus, the environmental and social due diligence (ESDD), the environmental and social assessment, and the ESAP and its supervision were conducted and organized around the performance standards, with some secondary reference to the Relevant Operational Policies of the IDB.

2.14 **The Relevant Operational Policies are also important.** Notwithstanding the above, and given that the IDB’s ROPs apply to these projects, MICI has reviewed IDB Invest’s compliance with both standards: the PS and the Relevant Operational Policies (ROP) of the IDB. In case of any discrepancy between IDB and International Finance Corporation (IFC) standards, the IDB policy prevails, as set forth in the IDB Invest Sustainability Policy.

D. Findings of the Compliance Review Process

2.15 **Environmental and social management of the Projects by IDB Invest.** The Corporation’s involvement with the Projects began in March 2013, and **Environmental and Social Due Diligence (ESDD)** was conducted between March and June 2013. Based on its recommendations, an **Environmental and Social Action Plan (ESAP)** was prepared. Among other measures, the Client was required to provide a supplemental **Environmental and Social Impact Assessment (ESIA)**, including an assessment of unaddressed environmental and social issues, and an **Environmental and Social Management Plan (ESMP)** detailing the Projects’ environmental and social programs and

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23 For more information on IDB Invest's ESDD process under the Sustainability Policy applicable to this case, see the IIC Environmental and Social Guidance Document.
procedures. Project supervision has been carried out mainly by independent environmental and social consultants (IESC) and by specialized consultants for review of specific issues. A more detailed timeline of the Projects is provided in Annex IV. The topics identified in the Terms of Reference, which are the subject of this investigation, are examined below.

1. Characterization of the affected communities as indigenous

   a. Requesters’ allegations and Management's Response

   2.16 The Requesters allege various adverse effects related to the failure to identify and consider the differentiated impacts on the mostly indigenous population in the Projects area. They maintain that its planning, development, and implementation has had and will have serious impacts on the indigenous population due to the violation of their right to consultation, the adverse effects on their culture, the disturbance of sacred and ceremonial sites, and harm to their indigenous way of life. They allege that this particularly affects indigenous women, who have built their worldview and way of life around the river.

   2.17 Management states that, although the environmental and social assessment concluded that most of the population surrounding the Projects is not indigenous, it has required the Client to consider differentiated impacts on and benefits to indigenous communities.

   b. Relevant Operational Policies

   2.18 The Sustainability Policy establishes that, prior to the approval of investment proposals, IDB Invest assesses the likely environmental and social risks and impacts to verify that they comply with the policy and other related standards and guidelines. It also notes the IDB Invest’s commitment to international good practice regarding all social aspects of every project it finances, including human rights. This entails requiring clients to ensure that indigenous people and other vulnerable groups are involved and included, and that adverse impacts on indigenous peoples are prevented and minimized, in keeping with OP-765 and PS7.

   2.19 Concerning the analysis of the obligation to assess the possible indigenous identity of the affected communities, OP-765 and PS7 (policies on indigenous peoples, or PIP) specifically require that the environmental and social risks and impact assessment process identify the indigenous peoples who may be affected by the Projects. Both standards contain definitions of communities or indigenous peoples, as shown in Table 2.1 below.
Table 2.1
Definition of indigenous communities or peoples in the ROPs

<table>
<thead>
<tr>
<th>OP-765</th>
<th>PS7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peoples who meet the following criteria:</td>
<td>Groups possessing the following characteristics in varying degrees:</td>
</tr>
<tr>
<td>i. they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization;</td>
<td>• Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;</td>
</tr>
<tr>
<td>ii. irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural institutions and practices; and</td>
<td>• Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;</td>
</tr>
<tr>
<td>iii. they recognize themselves as belonging to indigenous or precolonial cultures or peoples.</td>
<td>• Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture; or</td>
</tr>
<tr>
<td></td>
<td>• An indigenous language, often different from the official language of the country or region</td>
</tr>
</tbody>
</table>

2.20 OP-765 states that IDB Invest will require and verify that the project proponent conduct an evaluation to determine the seriousness of potential adverse impacts on indigenous peoples, identifying those affected. It also requires that, during the programming and identification stages, IDB Invest do a technical and systematic review of the operation, considering the perspectives of indigenous peoples to determine their presence and whether indigenous peoples might be affected. Depending on the nature, scope, and intensity of the impacts identified, IDB Invest will determine the level of analysis needed to address indigenous issues, including sociocultural analyses and good faith consultation and negotiation processes. Both policies consider the possibility of assistance from indigenous experts for this review, and OP-765 provides that, whenever possible, input should be sought from indigenous peoples who may be affected by the project.

c. MICI’s findings and compliance determinations

Summary

The municipality where the Projects are being carried out has a majority indigenous population (86% to 96% of the total population). However, the environmental and social assessment determined that three of the communities directly affected by the Projects were mostly Ladino (nonindigenous). The Projects’ area of influence includes at least 12 communities.

IDB Invest validated the conclusion, contained in the EIAs and the due diligence report, that the affected population was predominantly Ladino. This kept the applicable policies on indigenous peoples (PIP) from being triggered and, therefore, the specific safeguards that IDB Invest provides for these populations did not have to be applied. But a review of these studies shows several limitations, contradictions, and omissions in this characterization that are inconsistent with the definitions of indigenous communities in the policies on indigenous peoples (OP-765 and PS7). In addition, the analysis of many of the aspects considered in these studies, such as language, dress, and religion, reveal the existence of indigenous traits in the population,
which would have needed to be considered and assessed under the PIPs, especially in projects that intervene in natural resources vitally important to indigenous peoples.

Therefore, the characterization of the population as Ladino was not the result of a technical and systematic assessment that took into account the self-determination and perspective of the potentially indigenous communities, in order to characterize them during the preparation phase of an operation, as required by the PIPs. **MICI concludes that IDB Invest failed to comply with its Sustainability Policy, OP-765, and PS7.**

2.21 **Importance of correctly identifying the indigenous population.** Ascertaining whether the population potentially affected by IDB Invest-financed projects is indigenous is an **essential point.** It is the factor that determines whether the PIPs apply to the project and, therefore, **ensures its sociocultural viability.** This makes it possible to ensure the specific assessment of the potential risks and adverse impacts on these population groups and the most appropriate ways to address them based on their needs and in consideration of their perspective as indigenous peoples. This **should be done in a preliminary assessment** to determine, from the early stages of IDB Invest’s involvement, whether the project has potential direct or indirect adverse impacts on indigenous peoples and to identify those impacts, if any. To this end, the PIPs include elements for identifying a potentially affected population as indigenous.

2.22 **IDB Invest did not sufficiently review or verify the indigenous population determination.** In this case, **MICI has found that, despite ample information to confirm the indigenous character of this area of Guatemala, it was determined that the population directly affected by the works was Ladino. Thus, it considers that IDB Invest failed to sufficiently review the Operations to determine the possible presence of and impact on indigenous peoples in the area and failed to verify whether the Client had identified the affected indigenous peoples. Regarding IDB Invest’s review, it is noteworthy that, from the beginning of its involvement, the Corporation knew these projects were in a geographical area that includes indigenous territories; it had been documented that most of the population belonged to indigenous peoples of different ethnicities, and that these projects affect natural resources of vital importance to indigenous peoples. As stated in PS7, the culture, identity, traditional knowledge, and oral histories of indigenous peoples are connected to and maintained through their use of, and relationship with, the lands on which they live and their natural resources, which may be sacred or have spiritual significance.**

2.23 **The population is 86% to 96% indigenous.** The different environmental impact assessments (EIA) of the Projects and the transmission line indicate that **the population of the municipality of San Mateo Ixtatán is mostly indigenous (between 86% and 96% in the entire municipality),** detailing the different ethnic groups of Mayan origin that make up this population. **In describing the culture of the municipality, they state that:**

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24 IFC, PS7, p. 5; IFC, PS7, GN2, p. 2.
25 The Chuj, Q’anjob’al and Atiteco Mayan ethnic groups are specifically noted. EIA, Pojom II, 2010, pp. 319-320; EIA, Pojom II Final Layout Determination, 2012, pp. 155, 162; EIA, San Andrés, 2012, p. 152; EIA, San Andrés Final Layout
The predominant ethnic group is indigenous, [...] culturally, they are classified as a Mesoamerican ethnic culture. They still reserve the right and access to their own form of a Mayan worldview, which is expressed in a mythological relationship with the earth, [...] water [...]. Despite outside cultural influences, the inhabitants have kept their deeply rooted millenary traditions.26

2.24 Ladino population between 95% and 100% in three communities. The same EIAs that described a majority indigenous population in the municipality indicate that the communities “directly related” to the Projects are predominantly (95% to 100%) Ladino, that is, a “nonindigenous, Spanish-speaking, Western-dressing” population.27 These percentages refer to three communities considered to be affected by the Projects (Ixquisis, El Platanar, and Bella Linda), although with respect to GSA, the EIA adds that the project will affect the community of Primavera and, with respect to the Northwestern Transmission Line (NTL), it states that it will pass through eight other communities and the microregion of T’iaktak.28 The reviewed documents contain no source from which this conclusion could be drawn. Nor is there any evidence of a social baseline study29 that would lead to the conclusion that the majority of the potentially affected population could be characterized as Ladino.30

2.25 IDB Invest validated that the majority of the population was Ladino. IDB Invest’s environmental and social assessment of the Projects validated the perspective that the population directly affected was mostly Ladino, thus precluding the activation of the PIPs and, with it, the application of the specific safeguards that IDB Invest provides for indigenous populations. There is no technical basis for the assertion that the affected population is Ladino, and it even relies on contradictory information contained in the documents reviewed by IDB Invest. As a result, there was no analysis of the indigenous

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28 EIA, Innovación Noroccidente, 2011, pp. 17, 149-151; EIA, Innovación Noroccidente, 2015, pp. 4, 17. The EIAs state that public outreach was conducted in the project’s area of influence. They do not specify which area, but they include photos of meetings in Ixquisis, Platanar, Bella Linda, El Poblado, Yalanhuitz, and Santa Rosa.
29 The EIAs mention that surveys were carried out among the area’s residents to gauge their perception of the projects, but not to characterize or establish a social and cultural baseline of the population, so they did not include questions about the respondents’ ethnic identity or self-identification. EIA, Pojom II, 2010, pp. 342-355; EIA, Pojom II Final Layout Determination, 2012, p. 170, Annex 4; EIA, San Andrés, 2012, pp. 167-174, 183-185, Annex 8; EIA, San Andrés Final Layout Expansion, 2013, pp. 154-159, Annex IV. EIA, Innovación Noroccidente, 2011, pp. 143-146, Annex IV, EIA, Innovación Noroccidente, 2015, pp. 119-122, Annex III.
30 Only the first EIA for Pojom II explains (i) social and cultural transformations resulting from armed conflict, forced migration, or language displacement in the area by Ladinos, and (ii) characteristics such as a concentrated population pattern, as opposed to the dispersed pattern of indigenous communities, among other factors, to support the characterization of the area’s population as Ladino. EIA, Pojom II, 2010, pp. 357, 361, 363, 383-388, 436-444.
characteristics of the area’s population in line with the criteria or definitions expressly established in the PIPs.

2.26 Insofar as the Projects’ EIAs classified the directly affected population as Ladino, they also failed to include an assessment of impacts on indigenous communities; nor did they provide for any attendant prevention, mitigation, or compensation measures.

2.27 Why the population was defined as Ladino. To reach the conclusion that the majority of the population was Ladino, the project documents (including the EIAs) mention elements such as the prevalence of the Spanish language; at the same time, they refer to the need for interpreters to be able to interact with some members of the communities. They also specify that the younger population is bilingual and uses more Spanish and that men also communicate in Spanish, but that women and the older adult population communicate in Mayan languages. They stated that Chuj is being displaced as the predominant language in the municipality because the indigenous people have been forced to speak Spanish to buy and sell products or handle other affairs in the cities, and even prefer to identify themselves as Ladinons because of the pejorative attitudes that exist around being perceived as indigenous or “indio”. Another element used to define the population as Ladino is dress, i.e., whether the residents wore traditional clothing on a regular basis. The documents also refer to the observance of different religions, including traditional Mayan practices besides Catholicism.

2.28 The application of the PIPs and their obligations was not required. The data mentioned in the previous paragraph are used to justify the supposed Ladino status of the population; however, these same data also reveal the existence of indigenous population traits, which needed to be considered and evaluated under the PIPs. This was not done. On the contrary, the application of the PIPs was ruled out and the Client was not subject to any specific requirements related to complying with the obligations of those policies, i.e., identifying the potentially affected indigenous population, assessing the specific risks or adverse impacts, and determining measures to prevent, mitigate, or offset them, ensuring the effective participation of these populations pursuant to their rights as indigenous peoples.

2.29 The conclusions of the ESDD are reflected in the environmental and social review of the Projects (ESRS), published on the IDB Invest website, which indicates that most residents of the areas adjacent to the Projects are Ladinons, or Spanish-speaking Guatemalan citizens who do not follow an indigenous way of life.

2.30 Notwithstanding this characterization of the population as Ladino-majority and the resulting non-applicability of the PIPs, it is asserted that the Client has followed best practices in relation to the “indigenous component of the local society.” However, there

32 ESRS GSM & GSA, Section on Indigenous Peoples.
is no indication of the need for any assessment or analysis of the presence of indigenous groups in the area that could be affected by the Projects.

2.31 **Self-determination**, which is one of the most important aspects of the definition of indigenous peoples in the PIPs, was not examined in IDB Invest's environmental and social assessment. In this regard, and contrary to what was emphasized in the ESRS, the PIPs do not require that a community be monolingual; it can also be a group of indigenous peoples residing in mixed settlements, where the affected indigenous peoples are only a part of the more broadly defined community.\(^{33}\)

2.32 **Contradictions.** OP-765 requires a technical and systematic review, considering the opinion of the potential indigenous communities, in order to make this characterization at the preparation stage of an operation. IDB Invest's actions on this issue were contradictory because, first, it failed to systematically and technically address the possibility of an indigenous presence that would trigger the PIPs; second, it validated certain Client actions regarding the "indigenous component of the local society," which it described as good practice, but which were not part of a true assessment process that—at a minimum—would have allowed it to confirm or rule out whether the communities in the area met the definition of indigenous peoples under the PIPs.

2.33 A systematic evaluation of this aspect would have allowed IDB Invest to elucidate the contradictions in the project documents, some of which take the presence of the indigenous population for granted, while others maintain that the majority of the population is Ladino. However, none include a complete sociocultural baseline study, or census of the indigenous population, to consider the different areas of direct and indirect influence of the Projects, including the transmission line.

2.34 **Discrepancy in the number of affected communities.** Another noteworthy aspect is that the number of communities in the Projects’ area of influence is inconsistent in the different documents reviewed by MICI. Indeed, the Projects’ area of influence, particularly with regard to the transmission line, has yet to be defined within the framework of the Projects.\(^{34}\) This area encompasses 24 communities—which is significantly more than the three communities initially identified as Ladino—the vast majority of which are indigenous communities as reported in the rest of the municipality. The PIPs require the identification of direct and indirect social impacts in the entire area of influence of the Projects, without being limited exclusively to the areas of the works or their direct location, especially when there are indigenous communities in these areas whose attachment to their ancestral territory or to their natural resources does not depend on whether they reside in the communities directly affected by the Projects’ construction works.

\(^{33}\) PS7, Guidance Note 7.

\(^{34}\) In different project documents, and sometimes within the same document, reference is made to different numbers of communities in the area of influence.
2.35 **IDB Invest did not investigate the contradictions.** In this case, the Projects’ own documents contained sufficient information on the indigenous context of the area; and, **despite the conflicting information** on the consideration of the members of three communities as Ladinos, **IDB Invest did not delve further into this aspect.** It could, for example, have submitted a request for information to other specialized agencies; it could have reviewed information from national government agencies, international experts in the field, or indigenous organizations in Guatemala, which would have allowed it to rule out the possibility that the PIPs were not applicable to these specific projects. The PIPs themselves provide that project teams may seek advice from internal or external experts with specific knowledge of the indigenous issues involved.

2.36 **Specialized agencies confirm the indigenous character of the population.** In several interviews with MICI, officials from various international human rights organizations, national experts and authorities, and experts from the IDB Group (IDBG) have confirmed the indigenous character of the communities in the area where the Projects are located. Following an on-site visit related to the Projects, the Inter-American Commission on Human Rights (IACHR) expressed its concern for the human rights of the members of the Chuj and Q’anjob’al peoples who opposed the hydroelectric project in Ixquisis.35

2.37 **MICI has confirmed this perception in the field through interviews in the communities.** During the field missions, both at the eligibility stage and during this investigation, **MICI had the opportunity to visit several communities and hear, directly from their members,** statements and expressions consistent with the definition and requirements for the consideration of indigenous peoples set out in the PIPs. MICI met with some 350 members of the communities of Pojom, Nuevo San Mateo, Ixquisis, Caserío San Francisco, San José de las Flores, Nueva Concepción, Yulchen Frontera, Platanar, and Bella Linda. In these meetings, many community members self-identified as indigenous and expressed characteristics and beliefs that reflect an indigenous worldview aligned with this identity. In Ixquisis, for example, the women identified themselves as indigenous. Many indicated that they only spoke their native language; they dressed in traditional clothing and described how they were frequently discriminated against because of it. In Yulchen Frontera, several community members identified themselves as indigenous and expressed their feelings for the territory, explaining their “close relationship with Mother Nature” and how nature was sacred to them. In Bella Linda, many residents also said that they belonged to the native indigenous peoples of the area and explained the marginalization they have experienced as a result.

2.38 **No technical and systematic review was carried out based on the PIPs to identify the presence of indigenous communities.** IDB Invest and some social consultants hired for the Projects have insisted, both in their reports and in interviews with MICI, that **the indigenous component or aspect of the communities is being addressed by the Client.** However, MICI did not find that these measures were determined based on the

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PIPs themselves. Under the PIPs, the first step is to conduct a **technical and systematic review** to identify the possible presence of indigenous communities and determine the severity of the potential adverse impacts on them; once this has been done, with the informed consultation and participation of the affected indigenous peoples, measures to manage such impacts should be designed through an indigenous peoples’ plan or a separate indigenous component in the overall development plan, as mitigation measures should be tailored to the specific circumstances of the affected indigenous peoples’ communities. This was not done in these projects.

2.39 MICI concludes that IDB Invest did not ensure that the characterization of the affected communities as indigenous was carried out based on the definitions of indigenous peoples contained in the PIPs. On the contrary, it validated the reasons for ruling out the indigenous identity of the affected communities, which were inconsistent with the requirements of OP-765 and PS7, without conducting or requesting a technical and systematic analysis based on the existing and available information. Therefore, MICI concludes that **IDB Invest failed to comply with the Sustainability Policy, OP-765, and PS7**.

2. Gender-differentiated impacts

   a. Requesters’ allegations and Management’s Response

2.40 The Requesters allege that the adverse impacts of the Projects have been especially acute for the women in the project areas, who are mostly indigenous. They indicate that no gender-sensitive impact assessments were conducted, and no actions were identified to prevent, avoid, or mitigate adverse impacts and risks. They highlighted specific impacts, such as water pollution, which affects women differently because of the activities they traditionally perform (water collection, cooking, fishing for snails and shrimp to supplement the family diet, animal husbandry, and recreational activities with other women or their young children). The Requesters noted that women now have to travel longer distances to collect clean water, which affects the maintenance of the family gardens and farms for which they are usually responsible. They stated that the disappearance of crabs, snails, and fish from the rivers affects the family diet and economy, since these were sources of free food that must now be purchased from third parties. They also allege that the influx of outside workers and the build-up of security forces in the area has been a source of insecurity and fear because of harassment and physical and verbal threats targeting women, and an impediment to free movement when these groups have prevented women from accessing the river or used their equipment to block the way.

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36 PS7 should also be applied in “[p]rojects affecting Indigenous Peoples who are resident within the project-affected area and who are part of a larger regional population of Indigenous Peoples, or who are substantially integrated with mainstream society […]. However, in these cases the mitigation measures […] should be tailored to the specific circumstances of the Affected Communities of Indigenous Peoples.” IFC, Guidance Note 7, GN8.
2.41 IDB Invest noted that the possibility of impacts on women was analyzed as part of the ESDD process, and that the Client was required to prepare a gender equity plan to ensure women’s equitable participation in the consultation and benefits of the Projects. It indicates that it has not observed gender-differentiated impacts during its supervision visits. However, it said that “[i]t is obvious that challenges related to poverty and violence in this conflicted area (not related to the Project[s]) disproportionally affect vulnerable groups that include the elderly, women, and children. This is a sad reality which is not unique to this particular area of Latin America.” Although it indicated that “reversing this situation is a goal of the IDB Group,” it pointed to the general remedial measure of supporting the Projects and encouraging an increased presence of the State to promote development opportunities for all groups in the community.

b. Relevant Operational Policies

2.42 In analyzing gender equality obligations, and specifically the assessment, identification, and management of gender-differentiated risks and impacts, MICI will focus on the Sustainability Policy, OP-761 (Operational Policy on Gender Equality in Development), and PS1.

2.43 OP-761 establishes that IDB Invest will conduct its operations so as to identify and address adverse impacts and the risk of gender-based exclusion. In all operations, both OP-761 and PS1 require that: (i) IDB Invest assess operations’ potential adverse impacts on gender equality and, if impacts of this nature are identified, incorporate a gender analysis into its social impact and risk assessments; (ii) adequate measures be introduced to prevent, avoid, or mitigate such impacts; and (iii) measures be taken to ensure that there is equitable participation in the benefits of a project. OP-761 also specifically adds (iv) the obligation to seek the equitable participation of women in project-related consultations; and (v) IDB Invest’s obligation to recognize, “in any cultural or ethnic context,” women’s right to equality and other specific rights.

c. MICI’s findings and compliance determinations

| Summary

Women make up 51% of the population of the project area. Most are indigenous, and they are particularly vulnerable due to poverty, gender and ethnic discrimination, as well as difficulties in accessing education and other services. In addition, the Projects’ documents provide evidence of impacts that, given the common and traditional practices of women in the area, could affect them in a differentiated or aggravated manner. These include the impact on ecosystem services and access to water, due to the Projects’ intervention in freshwater bodies; insecurity and the possibility of gender-based violence due to the influx of outside workers to the area; and the installation of police and army detachments, due to the increased conflict surrounding the Projects.

However, IDB Invest failed to ensure that an assessment was conducted, as required by OP-761, to identify the potential gender-differentiated impacts on women and girls in the area so that the most appropriate prevention and mitigation measures could be taken to address
them. The intersection of the failure to identify this population as indigenous and the lack of gender perspective has compounded the potential consequences of this absence of a gender impact assessment.

IDB Invest required the Projects to have a gender equity policy in the hiring of workers and to ensure the equitable participation of women in consultations and benefits. However, the supervision of these requirements has been limited to verifying the existence of the equity policy only for the hiring of new employees.

There is no evidence that efforts have been made to consult with women on an equitable basis. The records of the consultations carried out, both before and after IDB Invest’s involvement, do not show equitable participation as required by the ROPs. Nevertheless, IDB Invest validated these consultation processes.

Nor is there any evidence that any particular measures regarding the risk of gender-based violence had been required until 2019, despite the potential impact of the influx of outside workers and the deployment of security forces on small and remote communities. MICI received multiple testimonies from women in the area who reported various situations in this regard.

MICI concludes that IDB Invest failed to comply with OP-761 and PS1, regarding its obligation to require an assessment of the potential gender-differentiated risks and impacts of the Projects; to require and supervise the adoption of appropriate prevention and mitigation measures; and to ensure and monitor that women had access to equal participation in the Projects’ consultation processes.

As of 2020, some actions have been taken to correct these instances of noncompliance. However, IDB Invest has yet to ensure the effective implementation of the ESAP and other gender-related requirements of the ROPs, particularly in terms of conducting a differentiated impact assessment and identifying, designing, and implementing appropriate prevention or mitigation measures.

2.44 Projects lack a gender perspective. MICI has found that the projects lack a gender-differentiated approach, both during the initial environmental and social assessment and later, during supervision. The EIAs for the Projects note that women in the municipality—who make up 51% of the total population—and especially indigenous women, are socioeconomically marginalized and vulnerable as a group, and that they face poverty and discrimination due to illiteracy, lack of employment, isolation from the municipality, and gender and ethnic discrimination.37

2.45 OP-761 recognizes that inequality affects women to a greater extent and that these inequalities interact with other inequalities based on socioeconomic, ethnic, and racial factors, exacerbating the barriers and vulnerabilities faced by some groups of women. The policy also requires IDB Invest to assess operations according to their potential adverse impacts on gender equality and, if such impacts are identified, to incorporate a gender analysis into its social impact studies.

2.46 IDB Invest did not require a differentiated impact assessment. The ESDD did not identify gender as a topic that warranted specific analysis in relation to environmental and social safeguards. MICI notes that IDB Invest did not require that an assessment be

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undertaken to identify the potential adverse impacts on women and girls or the potential risks of exclusion that the Projects might have on women in the communities, particularly given the context of the area. As the Guidance Note for PS1 explains, projects may have different impacts on women and men, due to their differentiated socioeconomic roles and their varying degrees of control over and access to assets, productive resources, and employment opportunities. It is IDB Invest's obligation to ensure that these factors are considered in the environmental and social analyses of the projects it finances.

2.47 **The rivers affected by the Projects are part of the women’s lives.** The project documents analyzed by MICI identify that these Projects will affect bodies of freshwater that the communities rely on for domestic and agricultural purposes. In addition, in several interviews conducted during the Compliance Review, MICI received information on how the river is “part of the lives” of the women in these communities: “most of their activities are centered on the river.”

Or how “in Guatemala [...] water is a woman’s job. Here, men do not carry water. [...] It is the women who have to travel long distances, whether from their homes or from the center of their community, to collect water wherever the source is located—the river, the stream, the spring...” During its visit to the area, MICI was able to directly verify the use of the rivers by the women of the communities.

**Image 2.1**
Woman using the river

Source: MICI.

2.48 **IDB Invest required the inclusion of a gender equity policy.** IDB Invest did not consider the abovementioned aspects when assessing the Operations. Nor did it consider their

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38 PS1 Guidance Note, Gender, GN50. See also ESMAP, Integrating Gender Considerations into Energy Operations, Knowledge Series 014/13, p. 5.

39 This is related to information MICI received in interviews with civil society organizations that support the Requesters, who stated that, during the dry season, the downstream communities of Yulchen Frontera and Concepción rely on the river to supply water for drinking, washing clothes, and other purposes, which is why they were very concerned about diminished water flow. Interview with UDEFEUGUA, Protección Internacional, Colectivo Madre Selva, Bufete de Abogados Maya.

40 Interview with the Office of the United Nations High Commissioner for Human Rights in Guatemala.
potential adverse impact on gender equality, particularly whether the construction of the Projects or the intervention of the rivers could affect women in a differentiated manner due to their relationship with and use of water sources and their particular situation of vulnerability. IDB Invest states that, while there was no assessment of specific impacts on women and girls, it did require that a gender equity policy be included in the ESAP, and that efforts be made to ensure women’s equitable participation in project consultations and benefits in order to comply with the ROPs in gender-related matters.

2.49 **An equity policy restricted to labor matters.** The Projects incorporated a Hiring and Gender Equity Plan into the ESMP that includes a “gender equity policy” for hiring. With this, IDB Invest deemed this ESAP action to have been satisfied, linking it to compliance with PS2 labor standards rather than to aspects of PS1 or OP-761 on gender. There is no evidence in the project documents that, in validating the plan and policy, IDB Invest or the IESC considered the other ESAP gender requirements for women’s equitable participation and access in the project-related consultations and benefits.

2.50 Therefore, the Projects’ gender equity plan and policy consists mainly of a plan for the recruitment of local personnel that, among other things, prohibits gender discrimination in hiring.

2.51 **Poor supervision without monitoring, consultation, or equitable access to benefits.** The supervision of gender issues by IDB Invest and the IESC has also been inadequate and, at times, limited to verifying the existence of the plan. This supervision makes no reference to factors that may lead to impacts specific to women, the monitoring of these impacts, the holding of consultations with women, or equitable access to benefits.

2.52 The most recent supervision activities, carried out in 2019 and 2020, include a more extensive analysis of gender aspects. MICI notes that, while IDB Invest has indicated that it required the Client to take measures to address gender impacts, as of 2019 this was limited to one measure linked to employment.

2.53 **IDB Invest validated consultations that did not reflect real equitable participation.** Both the ESAP and the ROPs require consultations to be carried out with a gender perspective, in order to ensure the equitable participation of women. It has been shown that local perception surveys were conducted for the preparation of the EIAs, as well as community assemblies or informational meetings about the Projects, which are reflected in minutes and letters of endorsement. These surveys did not include findings disaggregated by sex and, sometimes, did not even ask the respondents’ gender.41 **IDB Invest later validated the consultation processes undertaken by the Client,** based on minutes and letters of endorsement from informational meetings and community assemblies held between 2008 and 2014 which, as with the EIA surveys, do not reflect.

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gender or the rate of women’s participation, and therefore do not show whether there was equitable gender participation.

2.54 **IDB Invest validated meetings without ensuring that they were designed and held with a gender perspective.** Since at least 2010, it had been identified that women were unlikely to attend “meetings and information events held in communal houses or workplaces,” and that to obtain their opinion and participation it was necessary to make additional and different efforts, such as visiting them at home.\(^\text{42}\) However, **IDB Invest failed to ensure that the Projects included specific measures or procedures to facilitate equitable gender participation** that would make it possible not only to inform women about the Projects, but also to understand their concerns, identify potential differentiated risks and impacts, and determine, in consideration of their perspectives, the most appropriate measures to prevent or mitigate such impacts. The sociocultural circumstances of the women in the area are particularly relevant, as most speak Mayan languages, rarely participate in large, mixed community meetings, and often cannot read and write. IDB Invest validated the meetings held between 2008 and 2014 with no evidence of a gender perspective in their design and implementation. The IDB guide on Renewable Energy and Gender provides a suggested list of indicators to record and measure the equitable participation of women in consultation processes and in receiving benefits.\(^\text{43}\) None of these indicators or similar records have been required of the Projects, which affects IDB Invest’s capacity to supervise them.

2.55 **Positive steps as of 2019.** Since November 2019, the Client has been required for the first time to take specific actions to more easily obtain women’s opinions in an equitable manner. These include having Chuj and Q’anjob’al interpreters for community meetings. MICI sees this as a positive step. However, for cultural reasons, it is important that the design of community engagement processes and the communication strategy consider different aspects of the gender issue, which may include, for instance, the need for female interpreters in certain spaces. Although some of the Projects’ documents repeatedly refer to women being “given the opportunity to participate in communication processes,” “giving women the opportunity” is not the same as creating the proper conditions for them. A gender-sensitive participation process should recognize that women may need special arrangements or considerations due to factors such as domestic duties or childcare. In some cases, there may be a need for women-only consultation processes if, for social or cultural reasons, they do not usually speak freely in the presence of men.\(^\text{44}\) IDB Invest plays an essential role as the guarantor of these conditions, not only in defining the Client’s

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\(^{42}\) This was only done with respect to the San Mateo EIA, which only managed to achieve 18% female participation in the local perception survey. EIA, Pojom II, 2010, p. 342.

\(^{43}\) Suggested indicators include measuring the percentage of contributions made by women during consultations, as well as their level of satisfaction with the process as such; recording the number of women and men who participate in the process; determining whether the design of the consultations include gender equality elements (i.e., appropriate scheduling, gender segregation, provision of childcare, etc.). This list of indicators is not exhaustive because each project must develop its own indicators based on the specific context, but it can offer guidance. IDB, Gender and Renewable Energy: Wind, Solar, Geothermal and Hydroelectric Energy, November 2014, pp. 16-17.

\(^{44}\) ESMAP, Integrating Gender Considerations into Energy Operations, Knowledge Series 014/13, p. 5; IFC, TIP Sheet: Gender Mainstreaming Five Ways E&S Specialists Should Consider Gender in ESDD, 2017, pp. 4-5.
obligations but also in providing support, advice, and direct monitoring of the different actions intended to meet those obligations.

2.56 **Absence of a gender perspective in the grievance mechanism.** As in the consultation processes, other mechanisms for participation in the Projects also lack a gender perspective. This is the case of the grievance mechanism. IDB Invest should ensure that complaint management protocols or grievance mechanisms include appropriate methods, with a gender perspective and attention to cultural considerations, so women can report events that affect them while protecting the anonymity and confidentiality of the information submitted and be interviewed by trained personnel, among other requirements.45

2.57 **Intimidation and fear due to the presence of workers and security forces.** Regarding the identification and management of possible impacts of gender-based violence due to the presence of workers and security forces linked to the Projects, MICI notes that certain issues deemed likely to require attention have been identified since 2014. Following the May 2014 attacks on the Projects, national police and army contingents were deployed to the area, which compounded existing concerns about the potential impacts of the influx of outside workers. Since then, many of the community members—particularly women and girls—have reported feeling intimidated by these security forces. This was conveyed in three meetings that MICI held with some 150 women46 from nine communities. They said: “If the company didn’t exist, there would be no police, no army, no threats, no intimidation”; “We are no longer free. We are afraid all the time. We can’t go run an errand because the police get in our way and block our path.”47 During these meetings, MICI repeatedly received complaints and information about the intimidation they experience, and their fear, for example, of walking alone as they used to do because “the army, the police, and the company’s own security guards are on every corner.” They reported that they used to go to the river to wash clothes and bathe their children, but now do not feel safe doing so because of insults, intimidation, and threats from those they identify as company workers, police officers, and military personnel, whom they associate with the Projects.

2.58 Many women mentioned the insults and intimidation targeted at them because of their opposition to the Projects (“They have called us whores because we go out to protest”), as well as the fear they now feel walking through the area (“We can no longer go to the river because we could be raped at the river, we could be kidnapped, they could do

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46 In order to provide gender-sensitive spaces, these meetings were women-only. They were attended by the two female members of the MICI investigation team, a female Chuj and Q’eqchi’ language interpreter, female representatives of the Requesters, and women from the communities who wanted to participate in separate spaces or after the meetings with the rest of the community members. The meetings were held with women from the communities of Ixquisis, Pojom, Nuevo San Mateo, Caserío San Francisco, San José de las Flores, Nueva Concepción, Yulchen Frontera, Bella Linda, and El Platanar.
47 Meeting with women from the communities of San José de las Flores, Nueva Concepción, and Yulchen Frontera in the community of Yulchen Frontera, November 2019.
whatever they want to do to us. So, we are no longer free to go out walking like we used to"). Testimonies were also obtained from young people who reported having been sexually harassed by “company security,” who reportedly offered them money in exchange for “going with them” on the way to and from school or told them they “felt like giving them a good fuck.” The women who spoke to MICI repeatedly reported the change in their circumstances:

As women we are housewives, and [...] before, we women always went to the river to wash clothes, and there we would gather, talk, and live together very peacefully, because [...] there was no pressure or fear; we were free. And while we washed our clothes we would talk with our female companions, and the children [...] would go to play like this on the riverbank. While we did the washing, we would tell each other about our needs, our troubles, and our sorrows as women. But when the company arrived, this conviviality between us as women came to an end. When we used to go [...] to visit friends, for example, in another village, we enjoyed that freedom because there was no company, no police—but now it’s the opposite.48

2.59 Specialized agencies confirm impacts on women and express their concern. Organizations working for the protection of women’s rights in the region, including the Office of the High Commissioner for Human Rights (OHCHR) in Guatemala, provided information to the same effect. These organizations have stressed that the installation of both the company’s camp and the security forces has led to restrictions on women’s mobility on the roads they regularly use, for example, to go to the markets, due to the intimidation and harassment they face.49 MICI underscores that both civil society organizations and some international organizations, including the OHCHR and the IACHR, have publicly expressed their concern about the violence and conflicts that have arisen in the area.50

2.60 MICI observes that the risk of gender-based violence due to the Projects was not identified in the initial social assessments. While concerns were raised by the IESC and CSO regarding the impact that the influx of non-local workers and the installation of police and military in the communities could have on women’s safety, no measures were taken beyond general statements that workers were subject to a code of conduct, and two trainings on gender-based violence conducted in 2019.

2.61 No specific measures were required to address the risk of gender-based violence in the early stages of the Projects until 2019. It is important to emphasize that the influx of non-local workers, mostly men, is a social risk that can be further aggravated in small

48 Meetings with women, November 2019; Interview with the Aq’ab’al Women’s Association. Regarding the facts recounted by the women, MICI has relied solely on their testimonies. Due to the nature of many of the events reported, there are no investigations or documentation to confirm this information in any other way.
49 Interviews with OHCHR Guatemala; the Aq’ab’al Women’s Association; and Frontline Defenders.
and isolated communities. The fact that IDB Invest, as of November 2019, has required the Client to have a protocol to address gender-based violence is a positive step, and it will be vitally important to monitor its implementation closely and directly. However, over 10 years after the Projects began and eight years since the IDB Invest’s involvement, the Requesters’ allegations and the testimonies received show the consequences of not having required an assessment from the earliest preparation and design phases. As stated in the IDB’s social impact assessment guide in reference to the application of OP-761, the increased risk of gender-based violence is one of the adverse impacts on gender equality that should be identified in the early stages of a project, in order to include clear and specific prevention and monitoring measures in the ESMP; in this case, more specific measures were not required until 2019.

2.62 **The implementation of measures has not been verified.** MICI observes that, in this case, the supervision of the measures required by IDB Invest to address potential gender impacts, such as holding workers to a code of conduct or ensuring equitable participation in consultation processes, has not included the verification of their effective implementation during most of the Projects’ life cycle.

2.63 **The Projects lack a gender perspective: no equitable participation and no consultation.** MICI concludes that the Projects have lacked a gender perspective. The intersection of the failure to identify the population as indigenous and the absence of a gender perspective has exacerbated the consequences of this lack of gender impact assessment. IDB Invest has insisted that the communities’ use of the rivers is minimal. However, the lack of women’s equitable participation in the consultation processes makes these assertions invalid for purposes of determining what the differentiated impacts of the Projects might be on their lifestyles, livelihoods, food sources, and cultural and recreational practices. The equitable participation of women in the assessment processes and in determining prevention and mitigation measures would have allowed for the identification of these impacts, customs, and practices from the very beginning. MICI finds that no effort has been made to consult with them in a regular or meaningful way. As a result, many women in the communities feel they have been ignored and disrespected, having been subjected to changes that have altered their way of life and social relationships without having had the right to express their opinion.

2.64 While the attention that IDB Invest has paid to gender issues since 2019 is a positive development, MICI finds that, from 2013 (when the Projects were approved) to 2019, IDB Invest failed to ensure that gender issues were addressed in a manner consistent with the ROPs.

Therefore, MICI concludes that **IDB Invest failed to comply with the Sustainability Policy, OP-761, and PS1**, regarding its obligation to assess the gender-differentiated impacts that could be generated by the Projects; to require and supervise the adoption of the appropriate prevention and mitigation measures; and to monitor and ensure that women had access to equitable participation in the Projects’ consultation processes and benefits.

### 3. Information disclosure and community participation mechanisms

2.66 This section analyzes the **consultation processes** for the environmental and social assessments, as well as other **information disclosure and participation mechanisms** available to the Project-affected communities and stakeholders under Directive B.6 of OP-703, PS1, and the Disclosure of Information Policy. The allegations relating to the absence of free, prior, and informed consultation under ILO Convention 169, which is applicable as a function of OP-765 and PS7 on indigenous peoples, are not within the scope of this Compliance Review, as this issue was excluded at the eligibility stage.53

#### a. Requesters’ allegations and Management’s Response

2.67 The Requesters allege non-compliance with the standards related to information disclosure and participation mechanisms. They state that a “good faith consultation” was held with the community in 2009, with the participation of national and international observers, in which the residents of the municipality expressed their objection to the granting of permits for the exploitation of natural resources in their territories. They maintain that, notwithstanding this, these Projects did not properly consult with the communities. They point out that the processes undertaken have not been meaningful and have not included all the affected people, highlighting: (i) the absence of a record of the population’s comments; (ii) the insufficient information on the social and environmental risks and impacts of the Projects; (iii) the failure to provide sufficient, accessible, and culturally appropriate information in the information sessions and surveys; and (iv) the way in which the opinions of the population were considered.

2.68 Management claims it took special measures to ensure that the consultation processes were conducted consistently. It notes that it included actions in the ESAP, including a supplemental ESIA containing minutes and memoranda from the Client’s initial public consultation and stakeholder engagement activities. It says it reviewed the 2009 public consultation process, as well as the Projects’ written agreements with the communities in the area, and that all the specialists confirmed that these Projects enjoyed broad community support. It also indicates that technical documents were released through formal processes and that the Client has engaged in frequent, ongoing, and culturally appropriate contact with the communities through formal and informal meetings such as the peace roundtable, which was partially financed with IDB Group resources. In addition,

53 Case MICI-CII-GU-2018-0136, Eligibility Determination Memorandum, paras. 5.9, 5.12, 5.13.
it says it asked the Client to develop a grievance mechanism and to expand community outreach activities.

b. Relevant Operational Policies

2.69 For the analysis of the alleged impacts regarding stakeholder participation and the disclosure of project information, MICI will focus on the requirements of Directive B.6 of OP-703, PS1, and the Disclosure of Information Policy.

2.70 Directive B.6 of OP-703 requires consultation with affected parties and consideration of their views as part of the environmental and social assessment process. For category B operations, consultations with affected parties should be held at least once, preferably during the preparation or review of the environmental and social management plan. It also requires informing affected parties about project impacts and mitigation measures to be taken during project implementation.

2.71 PS1 establishes stakeholder participation as a fundamental element for the successful environmental and social impact management of a project, which is an ongoing process that may include, to varying degrees: stakeholder analysis and engagement planning; information disclosure and dissemination; consultation and participation; grievance mechanisms; and ongoing reporting to affected communities. Consultations are intended as an opportunity for communities to express their views on project risks, impacts, and mitigation measures, and for the Client to consider and respond to these views. PS1 further requires the Client to establish a grievance mechanism to receive and facilitate the resolution of affected communities’ concerns and grievances about its environmental and social performance. Communities should be informed of the existence of this mechanism during the project’s stakeholder engagement processes.

c. MICI’s findings and compliance determinations

<table>
<thead>
<tr>
<th>Summary</th>
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<tr>
<td>The Projects conducted <strong>local perception surveys</strong> and held <strong>community assemblies and informational meetings</strong> reflected in minutes and letters of endorsement. <strong>IDB Invest validated these processes</strong>, carried out between 2008 and 2014, as consultation processes in keeping with the ROPs. However, these meetings <strong>were not meaningful consultation processes</strong> in which community participation was designed based on a comprehensive and systematic identification of all stakeholders. Nor do they reflect two-way discussions in which: (i) the communities were informed of the Projects’ benefits and adverse impacts; (ii) the minimum information required by PS1 was disseminated or disclosed to the communities; or (iii) opinions and comments from the affected communities were heard and considered, as required by the ROPs.</td>
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<tr>
<td>The <strong>meetings validated by IDB Invest</strong> as consultation processes were <strong>informational meetings</strong> that focused mainly on the <strong>construction process and the benefits of the Projects</strong>.</td>
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54 Compliance with the ROPs will be reviewed for a category B project—as these projects were classified—without prejudice to MICI’s determinations as to noncompliance with the ROPs regarding the projects’ classification.
Therefore, MICI finds that, while IDB Invest formally required the design and implementation of consultation processes, community participation mechanisms, and the availability of a grievance mechanism within the framework of the projects, IDB Invest failed to ensure that the consultations undertaken were meaningful in practice, and that the community engagement processes, and grievance mechanism complied with the ROPs in terms of engagement with the population opposed to the Projects, information availability and disclosure, and adaptation to the specific circumstances and context of the area.

In addition, the community participation mechanisms and the social assessments of the Projects failed to adequately consider the opinion of the sectors opposed to the Projects. Through a technical assistance, IDB Invest made efforts and funded a study to determine whether the Projects had broad community support. While this support was found to exist, the study also found that the support was uninformed and largely based on the expectation of benefits, and thus did not address the lack of meaningful consultation.

During the supervision of the Projects, IDB Invest has also failed to ensure that the grievance mechanism is being implemented in line with the ROPs, especially regarding community outreach and the adaptation of the mechanism to the adverse risks of the Projects.

Therefore, it is concluded that IDB Invest failed to comply with its Sustainability Policy, Directive B.6 of OP-703, and PS1.

MICI further concludes that IDB Invest did comply with its Disclosure of Information Policy regarding the category B project requirements, as it published the summary of the environmental and social review on its website and, exercising the discretion granted by this policy, published some of the Projects’ EIAs.

2.72 Requirement of stakeholder analysis and planning of information to be shared. The meaningful consultations prescribed by B.6 of OP-703 and PS1 first require a stakeholder analysis and the planning of the format and content of the information to be shared with stakeholders. This analysis should consider their particular cultural and social attributes. In this case, MICI determined that IDB Invest had failed to ensure that the affected population was properly identified as indigenous under the PIPs. This factor has implications for the conduct of meaningful consultations appropriate for the population that may be affected by these Projects.

2.73 Good faith community consultation. In May 2009, prior to the EIAs, authorities and community leaders of the municipality of San Mateo Ixtatán organized a “good faith community consultation.” A total of 25,646 residents, including adults and children, from 72 communities in the region participated in this consultation, expressing their opposition to the “exploration and exploitation of open-pit mining and of natural resources in the municipality.”

2.74 General sentiment of rejection that was not considered. Although this process was not a specific consultation on these Projects, it reveals a negative sentiment and a general rejection of projects involving the exploitation of natural resources. This type of community consultation is a tool that has been used by indigenous communities in Guatemala and,

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55 This process was chaired by the mayor and approved by the municipal council. Act 020-2009 of the Municipal Council of San Mateo Ixtatán, May 2009.
as the United Nations Special Rapporteur for Indigenous peoples in Guatemala has noted since 2010, “they reflect the legitimate aspirations of [these] communities to make known their views” concerning projects with a potential impact on their traditional territories. Moreover, the rejection voiced by most, “reflects both the absence of consent and the lack of a proper consultation procedure.”\textsuperscript{56} However, we observe that this community consultation process was neither considered in the Projects’ EIAs nor known to those who carried out the ESDD.\textsuperscript{57}

2.75 \textbf{Contradictory perceptions about opposition to the Projects in the consultation.} IDB Invest learned of this community consultation in 2014, and the information it received on the matter indicated that the \textit{consultation} was \textbf{limited to mining activities}. However, many of the people who expressed their opinion during this consultation thought it \textbf{covered all types of development projects affecting the natural resources in their territories}. This is the Requesters’ perception, and it has been the persistent opinion of the Projects’ opponents, who point to this community consultation as evidence that a large number of community members have rejected the projects, even in meetings with IDB Invest.\textsuperscript{58} This perception of the Requesters regarding the 2009 consultation is not an isolated one: a similar community consultation in the municipality of Barillas in 2007 sparked a movement against the Santa Cruz hydroelectric project, which led to serious social conflicts and, finally, to the cancellation of the project.\textsuperscript{59} IDB Invest was aware of the social conflicts and the suspension of this project from the ESDD. However, there is no evidence that the perception of the sector of the population opposed to the Projects—which saw the consultation process as a rejection of the Projects—has been assessed or considered.

2.76 \textbf{No evidence of meaningful consultations.} The consultations that the Client conducted for the EIAs, before and shortly after the Corporation’s involvement, do not evidence meaningful consultation processes in which all stakeholders (including those opposed to these types of projects) were involved, in which communities were informed of both the adverse impacts and benefits of the Projects, or in which feedback was provided and opinions and comments from the affected communities were considered. Nevertheless, IDB Invest validated these processes as consultations in line with the ROPs.

\textsuperscript{57} EIA, Pojom II, 2010; EIA, Pojom II Final Layout Determination, 2012; EIA, San Andrés, 2012; EIA, San Andrés Final Layout Expansion, 2013; EIA, Innovación Noroccidente, 2011; EIA, Innovación Noroccidente, 2015; Interview with ESDD social consultant.
\textsuperscript{58} Request, p. 9; Meeting with community members in Bella Linda and Ixquisis; interviews with representatives of the Plurinational Government and community leaders; news media and reports from organizations whose representatives confirmed this position in interviews with MICI. Minutes of the March 2011 meeting in the municipality of SMI. See also Bordatto, Anne, \textit{Informe Especial No. 3, Irregularidades e impunidad ambiental en los tres proyectos hidroeléctricos en San Mateo Ixtatán, norte de Huehuetenango} [Special Report No. 3, Environmental irregularities and impunity in the three hydroelectric projects in San Mateo Ixtatán, northern Huehuetenango], \textit{El Observador}, July 2016, p. 2; UDEFEGUA Report 2018, p. 30, and Interview with Protección Internacional, UDEFEGUA, \textit{El Observador} and \textit{Madre Selva}.
\textsuperscript{59} CAO, Compliance Investigation Report on Hidro Santa Cruz, December 2018, p. 6.
2.77 At IDB Invest’s request, the Client documented the consultation processes that had already taken place, between 2008 and 2014, providing minutes of events and community meetings and documents supporting the Projects. Based on this documentation, IDB Invest found the Client’s consultation and information dissemination processes to be satisfactory.60

### Table 2.2
Summary of records, community meeting minutes, and letters

<table>
<thead>
<tr>
<th>Consultations reflected in the EIAs</th>
<th>Consultation documents from 2008-2014</th>
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<tbody>
<tr>
<td>• Local perception surveys on GSM, GSA, and NTL, whose use and validity were rejected in the ESDD</td>
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<tr>
<td>• Letters of endorsement and informational meetings on GSM</td>
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<tr>
<td>• Informational meetings on the NTL</td>
<td></td>
</tr>
<tr>
<td>• Statements of support from 11 communities</td>
<td></td>
</tr>
<tr>
<td>• Records or minutes of meetings held between 2008 and 2014 in 21 communities</td>
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</tbody>
</table>

2.78 No evidence of interactive, two-way meetings. However, no minutes, letters, or documents reflect meaningful consultations consistent with B.6 of OP-703 or PS1. None of these documents provide evidence of interactive meetings, consisting of two-way dialogues, in which all the impacts and environmental and social risks of the Projects and the mitigation measures to be adopted were disclosed; community concerns or observations were recorded; or there was evidence that such concerns or observations had been considered in the design and implementation of the Projects; and care was taken to share the information in an accessible and culturally appropriate manner.61

2.79 Holding of informational meetings on the construction and benefits of the Projects. The documents validated by IDB Invest show that informational meetings were held to discuss the construction and right-of-way acquisition processes for the NTL and the expectation that the Projects would facilitate electricity distribution. Explanations were given on how hydroelectric projects work in general, and the benefits of the Projects (in terms of employment or social investment projects) were enumerated. But none of the validated documents reflect the presentation of specific information on environmental and social impacts and the measures for their management. Meanwhile, in parallel to these informational meetings organized by the Client, communities and groups opposed to the Projects have also gathered to express their rejection and complaints.62

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60 As evidence of the community consultations and meetings held in connection with the projects, MICI has received and reviewed multiple copies of meeting minutes, records, and letters from local authorities submitted by AYSSA, the Requesters, the Client, and IDB Invest. Altogether, this analysis yielded some 120 documents consisting of meeting minutes and records as well as letters from local authorities and from communities to authorities, including the 64 records submitted as part of the last supervision.


62 MICI received 30 community meeting minutes from the Requesters, dated between 2013 and 2021, of meetings held in the community of Ixquisis. These meetings were chaired by the president of the microregion and attended by authorities and participants from the communities of the Microregion of Ixquisis, such as Nuevo San Mateo, Ixquisis, Bella Linda, Yulchen Frontera, Rincón, Caserío Primavera, and San Francisco. Minutes submitted by the Requesters.
2.80 **NTL consultation processes.** The consultation processes on the NTL, for which the area of influence has not yet been defined, have not been completed. The timeframe established for carrying out the NTL consultation processes does not comply with the ROP requirement to engage in consultations at an early stage of the Projects’ development. Moreover, IDB Invest has still not required the consultation process to be based on a comprehensive and systematic identification of all stakeholders. While it requested that all affected communities be included, this does not equate to all stakeholders.

2.81 **Need for stakeholder mapping.** As mentioned in relation to the characterization of the communities as indigenous, establishing a comprehensive social baseline of the affected communities is an essential first step for stakeholder identification. This identification should be carried out at the earliest possible stages, even if it is later supplemented and adjusted based on input from the local communities regarding the context in which the project is being implemented. The actual design of community participation processes should be conditioned by this identification process. However, the community engagement strategy validated by IDB Invest did not include a stakeholder mapping exercise. IDB Invest failed to ensure that this was done as part of the design of the community engagement strategy and that the consultations or the plan it subsequently validated covered all stakeholders, including opposition groups within and outside the Projects’ direct area of influence. While IDB Invest’s role with respect to consultation processes is complementary, it includes explaining, advising, providing support, and verifying.

2.82 **Roundtable for Peace and Development.** In 2017, the IDBG promoted a dialogue and negotiation process for the sustainable development of the municipality of San Mateo Ixtatán, known as the Roundtable for Peace and Development (SMI Roundtable). In this setting, the Client shared more in-depth information about the Projects, with the participation of various national and municipal government institutions, the Client, CSO representatives, and members of the communities in the area of influence of these Projects; but the Requesters in this case did not participate, and they believe that the process was illegitimate insofar as it did not include those they consider legitimate representatives of the communities. This space should not be understood as a substitute for the Projects’ meaningful participation processes because it is not a channel of communication about the Projects; rather, it has a much broader regional focus and entails a multi-stakeholder dialogue process that includes government authorities, civil society, local communities, and industry.

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63 IDB, Meaningful Stakeholder Consultation, 2017, p. 43.
64 IDB, Meaningful Stakeholder Consultation, 2017, p. 5.
65 This process resulted in the November 2018 signing of the Agreement for Peace and Development in San Mateo Ixtatán (ASMI), which identifies drivers of development for the municipality in terms of justice, security, education, technical and productive capacity, health, road infrastructure, environment and natural resources, and minimum conditions for development (including promotion of energy and rural electrification, reconstruction of the social fabric, and recovery of spaces for social, ethnic, and productive organization). The organizations Trece Democracia, Consenso y Desarrollo and 23 Comunidades de la Area Norte de San Mateo de Ixtatán participated in this process, as well as the Bishop of Huehuetenango as an observer. Agreement for Peace and Development San Mateo Ixtatán,
2.83 In general, the Projects have not engaged with the main core of opposition actors and groups but instead have mostly engaged with people who had already expressed support for the Projects.

2.84 **IDB Invest has concentrated on establishing majority support.** Both in its response in this particular case and throughout the project cycle, IDB Invest has focused on establishing majority support for the Projects. “Broad community support” is an IFC (International Finance Corporation) standard for projects with significant adverse impacts on affected communities (such as indigenous communities) and for which PS1 requires a process of informed consultation and participation. As Management has indicated, broad community support does not exclude the possibility of minority opposition. However, MICI cautions that “broad community support” is an outcome standard that is sought from an informed consultation process, i.e., it should result from a process that involves an in-depth exchange of perspectives and information, leading to the inclusion of the views of affected communities in decisions on matters that directly affect them, such as proposed mitigation measures, benefit sharing, and implementation challenges.

2.85 **IDB Invest did not verify that the necessary information was shared.** As mentioned earlier, IDB Invest concentrated its efforts on verifying this broad community support, without ensuring or verifying that the necessary information about the processes was being shared with the communities, considering their sociocultural characteristics and language barriers.

2.86 **What information should be shared with the communities?** As stated in PS1, the Client should provide the affected communities with access to information on: (i) the purpose, nature, and scale of the project; (ii) the duration of proposed project activities; (iii) any risks to and potential impacts on such communities and relevant mitigation measures; (iv) the envisaged stakeholder engagement process; and (v) the grievance mechanism. However, there is no evidence that IDB Invest has ensured that the Client was disclosing these minimum requirements of PS1.

2.87 **Simple and accessible information was not provided.** Legal notices were published nationally in Spanish, Chuj, and Q’anjob’al to announce that the EIAs would be available for public comment or opposition prior to approval. However, the documentation reviewed shows no evidence of IDB Invest asking the Client to publish the EIAs and other project assessments, or a non-technical summary explaining them in a simple and

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66 IFC Sustainability Policies, 2006 & 2012, para. 30; PS1, para. 31; IFC, Frequently asked questions on the IFC Sustainability Policy and Performance Standards and Disclosure Policy.

accessible manner, or the assessments, impacts, and prevention and mitigation measures, in local languages.68

2.88 In principle, the EIAs could be consulted at the Ministry of Environment and Natural Resources (MARN). However, this requires a fee for the service and travel to the offices in Guatemala City to receive copies on a CD.69 This is not an accessible method for the communities in the Projects’ area of influence. Nor is having to request them from the Client through its web page, which was confirmed during interviews with MICI.70

2.89 IDB Invest did comply with the Disclosure Policy. Regarding the Disclosure of Information Policy, IDB Invest complied with the requirements for category B Projects. IDB Invest published the investment summary on its website with a summary of the environmental and social review (ESRS) and, in exercising its discretion under that policy, published several EIAs for the Projects.71 Notwithstanding the above, MICI cautions that this does not replace the obligation to ensure that the Client prepared and provided the stakeholders with non-technical summaries containing the minimum information required by PS1.

2.90 In addition, a meaningful consultation process should be an ongoing process, spanning the entire project cycle. IDB Invest has noted this and stated it directly to the NGOs supporting the opposition groups during a meeting held in 2016.

2.91 The failure to effectively implement community participation mechanisms has direct implications for social impacts and, in this case, could be affecting the management of social risks identified at the outset of the Corporation’s involvement.

2.92 IDB Invest also lacks documentation of the community meetings that reportedly took place after 2014 to verify proper implementation of the community engagement strategy under the ROPs or even a broad community support for the Projects. The latest IESC supervision report is a positive step but, given the social risks that have materialized in these Projects, MICI considers that IDB Invest should have made additional efforts to verify compliance with the community engagement requirements of the ROPs before 2020.

2.93 There have been no systematic efforts to consider the opinion of opposition groups. The Projects’ IESCs have affirmed, through field inspections, that there is a good connection and dialogue between the Projects and the community members. This is

68 EyR website: https://energiayrenovacion.com
69 This was verified by the MICI investigation team at the MARN offices in Guatemala City during the field mission. See also interview with MARN officials.
70 Interviews with OHCHR, Environmental Engineer, Bufete para Pueblos Indígenas, UDEFEGUA, Protección Internacional, El Observador, and Madre Selva.
71 IDB Invest has not published (1) the ESIA, which required the Client to address the gaps it identified in the EIAs; (2) an April 2011 amendment to the Pojom II/San Mateo EIA (GSM); (3) a voluntary amendment to the San Andres EIA (GSA) dated March 2012; (4) a supplement to the San Andres EIA (GSA) for increased power, dated July 2012; and (5) a supplement to the San Andres EIA (GSA) on the form of diversion and ecological flow, dated November 2012.
valuable and positive and generally a good way to measure the effectiveness of the community engagement strategy. However, to date, this has been determined primarily based on interviews with community members organized or facilitated by the Client. In such polarized climates as this one, an adequate monitoring of social performance requires seeking and receiving information through outside channels besides the Client. In this way IDB Invest can ensure that the information on the implementation of the measures is comprehensive, systematic, and complete. That has not happened in this case. In 2016 and 2017, IDB Invest and the IESC made some efforts to talk to NGOs opposed to the Projects. Since then, however, there has been no systematic effort within the framework of IDB Invest’s supervision to consider the opinion of groups opposed to the Projects, so, the problems that were identified with respect to the initial assessment and the consideration of opposing perspectives persist and have intensified in the eight years since IDB Invest’s involvement.

2.94 Grievance mechanism insufficiently publicized. Finally, regarding the grievance mechanism, MICI finds that IDB Invest complied with the requirement to require the inclusion of a grievance mechanism. However, beyond the existence of this mechanism, MICI finds that IDB Invest has failed to ensure that it is being implemented according to the requirements of the ROPs, particularly with regard to its dissemination among the communities and adaptation to the Projects’ risks.

2.95 In 2016, some groups opposed to the Projects reported directly to IDB Invest that the communities were unaware of this Project-related grievance mechanism. MICI has also received direct information from community members who say that “the company never explained that there was a mechanism to present [their] complaints to them,” so they sought other ways to make their demands known through demonstrations or protests. In none of the documents reviewed by MICI is it recorded or reflected that any attempt was made to publicize the grievance mechanism; nor is there any evidence that IDB Invest ensured that information about the mechanism was in fact being disseminated.

2.96 MICI has also observed a lack of registration and documentation by the grievance mechanism. This not only hinders the information analysis but also prevents IDB Invest from adequately supervising the implementation of this measure, which is essential for preventing social conflicts in the area of influence. This lack of registration and documentation creates blind spots in the social management of the Projects, since it is impossible to know what type of claims were being or would have been filed and whether, through proper management, the escalation of tensions could have been prevented.

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72 In its comments to the draft version of this report, Management explained that, following its meeting and communications with opposition NGOs in 2016 and 2017, the insecurity in the area prevented it from carrying out the supervision mission with the opposition organizations as agreed, and that these organizations had not contacted IDB Invest again. It noted that subsequent missions by the IESC were conducted on “brief occasions of relative calm” in 2018 and 2019.
2.97 In the last Project supervision undertaken in 2020, IDB Invest ensured compliance with the documentation and registration requirement, so there is no noncompliance by IDB Invest in this regard.

2.98 Besides improving complaint registration, the latest Project supervision in 2020 updated the grievance procedure and included several modifications to address security-related complaints. MICI recalls that a Project-level grievance mechanism should be **transparent**, **readily accessible** to the communities, **culturally appropriate**, and **adapted to the risks** of the Project, while maintaining a certain degree of independence.\(^{73}\) Understanding the context and the type of claims that could arise is essential in the design of a grievance mechanism at the Project level.\(^{74}\) However, given the serious violence that has occurred and the polarization surrounding these Projects since 2014, it was essential for this mechanism to adapt to these risks before 2020, and IDB Invest should have considered these circumstances before validating the grievance mechanism. MICI also notes that, in both its previous and updated versions, the implementation of the grievance mechanism depends on the field director, who is also in charge of implementing the Projects' benefits program. This circumstance, coupled with the socioeconomic context and polarization in the area, could jeopardize the effectiveness of this mechanism. In some cases, due to Project-specific circumstances, it may be necessary for the Client to involve an independent third party as part of its grievance redress process.\(^{75}\) While this does not constitute noncompliance from IDB Invest, MICI believes that it should be considered before the approval of the new grievance mechanism for the Projects.

2.99 **Partial compliance with OP-703 and PS1.** In view of the above considerations, MICI concludes that **IDB Invest complied** with the requirement to formally **request** the Client to comply with the requirements of Directive B.6 and PS1, i.e., this is, to **carry out consultation processes and include a community engagement strategy and the grievance mechanism**; but **it failed** in its obligation to **ensure that the consultation processes were meaningful and that the engagement processes and the grievance mechanism met the requirements of the ROPs** in relation to the involvement of all stakeholders (including opposition groups); the disclosure and dissemination of information on the Projects; and adaptation to the circumstances and context of these Projects before 2020. Therefore, MICI concludes that, with respect to this obligation, IDB Invest failed to comply with the Sustainability Policy, Directive B.6 of OP-703, and PS1.

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\(^{73}\) IDB, Meaningful Stakeholder Consultation, 2017, pp. 34-35.
\(^{74}\) CAO, Guide to Designing and Implementing Grievance Mechanisms for Development Projects, p. 22.
\(^{75}\) Guidance Note, PS1, GN111.
4. Impacts on social cohesion, violence, and insecurity

   a. Requesters’ allegations and Management’s Response

2.100 The Requesters allege that the Projects have contributed to the erosion of the fabric of family and community life. They report episodes of violence between residents who support the Projects and those who oppose them. They also report a dramatic increase in the risks to the lives and safety of residents. They cite acts of violence, intimidation, harassment, and threats linked to the Projects, which prevent community members from carrying out their daily activities freely and safely. They also say that these attacks have been coupled with smear campaigns and the criminalization of those who oppose the construction work and demand respect for their fundamental rights. The Requesters describe a context of human rights violations that has created a climate of general insecurity and fear, which they attribute to the arrival and advancement of the Projects, with the involvement of the Client, its workers, members of the communities that support them, the private security company, and the public security forces.

2.101 Management has indicated that, given the high contextual risk derived from the presence of criminal organizations and the history of conflict in Huehuetenango, it took several measures that went beyond a typical ESDD process. For instance, it introduced measures aimed at improving the impact of the Projects on the development of the area, working closely with the IDB’s Gender and Diversity Division team to mobilize nonreimbursable TC funds (GU-T1270). It also contends that infrastructure Projects, such as small-scale energy Projects, have the potential to deliver positive development impacts, especially in areas with high levels of poverty, a history of conflict, and poor infrastructure. In this respect, it says that the positive impacts have not been felt because the Projects’ completion has been delayed due to the construction shutdown. It also reiterates its commitment to respect for human rights and the rule of law and expresses its concern over the continuing acts of violence and murders. It reports having taken measures to advise the Client on developing a security management plan and monitoring compliance with IDB Invest’s requirements.

   b. Relevant Operational Policies

2.102 For the analysis of obligations related to conflict and violence, the Relevant Operational Policies are the Sustainability Policy, Directive B.4 of OP-703, PS1, and PS4 (Community Health, Safety, and Security).

2.103 The Sustainability Policy establishes IDB Invest’s commitment to international good practice in the context of all social aspects of the Projects it finances, including human rights. Directive B.4 of OP-703 states that IDB Invest will identify and manage other risk factors in addition to environmental risks, including the governance capacity of borrowers or third parties and risks associated with highly sensitive social concerns, such as human rights violations.
2.104 PS1 states that business should respect human rights and identify all risks and impacts, including the issues identified in PS4. Specifically, PS4 requires the Client to assess and identify risks to the safety and security of affected communities throughout the Project cycle. PS4 also establishes a set of specific requirements if the Client hires private or public security employees or contractors.

2.105 These ROPs give rise to IDB Invest’s obligation to require that the Projects it finances: (i) assess and identify potential social impacts, including risks arising from the Client’s ability to manage a Project’s impacts and risks to the safety and security of affected communities throughout the Project cycle; (ii) establish and implement preventive and mitigation measures to address these impacts, favoring prevention over minimization; (iii) enforce compliance with human rights standards and best practices in the hiring, training, and behavior of security personnel toward the community; (iv) have a grievance mechanism in place to address community complaints about security issues and personnel; (v) investigate any allegations of illegal or abusive acts by security personnel and take action to prevent their recurrence; and (vi) assess and document the risks of using public security forces, strive to ensure that they comply with the standards of PS4, and communicate security arrangements to the community whenever possible.

c. MICI’s findings and compliance determinations

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<tr>
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<td>The Projects are being developed in a complex context in which multiple underlying causes of conflict interact. However, since their arrival, the level of conflict has increased and social cohesion within the communities has been adversely affected.</td>
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   The assessment and identification of environmental and social risks included the risks of social conflicts. But IDB Invest’s assessment and supervision of these issues has been inadequate, untimely, and incomplete. The Project area has a historical and current context of insecurity and polarization that required special attention from IDB Invest; however, the risk analyses failed to assess the real and specific risks of violence that the Projects could add to the area. The analyses focused on the risks that social conflicts could pose to the Projects, but not on the risks that the Projects could create for the communities.

   IDB Invest asked for the development of a security plan and took additional measures by hiring, in 2015, a specialized security and human rights consultant to advise and support the development and implementation of this security plan and the other requirements of PS4. This consultant identified several key gaps in security safeguards and made several recommendations, which the Corporation has formally required the Client to implement. However, the IDB Invest has not performed a close, ongoing, on-site verification of this implementation; or, at least, it has not done so with the urgency warranted by the gravity of the situation. Thus, most of the adjustments that have been made have been limited to a compliance “on paper.”

   Starting in 2020, IDB Invest has been (remotely) supervising these requirements more specifically and concretely, which is a positive step forward. However, after over eight years of limited compliance and serious Project-related security incidents, MICI concludes that IDB Invest
has failed to ensure that the Projects’ preventive and security control measures were in line with international good practice as required by the ROPs.

MICI also finds that **IDB Invest did not adequately assess and monitor the Projects’ ability to manage social risks.** The Corporation did not review the Client’s ability to implement the social plans and measures before approving the Operations, as required by Directive B.4 of OP-703 and PS1. Although it required the Projects to have a trained social manager to address social risks, IDB Invest did not ensure the implementation of this requirement between 2017 and 2019, thus failing to meet its supervision obligation.

MICI concludes that **IDB Invest failed to comply with its assessment and supervision obligations** in relation to the capacity and risk management requirements associated with social and security conflicts, established in Directive B.4 of OP-703, PS1, and PS4.

2.106 **Increased conflict.** The Projects are being implemented in a complex environment in which multiple underlying drivers of conflict interact; but, since their startup, the level of conflict has escalated, affecting social cohesion within the communities. Since 2014, a number of **serious acts of violence** associated with the Projects have been alleged. These include at least five instances of major sabotage (burning of machinery and the toppling of transmission line poles in 2014, 2016, 2017, and 2018), the **murders** of at least seven people—one of them during a demonstration against the Projects—and multiple allegations of injuries, arrests, threats, and intimidation, as well as the allegations of gender-based violence examined in the respective section of this report. Many of these facts have been documented during the supervision of the Projects and in some of the Client’s reports.

2.107 **Determining the facts surrounding many of these alleged situations is within the exclusive jurisdiction of the national authorities leading the respective criminal investigations.** As of this report, those authorities have not determined specific individual responsibility for the alleged acts of violence. MICI’s considerations in this case are not intended, nor should they be interpreted as, an assignment or determination of responsibility as to the origin of the acts of violence, and it is neither possible nor appropriate for this Mechanism to make such determinations in an investigation to review compliance with the ROPs.

2.108 **Efforts of IDB Invest.** IDB Invest has made efforts to address the issues of conflict and violence in the Projects area. In 2015, it **hired a consultant** to advise and support the Client in complying with requirements and to strengthen its capacity for security and conflict prevention; in 2016, it met with opposition NGOs, and in 2017, it worked with the IDB to **foster a process of dialogue** and negotiation in the municipality where the Projects are being developed, to provide a broader space in which to address the municipality's various social and infrastructure problems.

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77 See details in Annex V on Violent Events.
2.109 **Insufficient, untimely, and incomplete assessment and supervision.** Notwithstanding the above, MICI finds that IDB Invest's assessment and supervision of these issues has been inadequate, untimely, and incomplete. The environmental and social assessments of the Projects identified a high risk of conflict but did not include a specific analysis of the real risks that the Projects could create in an area with a historical context that required special attention from the parties involved, particularly from IDB Invest.

2.110 **Absence of specific analysis.** Both the EIAs and the ESDD mention the internal armed conflict as a relevant historical precursor, without following up with a specific analysis of its consequences. These documents do not address or assess specific safety and security risks arising from these circumstances or from the arrival of the Projects, such as risks to the community fabric or community safety concerns.

2.111 **Risk assessment for the Projects but not for communities.** MICI notes that the risk analyses and assessments were focused on addressing the risks these social conflicts could pose to the implementation of the Projects, rather than on addressing the risks that the Projects could pose to the communities.

2.112 **Symptoms have been addressed but causes have not.** These social risks materialized in May 2014, when machinery was set on fire during a demonstration against the Projects and four people were injured. IDB Invest then requested additional measures aimed at confirming majority support for the Projects and compliance with the PS. However, most of the initiatives designed to manage conflict have addressed the symptoms of social conflict rather than the underlying causes within the Projects' control (polarization, a limited community engagement strategy that excludes the opposition, the absence of adequate and complete environmental and social assessments, the lack of outreach and disclosure about the Projects, among others).

2.113 **One of the main causes of social conflicts in Guatemala is the exploitation of natural resources without consultation with indigenous communities.** In 2014, one year after the approval of these operations, around 65% of the municipalities where licenses had been granted for hydroelectric plants had reported social conflicts. Tensions and

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79 See Annex V on Violent Events.


81 Department of Public Advocacy (DIP) of Rafael Landívar University, 2014, *Gestión e inclusión social en proyectos hidroeléctricos: cinco propuestas integrales* [Governance and social inclusion in hydropower projects: five
divisions stemming from the internal armed conflict still persist in the Projects area. It is also plagued by organized crime and, more recently, in this and other neighboring municipalities, social conflict has intensified due to the rejection of hydroelectric and mining Projects.82

2.114 **IDB Invest requested that a security management system be developed and approved by specialists.** However, there was a failure to assess and manage other risks present from the outset, associated with the lack of engagement with the opposition and the polarization caused by the Projects. From the very beginning of its involvement with the Projects, IDB Invest knew about these circumstances and knew the risks of social conflict this could create.

2.115 **Reactive rather than preventive approach.** IDB Invest did not emphasize security issues until this risk first materialized in May 2014 and it engaged the services of a specialized consultant to advise and support the Client on compliance with PS4 in the area of security. As the operational policies indicate, the approach to security issues should be preventive, not reactive or mitigating. The specialized security consultant was hired in 2015, two years after the approval of the Operations and almost a year after the first serious acts of violence. Six years later, not all of its recommendations for bringing security measures in line with the ROPs have been implemented or incorporated. This is a slow response time to address risks that have involved the loss of lives.

2.116 **Serious acts of violence occurred between September 2015 and March 2018, including sabotage involving the burning of machinery (in March 2016 and January 2017) and the murder of a community member during a demonstration against the Projects, among others.**83 Despite this, compliance with the recommendations of the specialized security consultant was not specifically reviewed until 2018, when that consultant conducted its third and final visit.

2.117 **Incomplete supervision of the consultant's recommendations.** The hiring of a security and human rights consultant was a positive step taken by IDB Invest to advise and support the Client in achieving compliance with PS4. This consultancy was also a key element in the identification of essential ROP compliance gaps (which was done through specific recommendations for each instance of noncompliance) and, therefore, in the prevention of security risks or impacts. But IDB Invest’s failure to closely monitor and supervise these recommendations has resulted in an ineffective implementation and persistent

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83 See additional details in Annex V on Violent Events.
shortcomings in the security system and strategy, which have been identified since March 2015 and continue to this day, as the IDB Invest itself has recently identified.

2.118 **No consultation or information disclosure to the communities.** MICI notes that there is no evidence in the Projects’ documentation that the communities were consulted or informed about the security arrangements. The Guidance Note for PS4 explains that it is important for action plans regarding safety and security issues to be disclosed and communicated to affected communities, as managing community safety is more than a technical issue. It also requires a complete understanding of the social and cultural processes through which communities experience, perceive, and respond to risks and impacts.⁸⁴

2.119 It has been verified in this case that people in the area are divided in their perception of the public and private security forces, but a sector of the population feels threatened and intimidated by their presence. This is partly due to traumatic events of the past, such as the armed conflict. Several community members expressed this sentiment to MICI in interviews, saying “It’s as if we are slaves here. As if it were ’81, ’82, ’80, with the Army, with the PNC [national police], with their weapons.”⁸⁵

2.120 While information disclosure may be limited due to overriding security and safety needs, MICI finds that, given the tensions that arose in the area over the use of public and private security providers, IDB Invest should have required the Client to inform communities about its security arrangements and included this as an issue to be addressed in the community engagement process.⁸⁶ This could be done by publicizing basic information of interest to the communities affected by the Projects’ security arrangements.

2.121 **Compliance “on paper.”** The lack of close, ongoing, on-site verification of the implementation of the measures and recommendations for addressing the identified gaps has meant that compliance with the adjustments has been mostly “on paper,” without IDB Invest having been able to verify the effective implementation and operation of most of the measures to prevent these social risks. In addition, when significant failures in the management of security issues were detected, IDB Invest should have taken stronger measures to prevent the risk of loss of lives. This might have included dispatching independent VPSHR monitors to interact with public and private security forces over an extended period (as has been used by other IFIs in volatile environments) or supervising these issues more frequently.

2.122 **Overly formal and insufficiently timely and urgent supervision.** MICI considers that IDB Invest’s supervision of security issues and social conflicts has lacked timeliness and the urgency that the seriousness of the events warranted; it has taken an overly formal

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⁸⁵ Interviews with community members in Ixquisis.
approach to compliance “on paper,” rather than verifying effectiveness and performance on the ground and has been limited in its consideration of measures and consequences for serious noncompliance and gaps.

2.123 After over eight years of limited compliance and serious security incidents, MICI concludes that IDB Invest failed to ensure that the Client’s preventive and control measures were aligned with international good practice, as required by PS4.

2.124 Client’s limited capacity for environmental and social management. One of the issues that has been clear in the implementation and management of security issues is the Client’s limited capacity to implement the plans and measures agreed upon in the ESAP and CAPs (Corrective Action Plans). IDB Invest did not review this risk factor prior to the Operations’ approval. Lack of capacity may be a significant risk for the environmental sustainability of an operation (even those considered to have limited impacts), so it is an aspect that IDB Invest should properly analyze. A client’s capacity varies according to its ability and commitment to address and manage environmental matters and includes the availability of sufficient numbers and quality of staff to perform these tasks.87

2.125 In complex contexts like the one surrounding these Projects (with deep social polarization, distrust from one sector of the population, structural vulnerabilities, and conflicts beyond the Client’s control), it is essential to have personnel trained in the management of social risks and impacts to prevent the materialization and escalation of these risks. Having environmental or other specialists is also important, but it does not replace the need to ensure good management of social aspects, especially in Projects such as these.

2.126 MICI finds that IDB Invest failed to comply with Directive B.4 of OP-703 and PS1, by failing to review the risks associated with the Client’s capacity to implement social plans and measures. It complied with these policies by requiring a trained social manager to address the social risks of the Projects but failed to adequately supervise this requirement from 2017 to 2020.

2.127 Marked division and polarization. Through numerous interviews and field visits, MICI has verified a marked division and polarization between those who support the Projects and those who oppose them—in some cases within the same communities or families—as reported to MICI by community members and national and international authorities.88 The conflicting parties (both for and against the Projects) accuse each other and hold each other responsible for the violence; offer contradictory narratives about events,

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87 OP-703 Guidelines, p. 28.
88 In addition to the previously cited interviews with community members, see also, interview with the Human Rights Ombudsman’s Office and interview with the OHCHR office in Guatemala, as well as the Joint report of the Human Rights Ombudsman’s Office and the OHCHR office in Guatemala, Situación de las personas defensoras de derechos humanos en Guatemala: entre el compromiso y la adversidad [Situation of human rights defenders in Guatemala: between commitment and adversity], 2019, p. 29.
meetings, and social investment Projects; seek to delegitimize each other for being unrepresentative or misrepresenting their leadership; or insinuate coercion, bribery, and intimidation as grounds for supporting one side or the other. There is also a perception among a sector of the population that benefits are only granted to supporters of the Projects, which has also contributed to these divisions.89

2.128 During several interviews with MICI, community members and leaders have expressed their perception that the Company created conflict and division in the communities from the very beginning: “what the company did was to divide the people,”90 or “When the company arrived, the first thing it did was to start creating conflicts, giving contracts to community leaders, sowing division, both at the community level [and] at the social level, between families, including churches. That is what they provoked in our communities.”91 Representatives of the Requesters stated that “the company [encourages] confrontation with the communities that oppose these activities.”92

2.129 People in favor of the Projects told MICI that those who are opposed “have threatened everyone who doesn’t give in to them […]. They have blocked highway construction […] this group […] is intent on justifying behavior […] that causes so much damage, trying to make it look like supposed resistance to private Projects and actions, when they have also harmed and attacked the population of our municipalities and State institutions.”93

2.130 Despite this polarized situation, IDB Invest has not adequately addressed this impact. The peace roundtable promoted in 2017 was not intended to address the conflict or polarization created by the Projects and should not be understood as a substitute for the adoption of measures within the specific framework of the environmental and social management of the Projects to prevent, minimize, or address this division. The security measures that have been required address the potential consequences of this polarization, but not its causes or the need for dialogue and consultation with opposition groups. During project supervision, this lack of engagement was long justified by the supposedly criminal or “irrational” nature of these groups, although, to date, the violence has not been attributed to any specific individuals.

2.131 International human rights organizations and national institutions have cautioned against the stigmatization and criminalization of human rights defenders and indigenous people in Guatemala and in the particular case of Ixquisis.94 In 2016, IDB Invest was

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89 Interviews with the Office of the Human Rights Ombudsman of Guatemala; E&R’s field director and social director; the deputy minister of security and violence prevention; Meeting in Yulchen Frontera and with Requester leaders.
90 Interviews in Bella Linda.
91 Interviews with Requesters from Yulchen Frontera.
92 Interviews with the Plurinational Government.
93 Interviews with the organization 13 Democracia.
directly informed of the alleged stigmatization and criminalization of the groups opposing the Projects, and there is no evidence it has done any additional monitoring to ask the Client about it. In fact, there is no evidence in any of the Projects' documents that IDB Invest had considered these circumstances and the risk that the Requesters might be stigmatized and criminalized for their opposition to the Projects.

2.132 The commitments to respect human rights established in the Sustainability Policy reflect a need for institutional analysis and recognition of these types of situations, so they can be properly addressed in IDB Invest-financed Projects. In such polarized contexts as the one at hand, IDB Invest should supplement the information provided by the Client with other sources, in order to understand and address the underlying causes of the conflict, the effects of which persist to this day.

2.133 In view of the above considerations, MICI finds that IDB Invest failed to comply with its assessment and supervision obligations relating to the implementation of safeguards against the risks associated with the Client's capacity, the management of social impacts such as conflict and violence, and the security requirements set out in the Sustainability Policy, OP-703 Directive B.4, PS1, and PS4.

5. Cultural heritage

a. Requesters’ allegations and Management’s Response

2.134 The Requesters allege that the Projects have affected and will affect archaeological and ceremonial sites, with impacts on the cultural integrity of the communities in the area. They maintain that the indigenous people who live there “have their own system of customs and practices.” They explain that the Projects have negatively affected the indigenous peoples' worldview and their close relationship with natural resources, as the Projects' construction has disturbed sacred and ceremonial sites where they perform their Mayan rituals and damaged nearby archaeological sites.

2.135 Management reports that it asked the Client to analyze the presence of cultural heritage sites, amend the original design of GSM to prevent impacts to archaeological remains, and develop a chance finds procedure to manage unexpected discoveries of archaeological remains during the construction phase of the Project.

b. Relevant Operational Policies

2.136 For the analysis of obligations related to cultural heritage, the Relevant Operational Policies are the Environmental and Social Sustainability Policy of IDB Invest, Directive B.9 of OP-703, OP-765, PS7, and PS8 (Cultural Heritage).

2.137 These policies require identifying and assessing, through the environmental and social assessment process, impacts on culturally significant sites. They call for Projects to be
designed to prevent significant harm to cultural heritage, and for measures to be taken to prevent or mitigate potential impacts. These processes should include consultation with affected communities, guaranteed access to such sites, and the design and implementation of chance finds procedures to be included in the Client’s environmental and social management systems or plans. Both policies stipulate that sites of critical cultural importance\textsuperscript{95} should not be damaged unless unavoidable, in which case the Client should engage in an informed consultation and participation process, using a good faith negotiation process that results in a documented outcome.

2.138 Given the presence of indigenous peoples in the area, OP-765 and PS7 also require the identification and protection of the cultural heritage of potentially affected indigenous populations.\textsuperscript{96} PS7 requires that, if a Project may have a significant impact on critical cultural heritage\textsuperscript{97} that is essential to the identity, or to the cultural, ceremonial, or spiritual aspects of indigenous peoples’ lives, priority should be given to the avoidance of those impacts; otherwise, the Client should obtain the free, prior, and informed consent of the affected indigenous peoples’ communities. OP-765 requires the inclusion of measures to safeguard the culture, identity, language, and traditional knowledge of indigenous peoples, which is achieved through good faith consultation and negotiation processes that serve to identify potential risks and impacts and design socioculturally appropriate measures. If the adverse impacts on the cultural integrity of indigenous communities are particularly significant, OP-765 requires that the Client obtain the agreement of such communities to support, in the IDB Invest’s judgment, the sociocultural viability of the operation. This agreement should be obtained through a good faith negotiation process that addresses the operation and measures to address its adverse impacts.

2.139 This section will examine the assessment and measures taken regarding impacts on cultural heritage, rather than on natural heritage. Impacts on critical natural habitats and ecosystem services are discussed in the environmental impacts section below.

c. MICI’s findings and compliance determinations

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<td>The Projects’ area is rich in archaeological remains. Since the beginning of the Operations, it was identified that one of the hydroelectric plants (Generadora San Mateo) would affect the Ixquisis archaeological site. IDB Invest complied with its obligation to require that measures be taken to protect this cultural site and that a chance finds plan be implemented for the management of possible additional discoveries.</td>
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<tr>
<td>However, contrary to what is required under the ROPs, IDB Invest failed to ensure that the local and indigenous communities were consulted on the intangible value (cultural or spiritual) that they assign to the archaeological site, so their perspective could be considered both in the analysis of the degree of impact and in the design of the respective prevention or</td>
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\textsuperscript{95} Cultural sites or critical cultural heritage and sites are defined in OP-703 and PS8.

\textsuperscript{96} PS8 states that it does not apply to cultural heritage of indigenous peoples; PS7 applies in that case.

\textsuperscript{97} Including natural areas with cultural or spiritual value, such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks.
mitigation measures. There is indicia that the Projects could also affect other cultural objects or sites that are part of the cultural heritage of the local and indigenous communities, but there is no indication that the extent of their importance, or spiritual, archaeological, or historical significance has been fully assessed.

The studies carried out on the archaeological remains of the Ixquisis area focus on the site’s historical and archaeological value for the whole country; but these studies do not assess its value to local or indigenous communities. This lack of consultation on cultural heritage has also prevented the communities from knowing the plans and procedures for the management of archaeological finds, which may have led to many of the allegations of theft of archaeological material that have arisen in this case.

Therefore, MICI concludes that IDB Invest complied with its Sustainability Policy, with Directive B.9 of OP-703, and with PS8, in terms of requiring the Client to take measures to conserve and protect the archaeological heritage identified in the EIA for GSM. However, it failed to comply with those ROPs with respect to the requirement that the affected communities be consulted to identify and determine the spiritual and cultural value they assign to the identified heritage and to participate in the design and adoption of measures for its conservation. Regarding the latter facts, and referring specifically to the indigenous population, IDB Invest also failed to comply with its Sustainability Policy, OP-765, and PS7.

2.140 **IDB Invest assessed the potential impacts and required measures.** The information reviewed shows that assessments of the potential impacts on cultural heritage were carried out within the framework of the Projects, and plans were developed to address those impacts; it is also concluded that IDB Invest required the Client to design and implement measures to ensure compliance with the ROPs. IDB Invest required the Client to include and implement a chance finds plan, once it was identified that the GSM Project would affect the archaeological area of Ixquisis and that the Project area is rich in culturally important remains and artifacts. This was done in coordination and with the authorization of the competent national authority.

2.141 **MICI found that the first EIA for GSM identified that the Project would directly affect an archaeological conservation area, known as the Ixquisis archaeological area, for which mitigation measures had to be taken.** As a result, and at the request of the competent national authority, the Client undertook a study and an archaeological conservation program. The EIAs for the other Projects do not identify any specific impact on cultural heritage.

2.142 **Hiring of archaeologists and technical support.** In response to the requirements of the national authority, the Client hired archaeologists and requested assistance from the Guatemalan Institute of Anthropology and History (IDAEH for its name in Spanish) for the

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98 EIA, Pojom II, 2010, pp. 376-380; DIGARN Resolution 956-2011 on the approval of GSM EIA (2010) and conditions of 17 May 2011, operative point IV.
identification and survey of archaeological remains and artifacts in the Ixquisis area. Archaeological remains were identified near the GSM Project, consisting, among other things, of a mound (identified as Mound 2) located within the area of the Project’s regulating basin. The archaeological assessment found generally that construction should be allowed as it would not affect the archaeological remains.

2.143 The Client submitted the “Conservation, Protection, and Signage Plan for the archaeological remains of the Ixquisis site,” which included protection measures and protective fencing, informational signage, and tree removal, primarily. At the request of the National Department of Cultural Heritage, the Client also prepared educational material on the Ixquisis archaeological site for “teachers, students, tourists, and the general public,” in Spanish, Chuj, and Q’anjob’al, and the regulation basin was excavated in the presence of an archaeologist in case of additional chance finds.

2.144 During the due diligence process, IDB Invest took note of the information on the impact on the Ixquisis archaeological area and recommendations to minimize them, and in the ESAP required the Client to: (i) prepare a cultural heritage plan in the supplemental ESIA and (ii) develop a chance finds plan.

101 PDH, Expansions requested by MARN through OF-AMP-MARN/052-2011 /ECM/CMUS of 6 April 2011, p. 36 and Annex IV.
2.145 An annex to the ESIA contained the archaeological studies carried out and the conservation measures proposed to the national authority. A chance finds plan approved by IDB Invest was also included in the ESMP. Both measures required in the ESAP were deemed satisfied, mainly by the chance finds plan.

2.146 **No consultations were held to determine the cultural and spiritual value for local communities.** With respect to the requirements for identifying potential impacts on cultural heritage, the ROPs call for consultation processes to determine the value of the archeological remains for the communities that use them or have memory of their use, since cultural sites should be assessed “on the basis of their relative value and significance for local and affected communities.”\(^\text{104}\) Consultations also allow for the design of socioculturally appropriate measures to address these impacts. This requirement applies to both indigenous and nonindigenous communities. The requirements for community engagement or consultation are more rigorous where the cultural heritage is categorized as critical, i.e., may be “essential to the identity, or to the cultural, ceremonial, or spiritual aspects of indigenous peoples’ lives,” or is internationally recognized or legally protected cultural heritage. However, it does not appear from the documentation reviewed that any such consultation was carried out with the members of the area’s communities in the framework of the Projects. Nor is there any record of IDB Invest having advised its Client on this issue and requested that it engage in such consultation.

2.147 **The studies do not assess value to local communities.** The EIA and the studies of the archaeological remains in the Ixquisis area focus on the historical and archaeological value of the site for the entire country, but they do not assess the value it may have for the local or indigenous communities.

2.148 During MICI’s visit to the area, community members provided testimonies indicating that there is a burial area at the Ixquisis archaeological site where Mayan ceremonies are performed (they specified that they “perform a Mayan ceremony where the company diverted the river” because “it is a few steps away from a cemetery of the ancestors”), and that “the bodies of the people who were killed in 1980 in Ixquisis were buried where the tunnel is now going through.” The Requesters have also alleged that the Projects’ construction would affect the Pojom archaeological site and have reported the looting of archaeological artifacts.\(^\text{105}\)

2.149 The absence of consultation processes with local populations, particularly the indigenous communities, prevented an understanding of the meaning and cultural value

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\(^\text{105}\) *El Observador*, *Irregularidades e impunidad ambiental en los tres proyectos hidroeléctricos en San Mateo Ixtatán, norte de Huehuetenango* [Environmental irregularities and impunity in the three hydroelectric projects in San Mateo Ixtatán, northern Huehuetenango], Special Report, July 2016. The Municipal Development Plan of SMI states that the Chuj ethnic group is connected to the Pojom archaeological site north of the municipality and the Xapper cloud forest, recognized as having major cultural, ceremonial, and spiritual importance to the Mayan people. Municipal Development Plan, 2010, p. 73.
that the identified heritage has for them and the identification of the type of impacts that any impending intervention could have on them. It also prevented the identification or assessment of the potential presence of other cultural heritage areas or spaces, critical or not, of the indigenous communities in the Project area, as defined in the ROPs. This failure to consult also prevented the exchange of information between the Projects and the communities, creating barriers that kept the communities from knowing about plans and procedures for the management of findings. For example, in April 2014, the communities reported the destruction and extraction of archaeological artifacts and gold and silver from the Ixquisis archaeological site. The Human Rights Ombudsman’s Office investigated and found no destruction. Management and the IESC have expressed surprise over these allegations, since the Client has taken the appropriate steps, carrying out studies and adopting conservation measures, as indicated by the authorities and by IDB Invest itself.

2.150 **Consultation processes are important opportunities for information disclosure.** MICI finds that the consultation and participation processes outlined in the ROPs for the protection of cultural heritage are valuable spaces not only for understanding, hearing, and considering the affected population’s perspective on these assets and their cultural value, but also for providing important information on what is being done and planned for their management. Information gaps create uncertainty and, at times, misperceptions about the courses of action taken in the framework of the Projects.

2.151 The only proactively published information about the measures taken to protect the identified cultural heritage is the 2010 EIA for GSM and the mention in the summary of the environmental and social assessment of the Projects (available on IDB Invest’s website), that IDB Invest required a chance finds plan from the Client. MICI understands that the information submitted to the national authorities is accessible to the general public, and therefore, in theory, it would be possible for the Requesters to access this information through the Ministry of Environment and Natural Resources or the Ministry of Culture and Sports. However, these forms of access to information are neither accessible nor socioculturally appropriate for the communities in the Projects’ area (see also the earlier discussion on information disclosure considerations at the Project level).

2.152 **IDB Invest complied with the requirement for protective measures.** MICI concludes that IDB Invest complied with Directive B.9 of OP-703 and PS8, in terms of requiring the Client to take measures for the conservation and protection of the archaeological heritage identified in the EIA for GSM. These measures were implemented through actions that included consulting with professionals in the field and developing chance finds plans and

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106 *Prensa Comunitaria, San Mateo Ixtatán: En peligro lugar sagrado y area arqueológica por una empresa* [San Mateo Ixtatán: Sacred site and archaeological area endangered by company], May 2014.

107 ESRS, p. 1.

108 For example, it is known that an environmental engineer may have had access to at least some of this information as part of her research on the projects. Bordatto, Anne, *Informe Especial No. 3, Irregularidades e impunidad ambiental en los tres proyectos hidroeléctricos en San Mateo Ixtatán, norte de Huehuetenango* [Special Report No. 3, Environmental irregularities and impunity in the three hydropower projects in San Mateo Ixtatán, northern Huehuetenango], Special Report No. 3, *El Observador*, July 2016, pp. 30, 37-38.
procedures, which were included in the Projects’ environmental and social management plans.

2.153 **IDB Invest failed to require consultation with the local communities.** MICI further concludes that IDB Invest failed to comply with its Sustainability Policy, Directive B.9 of OP-703, and PS8, by failing to ensure and require that the Client hold consultations with the local populations to identify and determine the spiritual and cultural value of the heritage potentially affected by the Projects and the design of appropriate measures for its conservation. In addition, specifically regarding the indigenous population in the Project area, IDB Invest failed to comply with the Sustainability Policy, OP-765, and PS7, by not ensuring that the potential impacts on the cultural heritage of these indigenous communities were assessed or identified, and that these communities were consulted on the value they assign to the heritage that was identified and on the measures taken for its conservation.

6. Environmental impacts

   **a. Requesters’ allegations and Management’s Response**

2.154 The Requesters allege that the Projects’ activities have polluted water sources in their communities. They state that these sources are essential for the survival of the area’s ecosystems and for their subsistence activities. They say they use the river in different ways, for example, as a source of food, for their own consumption, for their animals, crop irrigation, hygiene, recreation, and laundry. The Requesters indicate that the river has been polluted due to improper management of the waste generated by the Projects, which comes from dumping wastewater and washing machinery and automobiles in the rivers, as well as from sediment accumulation. They further allege that the EIAs did not cover cumulative impacts that they believe could affect the biodiversity of the Cuchumatanes mountain range, which is on the list of Alliance for Zero Extinction (AZE) sites. The Requesters add that this area requires conservation actions to safeguard the species that inhabit it and are at imminent risk of disappearing.

2.155 Management reports that the Projects’ activities comply with the Corporation’s pollution prevention requirements and that the completion of a supplemental ESIA has been verified. It adds that, where noncompliance has been verified or observed, it has required the Client to take mitigating actions (through the ESAP or the various CAPs) and has supervised its compliance.

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109 In keeping with the Recommendation, this investigation does not include the analysis of allegations relating to transboundary environmental harm and impacts from contributions to climate change.

110 The Requesters state that river water is their only source of water and link its consumption to several illnesses that have emerged among community members.

111 They allege that the projects’ workers use the rivers as a toilet facility.

112 According to its website, AZE was established in 2005 to designate and effectively conserve the most important sites for global biodiversity conservation. AZE members have identified 853 AZE sites containing threatened species. For more information visit: [https://zeroextinction.org/the-alliance/about-the-alliance/](https://zeroextinction.org/the-alliance/about-the-alliance/).
b. Relevant Operational Policies

2.156 For the analysis of the alleged impacts regarding water pollution, ecosystem services, and critical habitats, the Relevant Operational Policies are the Sustainability Policy; Directives B.5, B.7, and B.9 of OP-703, and PS 1, 3 (Resource Efficiency and Pollution Prevention), 4, and 6 (Biodiversity Conservation and Sustainable Management of Living Natural Resources).

2.157 In relation to the management of potential risks and impacts, PS1 calls for the establishment and maintenance of an environmental and social management system (ESMS) appropriate to the nature and scale of the Project and commensurate with the level of its environmental and social risks and impacts. Directive B.5 establishes, among other aspects, that it should include the key direct and indirect impacts and risks of the proposed operation and the design of the proposed social and/or environmental measures to avoid, minimize, compensate and/or mitigate those risks.

2.158 Regarding pollution prevention, PS3 provides that the release of pollutants or waste should be avoided or, where avoidance is not feasible, reduced to a minimum. Regarding ecosystem services, PS4 states that, where appropriate and feasible, potential risks and impacts on priority ecosystem services should be identified and, if not preventable, mitigation measures should be implemented in accordance with PS6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources. PS6 requires that affected communities participate in identifying priority ecosystem services, considering the uses and values they attach to those services.

2.159 PS6 states that where critical habitats exist or may exist, external experts will be engaged to help develop a mitigation hierarchy and to verify the implementation of these measures. It also establishes that Project activities will not be implemented unless a number of requirements are met.113 For internationally recognized areas, the client should demonstrate that the proposed development is legally permitted, act in a manner consistent with any government recognized management plans for such areas, consult with stakeholders, and implement additional conservation programs.114 Under Directive B.9, IDB Invest will not support operations that, in its opinion, significantly convert or degrade critical habitats or involve significant conversion, unless a set of requirements is met, including mitigation and compensation measures acceptable to the Corporation.

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113 The requirements to be demonstrated are: 1. No other viable alternatives within the region exist for development of the project on modified or natural habitats that are not critical; 2. The project does not lead to measurable adverse impacts on those biodiversity values for which the critical habitat was designated; and 3. The project does not lead to a net reduction in the global and/or national/regional population of any Critically Endangered or Endangered species.

114 PS6, pp.2-6.
c. MICI’s findings and compliance determinations

**Summary**

Deficiencies in the assessment and management of environmental impacts on water sources, ecosystem services, and critical natural habitats were alleged in this case.

The environmental assessments identified that the Projects could create risks of river pollution and impacts on the quality of water sources used by the communities in the area, due to, among other reasons, wastewater discharge, potential oil spills, and erosion. To address these potential impacts, prevention and mitigation measures were included in the Projects’ environmental management plans, and IDB Invest complied with the requirement to request specific measures for water quality control, erosion control, and the handling of pollutants. **MICI finds that IDB Invest adequately supervised the measures** related to pollutants and sediment entrainment, identifying instances of noncompliance and requesting corrective actions when needed. By contrast, the Projects’ monitoring of water quality control mechanisms has been inconsistent and deficient, and IDB Invest did not ensure the effective supervision of all the agreed requirements until 2019.

Therefore, regarding impacts on water sources, MICI concludes that **IDB Invest complied with the Sustainability Policy, Directive B.5 of OP-703, PS1, and PS3, and failed to comply with** the Sustainability Policy and Directive B.7 of OP-703.

In addition, the environmental and social due diligence on the Projects identified that the environmental assessments did not address potential impacts on ecosystem services. The assessments submitted and accepted by IDB Invest to address this gap do not meet the requirements of the ROPs for this type of impact. **They do not comprehensively identify ecosystem services, do not establish differential uses of ecosystem services by indigenous peoples, did not involve community consultations to identify priority services, and do not include determinations on the effects of the Projects’ intervention of the rivers or the respective mitigation measures.**

Therefore, MICI concludes that **IDB Invest failed to ensure that the Projects’ impacts on ecosystem services were adequately assessed**, thus failing to comply with its Sustainability Policy, Directives B.5 and B.6 of OP-703, and PS1 and PS6.

In addition, initial environmental assessments had identified that the transmission line could have an impact on the Cuchumatanes mountain range and the Los Ángeles-Soloma-Todos Santos mountains, which are considered internationally recognized areas. The due diligence indicated the need for a critical habitat survey, which IDB Invest requested of the Projects. The Projects submitted an assessment that IDB Invest initially considered partially satisfactory; but, in 2020, it was found to lack several ROP requirements because it failed to properly define the boundaries of critical natural habitats and internationally recognized areas and to establish the risks and direct impacts on them. To date, these requirements have not yet been met, despite the fact that this gap was identified in 2013.

MICI concludes that **IDB Invest did not ensure compliance with these requirements and therefore failed to comply with** its Sustainability Policy, Directives B.5, B.7, and B.9 of OP-703, and PS1 and PS6.

### 2.160 Determining whether impacts were assessed, measures were implemented, and compliance was supervised.

Based on the allegations raised by the Requesters and the topics approved in the Recommendation for a Compliance Review (Document CII/MI-17-4), our compliance analysis focuses on whether IDB Invest ensured that the Client
assessed potential impacts to water source quality, ecosystem services, and critical habitats. We also examine whether adequate prevention or mitigation measures were established and whether compliance with the respective obligations was supervised.

**Quality of water sources**

2.161 **The assessment identifies potential impacts and establishes mitigation measures.** The documentation reviewed shows that the Projects’ environmental impact assessment identifies potential impacts on the quality of water sources, which could be caused by wastewater discharge from the camp’s sanitary services, oil spills from vehicle and machinery activities, runoff management, and the surge in the flow of the Yalhuitz River downstream of the powerhouse. To address these impacts, mitigation measures are included in the Projects’ environmental management plans and systems. Some examples of these measures are quarterly water quality monitoring, the disposal of oil and grease from machinery in sealed barrels for shipment, setting up an isolation area for oil spill prevention and drain lines for oil collection, and runoff control to prevent sedimentation (construction of drainage systems and ditches, etc.).

2.162 **IDB Invest required several actions** through the ESAP to ensure that the Projects comply with environmental and social requirements for water quality control.

2.163 As part of the ESMP, an environmental monitoring plan was developed with measures to mitigate potential water quality impacts. Plans and procedures for the control and management of water and hazardous materials and an erosion control plan were included in the ESMS for their implementation.

2.164 **Plans are not very detailed, but they meet requirements.** MICI notes that, although the contents of the ESMP and ESMS plans and procedures are not very detailed, they meet the minimum requirements of the ROPs with respect to the identification of impacts related to water pollution. Thus, **IDB Invest ensured**, based on the ESDD and ESAP, that the Projects adequately identified these impacts; it also made sure that specific measures were put in place to prevent or mitigate them, including management plans detailing specific actions for handling materials with the potential to cause water pollution and procedures for monitoring water quality, in compliance with the Sustainability Policy, B.5, PS1, and PS3.

2.165 **Supervision of measures by IDB Invest.** In the examination of IDB Invest’s supervision of environmental and social obligations, oil and fuel storage and river sedimentation are considered separately from water quality monitoring. Regarding the former (management of pollutants and sediments), IDB Invest supervised these obligations. Women from one area community stated, in interviews with MICI, that some of the activities they carried out

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in the rivers (such as washing their clothes) were affected because the rivers started to become "muddy." However, these problems were identified and addressed (or are being addressed) through specific measures required by IDB Invest as part of its supervision, including the proper storage of fuel and lubricants and the implementation of adequate sedimentation controls consistent with EHS (environmental, health, and safety) guidelines. For these reasons, MICI considers that IDB Invest complied with the Sustainability Policy and Directive B.7 of OP-703.

2.166 Regarding water quality monitoring, MICI found inconsistent monitoring and reporting; deficiencies in parameters and scope; noncompliance in the frequency of wastewater monitoring; and the overstepping of limits set in the EHS guidelines.

2.167 Lack of capacity and tools to enforce compliance with obligations. Although IDB Invest supervised the environmental obligations regarding potential water pollution, these obligations have been systematically breached, and IDB Invest has not shown the capacity to enforce them; nor did it appear to have the tools to do so until 2020.

2.168 Water quality sampling. Regarding the supervision of sampling to measure water quality, MICI found that IDB Invest focused almost exclusively on enforcing compliance with the limits set out in the EHS guidelines but did not consistently verify whether monitoring was being conducted at all points specified in the water management plans. Water quality sampling, both upstream and downstream, makes it possible to record all the necessary data for early detection of any values exceeding the maximum permitted values and their possible link to Project activities and, if necessary, to take corrective action to prevent or minimize impacts. Therefore, in connection with water quality monitoring, MICI finds that IDB Invest did not verify, during its supervision, whether all agreed requirements were met, as established in the Sustainability Policy and B.7.

2.169 However, MICI recognizes the effort made by IDB Invest starting in 2019, when it began to more consistently supervise all the ESAP requirements. IDB Invest also established specific conditions in 2020 to continue with the works. This is consistent with the Sustainability Policy and Directive B.7 of OP-703.

Ecosystem services

2.170 We will also examine compliance with the ROPs regarding the identification of impacts on ecosystem services and the consideration of the different values that the communities attribute to these services.

2.171 The assessments of the Projects do not address ecosystem services, and this has resulted in gaps. To begin with, the EIAs do not analyze whether the Projects could have specific impacts on these services. This was identified in the ESDD, which specifically noted that the Projects’ assessments do not address ecosystem services, do not analyze whether local communities directly use the surface or groundwater that would be used by
the Projects, and do not provide an adequate baseline analysis of how local communities use these resources or whether indigenous communities use them in a differentiated manner. As a result of these conclusions, IDB Invest required the Client to take two specific actions to address these gaps.

2.172 The documentary review shows that the assessments submitted to address the gaps identified by IDB Invest did not identify the ecosystem services fully and comprehensively. They also did not identify differential uses of ecosystem services by indigenous peoples in consultation with the affected populations; nor did they say whether the Projects could affect these services or determine the appropriate mitigation measures.

2.173 In 2015, IDB Invest found that the requirements related to ecosystem services had been met and, therefore, ceased to be part of the environmental and social supervision process of the Projects. However, there is no evidence in the assessments that all the communities had been consulted on the uses and the value they assign to the ecosystems; nor is there any evidence that a baseline study of the different uses had been carried out to identify the impacts and the resulting mitigation measures.

2.174 PS1, OP-703, and PS6: value attributed by communities to ecosystem services. PS1 and B.5 of OP-703 establish the processes for identifying Project risks and impacts. These are supplemented by standards such as PS6, which establishes specific requirements for impacts and mitigation measures related to ecosystem services. They specifically require consideration of the differing values attached to these services by affected communities. Thus, when communities are likely to be affected, they should be involved in determining priority ecosystem services, under the stakeholder engagement process defined in PS1.

2.175 Uses of the river by women, children, and other community members. In interviews with MICI, members of the communities in the area, specifically women, stated that they used the river for socializing, washing their clothes, and collecting fish, shrimp, and crabs for household consumption and sale. Other community members reported that children used the river for swimming, drinking water, and that some community members even prayed in the river.116

2.176 Inadequate assessment of the impacts on ecosystem services. MICI concludes that IDB Invest did not ensure that the Projects had adequately assessed the specific impacts on ecosystem services. It failed to ensure that the communities were given the opportunity to participate in defining the ecosystem services and the values attributed to them so that, based on this identification, specific measures could be taken to prevent or minimize impacts on these uses. Accordingly, it failed to comply with its Sustainability Policy, PS1, PS6, and Directives B.5 and B.6 of OP-703.

116 Meetings with members of the communities of Yulchen Frontera, Bella Linda, San José de las Flores, Nueva Concepción, Pojom, Nuevo San Mateo, Ixquisis, Caserío San Francisco, and Platanar.
2.177 **New identification in 2020.** Finally, although these requirements were deemed to have been met in 2015, in 2020 IDB Invest requested that the ecosystem services be identified again. MICI appreciates that the noncompliance has been remedied and urges IDB Invest to ensure that the Projects identify such services as soon as possible and determine the potential impacts and the measures needed to address them in consultation with the affected communities.

**Critical habitats**

2.178 **Presence of critical habitats in the area.** The Projects’ impact assessment identified the *Cuchumatanes mountain range* as a protected or special protection area.\(^{117}\) The ESDD also noted the existence of this area, particularly with respect to the NTL that would cross this internationally recognized area. It therefore identified the need to conduct a critical habitat survey, and IDB Invest included actions requiring the Client to demonstrate compliance with PS6 and carry out a critical habitat assessment.\(^{118}\)

2.179 **A critical habitat assessment was undertaken.** While IDB Invest initially found the assessment to be partially satisfactory, in 2019 it determined that it did not meet all the requirements of PS6 and asked that the missing requirements be met prior to the resumption of Project activities.

2.180 **Geographic scope of critical habitats remains pending, and impacts have not been identified.** To date, the geographical scope of the critical habitats has not been analyzed to determine potential Project-related impacts. Nor have the assessments been updated to: (i) reflect the findings of the biodiversity studies, or (ii) evaluate potentially significant residual Project impacts on critical species that qualify for the habitat and propose appropriate conservation actions to achieve net gains in the specific biodiversity values of the critical habitat. Potential impacts on internationally recognized areas have also never been identified, nor have the species present in the Important Bird Area (IBA) and the Alliance for Zero Extinction (AZE) area of the Cuchumatanes Mountains and the Los Ángeles-Todos Santos-Cuchumatanes Mountains been examined.

2.181 **IDB Invest failed to comply with its Sustainability Policy, PS1, PS6, and OP-703.** In light of the above considerations, MICI concludes that IDB Invest did not ensure that the Projects properly identified and defined the boundaries of critical habitats and internationally recognized areas and that the direct and indirect risks and impacts on them were established. In 2020, it required basic steps to ensure compliance with the operational policies, such as the assessment of potential impacts in the Cuchumatanes area and the description of measures to prevent and minimize them, as well as

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\(^{118}\) GSA - ESRS, p.2; GSM-ESRS, undated, p. 2; GSA - Investment Summary - For Disclosure, p. 3.
consultation with stakeholders. MICI concludes that IDB Invest failed to comply with its Sustainability Policy, PS1, PS6, and Directives B.5 and B.9 of OP-703. MICI also finds that IDB Invest has not adequately monitored compliance with the environmental and social requirements for the protection of critical habitats and internationally recognized areas, and that its failure to monitor these obligations from 2017 to 2019 was inconsistent with the Sustainability Policy and Directive B.7 of OP-703. MICI acknowledges—despite the delay—that, in view of the noncompliance identified in 2019, IDB Invest established specific requirements in 2020 that condition the continuation of Project activities on compliance with the requirements.

7. Cumulative impacts

a. Requesters’ allegations and Management’s Response

2.182 The Requesters allege that the Projects’ environmental impact assessments did not include cumulative impacts of the GSA and GSM hydroelectric plants or the other hydroelectric plants in northern Huehuetenango, which they believe could affect the biodiversity of the Cuchumatanes mountain range. They add that IDB Invest has not adequately fulfilled its supervisory role in relation to these impacts.

2.183 IDB Invest states that it verified that the Client performed a supplemental ESIA of the Projects, and that it has been in constant communication with the Client to remedy the shortcomings identified in the initial assessment and to address other risks and impacts identified during the subsequent six years of supervision. However, Management asserts that it has no obligation under the relevant policies to request a cumulative impact study for all Projects and maintains that it has complied with the ROPs.

b. Relevant Operational Policies

2.184 For the analysis of the Projects’ cumulative impacts, the applicable IDB Invest ROPs are the Sustainability Policy, Directives B.5 and B.7 of OP-703, and PS1.

2.185 The Sustainability Policy states that, depending on the type and location of each Project, cumulative impact assessments may be required to determine its synergistic and long-term effects and specific management plans for protecting critical habitats. PS1 states that, when the Project includes specific physical elements, aspects, and facilities likely to generate environmental and social impacts, impacts will be examined in the context of the Project’s area of influence. This analysis should include as appropriate, cumulative impacts on areas or resources used or directly affected by the Project, from other existing, planned, or reasonably defined developments. Directive B.5 establishes that environmental and social management plans should include the key impacts and risks, as well as the design of the proposed social and environmental measures to avoid, minimize, compensate and/or mitigate those impacts and risks. Finally, under Directive B.7, IDB
Invest will, during the Project’s implementation, review the Client’s compliance with the environmental and social requirements stipulated in the loan contract.

c. MICI's findings and compliance determinations

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The Projects’ environmental and social assessments did not include an assessment of potential cumulative impacts. IDB Invest’s environmental and social review initially identified the need for a cumulative impact assessment in light of other projects planned in the Projects’ area of influence. However, it was subsequently agreed that such an assessment would be necessary only if another hydroelectric Project was developed in the area. This was a modification of the initial environmental requirement—which referred to other projects in the area and not only to hydroelectric projects—and no rationale or assessment has been provided.

Therefore, MICI concludes that IDB Invest failed to comply with its Sustainability Policy, with Directives B.5 and B.7 of OP-703, and with PS1, by failing to ensure that the Projects included an assessment of cumulative impacts linked to the presence of other projects in the area, so suitable mitigation measures could be established if such risks or impacts were encountered.

2.186 Change of opinion. The Projects’ EIAs do not include an assessment of potential cumulative impacts that could result from their construction or operation. The ESDD did identify the need for such an assessment, but IDB Invest later agreed that it would be unnecessary unless another hydroelectric project was developed in the area.

2.187 This change in the conclusions regarding the gaps identified in the ESDD ignores the initial requirement for a cumulative impact assessment in relation to any other project in the area and limits it only to hydroelectric power plants. We have found no documentation that analyzes the presence or absence of other projects to be considered in the Projects’ environmental and social assessment that could serve as a basis for the decision not to carry out this assessment.

2.188 Noncompliance with the Sustainability Policy, OP-703, and PS1. MICI finds that IDB Invest failed to ensure that the Projects included an assessment of cumulative impacts linked to the presence of other projects in the area, so adequate mitigation measures could be established if such risks or impacts were encountered. IDB Invest decided, in contravention of the Sustainability Policy, Directives B.5 and B.7 of OP-703, and PS1, that such an assessment would only have to be made with respect to other hydroelectric projects in the area.

8. Environmental and social categorization of the Projects

a. Requesters’ allegations and Management’s Response
2.189 The Requesters allege that the Projects’ environmental and social categorization is improper and that they should have been classified as category A rather than category B operations in order to ensure a more robust environmental and social assessment. They contend that the Projects’ impacts are not limited, that they affect areas with significant ecological value, and that they irreversibly harm the flora and fauna of strategic ecosystems. They further allege that the Projects violate the rights of the indigenous peoples of the area and are detrimental to their livelihoods.

2.190 Management states that the Projects could now be considered category A due to “social unrest in the Project area.” But they maintain that the circumstances were different when the Projects were classified because Management believed that there was strong community support for the Project.

b. Relevant Operational Policies

2.191 To analyze the Projects’ categorization, MICI will focus on the requirements of the Sustainability Policy and Directive B.3 of OP-703. Both policies establish that, during the initial assessment or screening, IDB Invest categorizes operations according to potential risks and impacts. Under Directive B.3, consideration is given to potential negative environmental impacts—whether direct, indirect, regional, or cumulative—including environmentally related social and cultural impacts. The Sustainability Policy considers the type, sector, scale, magnitude, and importance of potential environmental and social risks and impacts. Both policies provide for three environmental categories: A, B or C. The project’s impact classification defines the environmental and social safeguards and the appropriate review, information disclosure, and consultation requirements.

2.192 According to the ROPs, category A projects are those that could cause potentially significant environmental and/or social risks and impacts, which are diverse, irreversible, or unprecedented that may extend beyond the boundaries of the actual project site or facilities. This category also includes projects with significant impacts on protected or sensitive areas and/or vulnerable groups. These are operations that are likely to cause significant negative environmental and associated social impacts or have profound implications affecting natural resources.

2.193 Category B projects are those are likely to cause mostly local and short-term negative environmental and associated social impacts and for which effective mitigation measures are readily available. They are operations whose potential environmental and/or social impacts and risks are less adverse than those of a Category A operation and are generally limited to the project site, largely reversible, and can be mitigated via measures that are readily available.
c. MICI’s findings and compliance determinations

IDB Invest classified the Projects as category B, considering that their impacts could be prevented or mitigated by following generally recognized performance standards, guidelines, or design criteria.

However, the Projects’ documents examined by IDB Invest during the categorization stage reveal potentially significant impacts that would correspond to category A projects: the presence of indigenous communities; a high social risk, in an area with a historically high-risk context and a vulnerable population; and potential impacts on the Cuchumatanes mountain range and the Los Ángeles-Soloma-Todos Santos mountains, all considered critical natural habitats in the area of influence of the transmission line.

Management has indicated that it now considers the Projects to be category A due to the social conflict they have sparked and that, internally, the Operations have been treated as if they were category A. MICI is of the opinion that this internal treatment jeopardizes the assurance of compliance with all the requirements for a category A project because those requirements have not been formally imposed and their application is at IDB Invest’s discretion, thus it is not sufficient to correct the Projects’ categorization error.

Therefore, MICI concludes that IDB Invest failed to comply with the Sustainability Policy and Directive B.3 of OP-703, when it assigned a category B to these Projects, which presented significant potential risks or impacts typical of a category A project.

2.194 Categorization analysis: are the risks and potential impacts category B? Below we analyze whether IDB Invest’s environmental and social categorization was done in accordance with the operational policies. More specifically, we examine whether the potential risks and environmental and social impacts identified by IDB Invest constitute impacts typical of a category B Project, as Management concluded.

2.195 IDB Invest classified the Projects as category B on the grounds that the impacts could be prevented or mitigated by following generally recognized performance standards, guidelines, or design criteria. Thus, the main Project-related environmental and labor issues in the reviewed documents are employment and working conditions; occupational health and safety and emergency response; pollution prevention; biodiversity, flora and fauna; and social and community affairs.

2.196 Supplemental ESIA with measures to mitigate the identified impacts. To address these impacts, IDB Invest considered that requiring the Client to prepare a supplemental ESIA would cover the aspects that form part of the safeguards. Specifically, for impacts or risks related to labor and working conditions, the Client would implement industry best practices in occupational health and safety, hire local workers, and develop a grievance mechanism; for aspects related to resource use and pollution prevention, among other standard measures, it would incorporate procedures for the handling and final disposal of lubricant residues and other solid wastes; for biodiversity, it would include measures to prevent or minimize impacts on flora and fauna and to restore biodiversity; and for social
and community affairs, it would continue to engage with stakeholders and deliver benefits.\textsuperscript{119}

2.197 Based on this description, the Projects would, in principle, fall under the category B definition of local and short-term impacts, which can be mitigated via readily available measures that are required to be identified in the ESDD process.

2.198 **Potential category A risks and impacts were not analyzed.** However, MICI also finds that the Projects’ documents that IDB Invest reviewed at that stage contain information on potential Project-related risks or impacts that would fit the description of category A projects. These include environmental issues related to critical habitats in the area of influence of the NTL, which would run through the Cuchumatanes mountain range, designated as important for bird conservation, and the Los Ángeles-Soloma-Todos Santos Mountains, a designated Alliance for Zero Extinction site. Regarding social impacts, the Projects’ documents indicate high social risk due to the social, historical (related to the armed conflict), economic, and cultural profile and context of the region’s population. The high percentage of indigenous communities in the area, the context of opposition to mining and hydroelectric Projects, and the proximity of an archaeological conservation area also point to a high social risk more typical of category A.

2.199 **Categorization is essential for determining safeguards.** The operational policies and their implementation instruments specify that these types of factors should be considered negative environmental and social risks or impacts consistent with category A. In other words, they are significant. These instruments specify that category A covers Projects with significant impacts on protected or sensitive areas and/or vulnerable groups, including critical natural habitats, indigenous territories, and cultural sites of spiritual, historical, or archaeological importance.\textsuperscript{120} With potential risks or impacts of such magnitude, the categorization of the Projects warranted special caution on the part of IDB Invest, since this categorization determines the environmental and social safeguards and the appropriate review requirements applicable to the Projects.

2.200 **The impacts and risks are significant.** MICI considers that the nature and characteristics of these factors, as well as their convergence, make them inconsistent with the ROPs’ description of the impacts or risks of a category B Project. On the contrary, they are potentially significant environmental and social risks that may have implications for both natural resources and social issues.

2.201 **The Projects have been treated de facto as Category A Projects, according to Management.** Management indicated that, due to the “social unrest in the Projects’ area,” the Projects could now be considered category A. But, as stated earlier, the social conflict that materialized after the categorization is not the only component that would turn the classification into category A. Management also provides assurances that, despite their

\textsuperscript{119} ESRS, GSA & GSM, pp.1-3.

\textsuperscript{120} Sustainability Policy, fn. 12, p. 7; Sustainability Policy Guidelines, fn. 4, p. 3.
classification as category B, the Projects have been treated internally as category A, in terms of the level of monitoring and supervision. More specifically, it states that these Projects underwent “an environmental and social analysis of the highest level,” and that a supplemental ESIA and additional biodiversity assessments were prepared to address the deficiencies in the EIAs regarding compliance with the ROPs.

2.202 That there was no formal imposition of the requirements for a category A Project—but instead a type of internal treatment—jeopardizes the assurance of compliance with those requirements, as their application is at IDB Invest’s discretion. In fact, if the Projects in this case had been categorized as A, it would have been required to publish all 11 EIAs conducted, not just the 6 that were disclosed. And they would have had to be published, with the investment summary, at least 120 days prior to the Board’s approval—not 49 days, as done.\textsuperscript{121} At least two meaningful consultation processes would have been required at the Project preparation stage: one during the scoping phase of the environmental assessment or review process, and the other during the review of the assessment reports. Neither of these consultations occurred.

2.203 \textbf{IDB Invest did not consider it necessary to change the categorization.} After the classification stage, during its supervision of the Projects, IDB Invest learned that the conflict and social risks in the area were increasing and worsening. It also confirmed certain risks or impacts related to critical habitats, among other aspects. However, IDB Invest did not find it necessary to change the Projects’ categorization,\textsuperscript{122} even though Management considered that the later circumstances of which it had knowledge warranted their classification as category A rather than B Projects.

2.204 \textbf{Non-compliance with Sustainability Policy and OP-703.} MICI concludes that, in this case, IDB Invest has failed to comply with the Sustainability Policy and Directive B.3 of OP-703, by attributing category B to Projects that presented potentially significant risks or impacts typical of a category A project.

9. \textbf{Connection between noncompliance and the alleged harm}

2.205 \textbf{Noncompliance with several ROPs creates a risk of actual or potential harm.} In this case, MICI finds noncompliance with several ROPs related to the assessment of adverse environmental and social impacts and risks; the design and implementation of measures to prevent, minimize, compensate, and/or mitigate these risks in accordance with the ROPs; and the supervision of the environmental and social requirements imposed on the Client. These conclusions regarding such issues as failing to identify the population as indigenous; the lack of assessments with a gender perspective; failing to consult the affected population regarding impacts and measures to manage them; failing to establish

\textsuperscript{121} The IDB Invest website indicates that the Projects’ information was published on 7 August 2013. Some of the EIAs and documents published on these projects are from after this date. There is no record in the documentation of exactly when these subsequent documents were published.

\textsuperscript{122} The OP-703 guidelines state that “[p]roject classification may change if during the preparation new information warrants changing the project’s category.” OP-703 Guidelines, p. 26.
the boundaries of and analyze critical natural habitats; and failing to identify ecosystem services, indicate that the Projects are not properly applying the safeguards designed by IDB Invest to prevent or mitigate impacts. As a result, there is a risk that these impacts will materialize because they have not been identified in time, because there are no effective measures to address them, or because of supervision problems.

2.206 With particular regard to the failure to identify the population as indigenous, OP-765 and PS7 seek to safeguard the rights of indigenous peoples from adverse impacts and possible exclusion from the benefits of development Projects. The first obligation arising from these policies is the need to identify indigenous peoples that could be negatively affected by a project. Here, MICI’s conclusion as to the improper characterization of the affected population—which denied the indigenous identity of most of the people and communities in the area—means that the Projects lacked complete social baseline data from their outset. This made it impossible to assess the impacts on these groups under the PIPs and may have contributed to harm related to their indigenous identity.

2.207 As for the impacts on women and girls in the area, MICI found noncompliance with the obligation to carry out impact assessments with a gender perspective. MICI received multiple statements from women who reported the harm they feel they have experienced as a result of these Projects, documented in the respective section of this report. The situations described by the Requesters are consistent with the materialization of gender risks that the obligations of OP-761 and PS1 are intended to prevent. Therefore, the absence of a gender-differentiated impact assessment and the resulting failure to design and implement preventive or mitigation measures in consultation with women, created the potential for such harms to have materialized.

2.208 Information disclosure and community participation processes are essential for identifying and managing the Projects’ environmental and social impacts. In this case, we also find noncompliance with IDB Invest’s obligations in this area. The absence of adequate participation and information disclosure processes limits the affected communities’ access to knowledge, even as they regularly use and enjoy these spaces. It prevents people who may suffer the direct or indirect consequences of a Project’s development from learning about its potential risks and impacts and the measures to address them, and keeps them from expressing their comments, concerns, or opinions. In interviews with MICI, community members expressed frustration and a sense of disrespect for their rights because they had not received complete information about the Projects and had not been heard. MICI considers that, in this case, IDB Invest’s noncompliance may have contributed to increased social impacts, such as conflict and social fragmentation, and may also have made it difficult to recognize and identify impacts that could harm the Requesters.

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123 November 2019 meetings with women from San Jose de las Flores, Nueva Concepción and Yulchen Frontera, Pojom, Nuevo San Mateo, Ixquisis, Caserio San Francisco, Bella Linda, and El Platanar.
2.209 In interviews with MICI, many other community members also expressed their pain, frustration, and helplessness in the face of what they perceive as the harm caused by the Projects’ arrival. **Noncompliance with requirements on community safety and security and the risk of human rights violations** can have serious and irreversible consequences. According to the ROPs, the approach to security measures should be preventive. Therefore, it is vitally important to carry out a timely and complete assessment in order for the Projects’ social management plan to include adequate measures to prevent—from an early stage—social impacts and conflicts such as those that have occurred in this case. As this report has described, the Projects’ implementation has contributed to an increase in conflict and a deepening of community divisions; and the failure to comply with those aspects of the ROP designed to prevent or mitigate such impacts may have played a role.

2.210 Regarding **cultural heritage**, the ROPs are intended to protect this heritage from the adverse impacts of Project activities. To determine and identify such heritage, it is essential to consult not only specialists in the field but also the local and potentially affected communities. The latter makes it possible to gauge the value that should be assigned to such cultural areas or sites. Damage, in the context of a critical cultural site, means “spoiling, compromising or impairing the condition or quality of a critical cultural site to the point that it will reduce its spiritual, historical or archeological value.”¹²⁴ The lack of consultation with local and indigenous communities on the value of the identified archaeological sites means that their opinions regarding the type of impacts (based on the cultural and historical value they attribute to them) and on the design of preservation measures have not been considered. This could compromise or impair the condition or quality of sites to which communities assign spiritual and cultural value, potentially damaging them.

2.211 Another instance of noncompliance determined by MICI relates to **environmental impacts**, understood as impacts on **water quality** and **ecosystem services**, as well as impacts on **critical habitats**. During its visit to the area, MICI obtained testimonies about the contamination of the rivers that the residents use in their daily lives, and how this contamination has reportedly affected their activities and their health. The Projects’ own documents identify impacts on the area’s waters and state that these impacts may have adverse effects on human health. In addition, PS4 states that the direct effects of projects on priority ecosystem services can create risks and adverse effects on health and safety in affected communities. In the case of these Projects, problems, deficiencies, and inconsistencies in water quality monitoring and reporting were identified and, although measures were determined to address these problems, IDB Invest has not met its obligation to supervise compliance with the respective obligations. It was also concluded that, because the rivers’ ecosystem services were not identified, the respective consequences and management measures were not identified and defined. Additionally, the lack of complete and timely studies to determine potential Project impacts on critical

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¹²⁴ OP-703 Implementation Guidelines, 2007 and 2019, p. 43 and p. 44, respectively.
habits and internationally recognized areas makes it impossible to define actions based on the mitigation hierarchy approach. Therefore, MICI finds that all of the above may have contributed to the harm alleged by the Requesters.

2.212 Finally, MICI concluded that these Projects were improperly classified, such that the environmental and social safeguards applied were less protective. The categorization of operations directly affects the environmental and social risk assessment process to be followed under IDB Invest’s policies. This is true both in terms of the requirements during the preparation process and at the subsequent implementation stage. An incorrect classification affects the operations’ implementation and may undermine their environmental and social sustainability, creating the risk of impacts typical of category A Projects—which are not addressed by these Projects, as they were considered category B.

III. CONCLUSIONS

3.1 Section II presented a detailed analysis of the findings of the investigation, which identified IDB Invest’s compliance and noncompliance with various obligations set forth in IDB Invest’s Environmental and Social Sustainability Policy, the Disclosure of Information Policy, operational policies OP-703, OP-765, and OP-761, and Performance Standards 1, 3, 4, 6, 7, and 8.

3.2 In addition to the obligations discussed in Section II, Directive B.1 of OP-703 establishes that IDB Invest “will only finance operations and activities that comply with the directives of this policy and are consistent with the relevant provisions of other [IDBG] policies.” Therefore, based on the compliance findings and conclusions reached by MICI, set forth in Table 3.1, IDB Invest failed to comply with Directive B.1 of OP-703.

Table 3.1
Summary of conclusions as to compliance with the ROPs

<table>
<thead>
<tr>
<th>Conclusions as to compliance</th>
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<tbody>
<tr>
<td>Identification of the affected population as indigenous</td>
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<tr>
<td>IDB Invest failed to comply with its Sustainability Policy, OP-765, and PS7, insofar as it did not ensure that the Client carried out a technical and systematic assessment of the possible indigenous identity of the Project-affected population, based on the definitions of indigenous peoples in the PIPs.</td>
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<tr>
<td>Gender-differentiated impacts</td>
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<tr>
<td>IDB Invest failed to comply with its Sustainability Policy, OP-761, and PS1, in terms of: (i) ensuring that the potential gender-differentiated risks and impacts of the Projects were assessed; (ii) requiring and supervising the adoption of appropriate prevention and mitigation measures; and (iii) ensuring and monitoring that women had access to equal participation in the Projects’ consultation processes.</td>
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<tr>
<td>Information disclosure and community participation mechanisms</td>
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</table>
IDB Invest **complied** with formally requiring the Projects to design, develop, and implement consultation and community participation processes, and a Project-level grievance mechanism, as required by its Sustainability Policy, Directive B.6 of OP-703, and PS1.

IDB Invest **failed to comply** with its Sustainability Policy, Directive B.6 of OP-703, and PS1 with respect to the requirements on meaningful consultations, community participation and Project information disclosure mechanisms, and the grievance mechanism, in terms of the identification of all stakeholders, engagement with the opposition, information availability and disclosure regarding the Projects’ adverse impacts and benefits, and the adaptation of these mechanisms to the specific circumstances and context of the Projects.

IDB Invest **complied** with its Disclosure of Information Policy with respect to the category B Project requirements, as it published the investment summary along with a summary of the environmental and social review on its website and, exercising the discretion granted by this policy, published some of the Projects’ EIAs.

<table>
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<tr>
<th>Impacts on social cohesion, violence, and security</th>
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<tr>
<td>IDB Invest <strong>failed to comply</strong> with its Sustainability Policy, Directive B.4 of OP-703, PS1, and PS4 in connection with: (i) assessing and supervising measures to prevent and mitigate social conflicts; (ii) addressing the effects on the social fabric of the community; (iii) assessing, designing, and implementing measures related to the Projects’ security; and (iv) the Projects’ capacity to manage social impacts.</td>
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<tr>
<th>Impacts on cultural heritage</th>
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<tbody>
<tr>
<td>IDB Invest <strong>complied</strong> with its Sustainability Policy, Directive B.9 of OP-703, and PS8, with regard to requiring the Client to take measures to conserve and protect the archaeological site of Ixquisis, identified in the EIA for GSM.</td>
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However, it failed to comply with the requirement under those operational policies that the affected communities should be consulted to determine the spiritual and cultural value they assign to the identified heritage and to design the measures for its conservation.

With specific regard to the indigenous population in the Project area, IDB Invest **failed to comply** with its Sustainability Policy, OP-765, and PS7 because it did not ensure that the potential impacts on the cultural heritage of these communities were assessed or identified. It also failed to ensure that the communities were consulted regarding the value they place on the identified heritage and the measures for its conservation.

<table>
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<tr>
<th>Environmental impacts of the Projects</th>
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<tbody>
<tr>
<td>IDB Invest <strong>complied</strong> with its Sustainability Policy, Directive B.5 of OP-703, PS1, and PS3, by ensuring that the Projects had adequately identified potential impacts on water sources and that specific measures were in place to prevent or mitigate these impacts. However, it failed to comply with its Sustainability Policy and Directive B.7 of OP-703, insofar as it failed to effectively supervise the measures related to water quality monitoring until 2020.</td>
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</table>

IDB Invest **failed to comply** with its Sustainability Policy, Directives B.5 and B.6 of OP-703, PS1, and PS6, by failing to ensure that the Projects had adequately assessed the specific impacts on ecosystem services and determined measures to prevent or minimize the impacts on those uses.

In addition, IDB Invest **failed to comply** with its Sustainability Policy, Directives B.5 and B.9 of OP-703, PS1, and PS6, in relation to critical natural habitats, as it did not ensure that the Projects identified and determined the boundaries of critical natural habitats and internationally recognized areas and that they established the direct and indirect risks and impacts on them. It also **failed to comply** with Directive B.7 of OP-703, due to the inadequate supervision of these requirements.

<table>
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<tr>
<th>Cumulative impacts</th>
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<tr>
<td>IDB Invest <strong>failed to comply</strong> with its Sustainability Policy, Directives B.5 and B.7 of OP-703, and PS1, by failing to ensure that the Projects had a cumulative impact assessment linked to the presence of other projects in the area, so appropriate mitigation measures could be put in place if such risks or impacts were encountered.</td>
</tr>
</tbody>
</table>
Environmental and social categorization of the Projects

IDB Invest failed to comply with its Sustainability Policy and Directive B.3 of OP-703 by classifying the Projects as category B when they presented potentially significant risks or impacts typical of category A projects.

Source: Prepared by MiCl.

IV. RECOMMENDATIONS

4.1 A compliance review contributes to the IDB Group’s process of continuous improvement. MiCl believes that the added value of a compliance review process like this one is twofold: the first aspect is related to the specific operation being investigated, and is intended to correct and/or strengthen the sustainability of the project; the second concerns those more general areas or subjects connected to the different operational policies that tend to pose challenges during their implementation, for which MiCl’s independent perspective can contribute to IDB Invest’s continuous improvement process. It is important to note that IDB Invest recently amended its environmental and social sustainability framework, so the general recommendations in this report cover both the regulations that applied to these Projects and those currently in effect. The recommendations presented here are meant to address both of these aspects and are submitted to the Board of Executive Directors for consideration and approval of their adoption.

4.2 If the recommendations are accepted, an action plan will be requested and MiCl will monitor the recommendations. The MiCl Policy states that, if the Board of Executive Directors accepts the recommendations and deems it appropriate, it will instruct Management to develop, in consultation with this Mechanism, an action plan and present it for consideration. When applicable, MiCl will monitor implementation of any action plans, or remedial or corrective actions agreed upon as a result of a Compliance Review. In this case, it is important to remember that the Projects are still in the execution phase. Accordingly, MiCl’s recommendations include specific recommendations for the Projects and general recommendations for IDB Invest.

<table>
<thead>
<tr>
<th>Characterization of the affected communities as indigenous</th>
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<tbody>
<tr>
<td><strong>Recommendation 1</strong> Establish a social baseline of the communities directly and indirectly affected by the Projects. This baseline should:</td>
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<tr>
<td>- Systematically and technically assess the indigenous character of the affected population.</td>
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<tr>
<td>- Follow the advice of experts on indigenous communities and, if possible, on the Chuj and Q’anjob’al ethnic groups of Guatemala.</td>
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<tr>
<td>- Based on the findings of this social baseline, include any appropriate measures consistent with the mitigation hierarchy and the relevant operational policies, specifically including the policies on indigenous peoples.</td>
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</tbody>
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| **Recommendation 2** Strengthen IDB Invest’s environmental and social safeguards unit in the area of indigenous peoples to ensure that its staff understand and are able to apply |
the requirements of the ROP on indigenous peoples (PIPs). This should include:

- Strengthen and expand IDB Invest’s roster of local independent experts to include subject matter specialists.
- Train IDB Invest’s team of environmental and social specialists to recognize and identify factors, elements, and indicators that should trigger the need for technical and systematic assessments on the indigenous identification of affected communities.
- Report to the Board of Executive Directors annually on the implementation of and compliance with the PIPs, using indicators that allow for adequate monitoring.

**Recommendation 3**
Integrate the IDBG’s indigenous specialists into investment Projects in areas of the region with a high indigenous population, beginning at the screening stage.

**Gender-differentiated impacts**

**Recommendation 4**
Conduct a gender-differentiated impact assessment that covers direct and indirect environmental and social impacts throughout the Projects’ area of influence. This assessment should be carried out by gender experts, preferably with knowledge of and experience with indigenous Mayan women in Guatemala.

**Recommendation 5**
Mainstream a gender perspective in the Projects’ communication strategy (external and internal) and in their grievance mechanism. This should, at least:

- Include spaces or methods specifically designed to encourage the participation of women from the communities in the consultation processes.
- Have a female interpreter in the native languages (both Chuj and Q’anjob’al, as well as others that may be needed according to the ethnic composition of the communities in all the direct and indirect areas of influence).
- Ensure that gender-sensitive procedures are in place for women to file complaints, particularly complaints of gender-based violence against women committed by the Projects’ workers or security forces.
- Prepare, make available, and distribute in local native languages outreach materials on the Projects, as well as on the rights of communities and women in relation to the Projects, their opportunities for participation, and the grievance mechanism.

**Recommendation 6**
Design, incorporate into the Projects’ ESMP, and implement a Sexual and Gender-Based Violence Prevention Protocol that includes:

- Regular training activities for all Projects’ employees on gender-based violence (including street harassment, intimidation, and sexual violence).
- A procedure, with a gender perspective and attention to the cultural nuances of the region, to address communities’ complaints of gender-based violence perpetrated by the Projects’ workers. This procedure should be communicated to the communities clearly and simply and should include safeguards to prevent re-victimization or reprisals against complainants.
<table>
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<tr>
<th>Recommendation 7</th>
<th>Strengthen IDB Invest staff’s understanding, capacity, and implementation of the gender safeguard requirements and any relevant standards applicable to identifying, assessing, and mitigating impacts on women and girls in operations, as well as to any requirements for ensuring the safe, effective participation of vulnerable groups.</th>
</tr>
</thead>
</table>
| Recommendation 8 | Establish a zero tolerance policy toward gender-based violence as part of IDB Invest’s environmental and social safeguard policies. This policy should:  
- Be included in the contractual terms and conditions of operations approved by IDB Invest.  
- Include an internal process for IDB Invest to investigate any circumstance in which it learns of complaints or allegations of gender-based violence associated with a IDB Invest-financed operation. These processes should be conducted by trained personnel, should not rely exclusively on information provided by the Client, and should pay special attention to information provided by alleged victims, international organizations, and civil society organizations that specialize in gender and human rights issues. |
| **Information disclosure and community participation mechanisms** |
| Recommendation 9 | Conduct a meaningful consultation process with all the communities in the Projects’ area of influence. This process should document, record, and present evidence of two-way dialogue and show that clear, simple, and accessible information is provided on the Projects’ social and environmental risks and impacts, and that such information is culturally appropriate and includes the views of opposing persons or groups. To carry out this consultation process, it will be necessary to:  
- Prepare a Stakeholder Engagement Plan.  
- Conduct stakeholder mapping.  
- Disclose and disseminate relevant information in advance, in non-technical, culturally appropriate formats that can be easily understood by the affected communities, on the environmental and social impacts of the Projects and the prevention and mitigation measures adopted. This information should be provided in Spanish, Chuj, and Q’anjob’al.  
- Assess the training needs of the Client’s community engagement team and, if necessary, provide training before the consultation is held.  
- Obtain technical advice from IDB Invest and, if possible, indigenous peoples and gender specialists, to design and carry out an informed consultation process on the Projects.  
- Have Maya Chuj and Maya Q’anjob’al interpreters available.  
- Thoroughly document the processes, in order to record the information shared, the participants’ observations and comments, and the outcome of the consultations. |
| Recommendation 10 | Review the possibility of including an independent third party as part of the Project-level grievance mechanism. If applicable, consult the affected communities and interested third parties on the matter and update the grievance and complaint management procedure. |
| Recommendation 11 | Design an ongoing strategy for information disclosure, reporting, and explanation of the grievance mechanism among the affected communities and stakeholders. The disclosure strategy should be accessible and culturally appropriate and involve, at a minimum, regular outreach campaigns. |
| Recommendation 12 | Dispatch a Voluntary Principles on Security and Human Rights (VPSHR) monitoring team before the resumption of construction activities. |
| | - This team should comprise people with experience in security and human rights issues. |
| | - It should be deployed for a sufficient period to allow for observation of the measures’ implementation and their adaptation to emerging situations. |
| | - The team should review and report to IDB Invest on the compliance of public and private security forces with the VPSHR. |
| Recommendation 13 | Require the Client to implement and address all outstanding security requirements and gaps before the start of construction activities. Compliance with this recommendation should also require: |
| | - Taking into account MICI’s considerations, as outlined in this report, regarding the assessment of risks to the community posed by the use of private and public security; the review and supervision of private security companies; the training and instruction of all security management personnel; the need to regulate relations with public security forces; the investigation of security incidents; and the need to communicate the Projects’ security arrangements to the communities. |
| | - Communicating the relevant aspects of the security management plan and system to the affected communities. Information shared should include key arrangements with private and public security providers. |
| Recommendation 14 | Include security and human rights management specialists in the supervision process. |
| Recommendation 15 | Advise the Client on engagement and communication with opposition groups. The language and terms used to refer to individuals or organizations opposed to the Projects should not increase their vulnerability to stigmatization and should aim to reduce polarization. IDB Invest should require the inclusion of these considerations in the Projects’ communication strategy and monitor their implementation. |
| Recommendation 16 | Assess the social investment programs carried out by the Client, to determine their effectiveness and equitable distribution among the communities in the area of influence of the three Projects. This assessment should start with a preliminary analysis and identification of the needs of all the communities in the area of influence of the three Projects. |
| Recommendation 17 | Develop a good practice handbook for implementing the Voluntary Principles on Security and Human Rights (VPSHR) and applicable safeguards for the use of security forces in IDB Invest-financed operations. |
| Recommendation 18 | Strengthen the knowledge and capacities of IDB Invest’s social specialists on insecurity, conflict, and violence in the Project context, including the |
requirements of PS4, the International Finance Corporation’s Good Practice Handbook on the Use of Security Forces, the VPSHR, and other protocols for implementing PS4 requirements in violent and volatile contexts in which IDB Invest operates, as well as mechanisms for managing conflicts between clients and communities.

**Recommendation 19**  
Include mechanisms or tools for monitoring violence associated with IDB Invest-financed Projects in existing environmental and social review and supervision protocols.

**Recommendation 20**  
Develop and deliver a training program on the guidelines on addressing risks of reprisals in the context of IDB Invest development Projects. This program should:
- Train IDB Invest’s environmental and social specialists on the issue of reprisals in development Projects in Latin America and the Caribbean.
- Be designed and delivered with the advice of people with contextual knowledge and experience related to the issue of reprisals in Latin America and the Caribbean.

**Recommendation 21**  
Submit an implementation plan for IDB Invest’s reprisals guidelines, including the presentation of periodic reports to the Board of Executive Directors, providing an account of the strategy, objectives, indicators, and outcomes, so their effectiveness can be monitored and measured, and adjustments made where appropriate.

**Cultural heritage**

**Recommendation 22**  
Assess the relationship between communities in the Projects’ area of influence and the Project-affected areas or sites of cultural importance. This should include differentiated impacts on indigenous communities. It should be done through consultations with these communities, which should be given access to documentation on the studies and measures taken so far to protect the cultural heritage.

**Recommendation 23**  
If needed, adjust or modify prevention and mitigation measures based on this assessment, with the participation of the members of the communities in the Projects’ area, including indigenous communities. Keep and maintain records of this process.

**Environmental impacts**

**Recommendation 24**  
IDB Invest should take an active role with the Client to ensure that construction activities do not recommence on the Projects until the requirements established in 2020 regarding water quality control, ecosystem services, and critical habitats are met.

**Recommendation 25**  
IDB Invest should ensure that: (i) priority ecosystem services, potential impacts, and measures to address them are identified in accordance with PS6; (ii) potential impacts on internationally recognized areas are identified and appropriate mitigation measures are defined; (iii) biodiversity action plans are updated with available information on biodiversity in the Projects’ area of influence, including internationally recognized areas and all species that
depend on critical habitats, and that the boundaries of identified critical habitats are determined.

### Cumulative impacts

**Recommendation 26** Prior to the resumption of Project activities, IDB Invest should supervise the completion of a cumulative impact assessment regarding any other existing, planned, or reasonably defined development in the Projects' area of influence.

### Environmental and social categorization of the Projects

**Recommendation 27** MICI recommends that IDB Invest establish a procedure (if one does not exist) to allow Projects to be reclassified after the screening/classification phase, when circumstances are identified that elevate the risks and impacts of the Projects to those described for category A.

**Recommendation 28** Ensure that the Projects examined in this case are supervised under the requirements of category A projects, ensuring compliance with the environmental and social requirements of this category and the relevant operational policies, including the publication of the supplemental ESIA.

### Recommendation for an action plan

**Recommendation 29** Management should develop, in consultation with MICI, an action plan for implementing the recommendations in this report that are approved by the Board of Executive Directors. This plan should contain an implementation schedule compatible with the operation under investigation, which MICI would monitor under paragraph 49 of its Policy.

In case of exit from the Projects, IDB Invest should make the necessary provisions to ensure a responsible exit from the Operations, taking into account the findings, conclusions, and recommendations of this report. For this, a transition plan should be prepared, in consultation with the communities, guided by the principles to do no harm, transparency and responsibility. Among other measures, at a minimum, it should:

- Disclose and disseminate information on the Projects’ environmental and social impacts and the prevention and mitigation measures adopted, in non-technical, culturally appropriate formats that can be easily understood by the affected communities.
  - Include information on the benefits that the Projects would have brought for some communities
  - Incorporate in the disclosure, dissemination, or communication strategy a gender perspective to ensure that women are informed and able to participate.
  - Provide information in languages and forms agreed with the communities, taking into account the needs of women and the elderly.
  - Include, primarily, the information contained in assessments, studies, and measures taken with respect to archaeological heritage; the supplemental ESIA; and biodiversity assessments and action plans.
- Evaluate the gender-differentiated impacts caused or exacerbated by the Projects’ arrival in the communities. This assessment is separate from, and may supplement, the evaluation of the social management plan contemplated in the ESAP.

- Carry out, in consultation with the communities in the area of influence of the Projects, a professional training and community empowerment project focused on the women of the communities.

- Advise the Projects on the implementation of a grievance mechanism adapted to the sociocultural context of the area, that includes a gender perspective, provides for the availability of Chuj and Q’anjob’al interpreters, and can continue to receive individual complaints from community members about Project impacts from the beginning of the Project until IDB Invest’s exit. To this end, also advise them on the possibility of bringing in an independent third party.

- Design an exit strategy and a transition plan with the aim to prevent, at all times, the escalation of social conflicts and the risk of any form of reprisals. To this effect, the participation of the communities in the different stages is essential, and it would be advisable to employ and deploy a team of security and human rights specialists to advise on the design of the plan and monitor its implementation.

- Advise and train relevant stakeholders, from the public and private sectors in San Mateo Ixtatán and Guatemala, on the relevant safeguards on security and human rights, particularly those related to infrastructure projects, and emphasizing the protection against reprisals.

- In the event that the Projects are not built, advise and provide assistance to the Client on restoring physical spaces affected by the construction of the Projects or associated facilities, taking into particular consideration the potential environmental impacts and to the cultural heritage of the communities, in compliance with the applicable legal system.

- Inform the communities of IDB Invest’s exit from the Projects in a broad, transparent, and neutral manner. As part of this measure, IDB Invest should advise the Client on communication with stakeholders, so that the language and terms used to refer to individuals or organizations opposed to the Projects do not lead to stigmatization, do not attribute responsibility to them, and, to the extent possible, reduce polarization.

Without prejudice to the above, Management’s action plan should also include the relevant measures to implement the institutional recommendations approved by the Board of Directors, all of which MICI would monitor under paragraph 49 of its Policy.

4.3 Under paragraph 48 of the MICI Policy, once the Board of Executive Directors has considered this report, it will be published in the Public Registry with Management’s and the Requesters’ comments and the Board’s final decision.

4.4 If the action plan for implementing the recommendations is approved by the Board of Executive Directors, MICI will prepare a monitoring plan and issue periodic monitoring reports according to the implementation schedule for the proposed actions.
Annex I: Complete and confidential Information on the compliance review findings and conclusions

This Annex contains the complete information, including confidential information, on which MICI bases its findings and conclusions regarding the Compliance Review Report. It only includes the chapters or sections of the report that contain confidential information.

MANAGEMENT RESPONSE TO ICIM’S PRELIMINARY VERSION OF THE COMPLIANCE REVIEW REPORT FOR PROJECTS GENERADORA SAN MATEO S.A. AND GENERADORA SAN ANDRÉS S.A (MICI-CII-GU-2018-0136)

Introduction


Management recognizes ICIM’s efforts to conclude the investigation under difficult circumstances for its team members and values their high level of commitment.

IDB Invest welcomes the opportunity to provide comments to the Report.

IDB Invest appreciates ICIM’s suggestions to improve institutional performance and correct non-compliance at a project level and would like to note the following key points to the Report:

a) Management recognizes that the complex social situation surrounding the Projects has deteriorated significantly over time and agrees with ICIM’s assessment of structural vulnerabilities and conflictive environment. Management believes that it has taken timely, reasonable and appropriate actions to stay abreast of this volatile context and appropriate mitigation efforts were proposed throughout the Projects’ appraisal and supervision.

b) Please include additional contextual information to adequately reflect (i) IDB Invest efforts and (ii) the Projects construction reality. Specifically, the Report could incorporate:
   • the Projects and Environmental & Social Evaluation timeline described in Section 1 below, while also detailing how the numbers of workers and security personnel (private and public) present at the site have fluctuated since IDB Invest became involved; and
   • the evolution of the security context in the Projects area from the time of the Due Diligence to the present and recognize the implications that high insecurity in the zone had on IDB Invest’s ability to visit the Projects site in person.

c) Please adjust ICIM recommendation on section 2.2.1: Instead of hiring one indigenous people’s expert, IDB Invest could expand its roster of various specialized local consultants;
e) Please remove reference to the May 2009 consultation (Sections 2.77, 2.78 and 2.79 of the Report), as it was not related to the Projects, but to mining and extractive activities in the municipality. Management believes that mentioning this event could cause confusion;

f) Please include in the ICIM recommendation in Section 2.2.4 that training should be based on the Good Practice Handbook for Use of Security Forces published by the IFC1, while incorporating pertinent content from the VPSHR, so there is alignment with IDB Invest’s existing sustainability framework;

g) Please include Management’s complete quote on section 2.194 of the Report regarding the policy requirement for cumulative impact evaluation: “there is no obligation to perform a cumulative impact assessment for every project”. According to the Pertinent Policies the cumulative impact evaluation is a decision taken on a case-by-case basis, depending on the context of the area of influence, project characteristics, affected community concerns and or scientific concerns. The Report provides only a partial quote extracted from Management Response to the Compliance Review and Terms of Reference (MICI-CII-GU-2018-0136);

h) 

i) Lastly, we would respectfully request ICIM to reconsider the recommendation to alter the project categorization after appraisal for the reasons outlined in section 2.3 of this Response.

As certain parts of this Response are confidential (according to IDB Invest Access to Information Policy), Management appreciates that ICIM will allow Management to indicate which paragraphs need to be redacted before a final version is published in ICIM’s registry.

Management also wishes to provide additional information on a series of measures that are already being implemented since the beginning of the investigation. A brief description of those facts and some observations regarding the status of the Projects are provided below.

Management remains at ICIM’s disposal for any further clarification deemed necessary.

1- The Projects

In order to better visualize Project’s activities since IIC/IDB Invest assessment, as well as financing milestones, Management has prepared two timelines: financing and environmental & social supervision.

Construction was interrupted for 81% of the time during the life of the Projects as construction activity took place for 17 months out of the 88 months since it began in February 2014. Despite Projects inactivity

1 International Finance Corporation
and heightened security risks, IDB Invest and its expert consultants continued to engage with Borrowers and supervise the Projects throughout this time.

Financing Timeline and Financing Information

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2 Presidential Elections in the country.
## Projects and Environmental & Social evaluation Timeline

<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Event</th>
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<tbody>
<tr>
<td>2013</td>
<td>March</td>
<td>ESDD 3 visit</td>
</tr>
<tr>
<td>2014</td>
<td>January</td>
<td>Beginning of construction</td>
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<tr>
<td>2014</td>
<td>February</td>
<td>ESAP 4 Support – E&amp;S officer and consultant visit site</td>
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<tr>
<td>2014</td>
<td>May</td>
<td>Constructions stops.</td>
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<tr>
<td>2014</td>
<td>June</td>
<td>1st Social Evaluation Visit (Environment consultants)</td>
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<tr>
<td>2014</td>
<td>October</td>
<td>2nd Social Evaluation Visit (Desmarginalizar consultants)</td>
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<tr>
<td>2015</td>
<td>April</td>
<td>ESAP Support Visit (Office only) On Common Ground consultants</td>
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<tr>
<td>2015</td>
<td>June</td>
<td>1st Fund for Peace 5 Visit</td>
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<tr>
<td>2015</td>
<td>July</td>
<td>Construction restarts</td>
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<tr>
<td>2015</td>
<td>September</td>
<td>2nd Fund for Peace Visit</td>
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<tr>
<td>2015</td>
<td>November</td>
<td>E&amp;S Supervision Visit – On Common Ground</td>
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<tr>
<td>2016</td>
<td>April-May</td>
<td>Individual environmental and social consultant visit</td>
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<td>2016</td>
<td>July</td>
<td>E&amp;S Supervision visit – Social Capital Group</td>
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<tr>
<td>2016</td>
<td>September</td>
<td>Meetings with CSOs 6 (E&amp;S officers)</td>
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<td>2016</td>
<td>November</td>
<td>E&amp;S Supervision Visit – Social Capital Group</td>
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<td>2016</td>
<td>December</td>
<td>First Disbursement</td>
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<tr>
<td>2017</td>
<td>January</td>
<td>Construction stops.</td>
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<tr>
<td>2017</td>
<td>March</td>
<td>E&amp;S Supervision Visit (office visit) - Social Capital Group</td>
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<tr>
<td>2018</td>
<td>March</td>
<td>E&amp;S Supervision Visit + Fund for Peace visit</td>
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<tr>
<td>2018</td>
<td>April-Sept</td>
<td>Rehabilitation activities on construction sites</td>
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<tr>
<td>2018</td>
<td>August</td>
<td>Rehabilitation stops</td>
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<tr>
<td>2019</td>
<td>May</td>
<td>Stakeholder mapping report – Social Capital Group</td>
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<tr>
<td>2019</td>
<td>September</td>
<td>E&amp;S Supervision – Social Capital Group</td>
</tr>
</tbody>
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3 Environmental and Social Due Diligence  
4 Environmental and Social Action Plan  
5 Leading international not for profit organization specializing in Security and Human Rights  
6 Civil Society Organizations
2. Compliance Review

Management appreciates ICIM’s detailed and technical compliance review. Over the past several years many of the recommendations presented in the Report have already been incorporated into IDB Invest’s structuring and supervision efforts. Management is committed to continuing to strengthen its capacity to manage Environmental, Social and Governance risks associated with the projects financed by IDB Invest.

Although construction formally began in July 2013, it is important for the ICIM Report to indicate that actual construction activities took place almost entirely during the period from mid-2015 to late 2016 (figures 1 and 2 below). During that time, IDB Invest and its Environmental, Social and Security consultants visited the Projects site five times and the Borrowers’ headquarters an additional two times.

Since January 2017, construction has stopped. Currently the San Mateo Project (GSM) and the San Andres Project (GSA) are still only partially constructed. Minimal work did continue on the transmission line for the next 18 months, but works stopped on that component as well in July 2018 and have not resumed.
Unfortunately, since January 2017, due to the unrest and conflict existing in the region IDB Invest has not been able to continue visiting the Projects site safely, except during a brief window in mid-2018 and another in late 2019. IDB Invest took advantage of both windows to conduct on-site supervision visits, the first of which included the original security team from Fund for Peace.
Even though construction activity has been halted by the Borrowers for the last four years, IDB Invest has continued regularly supervising the Projects, assessing compliance, and taking formal steps to request the Borrowers to close all environmental and social gaps before resuming construction.

2.1 Methodology

Management agrees with ICIM that the compliance review process is limited to the specific scope of the Mechanism and its standard of proof for its determinations is unlike that of a legal or judicial review, and for such reason ICIM’s analysis and reports are not intended to be used in judicial or regulatory proceedings or for purpose of attributing fault or liability, or for determining compliance with law or regulations.

2.2 Compliance Review Findings

2.2.1 Characterization of affected communities as indigenous peoples

At the beginning of the due diligence process, the Project Team, aware of the social context in which the Projects were located, hired an internationally renowned anthropologist specializing in Environmental and Social Due Diligence (ESDD) assessment and in the application of IDB’s and World Bank’s policies on indigenous peoples. The consultant visited the region and reported that there were indigenous people living throughout the area of influence of the Projects. The consultant further reported that in his opinion, the three communities directly impacted by the hydroelectric Projects’ construction were predominantly “Ladino” (Spanish-speaking Guatemalans with mixed Spanish and indigenous ancestry).

This finding was consistent with the government census data presented in the Projects’ EIAs, also accepted by the Guatemalan government. The Project Team assessed the finding, therefore, to be reasonable and summarized it in the Project’s Environmental and Social Review Summary. This summary was published on IDB Invest’s website in mid-2013.

Management would like to highlight that from the time that information was published nearly two years passed before IDB Invest signed the Projects’ Loan Agreements. During those two years, given the complexity of the area and the heightened contextual risk, the Project Team continued to conduct due diligence activities.

During this period, IIC’s Senior Management reached out to the IDB in order to solicit help from the Gender and Diversity (GDI) specialists in the Guatemala office. As a result, GDI’s expert in indigenous peoples also visited the site during the due-diligence process to assess the situation and the level of local support for the Projects. Both the GDI local specialist and the IDB Representatives in Guatemala have provided valuable support throughout the supervision phase of the Projects.

9 Regarding the Client’s compliance with the IPP at that time, the consultant found that the Client’s field team has followed best practice in relating to the indigenous component of local society. It has ensured that interpreters were available to translate the discussion into the indigenous language at community meetings where some participants did not speak Spanish. It has employed a culturally appropriate approach to communication with villagers and showed respect and deference to community authorities (including the auxiliary mayor) and to religious leaders as well. Community meetings were always called by the village authorities who also presided. In the opinion of the IESC team, no additional special measures were required to assure compliance with the relevant policies and Performance Standards.

10 Environmental and Social Impact Assessments
Furthermore, IDB Invest arranged three more due diligence visits to the Projects area by two additional consulting firms with expertise in matters relating to indigenous peoples (June 2014, October 2014, and April 2015). During the first of those additional three visits, the new consultant assessed the Projects area for the potential presence of indigenous people, this time carefully applying the definition found in the Indigenous Peoples Policies (IPP).\footnote{IDB OP-765 and IFC Performance Standard 7} The conclusion of this assessment was that there was a strong likelihood that many of the local residents, across all of the local communities, did in fact qualify as “indigenous people” according to the IPP’s definitions.\footnote{Management notes that in that same report the ESDD Consultant mentioned that although they acknowledged the presence of many people of indigenous origin, culture and language in varying degrees, the consultants didn’t see the need for exclusive programs for indigenous people considering they were part of integrated communities in the area.} At that point, prior to finalizing the contractual conditions and the Environmental and Social Action Plan (ESAP) to be included in the loan agreements, the Project Team decided to apply the IPP to all the communities in the Projects area of influence—without exception.

The evidence of this decision can be found in the final, executed version of the Projects’ ESAP. The ESAP includes a series of conditions designed specifically to require the Projects to comply fully with the IPP.\footnote{The ICIM Preliminary Report mentions these conditions in a footnote to Annex 1.}

Since 2019 IDB Invest Environmental, Social and Corporate Governance Division (SEG) has steadily increased its number of social experts. The team has specialists in archeology, social sciences, conflict resolution, gender risk assessment and human rights, all with ample experience with private sector development projects. It is also common practice to engage the assistance of external consultants for appraisal and supervision of high-risk projects.

When assessing risks and impacts to indigenous peoples it is beneficial that a specialized consultant is engaged, since every ethnic and cultural community presents unique characteristics. Considering this, Management believes that it would be more effective to expand its roster of social experts as well as its roster of various specialized local consultants to ensure both breadth and depth of coverage, rather than hiring one indigenous people’s expert.

Management agrees with the ICIM that IDB invest should continue to invest in capacity building. IDB Invest believes that continuing its efforts to enhance Borrower capacity and to increase engagement with communities and local civil society organizations (CSOs) is an important factor to mitigate risks, while enhancing opportunities for value creation and positive development impact in projects where indigenous people are present.

2.2.2 Gender differentiated impacts

Management appreciates the ICIM Report’s recognition of the efforts that IDB Invest has made since the Projects’ inception to promote gender equity in activities related to consultation and benefit sharing and to mitigate risks to women and girls from Projects-related activities. Moreover, financing documentation includes covenants to address gender differentiated impacts as was the case for these Projects.
The Borrowers were required to make their best efforts in ensuring that the female labor force has the opportunity to be employed by the Projects or in related activities. In addition, the Borrowers needed to ensure that women participate in Projects related consultations and in committees and had access to and benefit from social investments related to the Projects. As part of each Environmental and Social Compliance Report, the Borrowers would need to provide evidence of the implementation of activities specifically designed to ensure equal access for girls and women to Projects-benefits and to Projects-related consultation activities. This plan also needed to consider any differential roles of women in indigenous and ladino communities and families. It was required that the Borrowers took action to ensure that

IDB Invest is fully committed to gender equality and diversity and supports the continuous advancement of international standards to prevent sexual harassment, abuse and exploitation, both internally and in the operations it finances. In a recent statement, IDB Invest CEO emphasized the institution’s zero tolerance policy regarding gender-based violence.

In early 2020 a specific tool (Gender Risk Assessment Tool – GRAT\(^{17}\)) was applied to a sample of projects; since the approval of IDB Invest’s updated Environmental and Social Sustainability Policy in April 2020 (effective since December 15, 2020), all high-risk projects undergo this specific screening as part of the environmental and social risk appraisal. The Policy explicitly requires clients to identify and address gender-related risks (including gender-based violence and sexual exploitation) and to put in place specific measures to prevent and address these risks. Compliance with the Policy is required under the financing agreements signed with IDB Invest’s clients.

The GRAT, also referenced in the Sustainability Policy Implementation Manual,\(^ {18}\) guides IDB Invest’s Environmental and Social Officer (E&S Officer) in evaluating how a project identifies gender risks, promotes inclusive consultation and engagement, develops gender adequate grievance mechanisms, incorporates gender concerns in health and safety evaluations and working conditions, and provides for gender consideration in resettlement processes and biodiversity evaluations. The results of the GRAT help inform the necessary prevention and mitigation measures prescribed in the ESAPs (environmental and social actions plans).

Since 2019 the institution has been investing in a series of internal and external trainings and knowledge products regarding the application of the GRAT and gender-based violence prevention.\(^ {19}\)

Management is concerned that there have been allegations of gender-based violence and discrimination or exclusion, despite IDB Invest’s efforts to require Borrowers to comply with the Pertinent Operation Policies.


\(^{18}\)https://www.idbinvest.org/en/sustainability

IDB Invest stays committed to continue to expand its efforts to provide capacity building to personnel and clients, while continuing to develop specific content on gender risk assessment and to invest in improving knowledge databases.

2.2.3 Participation and information sharing

With respect to the Report’s findings regarding lack of consultation with people opposed to the Projects, Management appreciates the Report’s recognition that in 2016 and 2017 there were efforts on the part of IDB Invest and its environmental and social consultants to talk with CSOs opposed to the Projects. Management would like to specify that these efforts included a series of emails and phone calls to exchange information with a prominent local human rights activist, as well as a meeting between IDB Invest’s E&S Officers and representatives from several local and international CSOs in Guatemala City.

During the meeting, the Project Team explained that it had been unable to locate anyone opposed to the Projects despite having visited the area eight times over the preceding three years. In response, the CSO representatives offered to accompany IDB Invest to the field during a future supervision visit, and the Project Team began planning internally for that trip to occur in early 2017. Unfortunately, as noted above, only a few months later the Projects were attacked. Since then, except during brief windows of relative calm in mid-2018 and late 2019, the persistent insecurity in the zone has made future supervision visits impossible.

During the above-mentioned meeting, the CSO representatives explained that they had not yet attempted to contact the Borrowers directly. IDB Invest shared the contact information for the Borrowers’ communications specialist and encouraged the representatives to make contact. IDB Invest also requested the borrower to ensure, and document, that their ongoing outreach activities reach not only community leaders and Projects supporters, but also the segment of the local population that does not currently support the Projects and that may not feel represented by the official community leaders.

Management notes that after that initial meeting, IDB Invest received no further communications from any of the CSOs. In September 2019, IDB Invest and IDB Invest’s E&S consultant did however email the local activist mentioned above multiple times to request her assistance with coordinating a visit to the Projects area accompanied by CSO representatives to no avail. Shortly thereafter a letter was sent to the ICIM by three of the CSOs forming part of the Requester group. The authors expressed concern that the consultant’s visit might interfere with the ICIM investigation and asked to be kept informed about the planning and outcome of the visit. They also requested ICIM’s director to share this concern with Management. The authors did not, however, agree to help coordinate the visit or to participate in it.

In November of 2019, observing the ongoing lack of communication between the Borrowers and individuals or groups opposed to the Projects, IDB Invest required that the Borrower implement a Corrective Action Plan (CAP) prior to undertaking any construction activities and update the Environmental and Social Management System to include a social engagement strategy that provides a proactive and systematic communication with representatives from all communities in the Projects area, including engagement with individuals and groups opposed to the Projects.
Management appreciates ICIM’s efforts to broaden the analysis and research additional consultation processes in order to understand local context. Nevertheless, it wishes to clarify that the consultation in May 2009 mentioned in Sections 2.77, 2.78 and 2.79 of the Report is not related to the Projects, but to mining and extractive activities in the municipality.

2.2.4 Impacts to social cohesion, violence and insecurity

Management appreciates the ICIM’s recommendations for actions to reduce the insecurity and conflict that now characterize the Projects area. Management takes this opportunity to describe the similar actions that IDB Invest has been taking since its earliest engagement with the Projects. Management believes that when viewed in their full context, such actions have been both timely and appropriate.

At the time IDB Invest began its ESDD, no organized opposition was apparent, nor was any Project-generated polarization evident. The ESDD Report, written following an IDB Invest and expert consultant site visit in March 2013, describes that the region had experienced extreme conflict in the past—unrelated to the development of these Projects—and that there were still “tensions” in the area. The ESDD Report also discloses that the Environmental Impact Study includes responses to a survey that indicated that some local residents held negative feelings towards the Projects (though the authors cast doubt on the validity of those responses, given the poor quality of the survey). It was because of this background that the ESDD Consultants were on the lookout for any signs that latent tensions were being inflamed by the Projects. After visiting the site and investigating these matters in person, the social expert on the ESDD team wrote the following:

Against the background described above, the Borrower’s field team has done an exemplary job of building relationships in the area surrounding the Projects site in the Municipality of San Mateo over the past 3.5 years. The Borrower’s team members have intimate knowledge of the families in the area and call many local people by first name. Almost no community members admitted to harboring doubts about the Borrower’s intentions or potential damage from the hydropower dam.

Nevertheless, as is good practice for infrastructure projects, the draft ESAP prepared by the consultants after the first visit to the Projects site required the Borrowers to develop a “Site Security Management Plan” prior to the execution of the Loan Agreement.

In February of 2014, an IDB Invest E&S Officer visited the Projects site together with the environmental consultant from the ESDD team. They toured the site and surrounding communities, largely on foot, and interviewed local community members at will. During the tour, the project managers explained to them that the area was free from the type of conflict and insecurity affecting Hidro Santa Cruz. The difference, the managers explained, was due to the constant engagement and relationship building efforts by the Projects’ staff—who had been living in the area for almost four years already.

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20 Hidro Santa Cruz is hydroelectric project in Barillas (approximately 70 kilometers by road from the Projects), referred to in the ICIM report and visited by the ICIM during their investigation.
Thus, it came as a surprise to IDB Invest when, in May 2014, the Projects’ work camp suffered an attack that resulted in the destruction of construction equipment and one project worker being injured by gunfire. Management notes that in the chronological list of “acts of violence and protests related to the Projects” (Annex V to the Preliminary Report), this event appears first. Management also notes that no person or group ever came forward to claim responsibility for these acts, but that allegedly the protesters arrived in buses from somewhere outside of the Projects area.

The ESDD Consultants conducted the next evaluation visit less than two months later, in June 2014. None of the people the ESDD Consultants interviewed during the visit expressed any opposition to the Projects. Nevertheless, since it had become clear that some sort of opposition force was at work, whether local or external, the ESDD Consultants recommended that the Borrower should develop a communication strategy that included interest-based stakeholders (i.e., those who are outside of the Projects’ direct area of influence but who have expressed interests or concerns about the Projects) in the dialogue process and in future consultations. The strategy should consider the degree of conflict between community groups, the impacts on the Projects from the opposition groups, and the request from interest-based stakeholders to be part of the negotiation process. IDB Invest converted this recommendation into a binding contractual obligation by including it in the ESAP annexed to the executed Loan Agreement.

In October 2014 IDB Invest contracted a consulting firm (“Desmarginalizar”) specializing in sociopolitical analysis and conflict resolution in crisis zones to assess Project’s consultation activities, determine compliance status of the social action items in the Projects ESAPs and provide IDB Invest recommendations for remedying any deficiencies and filling any gaps encountered.

Three of the firm’s consultants visited the Projects area for three days at the end of that month, unaccompanied by any project staff. They conducted 43 individual interviews with residents from 11 communities, plus group interviews with 44 additional residents in eight other communities. Two weeks later the consultants also interviewed the Bishop of Huehuetenango and the Director of Strategic Analysis from the Office of the Procurador de los Derechos Humanos.

The report that came out of this consultancy concluded that there was broad support for the Projects, although there were pockets of opposition scattered throughout the Projects area. This opposition existed, according to the report, despite findings that (i) the company complied with its obligations to offer mechanisms of participation, of informing the communities, and attending to vulnerable people; (ii) the company took into account the suggestions received from the communities; (iii) the communities manifested support to the Projects and they did so in a manner that is free and informed; and (iv) the minutes of community meetings provided evidence that the communities supported the Projects, and that they did so by way of free, prior and informed consent.

Regarding the acts of violence that were carried out at the Projects site earlier in 2014, the report found that there was no evidence that the residents of the region sympathized with the attack of May 5th, or that a majority or important number of the residents participated. In interviews and focal groups, the participants attributed the attack and other phenomena of opposition to actors external to the zone. The report mentions that the Procuraduría de los Derechos Humanos considered the social management of the Borrowers to be satisfactory, and that they were willing to support the Projects.
The same month, October 2014, IDB Invest recognized that the Borrowers lacked the in-house capacity to develop a security management plan consistent with IFC Performance Standard 4. In response, the Project Team updated the working draft of the ESAP to require the Borrowers to contract a consultant to assist with development of and implementation of a security management plan. This requirement was to be completed prior to the execution of the Loan Agreement. IDB Invest also included a requirement in the ESAP to define and implement social investments in an equitable manner, meant to mitigate some of the underlying causes of potential conflict in the zone.

By the following March (2015), IDB Invest observed that the Company was struggling to identify a qualified consultant to assist with the development of a Security Management Plan/System (SMP/S). As a result, the Project Team accessed Technical Assistance Funds and contracted the Fund for Peace (FFP), a leading international not for profit organization specializing in the Voluntary Principles on Security and Human Rights (VPSHR). FFP assignment included a review of the existing documentation to understand the current context, a site visit and work with the Borrowers to develop, implement, and monitor the Borrowers’ SMP/S consistent with IFC PS4.

At the same time, IDB Invest contracted the firm On Common Ground (OCG), specialized in human rights, indigenous rights, and conflict management. OCG’s task was to assess the Projects’ compliance before IDB Invest would decide to sign the Loan Agreement. The Report they produced includes sections on “Community Security,” “Security and Conflict Prevention,” and “Personal Security.” The report concluded that:

(i) The Borrowers organized visits to all 23 communities in the area of influence by representatives from the Office of the President of Guatemala, government officials, the Vice-ministry of Sustainable Development, the Human Rights Ombudsman, the United Nations High Commission for Human Rights, the Ministry of State and the Presidential commission against Racism and Indigenous Peoples discrimination (CODISRA).

(ii) The Borrowers’ staff provided instruction to community members on peace building, even at difficult moments of conflict.

(iii) Detailed information related to personal security is included in the Security Management Plan, which describes the Security Committee, monitoring procedures, and Center of Emergency Operations. The Security Committee includes representatives from each of the Direct Area of Influence micro-regions (Yalanhuitz, Ixquisis and Nuevo Triunfo), Borrower representatives, contractors and the company acting as security leader. The committee members communicate constantly and meet biweekly to update information regarding local security, identify risks and review contingency plans.

Regarding security, safety and violence, the IDB Invest Loan Agreements incorporate the ESAP, which requires the Borrowers to provide the IIC with a written commitment of Borrowers and its subcontractors to implement Good International Industry Practice (GIIP) in the use of its security forces. This would encompass the need to develop and implement a security management system to mitigate the risk of inappropriate use of force against communities. This system should be consistent with Performance Standard 4 following a third-party verification conducted by an expert acceptable to the IIC.
would also involve developing a protocol that includes vetting for in-house and third-party contractors and training. The Security Management System should address the use, qualifications, responsibilities, roles, actions, training, and supervision of security personnel in Projects sites employed by the Borrowers and its subcontractors during construction and operations phases of the Projects. The Borrowers should evaluate the use and potential community impacts of hiring local people as security personnel, an action which can have consequences on interpersonal and power dynamics in the communities.

Fund for Peace visited the Projects the following month to conduct their initial assessment of conditions on the ground. In July they submitted their Report, detailing clearly for the Borrower the specific Operational Policies requirements that needed to be met and the gaps that needed to be closed. The Report concluded with next steps, that mentioned that FFP would assist the Borrowers in the development, documentation, and with implementation of a Security Management Plan and System (SMP/S).

The same document describes that FFP had met with the Borrowers to discuss the gaps in current policy and procedure, and to outline areas for improvement. FFP had also provided the Borrowers with key industry guidance, such as the Voluntary Principles Implementation Guidance Tool and the VPSHR Guidance on Auditing Against Key Performance Indicators. Further, following this Initial report, and upon acceptance of the included recommendations, a draft outline of good practice on what should be included in an SMP/S and how it should be integrated into operations and management systems would be circulated to the Borrowers.

The consultants stated that it was critical that the company developed its own SMP/S in order to ensure internal buy-in and to further ensure the utmost appropriateness for their operations. FFP would provide as much advice as is necessary in formulating the SMP/S.

FFP wrote that the SMP/S should be developed between July and September 2015. However, given that the construction phase was expected to begin in mid-July, there was a new urgency for the formulation and implementation of the SMP/S. Thus, FFP would work with the Borrowers to expedite this process as much as possible, with the key priority being engagement with the construction contractor, Solel Boneh, on the hiring, management, and oversight of private security contractors, as well as engagement with the police and military on expectations of conduct and regulating equipment transfers (provision of support) to those police and military personnel.

In September, Fund for Peace conducted a follow-up visit to the Projects. They have observed that in general there was satisfactory progress on developing and implementing a SMP/S. They have noticed that true success of any SMP/S depends on how the SMP/S is practically implemented and institutionalized over the long term and is tested in times of crisis or emergency. FFP felt that without the scope of long-term observation, it was impossible to guarantee the success of effective implementation. However, understanding the breadth and depth of policy and procedure, apparent management buy-in, and evidence of implementation (such as training programs, etc.) there was a strong guide and indication as to the potential effectiveness of such an SMP/S in the future.

On Common Ground conducted the next supervision visit less than two months later. During the visit, the consultants interviewed the heads of security from the Company as well as the EPC Contractor, Solel Boneh Group (SBG), as well as individual security personnel. The resulting report noted that the
Borrower’s security manager demonstrated a good level of familiarity with the human rights issues and Voluntary Principles on Security and Human Rights (VPs). The report mentioned that Fund for Peace has made two visits to site to review and strengthen the implementation of security that is compliant with the VPs.

The report mentioned several recent security incidents. All but one involved people threatening and intimidating workers, destroying equipment, and attempting to access restricted areas. The one exception was an incident involving employees of a Projects’ subcontractor drinking alcohol in a local community and provoking local residents who then invaded a contractor’s workshop. The security managers explained that, in response to some of these incidents, they activated the Projects’ security procedures and that they were deemed effective. They professed to have learned lessons from the experience, and that these related to the need for better internal communications. The Report also found that the Borrower’s armed security personnel have not used armed force against protesters that have physically attacked Project’s personnel and assets in May 2014 and November 2015.

The OCG report recommended certain actions and IDB Invest included a Corrective Action Plan (CAP) to require:

1- An Implementation Plan which would include every mitigation and monitoring measure or general commitment mentioned in the ESMP (Environmental and Social Management Plan), ESIA (Environmental and Social Impact Assessment), and a BAP (Biodiversity Action Plan). Implementation activities would include, among others, the following: (a) regular inspections; (b) definition of remedial actions for non-compliance; (c) status-tracking and follow-up procedures for open non-compliances; (d) internal audits; and (e) reporting to Lenders on implementation progress and results.

2- A report on (i) steps that the Client was taking to ensure that the entire workforce, including contractors and their subcontractors, were complying with the Projects’ Code of Conduct, and (ii) how these steps have been rolled into the Implementation Plan, for systematic and regular follow-up by the Borrowers.

IDB Invest’s E&S Officers then devoted the next several months to finding a qualified consultant to create this plan, working together with the Company to define the scope of work for the contract, and advising and assisting the consultant with the actual work.

At that same time, since the ESDD came to a close with the signing of the Loan Agreements, IDB Invest (together with the rest of the Lenders and the Borrowers) contracted Social Capital Group (SCG) and Consultoría y Tecnología Ambiental (CTA) to take on the role of Independent Environmental and Social Consultant (IESC). The first week in July 2016, the firms conducted a supervision visit. Their Report concluded that the community relations team has managed to establish a permanent dialogue with the communities and leaders of 23 communities of the Area of Influence that gives clear indications of the support and approval of the Projects. It stated that the Borrowers already had a strategic communications plan that represented a positive advance.
The report also confirmed that the new Implementation Plan covered security themes.

Just before a new supervision mission took place, on June 24, 2016, IDB Invest received a letter signed by various CSOs expressing their opposition to the Projects. The letter arrived too late for the consultants to plan to follow up on it during their visit. Nevertheless, on July 15 and 17, 2016 the IDB Invest E&S Officers held calls with the authors of the letter as described in the section of this response related to participation and information sharing. In September of the same year, the E&S Officers traveled to Guatemala City to meet with the CSOs representatives in person and to discuss with the Borrowers their communication strategy with stakeholders.

During the visit, the E&S Officers met with representatives from several CSOs. The representatives confirmed that they had not attempted to contact the Company directly. The IIC provided all the participants with the contact information for PDH’s communication specialist and encouraged them to reach out to her.

On September 30, 2016 IDB Invest sent to the Borrowers the minutes of the recent meetings with the CSOs as well as the points of agreement already reached with Borrowers during the visit including commitment to engage in dialogue with the CSOs, ensure and document outreach activities, address ecosystem services complaints, and ramp up disclosure at a local level in native languages. The Borrowers also agreed to describe to the CSOs the work carried out together with Fund for Peace and to develop and implement a Site Security Management Plan and Strategy that accords with the Voluntary Principles on Security and Human Rights.

Since January 2017, due to the frequent acts of violence and intimidation (e.g., armed protesters patrolling the abandoned work sites) IDB Invest has considered the area to be too dangerous to visit except during a brief window in mid-2018 and another in late 2019. IDB Invest took advantage of both windows to conduct on-site supervision visits, the first of which included the original security team from Fund for Peace.

The bank has continued to communicate to the Borrowers that all E&S non-compliances would need to be remedied before construction could restart. These non-compliances include those for which IDB Invest created a Corrective Action Plan after the 2018 visit by Fund for Peace.

IDB Invest has taken active measures to press the Borrower and Sponsors into compliance and has in parallel directing the E&S consultants to work hand in hand with the Company to close all compliance gaps related to plans, procedures and documentation. The goal is for the Projects to be equipped with the tools necessary to manage E&S risks in a manner compliant with the Pertinent Operational Policies if and when construction resumes.

21 ACOGUATE (Peace Watch), ACOGUATE (Colectif), Asociación Civil El Observador; Asamblea Departamental de Pueblos de Huehuetenango; Protection International; and Network in Solidarity with the People of Guatemala.

22 ACOGUATE (Peace Watch), ACOGUATE (Colectif), Asociación Civil El Observador; Asamblea Departamental de Pueblos de Huehuetenango; Protection International; and Network in Solidarity with the People of Guatemala.

23 CAP items related to security include: (i) Update the SMP/S from 2015 to include lessons learned from violent incidents and taking into account the new security services provider; and (ii) develop risk analyses in a manner integral with the SMP/S and update them at least every six months.
In addition, to address the contextual risks of the area, IDB Invest did not limit its activities to improving the social cohesion and safety of the area to policy requirements, but in this case went beyond what is prescribed in the relevant policies. IDB Invest partnered with the GDI team of the IDB to develop a Technical Cooperation whose main objective was to address existing social conflicts in communities, which included supporting Mesa de Dialogo (that involved impartial third parties and observers) to bring opposing groups together and address social issues – including but not limiting to the Projects. The IDBG’s support of the peace roundtable led to the signing of a peace agreement in November 2018 that represented a step forward towards social cohesion in Huehuetenango, an area historically plagued by social conflict and poverty.

Regarding the recommendation to develop a good practice manual to implement the Voluntary Principles on Security and Human Rights (VPSHR), Management notes that the content of its sustainability framework extensively covers the evaluation of risks to community health and safety and the need for human rights protection. As such, it is already part of IDB Invest’s evaluation process to understand the context in which the Projects are located, identify security related human rights risks and recommend prevention and mitigation measures.

To provide alignment with IDB Invest’s existing framework, Management suggests that the recommended training is based on the Good Practice Handbook for Use of Security Forces published by the IFC, while incorporating pertinent content from the VPSHR.

IDB Invest has recently published the Good Practice Note for the Private Sector: Addressing the Risks of Retaliation Against Projects Stakeholders and is part of the knowledge program for 2021 capacity building on this topic for staff and Borrowers.

2.2.5 Environmental Impacts

Impacts to Water Sources Quality

Management appreciates ICIM’s recognition of IDB Invest’s efforts in supervising the Projects and clarifies that those efforts were continuous throughout the years.

Management acknowledges the ICIM’s assessment that IDB Invest was focused on the compliance with IFC/World Bank’s Environmental, Health and Safety (EHS) guidelines parameters for water quality but did not supervise sufficiently whether monitoring took place at all of the planned sampling points.

Management would like to highlight that the sampling point of greatest interest from a community health perspective, and therefore the one on which IDB Invest has remained focused throughout the supervision, was the one below the Project camp’s wastewater treatment plant. Regarding the water quality at this key point, the records show that with only minor exceptions, which have been detected and corrected in a timely manner, the water quality has complied with Guatemalan regulations and with the standards in

24 https://www.iadb.org/en/project/GU-T1270
26 https://idbinvest.org/en/publications
the World Bank Group’s Environmental, Health and Safety guidelines ever since IDB Invest required the Projects to adjust the treatment plant in February 2016.

2.2.6 Impacts to Ecosystem Services

Regarding the identification of Ecosystem Services, the ICIM’s Preliminary Report indicates that in 2015, “IDB Invest considered the requirements linked to ecosystem services to be complete, and therefore those ceased to be part of the process of environmental and social supervision of the Projects.”

Management would like to clarify that the Projects’ ESAP required an identification of priority ecosystem services in two distinct actions items. The first required an assessment of ecosystem services to be included in the supplementary ESIA (the deadline for that item was the execution of the Loan Agreement).

This requirement was indeed considered complete in 2015 after the Borrowers developed a preliminary Biodiversity Action Plan (BAP). On Common Ground assessed that Plan during its 2015 evaluation and found that it emphasized the importance of assessing biodiversity and ecosystem services and mitigating related impacts on an ecologically relevant scale. The consultants mentioned that surveys of local community members provided information on the use of aquatic snails and crabs found in the streams and rivers. Research undertaken to develop the BAP and ESIA addendum indicated that there was no differential use of natural resources by indigenous and non-indigenous people.

The second ESAP action item that also explicitly required an identification of biodiversity features or priority ecosystem services. It requested that the Borrowers should demonstrate, to satisfaction of the Lenders, a) the Project’s compliance with PS6 requirements for Projects in Critical Habitats and Internationally Recognized Areas and b) describe the Project’s mitigation and monitoring strategy in a Biodiversity Action Plan (incorporating the baseline study of Project’s area of influence and a biodiversity monitoring and management plan based on the results of the survey, with a terms of reference and consultant approved by Lenders).

The BAP should be prepared by qualified biologists from a Guatemalan academic institution or conservation organization and provide evidence of consultation with relevant stakeholders and experts. In addition, the BAP should demonstrate the Project’s compliance with the requirements of PS6 Paragraphs 17-20, especially in terms of impacts on the Alliance for Zero Extinction Site.

The Borrowers were required to complete this ESAP item prior to any construction activities resuming.

2.2.7 Impacts to Critical Habitats

Regarding impacts to critical habitats, ICIM’s Preliminary Report acknowledges that the Projects, as a requirement set by IDB Invest, developed a Critical Habitat Assessment (CHA). Indeed, the Projects’ ESAP contains a requirement for the Projects to complete a CHA prior to the signing of the Loan Agreement, and the Projects met that requirement. The ESAP also includes a second requirement, described in the previous section of this Response, centered on the need for a Biodiversity Action Plan (BAP) to manage
the impacts identified in the CHA. In Management’s assessment, this second ESAP item fully addresses the gaps that the ICIM Report lists with respect to compliance with PS6.

The ESAP attached to the Loan Agreement required delivery of the BAP prior to the second loan disbursement. Management notes that the only project component that could potentially affect critical habitat is the transmission line, and construction on the transmission line was not planned to begin until after the second disbursement. The Project Team prepared the loan conditions with the expectation that the BAP would be completed prior to any Projects-related impacts to critical habitat occurring—in compliance with the requirements of PS6.

2.3 Project Environmental and Social Categorization

According to IDB Invest’s Environmental and Social Review Procedure Manual, the environmental and social categorization of a project is first defined in the beginning stage of assessment (“origination phase”), but it needs to be confirmed during eligibility and screening phases.27

After having evaluated all pertinent documents, reviewed client information, and performed the site visit mission, the IDB Invest Operations Manual establishes that the SEG Officer should confirm the transaction category, allowing for a change in the category initially assigned to the project. Categorization requirements have been disseminated in internal trainings and are considered carefully for all projects.

Management agrees that the project and contextual risks escalated over time to be commensurate with a Category A Project. For that reason, IDB Invest has been addressing the Projects as such since supervision started with several independent expert consultants, multiple site visits, technical assistance, action plan oversight and dialogue with stakeholders, even without a formal change in categorization.

Management believes that formally altering the categorization for these Projects more than eight years after appraisal will be merely a formality given that project supervision during this period has been commensurate with a Category A project in line with the evolution of the project and contextual risks on the ground. Moreover, it is neither feasible nor practical to recategorize a project retroactively from a process or technical perspective as the circumstances have changed since the Projects were assessed.

Management is concerned that a precedent in which a project is recategorized after closing could also lead to situations in which a project’s risk categorization could be downgraded as supervision progresses. There is no precedent for projects to change categorization, either higher or lower during project supervision. IDB Invest’s internal procedures manual for E&S and IDB Invest internal systems include the ability to flag high risk projects during supervision to ensure appropriate level of oversight.

For all the reasons stated above, Management requests ICIM to adjust their recommendation to change the formal categorization of the Projects and instead recommend that the Projects be supervised in accordance with a Category A project.

27 https://idbg.sharepoint.com/sites/IICPortal/Resources/Pages/Sustainability.aspx, item 2.3 and 3.2.2.

Yich K’isis, June 2021

Ms.: Andrea Repetto Vargas
Director
Arantxa Villanueva
Compliance Review Phase Coordinator
Mariana Clemente
Case Officer
MICI-Independent Consultation and Investigation Mechanism
Inter-American Development Bank Washington D.C.

Ref.: Observations of the Requesters’ representatives regarding the MICI preliminary report within the scope of the case MICI-CII-GU-2018-0136.

Dear all,

Following the preliminary report received on Monday, April 19, 2021, and in compliance with the term stipulated in the Internal Policy of the MICI, acting as representatives of the Requesters, following you will find general observations on the report as well as observations regarding each of the topics addressed in the preliminary report and annexes.

Observations are presented as follows:

i) General observations pertaining the general context of the process before the MICI, and the considerations and conclusions defined in the report.

ii) Observations regarding the context described.

iii) Specific findings of the Compliance Review process.

iv) We will submit our requests for them to be considered in the final report.

v) Finally, we will make some observations in regarding the report’s annexes.

The recommendations intend to guarantee not only the acknowledgement of IDB Invest’s breaches of the IDB Group operational policies, but also the adoption of measures and recommendations to restore the living conditions of the people affected by the projects by linking the instances of non-compliance directly to the damages caused and to specific proposals to access remedies in order to ensure an effective accountability to the communities affected by the project.
General observations:

Below, we will explain our general considerations regarding: 1) the insufficiency of the recommendations provided; 2) the impact of the constant delays of the request procedure; 3) the need to adapt the language to guarantee impartiality and clarity; and 4) the evident unfeasibility of the financial, ecological, and social aspects of the San Mateo and San Andres projects.

1. Inadequacy of recommendations upon the serious damages caused by IDB Invest’s non-compliances of operational policies.

The facts submitted within the request and the successive documents, the data gathered during on-site visits by the MICI and by the expert panel reveal and acknowledge a serious scope of non-compliance by IDB Invest of the Operational Policies of Indigenous Peoples (OP-765), Gender Equality (OP-761), Environment and Safeguard Compliance (OP-703) and the Sustainability Policy.

The non-compliance of these policies has damaged the worldview of ancestral peoples, has had a psychosocial impact on individuals and families, has deteriorated the social fabric, and has caused serious and irreparable damage to the ecosystems, which in turn, has affected the livelihood of Indigenous Peoples because of their high dependency on natural resources.

Despite the serious context of non-compliance and the damages arising from it, the report DOES NOT explicitly and in detail identify the damages resulting from the documented instances of non-compliance, nor does it set forth specific recommendations regarding measures that guarantee access to remedies for the affected communities. At no time does the report recommend compensation measures aimed at restoring the living conditions of the people affected by the project.

For the most part, the preliminary report focuses on providing evidence of instances of non-compliance by the IDB Invest Management, as a result of a process of over two years, within the scope of the monitoring and follow-up mechanism of the San Mateo and San Andres projects. The process was invoked by the Requesters and by us acting in our capacity as representatives in the request submitted in August 2018. However, despite the evidence gathered and the findings submitted, many of the recommendations provided by the MICI in the preliminary report are insufficient, since they only reiterate measures for IDB Invest to return the project to compliance.

The MICI seems to overlook the fact that the current context has changed and that now the damages are greater, as a result of the lack of prompt attention given to the serious situations that have been taking place since the beginning of the projects.

The mechanism must move forward and propose measures to provide effective answers to the damages caused by IDB Invest, giving special consideration to the recommendation made by the OVE (Oversight and Evaluation) in the MICI Assessment regarding the need to “Ensure that corrective action is taken
when there are findings of noncompliance with the policies and associated harm”\(^1\), which recommends the MICI to make recommendations to the IDB Group to “come into compliance with its operational policies, so that the projects meet the policy requirements for the identification, mitigation, and/or compensation of the adverse environmental and social impacts associated with this noncompliance.”

2. Delays in the request processing times that hindered the process development and the situation in the territory

Pursuant to the MICI regulations, the preliminary report should have been notified to the corresponding parties on February 26, 2020. The MICI postponed the delivery of the preliminary report 6 times\(^2\). The delay and successive postponements deepened the social crisis and unrest present in the territory, causing uncertainty and tension situations which could have been avoided if the request had been opportunistically solved, in accordance with the terms set forth in the MICI internal policy for IDB Invest projects.

Furthermore, the last two extensions requested by the MICI were used by the client to incite division and confrontation among the population and to perpetuate a strategy to criminalize authorities and advocates of the Mayas Chuj, Q’anjob’al, Akateka First nations and of the Mam population. Moreover, these delays facilitated the leakage of information to the client; hence, they obscured the extent of the violations of the rights of Indigenous Peoples. Lastly, the IDB Invest Management used the time to pursue some actions intended to demand the client’s compliance with the relevant operational policies and, therefore, demonstrate some level of compliance. The MICI documented those actions as progress made by the Management. However, these measures are limited, late and inappropriate, considering over 8 years have gone by and the Bank has not acted in due diligence to demand the client’s compliance with the relevant operational policies.

The representatives and Requesters have reported a systematic non-compliance of the operational policies and the lack of action by the Management to identify, mitigate and compensate the impact and damages caused by their actions and omissions since 2013. The affected communities do not accept that the corrective actions taken by IDB Invest in the last semester of 2020 are being used as an argument to state that the necessary adjustments have already been made, due to the systematic nature of the instances of non-compliance and the diverse damages caused.

3. The report needs the use of objective, clear, and convincing language.

The final report should be written objectively and impartially, avoiding the use of qualifying adjectives that exceed the scope of the MICI compliance review. Likewise, findings should not be written using

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\(^1\) OVE. Assessment of the Independent Consultation and Investigation Mechanism (MICI) March 2021, page 18.

vague language, avoiding any margin of doubt or interpretation, and lastly, we suggest that recommendations should be written using clear and precise language.

For example, in paragraph 2.31, the MICI uses the term highlight, when this word is not essential. The report should be written in a more direct manner with unbiased wording.

Another example can be seen in paragraph 2.90, where the MICI states “[...] As the Management has stated, the wide support of the community does not exclude the possibility of a minority opposition. Nevertheless, the MICI warns that this standard is an indicator that informed consultations were made [...]”. This item as it is drafted is not clear. The writing should be clearer. In particular, it is recommended to change “is an indicator” to “demands” so that it is clear that the PS1 calls for informed consultations.

4. Social and economic unfeasibility of the project

The high levels of social conflict, the severity of the damages caused to the communities, the nature and the dimension of the “corrective” measures that the Management and the client must implement and the level of mainstream opposition in the affected communities with reference to the construction and implementation of hydropower projects, given the impacts and damages already caused and those that could happen in the future, evidence that the San Mateo and the San Andres hydropower projects are not feasible from the financial, ecological and social perspective. This reasonably and shows the need for IDB Invest to stop financing the San Mateo and the San Andres hydropower plants, based on sustainability and profitability criteria.

I. Observations regarding the geographic and social context

Next, we will make some observations regarding the context described by the MICI in the preliminary report:

In the preliminary report, the name of the village is recorded as Yich K’isis, the same name used to identify the region; in the observations, opinions, and recommendations of the Plurinational Ancestral Government (hereinafter, GAP), its original name, Yich K’isis, is used. Although it is not officially recorded in Guatemala’s official records of place names and toponymy, it is a strategy used to reclaim them. Yich K’isis means ‘at the bottom of the cypress grove.’

Regarding item 1.2. In the case of the municipality of San Mateo Ixtatan, as per the 2018 Population National Census, indigenous people account for 97.69% of the population, which means that most of the communities are inhabited by indigenous people.

Regarding item 1.4. While it is true that the internal war caused terror, the communities sought to and effectively strengthened their community organization processes and worked towards the prevalence of their ancestral authorities with their own means from their worldview. As a result,
harmony and intra-community tranquility were reinstated. It must be stressed that the different levels of unrest, which progressively increased and lead to problems at a local level, began with the arrival of the client to commission the hydropower projects.

II. Observations to the findings regarding the Compliance Review process

In this section, we will make observations to the MICI findings within the scope of the Compliance Review, according to the thematic areas identified by the mechanism. In each thematic area, we will reanalyze the described instances of non-compliance by IDB Invest and we will complement what has been stated by the MICI, identifying the specific damages arising from these non-compliances. Furthermore, we will propose adjustments and complementary notes to the recommendations.


The MICI preliminary report acknowledges that IDB Invest did not comply with the Sustainability Policy, namely OP-765 and PS7, given the errors in the categorization of the indigenous population, which lead to the exclusion of the Maya indigenous communities at a local level. This, among other issues, did not allow the precise delimitation of the scope of the projects and the participatory identification of environmental and social impacts.

As representatives of these communities, we state that the instances of non-compliance and violations of the rights of indigenous peoples contribute to the low-intensity genocide and ethnocide that affect the indigenous communities in Guatemala and gives way to the gradual extermination of the Chuj, Q’anjob’al y Akateko peoples who have ancestrally inhabited these lands.

These findings, besides being clear non-compliances of IDB Invest operational policies, caused damages to the local indigenous population, namely:

- Intervention and transformation of the territory at the expense of the local indigenous peoples’ customs and traditions.
- Worsening of exclusion and structural discrimination suffered by the indigenous peoples in Guatemala, given the promotion of racial hatred against indigenous peoples.
- Increased local unrest.

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3 Concept used by the Plurinational Ancestral Government to reflect on those racist practices to foster projects and policies which, in the name of “development” put the survival of indigenous peoples at risk, promoting their disappearance by affecting the collective values and solidarity inherent to the communities and their living conditions, by means of stigmatization, exclusion and/or violence acts. This practice further promotes hatred within the communities with the aim of tearing the social fabric and promoting the loss of identity as well as the very meaning of living in a community.

4 Section 13.5 of the American Convention expressly states that “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.” The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has established that “The promotion and protection of the right to freedom of expression must, however, go hand in hand with efforts to combat intolerance, discrimination and incitement to hatred.”  (Report of the Special Rapporteur for the promotion and protection of the right to freedom of expression, A/67/357, September 7, 2012 - Hate speech.)

5 This is connected to the constant demonstrations by those in favor of the company, who state that those who oppose to the projects are “behind”, “against development”, “members of the guerrilla”, “linked to organized crime” and/or “terrorists”.

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- Disruption of self-determination and loss of autonomy.
- Disruption of the community social fabric.

Despite this serious situation, the MICI limits itself to giving corrective recommendations to move the project towards compliance again, recommending, for instance, to establish the social baseline and to strengthen the environmental and social safeguards regarding indigenous peoples. On their own, measures aimed at establishing the social baseline of the affected communities, either directly or indirectly, do not make sense. These would only be meaningful if the MICI recommended establishing this social baseline in order to be able to identify the communities that have been damaged and negatively impacted by the project, in order to effectively apply the mitigation hierarchy — prevention, minimization, compensation — in accordance with the PS1, and based on this establish measures to mitigate, compensate or restore the living conditions of the affected people.

In this sense, the recommendations set forth by MICI in item 1 are insufficient. The severity of the damages currently affecting the Requesters must be remediated in an integral and satisfactory manner. Therefore, we recommend that the MICI complements its recommendations bearing in mind the following items:

1. To respect the decision of the Mayas Chuj, Q’anjob’al, Akateka indigenous peoples and Mam population made in 2009 concerning their opposition to the construction and implementation of the San Andres and the San Mateo hydropower projects, a decision that was made in the legitimate exercise of the peoples’ rights, established in international law, to self-determination and to free, prior, and informed consent regarding the San Mateo and San Andres projects.

2. To determine the social baseline stated in item 1 of the corrective measures, specifying its scope regarding: a) assessing the indigenous nature of the populations either directly or indirectly affected; b) applying the mitigation hierarchy pursuant to the PS1 to mitigate and compensate the damages generated by the project. This must be carried out through a diverse and mixed commission, integrated by experts on Guatemalan indigenous peoples and with the presence of ancestral authorities, considering differential and gender perspectives, and therefore safeguarding the genuine participation and oversight by the affected communities.

3. To respect the collective dimension of the culture of local indigenous peoples in relation to their collective rights over the land, territory, and natural resources, by respecting the decisions of indigenous peoples regarding the use and management of natural resources in their territory. This recommendation implies a mandate to refrain from doing.

4. To ensure there shall be no practices of discrimination, exclusion and/or racism against indigenous peoples and, in particular, indigenous women of the Yich K’isis micro-region during the process of divestment and responsible phase-out of the hydropower projects.

5. To make a public statement acknowledging the events occurred and recognizing the responsibility of IDB Invest and the client, which shall be translated into the indigenous languages spoken by the Requesters and widely distributed in the Yich K’isis micro-region.

6. That IDB Invest and the client hold an act of public apology to the members of the GAP (Plurinational Ancestral Government) and the Chuj, Q’anjob’al and Akateko nations affected
by instances of non-compliance and the damages caused within the projects’ scope.

7. Review the technical instruments applied by the IDB Group to determine the characterization of the population and assess the knowledge and sensitivity of the personnel responsible of implementing the instruments, to ensure their suitability and expertise. Likewise, to consider the 2002 National Population Census\(^6\) and Guatemala’s linguistic map as a benchmark to determine the characterization of the indigenous population.

8. To integrate compliance with international conventions and instruments on indigenous peoples in its rules, procedures, policies, protocols, and project management.

In addition, regarding the final MICI report in terms of compliance review, we recommend:

9. To design and implement, in consultation with the Requesters, a risk analysis of retaliation\(^7\) and a protection plan to prevent possible reprisals against the population and their leaders following MICI’s final report.

b. **Differential impacts on the basis of gender**

The preliminary report of the MICI acknowledges that IDB Invest failed to comply with the Sustainability Policy, OP-761 and PS1, by not including the gender perspective, not guaranteeing the equal participation of women in consultations, in decision-making and in impact assessments and by not requiring the preparation of a gender impact assessment within the scope of the San Mateo and San Andres projects.

These findings, in addition to being clear non-compliances of IDB Invest’s operational policies, caused harm to women in the micro-region, including:

- Discrimination against women in the evaluation, planning, and supervision stages of the projects, excluding them from participation and decision-making scenarios.
- Women’s loss of freedom and mobility in their community.
- Loss of tranquility.
- Victims of stigmatization, sexual harassment, and threats of assault.
- An increased burden of care in nursing the sick because of environmental contamination and intensified difficulty in the activities related to water collection and food harvesting.

Both in the request and in the subsequent process, the representatives and claimants presented a serious status of the damages to the detriment of women in the micro-region of Yich K'isis, which are described below.

- They were not allowed to walk at ease in the territory, their path was blocked on the road,

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\(^6\) Due to the widely acknowledged series of irregularities in the 2018 Census, especially the way in which data on indigenous peoples was collected.

\(^7\) In response to the “Guidelines to address the risk of retaliation in the management of requests: Independent Consultation and Investigation Mechanism, IDB Group: Independent Consultation and Investigation Mechanism of the IDB Group.”
they were returned to their homes, they were harassed, and they were discriminated and stigmatized, which created a serious context of intimidation and fear.

- They suffered the impacts of water contamination due to the inadequate disposal of waste from the construction of the hydropower projects, which resulted in an increased burden of care for new patients in the community and an intensified difficulty in water collection. In addition, they had to stop their gatherings by the river for the purposes of recreational activities, fishing and doing their laundry.

- They were excluded from the information and decision-making spaces in relation to the San Mateo and San Andres projects, which exacerbated their situation of vulnerability and exclusion, and increased the existing gaps.

- They have experienced depression due to the effects on their mental and emotional health, derived from intimidation, stigmatization, harassment, exclusion, pollution of rivers and increased community conflict and burden of care.

- Girls have experienced the aforementioned impacts to a greater extent in their daily lives, for example, when moving in the territory to go to school and when running errands, among others.

We consider it vitally important, in addition to the annex containing the women’s testimonies, to incorporate the description and characterization of the previous events, given their severity to make it a crucial element in the coherence of the final report.

The facts described show that in the specific case of the IDB Invest Management, the gender equality policy was breached since the proactive and preventive actions stated therein were not considered, which is evidenced in: 1) The San Mateo and San Andres projects did not implement the transversal integration of the gender perspective in the context of their intervention, as they did not take women into account neither in the planning stages, the consultation and participation processes, nor in the measures to boost employment and the benefits derived from the projects. Furthermore, 2) there were no measures aimed at ensuring the effective participation of the Mayan women of Yich K’isis in the consultations, nor were the differentiated negative impacts on women identified, or the corresponding mitigation measures applied in the Environmental and Social Management System.

In view of the severe damage caused, the MICI proposes a series of insufficient and disproportionate recommendations that do not remedy or put an end to the negative consequences generated by the actions and omissions of the Bank by breaching its policy. For the same reason, the representatives and claimants consider that they should be adjusted and complemented taking into account the following:

1. Assessing the differentiated impacts aiming at the comprehensive identification of the damages caused and the design and implementation of mitigation and compensation measures (in full application of the mitigation hierarchy as established by PS1). This must be carried out by a diverse and mixed commission, integrated by experts on gender and advocates with an ethnic approach to guarantee the effective monitoring and participation of women
belonging to the affected communities.

2. Make a statement addressed to the company and its associated contractors with a clear message of zero tolerance for any kind of violence against women and which takes into consideration the risks associated with the presence of external workers.

3. Designing, with the participation of the requesters and their representatives, a roadmap to provide assistance, prevent and manage gender violence from a differential and intercultural perspective.

4. Designing a roadmap, with the participation of the requesters and their representatives to implement a request system that is accessible and affordable to women in cases of gender-based violence, giving them the necessary safeguards to file requests, including translation services, identity protection safeguards if requested, and expert support.
   a. Including a contractual clause stating that requests or allegations of gender violence imply that any request or allegation of gender violence must be reported immediately (maximum 48 hours) to the IDB Invest. Sanctions should be considered if this is not met.

5. Ensuring that the measures implemented are duly consulted with the complaining women for the design and implementation of collective healing measures according to their uses and customs.

6. That in the implementation of projects in the territories of the Q'anjob'al, Chuj and Akateka nations, IDB Invest implements specific policies to create diverse teams including experts on indigenous peoples, advocates, gender issues and violence against indigenous women.

7. Strengthening the capacities of IDB Invest and the clients in relation to the gender perspective and measures to prevent any act of gender violence in the execution of their operations and their own security activities.

8. Both IDB Invest and the client should refrain from using the image of women of the Yich K'isis micro-region to promote and advertise their projects.

c. About the mechanisms of participation and dissemination of information

The MICI's preliminary report acknowledges that IDB Invest failed to comply with the Sustainability Policy, Guideline B.6 of OP-703 and PS1, by not ensuring the adequate identification of the affected population as indigenous; by not supervising meaningful consultations with the actors and stakeholders, specifically with the majority opposition groups and by failing to verify the proper implementation of the request mechanism.

Regarding the findings, we highlight the importance of the MICI evidencing, in its final report, not only that IDB Invest failed to demand its client to comply with the obligation to create and make publicly available a request mechanism at a project level and at the disposal of the affected population, but also the fact that the population was unaware of its existence.

On this matter it is also relevant to state that IDB Invest and its client at no time showed, made publicly
available or circulated the request mechanism, which allowed the rights of the Q'anjob’al, Chuj and Akateka nations to be violated from the beginning of the activities. It was not until 2017, in an event organized by the OHCHR (Office of the High Commissioner for Human Rights) (Office of the High Commissioner for Human Rights) (Office of the High Commissioner for Human Rights), that the multilateral banks IMF (International Monetary Fund), WB (World Bank) and IDB revealed the general aspects of their own request mechanisms, which led the Plurinational Ancestral Government to carry out its own investigation, with the support and advice of other human rights platforms, to find out if these banks had funds for authorized projects in the territory. Until then, it was not possible to determine that IDB Invest had funds destined for hydropower projects in the Yich K'isis community, which means that it took around 6 years after the authorization of the first projects by the Ministry of Energy and Mines of Guatemala for the Yich K'isis community to able to submit their request in 2018.

Similarly, it is noteworthy that the MICI refers to the fact that the Management has initiated a process of dialogue with the local communities resisting the projects, and in this regard, there was information about a consultancy from IDB Invest to seek dialogue with the resisting communities, and other attempts to approach community leaders, which were never accepted by the communities since they occurred in an inappropriate manner and were not based on acknowledging the severity of the damage already caused. It is essential that this clarification must be made in the final report.

It is also important to mention that in the preliminary report the MICI failed to refer to the good faith consultation carried out in 2009, a legitimate mechanism by which local communities expressed their free will and, in the exercise of their self-determination, their disapproval of hydropower projects, a decision that should have been honored.

If IDB Invest had demanded and supervised an adequate social impact assessment in the territory, it would have identified this fact as a relevant ground for determining the feasibility of the projects and their categorization. This shows that IDB Invest did not act with the necessary due diligence and only used the information provided by the client. It is imperative for the MICI to show this in its final report.

Finally, the report should emphasize how the poor characterization of the Projects, in addressing them as Category B, affected the information and communication standards considered “acceptable” for the projects, grading them as lower than those actually required by their nature, which led to greater exclusion and conflict among the local population.

The aforementioned, in addition to being a clear non-compliance of IDB Invest’s operational policies, caused damage to local communities, including:

- The intervention and transformation of the territory to the detriment of the uses and customs of the local indigenous population.
- The worsening of exclusion and structural discrimination suffered by the indigenous peoples of Guatemala.
- The exclusion of the affected communities opposing the projects from forums for dialogue and decision-making regarding the projects and development in the Yich K'isis micro-region by creating spaces such as the San Mateo Ixtatán Dialogue Table.
Considering the above, we consider that the recommendations given by the MICI must be adjusted and complemented with the following:

1. Guarantee access to clear, truthful, timely, true, and differential information according to the uses and customs of the local indigenous communities, in all the subsequent phases of the MICI process and the projects.
   a. Given the need to implement the crosscutting integration of the gender perspective in the scope of its interventions, the IDB Invest Management and the client must take specific and differential measures to ensure the inclusion and effective participation of affected indigenous women.

2. Translate the following documents into the Chuj and Q'anjob'al languages and disseminate them on the community radio station;
   o MICI final report and summary of the main findings for socialization with indigenous peoples.
   o Results of the assessments of the San Mateo and San Andres hydropower projects.
   o Management instruments for hydropower projects.

   d. About the impacts on social cohesion, violence, and insecurity

The preliminary report of the MICI acknowledges that IDB Invest failed to comply with the Sustainability Policy, Guideline B.4 of OP-703, PS1, and PS4, given that from the beginning of operations, the levels of social conflict have increased at a local level, among other things, due to the lack of a risk assessment, the ineffective implementation of recommendations, the lack of consultation with the communities on security issues, and the lack of timely monitoring and supervision by IDB Invest.

In this regard, it is important that the MICI includes in its final report that, considering the history of other similar projects financed by IFC (International Finance Corporation) and the fact that the micro-region is an area that suffered the grave consequences of internal armed conflict, it was relevant to carry out a contextual risk analysis, which was not done.

Similarly, we must consider the comments of the Inter-American Commission on Human Rights (IACHR) in its visit to Guatemala, specifically in their trip to Huehuetenango, in which: “[...] the IACHR observed with great concern that, in a situation of serious unrest resulting from various hydropower projects, human rights advocates are subject to lengthy judicial proceedings, precautionary measures, arbitrary detentions, and arrest warrants. The Commission also received testimony from the children of Sebastián Alonso Juán, a rights advocate who died of gunshot wounds on January 17, 2017, during a peaceful demonstration against the hydroelectric project in Yich K’isis, Huehuetenango.”

It is also relevant that the MICI considers in its final report that IDB Invest, and the client have failed

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8 IACHR. Preliminary Observations to the IACHR’s on-site visit to Guatemala, August 4, 2017. Taken from: https://www.oas.org/es/cidh/prensa/comunicados/2017/114a.asp
to comply with the IDB Group’s social and environmental safeguards on several instances, and therefore have contributed to the human rights violations, and that the projects are not accepted by most of the population, as they are responsible for the exacerbation of conflict in the territory to unbearable levels for the population. In this sense, given the existing level of conflict, it is difficult for projects to align to avoid further violence. To further details on this point, it is necessary to take into account the following facts:

From the outset of the client’s commissioning of the hydropower projects, a military detachment⁹ and a substation of the PNC¹⁰ were set up in the company’s premises in the Yich K’isis region, who repressed the population during the various peaceful demonstrations to request the company to leave the premises. Acts of repression and violence against women were also reported. Furthermore, torture was allegedly used to force people to inform who are the community authorities leading the opposition to the project. In addition, the private security company SERSECO¹¹ which provided security services to the client, is also suspected of committing acts of repression and violence against the communities, leaders, women, and it was allegedly behind a murdering during one of the peaceful community demonstrations.

Likewise, the criminal system was maliciously used by the client against community leaders and authorities and the Q’anjob’al and Chuj nations—who, in turn, are human rights advocates—to weaken, prevent and eliminate all actions aimed at defending the territory and its own rights, therefore undermining the exercise of dissent and conscientious objection.

Corporate media and social networks were further used to stigmatize human rights defenders in the territory, using derogatory and pejorative terms such as: “violent,” “ignorant,” “conflictive,” “guerrillas,” “troublemakers,” “opponents to development,” among others, and sending stigmatizing messages against human rights defenders to criminalize them.

Another relevant fact was that the client co-founded the electoral campaign for the mayor’s office in the 2019 election in the municipality of San Mateo Ixtatán, to promote the victory of the UCN¹² candidate, who is loyal to the interests of the company. Such elections have been reported as fraudulent by the communities.¹³

In addition to the above, the San Mateo Ixtatán Dialogue Table was created without the

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⁹ Actions by members of the army in the military detachment: the army tortured two youths on the detachment grounds, using the youths’ arms to hold the weapons while shooting, with the aim of torturing them by burning their arms with each shot fired and to obtain information from them.

¹⁰ A substation of the National Civil Police (PNC).

¹¹ It is a private security company owned by a retired military officer, Gustavo Adolfo Padilla, who changed his name to Gustavo Adolfo Muller. He was directly involved in the most heinous years of the genocide in the Ixl territory. https://www.prensacomunitaria.org/2018/07/vivir-en-yich-kisis-es-sinonimo-de-inseguridad-para-la-poblacion

¹² The founder and the party’s candidate for president was arrested and is imprisoned in the United States for drug trafficking.

¹³ Mr. Andrés Santizo Gómez, was the Second Councilor of the Municipal Council during the 2016-2020 office term. He was and continues to be loyal to the client. He was endorsed by the client for the candidature of the UCN party and is currently the mayor of the municipality of San Mateo Ixtatán for the 2020-2021 office term. https://m.facebook.com/Comunitaria.Prensa/posts/2365228163595009
participation of the affected communities or their ancestral authorities which deepened the conflict in the Yich K’isis region, as well as in the municipality of San Mateo Ixtatán, and finally throughout the Q’anjob’al, Chuj and Akateko territories.

Lastly, through deception, offers, threats, and even coercion against illiterate people, they were pressured to sign the acceptance certificates of the hydropower projects ignoring their content\textsuperscript{14}. Likewise, extortion was used against community authorities, presumably hiring extortionists and hitmen to force them to sign, thus exacerbating local conflict.

What has been stated above, besides constituting a clear non-compliance of IDB Invest’s operational policies, caused damage to the local communities, including:

- Restricted access to natural resources and rivers given the de facto mobility bans imposed by public and private security forces that protect the company.
- The disruption of harmony and social cohesion at intra-family and inter-community level, including among the municipalities adjoining to San Mateo Ixtatán because of the commissioning of the project.
- The repression and stigmatization of peaceful demonstrations by the communities opposing the San Mateo and San Andres hydropower projects, which affected the personal integrity of female protesters.
- The extrajudicial execution of Sebastian Alonso by security forces in the context of peaceful protests.
- The criminalization of authorities and community leaders who opposed the projects (63 people were criminalized according to data from the Law Firm for Indigenous Peoples)
- Cases of human torture because of their opposition to the project.
- The displacement of the communities during the commissioning of the project.

Considering the foregoing, we consider that the recommendations made by the MICI are insufficient to align the project and for it to regain its compliance status, given that the underlying problems related to the severity of the damages caused are neither addressed nor solved. These types of recommendations are applicable in contexts of lesser conflict, that is, where conflict has not escalated exponentially. At this point, the level of violence in the territory is such that the conditions for these measures to have a real and effective impact on the territory cannot be currently guaranteed. As a result, the MICI recommendations should be adjusted and complemented with the following items:

1. Acknowledging that the execution of the San Andres and San Mateo projects has torn the social fabric and damaged community coexistence and the integrity of the inhabitants of the Yich K’isis micro-region and of other leaders who participate in leadership at a regional level.
2. Urging the Bank to demand the company that its staff and contractors refrain from stigmatizing the Requesters.
3. Calling on IDB Invest to avoid offering any financial support to the San Mateo Ixtatán Dialogue Table considering it is a space from which local indigenous communities have been excluded,

\textsuperscript{14} According to community reports, Maricruz and Otto Armas, who were commissioned by the company (client), aggressively arrived at the Yulchen Community to force them to accept the project, using expressions such as “ignorant”, “animals”, “you do not understand”. Likewise, “they gave money to young men and women to convince the population to endorse the continuity of the hydropower projects.”
discriminated against, and stigmatized for opposing the San Mateo and San Andres hydropower projects, thus increasing their exposure to risk and condition of vulnerability.

4. Restoring the living conditions of the families of victims of murder, and those stigmatized and criminalized for filing requests against the San Andres and San Mateo projects.

5. In reference to recommendation 1 of the corrective measures proposed by the MICI on this item, it is recommended that this team be accompanied by national and international organizations trusted by the communities such as UDEFEGUA, Protection International, Frontline Defenders and ACOGUATE.

Observations regarding the institutional recommendations of the IDB Group

6. Regarding recommendation 6 at the IDB institutional level, ensuring that future manuals and documents are developed in the languages spoken in the region and widely distributed.

7. Including a policy of Zero Tolerance for reprisals against human rights defenders and whistleblowers in the contractual conditions of the operations approved by IDB Invest.

e. **About Cultural heritage**

The preliminary report of the MICI acknowledges that IDB Invest failed to comply with the Sustainability Policy, Guideline B.9 of OP-703, PS7 and PS8, given the projects’ adverse effects on their worldview and the close relationship between indigenous peoples and natural resources, since its commissioning has altered sacred and ceremonial sites where the indigenous peoples of the region carry out their Mayan rituals.

As regards to the findings, we believe it must be noted that there is little evidence that the IDB oversaw the correct implementation of the necessary measures to ensure the effective protection of assets.

This, in addition to being a clear instance of non-compliance of IDB Invest’s operational policies, caused damages to the cultural heritage of local indigenous communities, among which:

- The destruction of sacred and ceremonial sites where the population carries out their Mayan rituals.
- An impact on the essential elements of the Mayan indigenous worldview.
- Obstruction to the performance of ancestral spiritual practices of the Mayan peoples in the micro-region.

Considering the above, we consider that the recommendations by the MICI are insufficient, since there are no recommendations aimed at compensating the communities for this heritage loss (in full application of the mitigation hierarchy). We consider that they should be adjusted and complemented with the following recommendations:

1. Disclosing the coordination and authorization documents regarding the design and implementation of measures to ensure compliance with the client’s ROP in relation to cultural heritage.
2. Financing and facilitating a study and/or inventory by ancestral authorities and the Plurinational Government on lost/modified heritage so that they can recover the memory of grandparents from sacred and ceremonial sites, related legends, and stories, as well as implementing a rescue and care plan.
3. Funding a plan for the recovery, care, and protection of the affected ceremonial sites.
4. Funding actions and/or projects aimed at restoring the population’s relationship with the sacred site.
5. Returning the archaeological objects and goods removed and looted from the “Yich K’isis” archaeological site.
6. Restoring the Yich K’isis archaeological site destroyed by the client’s activities.
7. Creating an archaeological museum to place the objects and goods removed from the site.

f. About environmental impacts:

The preliminary report of the MICI acknowledges that IDB Invest failed to comply with the Sustainability Policy, PS1, PS6, and Guidelines B.5, B.7, and B.9 of OP-703 by failing to identify all the possible environmental impacts of the projects, by failing to oversee irregularities in the monitoring of water quality, by not requiring the comprehensive and complete identification of eco-systemic services.

In addition, we would like to highlight that the preliminary report did not consider the information submitted by the Requesters concerning the floods following the ETA and IOTA storm events, or the evidence of the area’s increased vulnerability to possible recurring natural and weather events because of the partial construction and abandonment of the project.

The later, in addition to being a clear instance of non-compliance with IDB Invest’s operational policies, affected the area’s environmental sustainability and the local indigenous communities, including:

- The impact on ecosystem services in the territory:
  - The impact on Cerro San Francisco.
  - The scouring of Mt. Elo—currently known as Camelia and of significant importance to the population—has not only altered the environmental, ecological and energy balance provided to the communities, but the resulting accumulation of water caused greater damages during the ETA and IOTA storms, leading to floods.\(^\text{15}\).

- Floods of unprecedented magnitude, which brought about:
  - The loss of crops (MILPAS), thus affecting the population’s food security.
  - Fear in the population to the imminent threat of an avalanche.

- Decreased river flows resulting from excavations in the river basin, bringing the water levels below the own source levels.

\(^{15}\) Verify the PNC report sent to CONRED, which is attached to the annotated report to MICI.
- Pollution of the Pojom River due to waste dumping and the diversion of the Pojom, Negro, Varsovia, Palmira, and Primavera rivers, which caused:
  - The loss of breeding animals.
  - An impact on aquatic species, affecting the fishing activities of local populations.
- The loss of corn crops.
- An increase in the time and distance travelled to collect quality water.

Taking the above into account, we consider that the recommendations given by the MICI are insufficient, and should be adjusted and complemented to include:

1. Carrying out an updated independent study that can determine the environmental impacts caused by the San Mateo and San Andres projects throughout the basin. The cost of this study must be borne by the client and facilitated by the IDB Invest Management; it must be carried out by a company that specializes in these matters and is independent from the client. This company shall be selected with the participation of the communities and ancestral authorities. The study must be conducted together with ancestral authorities and the communities that are directly affected, it must include a differential and intercultural perspective, be of a comprehensive nature in relation to the identification of impacts on the environmental components and ecosystem services, as well as of the current and future risks that may arise.
2. Setting a compensation, reparation and restoration plan regarding the impacts and damages identified in the study.
3. Urgently conducting an updated risk analysis to set an imminent risk management plan, given the increased vulnerability of the population to natural and weather events.
4. Establishing a prevention, mitigation, and management plan to address possible short and medium term environmental and weather events.
5. Setting out measures to adapt to potentially worsening weather events, given the increased vulnerability of the area.
6. Undertaking actions for the ecological restoration of the basin in the municipality of San Mateo Ixtatán to restore the quality and flow of the affected water sources.
   i. Setting up a wastewater treatment system.
   ii. The reforestation and restoration of rivers.
   iii. The reforestation and restoration of the affected areas.
7. Undertaking actions that guarantee access to quality water for families who were deprived of it due to water contamination.
8. All actions to be implemented must be duly consulted with the Requesters.

g. About cumulative impacts:

The preliminary report of the MICI acknowledges that IDB Invest failed to comply with the Sustainability Policy and Guidelines B.5 and B.7 of OP-703 and PS1, given that IDB Invest did not ensure the submittance of a cumulative impact assessment for each Project that considered the existence of
other projects in the area, so that adequate mitigation measures could be identified.

This promoted the commissioning of the hydropower projects, with no certainty of what the additional cumulative impacts could be, given the presence of other projects in the area, thus increasing the risk of environmental and social damage. Some of the cumulative impacts that were not assessed were: accelerated deforestation by industrial activities; habitat deterioration due to aerial spraying by MOSCAMED; the commissioning and mass authorization of hydropower projects, as well as mineral and hydrocarbon extraction projects in the region.

Because of the foregoing, the recommendation by the MICI to carry out an assessment of the cumulative impacts that considers any existing, planned, or reasonably defined development project in the area of influence of the Projects is considered reasonable.

In addition to the above, it would be advisable that, given the uncertainty of the impacts, the bank refrains from funding new projects in the region until the cumulative impacts of the existing projects are identified.

h. About the environmental and social categorization of the projects

The MICI’s preliminary report acknowledges that IDB Invest failed to comply with the Sustainability Policy and Guideline B.3 of OP-703, having incorrectly categorized the San Mateo and San Andres projects, despite the straightforward evidence of the severity of its potential environmental and social impacts.

The aforementioned, besides constituting a clear non-compliance of IDB Invest’s operational policies, prevented the adequate and timely identification, prevention, and mitigation of damages to the environmental sustainability of the area and to local indigenous communities, which lead to:

- The worsening of local conflict.
- A deeper tearing of the community structure.
- The militarization and materialization of an important level of repression and violence by the security forces in charge of protecting the company.
- Increase environmental impacts.

In view of the above, we consider that the recommendations made by the MICI are reasonable and should be implemented; however, they remain insufficient and should be adjusted and complemented with the following:

- Strengthening IDB Invest’s and clients’ capacity of project categorization.
- Setting out sanctioning measures applicable to clients when determined that their actions deliberately led to the erroneous categorization by the IDB of projects to be funded, without prejudice to the sanctions established by the local legislation.
III. REQUESTS

1. Taking into account the adjustments and recommendations made by the communities in this written response, submitted to the draft MICI report with a view to strengthening its final version and thus ensuring the restoration of the living conditions to the affected communities and the environment.

2. **Main request:** to recommend the implementation of a RESPONSIBLE EXIT PLAN of the San Mateo and San Andres projects financed by IDB Invest.

The Requesters’ representatives reiterate that the communities sustain their position regarding the fact that, given the severity of the damages caused by the construction of the San Andres and San Mateo projects and their current ecological, financial, and social unfeasibility, the main expectation of the request is that IDB Invest will cease funding these projects, and devise, together with the Requesters and the client, a RESPONSIBLE EXIT PLAN, which shall include the following items:

1) **Regarding the social damage caused and the increase in social conflict in the territory:**

   a. To acknowledge that the execution of the San Andres and San Mateo projects has damaged the social fabric, community coexistence, and the life and integrity of the inhabitants of the Yich K’isis micro-region and of other leaders who participate in social leadership at a territorial level.

   b. To restore the living conditions of the families of victims of murder and victims of torture, stigmatization and criminalization based on their submission of requests against the San Andres and San Mateo projects.

   c. To urge the Bank to demand the company that its staff and contractors refrain from stigmatizing the requesters.

   d. To recommend on the IDB Invest to stop offering any financial support to the San Mateo Ixtatán Dialogue table, considering it is space from which local indigenous communities have been excluded, discriminated against, and stigmatized for opposing the San Mateo and San Andres hydropower projects, thus increasing their exposure to risk and condition of vulnerability.

   e. To offer compensation for the financial damages identified in MICI’s investigation, resulting from the execution of the San Mateo and San Andres Projects and the failure to comply with their operational policies.

   f. To ensure that the processes of divestment and responsible exit of the hydropower projects are free from discrimination, exclusion, and racism against the indigenous peoples of the Yich K’isis micro-region.

2) **Regarding damages to indigenous peoples:**

   a. That IDB Invest and the client hold an act of public apology to the members of the GAP
(Plurinational Ancestral Government) and the Chuj, Q'anjob'al and Akateko nations affected by instances of non-compliance and the damages caused within the projects’ scope.

b. To respect the decision of the Mayan Chuj, Q'anjob'al, Akateka indigenous peoples and the Mam population regarding the San Andres and San Mateo hydropower projects, a decision that was made in the exercise of the recognized right of peoples to self-determination and to the prior, free, and informed consent, set forth in international law.

c. To respect the collective dimension of the culture of local indigenous peoples in relation to their collective rights over the land, territory, and natural resources, by respecting the decisions of indigenous peoples regarding the use and management of natural resources in their territory.

a. To restore living conditions to compensate for the damage caused to indigenous peoples.

b. To ensure that due processes are followed and to guarantee the respect for the right to self-determination of the indigenous peoples of the Yich K’isis micro-region relating to the San Mateo and San Andres projects.

c. To ensure the absence of practices of discrimination, exclusion, and racism against the indigenous peoples of the Yich K’isis micro-region during the process of divestment and responsible exit of the hydropower projects.

3) Regarding cultural heritage:

a. To fund and facilitate a study and/or inventory by ancestral authorities and the Plurinational Government relating to lost/modified heritage so that the memory of the grandparents of sacred and ceremonial sites, the related legends and stories can be recovered, as well as to implement a rescue and care plan.

b. To fund a recovery, care and protection plan for the ceremonial sites affected.

c. To provide funding for actions and/or projects aimed at restoring the population’s relationship with sacred sites.

d. To return the archaeological objects and goods removed and looted from the “Yich K’isis” archaeological site.

e. To restore the Yich K’isis archaeological site destroyed by the client’s activities.

f. To create an archaeological museum to house the objects and goods removed from the site.

4) Regarding the differentiated damages affecting women:

a. To restore the living conditions of negatively affected women. Measures aimed at restoring the living conditions should address the loss of their livelihood, the increase in the burden of care, the health damage caused to the population, and the psychosocial impacts of stigmatization, harassment, and threats. Such measures must guarantee the effective monitoring and participation of women belonging to the communities affected.

4) Regarding environmental damage.

a. To urgently conduct an updated risk analysis to establish a management plan that addresses
the imminent risk resulting from the construction of the projects’ infrastructure in the absence of a risk analysis, given the increased vulnerability of the population to natural and weather events.

b. To carry out an independent and updated study on the impacts generated by the San Mateo and San Andres projects throughout the basin.

c. To establish a reparation, compensation, and restoration plan regarding the impacts and damages identified in the study.

d. The ecological restoration of the basin in the municipality of San Mateo Ixtatán aimed at recovering the quality and flow of the affected water sources.

e. The environmental restoration and remediation of the affected areas.

f. To lay out a prevention, mitigation, and management plan to address possible short and medium term environmental and weather events.

g. To take measures to adapt to potentially worsening weather events, given the increased vulnerability of the area.

h. To undertake actions for the ecological restoration of the basin in the municipality of San Mateo Ixtatán to restore the quality and flow of the affected water sources.
   i. To set up a wastewater treatment system.
   ii. The reforestation and restoration of rivers.
   iii. The reforestation and restoration of the affected areas.

i. To undertake actions that guarantee access to quality water for families who were deprived of it due to water contamination.

j. To ensure that the actions to be implemented are duly consulted with the Requesters.

5) Regarding the MICI:

a. To translate MICI’s final report and the summary of the main findings into the Chuj and Q’anjob’al languages so that it is circulated among indigenous peoples.

b. To design and implement, in consultation with the requesters, a retaliation risk analysis and a protection plan to prevent possible reprisals against the population and their leaders following MICI’s final report.

6) Regarding the role of the Board of Directors:

a. The Board of Directors must commit to a transparent follow-up process of the case, including the disclosure of the report and the implementation and monitoring of the proposed plan.

7) Structural Recommendations to the IDB Group

a. To eliminate all practices of discrimination, exclusion, and racism against indigenous peoples within the scope of the operations and projects financed by the IDB Group.

b. To include, among the contractual provisions of the operations approved by IDB Invest, a policy of Zero-Tolerance for reprisals against human rights defenders and whistleblowers.
c. To review the technical instruments applied by the IDB Group to determine the characterization of the population and to assess the knowledge and sensitivity of the personnel responsible to implementing the instruments, so as to ensure their suitability and expertise.

d. To incorporate in its guidelines, procedures, policies, protocols, and project administration compliance with international conventions and instruments regarding indigenous peoples.

e. To strengthen IDB Invest’s and clients’ capacities in relation to the gender perspective and measures to prevent any act of gender violence in the exercise of their operations and their own security activities.

f. To set out sanctioning measures applicable to clients when determined that their actions deliberately led to the erroneous categorization by the IDB of projects to be funded, regardless of the sanctions applicable pursuant to the legislation of the pertaining country.

3. **Subsidiary requests:** If determined that investment in the San Andres and San Mateo hydropower projects is to continue given the scope and limitations of the MICI, we request that the activities of Empresa Energía y Renovación S.A. be resumed contingent to and in full compliance with the recommendations submitted in the different sections herein, which strengthen and adjust the proposals by the MICI. **In no way does this request constitute an endorsement by the communities to the hydropower projects, nor does it open the possibility for new consultation scenarios.**

IV. **Regarding the annexes**

**Annex V: Acts of violence related to the Projects:**
The events listed in the annex correspond up to July 2018, ignoring the information submitted to the MICI by us later, for example:

In November 2020:
- Attempts to force the entry of machinery by armed persons without the consent of the local populations.
- Violence incidents which tried to be blamed on peaceful demonstrations (which led to the finding of three incinerated bodies).

In January 2021:
- Event of community confrontation due to the San Mateo and San Andres hydropower projects

In March 2021:
- Workers of Energía y Renovación carry firearms and attack the residence of a family in the Microregion.
- Arrest and prosecution of Julio Gómez Lucas.

Annex VI: Women’s Testimonies of the impacts of the Projects: According to consultations undertaken with the women who participated in testimony-taking meetings with the MICI, they agree with the disclosure of this annex, given that it reflects the reality of what they experienced, and it also helps to prevent the risk of retaliation since women are not specifically identified.

In addition to the annexes shared by the MICI, we consider that the final report should contain evidence on the management’s allegations regarding its supervision and follow-up of the projects, considering that this information is publicly available. In its preliminary report, the MICI omitted to include annexes related to the information provided by the administration about its actions to comply with operational policies, ignoring the fact that this information is publicly available and should be known by the community Requesters and their representatives.

Finally, we reiterate the importance of ensuring the independence of the MICI in processing and closing the requests, and that, within this scope, the Board respects the integrity of the final report and its recommendations for the case herein, considering them as final and not subject to amendments, as recommended by the OVE (Oversight and Evaluation) within the context of its Mechanism evaluation16.

Sincerely,

Plurinational Government of the Akateko, Chuj, Q’anjob’al, and Popti First Nations
Inter-American Association for Environmental Defense -AIDA-
International Platform against Impunity

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16 Evaluation of the Independent Mechanism of Consultation and Research (MICI). March 2021
<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td></td>
</tr>
<tr>
<td>May</td>
<td>Good faith community consultation with 72 communities - Rejection of mining and natural resource exploitation projects.</td>
</tr>
<tr>
<td>2010</td>
<td></td>
</tr>
<tr>
<td>December</td>
<td>1° EIA Pojom II/San Mateo (GSM)</td>
</tr>
<tr>
<td>2011</td>
<td></td>
</tr>
<tr>
<td>April</td>
<td>2° EIA Pojom II/San Mateo (GSM)</td>
</tr>
<tr>
<td>2012</td>
<td></td>
</tr>
<tr>
<td>March</td>
<td>1° EIA San Andres (GSA)</td>
</tr>
<tr>
<td>March</td>
<td>2° EIA San Andres (GSA)</td>
</tr>
<tr>
<td>July</td>
<td>3° EIA San Andres (GSA)</td>
</tr>
<tr>
<td>November</td>
<td>4° EIA San Andres (GSA)</td>
</tr>
<tr>
<td>December</td>
<td>3° EIA Pojom II/San Mateo (GSM)</td>
</tr>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>April</td>
<td>Initial Loan Proposal</td>
</tr>
<tr>
<td>March - June</td>
<td>ESDD Visit and Report</td>
</tr>
<tr>
<td>July</td>
<td>5° EIA San Andres (GSA)</td>
</tr>
<tr>
<td>July</td>
<td>1° EIA Transmission Line</td>
</tr>
<tr>
<td>August</td>
<td>Disclosure of E&amp;S information by IDB Invest - ESRS</td>
</tr>
<tr>
<td>September</td>
<td>Approval of Projects</td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>February - March</td>
<td>IDB Invest and DD environmental consultant visit</td>
</tr>
<tr>
<td>June - August</td>
<td>Independent Environmental and Social Consultant (IESC) Supervision visit and report</td>
</tr>
<tr>
<td>October</td>
<td>Consultant visit to Projects to assess support for Projects</td>
</tr>
<tr>
<td>August - November</td>
<td>ESIA (Supplementary EIA)</td>
</tr>
<tr>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>February</td>
<td>IDB Invest visit to Guatemala City</td>
</tr>
<tr>
<td>May</td>
<td>Signing of the Loan Agreement (closing)</td>
</tr>
<tr>
<td>May</td>
<td>Documentary review of compliance with ROP</td>
</tr>
<tr>
<td>June</td>
<td>2° EIA Transmission Line</td>
</tr>
<tr>
<td>July</td>
<td>First visit and report by the Security and Human Rights Consultant</td>
</tr>
<tr>
<td>September</td>
<td>Second visit and report by the Security and Human Rights Consultant</td>
</tr>
<tr>
<td>November</td>
<td>IESC Supervision visit</td>
</tr>
<tr>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>January</td>
<td>IESC Supervision Report</td>
</tr>
<tr>
<td>April</td>
<td>IDB Invest visit to Guatemala City</td>
</tr>
<tr>
<td>July - August</td>
<td>IESC supervision visit and report</td>
</tr>
<tr>
<td>September</td>
<td>IDB Invest visit to Guatemala City</td>
</tr>
<tr>
<td>November</td>
<td>IESC Supervision visit</td>
</tr>
<tr>
<td>2017</td>
<td></td>
</tr>
<tr>
<td>February</td>
<td>IESC Supervision Report</td>
</tr>
<tr>
<td>March - August</td>
<td>IESC supervision visit and report</td>
</tr>
<tr>
<td>2018</td>
<td></td>
</tr>
<tr>
<td>March</td>
<td>Third visit and report by the Security and Human Rights Consultant</td>
</tr>
<tr>
<td>Time Frame</td>
<td>Description</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>March - April 2019</td>
<td>IESC Supervision visit and report</td>
</tr>
<tr>
<td>May 2019</td>
<td>Mapping Groups of Interest and Key Stakeholders by IESC</td>
</tr>
<tr>
<td>September - November 2020</td>
<td>IESC Supervision visit and report</td>
</tr>
<tr>
<td>October - November 2020</td>
<td>IESC supervision visit and report</td>
</tr>
</tbody>
</table>
### Annex V: Timeline of Violent Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2014</strong></td>
<td></td>
</tr>
<tr>
<td>5 May 2014</td>
<td>Public protest against the company for alleged breach of the works standstill agreement, after which a group of people had set company machinery on fire. Four people were reportedly injured.</td>
</tr>
<tr>
<td>25 May 2014</td>
<td>UDEFEGUA staff were reportedly detained and threatened by people in favor of the Project while they went to verify attacks against advocates for human rights.</td>
</tr>
<tr>
<td>26 May 2014</td>
<td>Community authorities, COCODES and the auxiliary mayors of each village submitted a request to the Military Detachment and the National Civil Police (PNC) rejecting their protection of the company. They were met with anti-riot gear and weapons in an intimidating stance.</td>
</tr>
<tr>
<td>23 June 2014</td>
<td>Community members of Resistencia Pacífica were reportedly attacked with tear gas bombs by the PNC when they went to deliver a document requesting the withdrawal of the PNC Station. According to the officer in charge, protesters threw stones, burned tires and threatened to burn down a home.</td>
</tr>
<tr>
<td>23 June 2014</td>
<td>The PNC reportedly interrupted around 400 people during a Mayan ceremony on the banks of the Negro River, where there were turbines to carry out the PDH, S.A. hydroelectric project. According to statements made by residents, the police had interrupted the ceremony, causing riots that ended with the PNC using tear gas against the population.</td>
</tr>
<tr>
<td>17 August 2014</td>
<td>Two people from the Resistencia Pacífica of Ixquisis were reportedly detained and beaten by people in favor of the Company. The motive is unknown but they were released by people who intercepted the group. On the other hand, that exact same day, they tried to set fire to the house of a community member in favor of the Company and his son, rob them and kill their dogs.</td>
</tr>
<tr>
<td>16-18 November 2014</td>
<td>The PNC reportedly used tear gas against a group of community members following a meeting “in defense of the land.” The PNC mentioned that it had received a report of an attempted robbery and burning of a house. That night ended up in a community member being murdered. The perpetrator of this incident is unknown. The following day, when community members approached the body to protect it and while they waited for the Public Prosecutor, unknown subjects shot them, killing a minor community member and injuring two others.</td>
</tr>
<tr>
<td><strong>2015</strong></td>
<td></td>
</tr>
<tr>
<td>19 January 2015</td>
<td>Two community members opposing to the Projects were reportedly captured by security forces for alleged liability in the two deaths in November 2014. They were later released under pressure from the community, who allegedly detained a COPREDEH official in San Mateo to press for their release.</td>
</tr>
<tr>
<td>3 March 2015</td>
<td>The PNC allegedly used tear gas against the community of Pojom to capture some community members</td>
</tr>
<tr>
<td>26 August 2015</td>
<td>A community member was allegedly killed after refusing to grant the company easement access, presumably after realizing that the company had taken hold of an extension of land greater than the one it had been sold.</td>
</tr>
</tbody>
</table>
September 2015 | Company workers were reportedly threatened by people from the Ixquisis community, who blocked their way and made it difficult for them to get to their workplace.

24-25 November 2015 | Explosion at the Project micro-plant due to a short circuit. Vandalism against the Project machinery, including gunshots and stones.

7 December 2015 | Client security staff were allegedly detained, beaten, and three people were accused based on false evidence, who were released on bail seven days later.

20 December 2015 | While under the influence of alcohol, Project security staff incited residents of Ixquisis to violence, who reportedly went looking for them at their workplace along with other people. When they did not find them, they reportedly remained in the workshop area firing shots and intimidating. The Security Company reportedly fired the guard after verifying that he had repeated his inappropriate behavior.

27 December 2015 | Three men were allegedly attacked by a group of masked subjects. One of the assailants was allegedly dressed in the uniform of the Projects’ private security company.

**2016**

Beginning of 2016 | Reports of intimidation, threats and criminalization of the population after the establishment of the PNC Substation. There was information on approximately 30 people opposed to the hydroelectric projects for whom arrest warrants have been issued and there were allegedly five arbitrary arrests in the region.

31 January 2016 | Company workers allegedly illegally detained a young man, who was later transferred to the PNC and spent three days in jail. The accounts differ as to the motives for the arrest. Company security staff alleged vandalism to a company vehicle. The person detained alleged intimidation and detention for no reason whatsoever when he was passing by the place.

12 March 2016 | Burning of San Andrés Project machinery in the villages of El Platanar and Bella Linda. There are criminal proceedings pending for these events, but the perpetrators are still unknown.

12 March 2016 | Two Yalanhuitz men were allegedly illegally detained by the Client’s security staff and then handed over to the PNC, where they were detained for around 23 hours before being released. The motives for the arrest are unknown.

15 March 2016 | A PNC police car was reportedly attacked with a gun in Pojom, injuring a PNC agent. There are criminal proceedings pending for these events, but the perpetrators are still unknown.

18 March 2016 | The priest of San Mateo Ixtatán was allegedly the victim of a murder attempt when he was traveling through Pojom and his vehicle was shot. The perpetrators are unknown. Similar alleged attacks have occurred in the past.

March-June 2016 | A group calling itself the Fuerzas Armadas Campesinas (FAC) [Farmers Defense Force] threatened and demanded that the Projects withdraw from the territory, by using flyers, banners and posting between three to four videos on social media. There are different accounts as to the origin and composition of these events. Some sources indicate that it could be a mutation of the local opposition group, made up of about 20 people and that they allegedly presented an isolated threat. Another account is that it could be the Client’s action to close down the Projects and another that deals with threats and false videos by means of which they would have tried to smear the reputation of the opposition and link the “Resistencia Pacifica” movement against the Projects with alleged armed insurgent groups.

The Ministries of Defense and Government have opened investigations in this regard. The Public Prosecutor reportedly indicated that the videos were false.

4 April 2016 | Alleged attack on the camp, employees and community members within the scope of a protest against the Projects.

23 April 2016 | Alleged threats against a member of the Frente Nacional de Lucha (FNL) [National Liberation Front]. The foreman of a farm told an FNL member, “we already know what you’re up to and your heads will be on the chopping block.”

4 May 2016 | The Client’s employee was reportedly injured in an armed attack at the San Andrés Project site.

8 May 2016 | Project workers reportedly shot at community members who were returning to the Yulchen Frontera community after having participated in a human rights defense activity.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>25-26 May 2016</td>
<td>Security staff from the Projects reportedly threatened to kidnap and kill a San Francisco village community member, who was later attacked with a machete, supposedly by staff from the private security company. The next day he reportedly received the same threats.</td>
</tr>
<tr>
<td>31 May 2016</td>
<td>Project employees reportedly suffered an armed attack at the San Andrés Project site.</td>
</tr>
<tr>
<td>31 May 2016</td>
<td>Alleged burning of the business of a person opposed to the Projects.</td>
</tr>
<tr>
<td>18 September 2016</td>
<td>Attempted murder of two human rights advocates while driving along the Northern Transversal Strip (FTN). Men blocked the road and fired shots at the vehicle.</td>
</tr>
<tr>
<td>24 October 2016</td>
<td>Murder of a Project employee by a group of armed people.</td>
</tr>
<tr>
<td>2017</td>
<td></td>
</tr>
<tr>
<td>10 January 2017</td>
<td>People in favor of the Projects allegedly appeared at a Community Meeting in Bella Linda organized by community members opposed to the Projects, to intimidate them, photograph them and film the event. When these people were asked to leave, this caused a climate of tension that turned into death threats against organizers of the Community Meeting and even against the assistant mayor of Bella Linda.</td>
</tr>
<tr>
<td>14 January 2017</td>
<td>Cloth blankets with a written ultimatum addressed to the company, the police and the Army, to leave the area within 24 hours, were allegedly placed in the vicinity of the Client’s machinery camp, with an ultimatum addressed to the company, … a message very similar or almost the same, as the one contained in the alleged FAC that was spread around in April 2016.</td>
</tr>
<tr>
<td>17 January 2017</td>
<td>Public protest against the Projects. The protest had been planned in advance as a peaceful mobilization against the Projects. The police reportedly fired to repel the protest, but there are different accounts as to whether someone else fired shots. During the course of these events, a 72-year-old community member was killed from a gunshot wound and lack of subsequent medical care. His family and neighbors made efforts to transfer him to a nearby hospital, but given the difficult access to the area, this took several hours and he died on the way. This incident is under investigation by the competent authorities, but so far the assailants are unknown.</td>
</tr>
<tr>
<td>17 January 2017</td>
<td>Burning of machinery and looting of the camp after the protest and murder of the community member.</td>
</tr>
<tr>
<td>21 January 2017</td>
<td>Human rights organizations made a caravan to the area to verify the events related to the January 17th murder. The bus they were in was allegedly intercepted by people who asked them for money and threatened to set the vehicle on fire, with the intention of making other communities block their path and accused them of causing disturbances. After continuing on their way, they were allegedly intercepted by the police. Throughout this day, they took photographs of them in an intimidating manner three times.</td>
</tr>
<tr>
<td>6 February 2017</td>
<td>Fire in the Rio Ixquisis pipeline intake works at the Pojom II project site.</td>
</tr>
<tr>
<td>18 February 2017</td>
<td>Project security guards, dressed as civilians, fired shots into the air near the San Francisco village.</td>
</tr>
<tr>
<td>March 2017</td>
<td>A community member who works for the Projects allegedly shot a community member in Bella Linda.</td>
</tr>
<tr>
<td>22 April 2017</td>
<td>Appearance of a signboard on the road in Barillas against the company.</td>
</tr>
<tr>
<td>25 April 2017</td>
<td>Appearance of a wooden sign with an intimidating legend against “foreign companies” in the municipality of San Mateo.</td>
</tr>
<tr>
<td>9 May 2017</td>
<td>Appearance of a banner in Ixquisis, threatening “foreign companies” and challenging public security institutions.</td>
</tr>
<tr>
<td>21 May 2017</td>
<td>A group of people reportedly gathered at a police station to threaten Project staff and assets.</td>
</tr>
<tr>
<td>5 July 2017</td>
<td>A community member linked to the Projects allegedly fired shots at a community member of the Resistencia. No physical injuries were sustained.</td>
</tr>
<tr>
<td>16 July 2017</td>
<td>A community member related to the Projects allegedly threw stones at an opponent’s house for 30 minutes. 100 meters from the place, another community member who works in the Client’s private security forces fired his work weapon and shot five times.</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
</tr>
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<td>--------------------</td>
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</tr>
<tr>
<td>30 August 2017</td>
<td>Burning of machinery, road blockage and destruction of the GSM Project geomembrane. The perpetrators are unknown. Simultaneously, community members were peacefully protesting the rejection of the Projects, and reported that they were victims of stigmatization and slander since they were allegedly branded as responsible for violent acts.</td>
</tr>
<tr>
<td>28 October 2017</td>
<td>Project security guards fired around 10 shots in front of the family homes in the small village of San Francisco located in front of the machinery camp. The incident occurred in front of two police cars. The family reportedly fled to the forest to hide and stayed there for several hours fearing to return.</td>
</tr>
<tr>
<td>29 October 2017</td>
<td>Project security guards fired shots while a group of children played in a field in front of the Client’s facilities. The group of children including the son of a human rights advocate who a month earlier had received threats against him and his family from the Client’s workers, the police and army agents.</td>
</tr>
<tr>
<td>1 November 2017</td>
<td>Alleged armed attack against Project employees. No injuries were reported. Destruction of a light pole.</td>
</tr>
<tr>
<td>13 November 2017</td>
<td>Protest in front of the PNC substation to protest the presence of the police, the company and the army in the territory. According to one statement of accounts, the police reportedly responded with tear gas against the protesters, causing injuries, even though it was a peaceful protest. On the other hand, both the police and the company reported the alleged use of guns by protesters, as well as an armed attack on the substation and the Projects camp. The events are under investigation by the authorities without anyone being held accountable to date.</td>
</tr>
<tr>
<td>2018</td>
<td></td>
</tr>
<tr>
<td>9 and 16 April 2018</td>
<td>People allegedly harassed the contractor’s employees while they were working on repairing the Yalhuitz bridge in the village of Bella Linda.</td>
</tr>
<tr>
<td>24 April 2018</td>
<td>Alleged attack with a gun against the contractor’s machinery and attack on the rangers on motorbikes in the village of Bella Linda</td>
</tr>
<tr>
<td>29 April 2018</td>
<td>Cloth blankets appeared at the entrance of the Ixquisis village, with threats to the company, the police and the army.</td>
</tr>
<tr>
<td>11 May 2018</td>
<td>Three men allegedly intercepted the contractor’s staff, threatening them to leave the San Andres project area, mentioning that they were armed.</td>
</tr>
<tr>
<td>20 May 2018</td>
<td>Cloth blankets appeared at the entrance of the Ixquisis village, with threats to the company, the police and the army.</td>
</tr>
<tr>
<td>21 May 2018</td>
<td>The contractor’s employees have received death threats from a man of approximately 60 years old.</td>
</tr>
<tr>
<td>24 May 2018</td>
<td>Alleged armed attack against two cars belonging to the contractor’s employees. A crew and a community member were injured.</td>
</tr>
<tr>
<td>26 May 2018</td>
<td>Alleged attack with a gun against the community leader’s home in the village of Bella Linda. The victim is a participant in the Dialogue Table.</td>
</tr>
<tr>
<td>29 May 2018</td>
<td>Alleged attack with a gun against the home of an employee and community leader in the village of Bella Linda. Nine sheep, owned by another community member, were allegedly killed with a knife.</td>
</tr>
<tr>
<td>10 June 2018</td>
<td>The cows of an individual who had sold his land for the Projects were found dead and dismembered. Members of the Resistencia Pacífica mentioned that the act was used to criminalize after obtaining the Frontline Defenders award at an event from which they were returning when this occurred.</td>
</tr>
<tr>
<td>14 July 2018</td>
<td>Road obstruction as a form of protest to demand that security forces and the company withdraw. The houses of four community members were also attacked and two of them burned down. Likewise, that day, a series of mobilizations took place, demanding that the police and the army withdraw from the area. Community members reportedly submitted a report to the police, who refused to accept it.</td>
</tr>
<tr>
<td>16 July 2018</td>
<td>Obstruction of road sections, alleged attack on a police car. Protests continued and were repelled by the police throwing tear gas.</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
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</tr>
<tr>
<td>16 August 2018</td>
<td>Alleged attack with a gun against an employee of the Client’s contractor company, who was shot and wounded when on his way to work.</td>
</tr>
<tr>
<td>11-30 September 2018</td>
<td>A group of people allegedly set up a sit-in on the Northern Transversal Strip (FTN) to protest the presence of the Client, the police and the army. It was reported that the people in the blockade were asking for money (extortion) from those who were passing by the area and allegedly attacked houses and livestock in the surrounding areas.</td>
</tr>
<tr>
<td>25 September 2018</td>
<td>Aggression against a member of the opposition, a resident of Bella Linda, and four fellow advocates who have allegedly been reported to the Santa Eulalia Municipal Prosecutor for crimes of threats and shooting with a gun.</td>
</tr>
<tr>
<td>4 October 2018</td>
<td>Protesters were heading to the sit-in at the FTN to protest against the presence of the PNC and the Client, when they were intercepted by the police and the army. According to some accounts, people were seen carrying high-caliber guns and hiding their faces with ski masks. Members of the Resistencia Pacifica movement reported that police and paramilitary forces had been sent to the micro-region ofIxquisis “like during the worst years of the armed conflict.”</td>
</tr>
<tr>
<td>6 October 2018</td>
<td>A PNC tent was set up in the Northern Transversal Strip, presumably to control community mobilizations and protests.</td>
</tr>
<tr>
<td>8 October 2018</td>
<td>A group of people protested violently by throwing stones and attacking the public present at the inauguration of the Regional Convoys of the Ministry of Communications that reportedly took place at the seat of the municipality of San Mateo Ixtatán.</td>
</tr>
<tr>
<td>9 October 2018</td>
<td>From early in the morning, the sit-in set up since September 11th was reportedly maintained. A group of women, on their way to a human rights workshop, and a group of men on their way to join the sit-in at the FTN, were intercepted by the PNC at the junction between Yalanhuitz and Yulchén Frontera, who blocked their path, with anti-riot gear, while pointing their guns directly at them. The PNC reportedly used tear gas against community members to disperse people. When fleeing, the people were allegedly pursued by the police. At least five people were reportedly injured. Shots were allegedly heard around 9:30 a.m. Likewise, the destruction of the PNC checkpoints set up along the FTN was reported. The women’s group also reported that, during the walk, there were men photographing them and that, on their return to Ixquisis, NGO members were photographed. The Departmental Governor of Huehuetenango requested that the President of the Republic declare a state of siege in the municipality, which was revoked on October 12th.</td>
</tr>
<tr>
<td>12 October 2018</td>
<td>A “Solidarity Caravan” was convened, made up of 12 vehicles and 200 people, who arrived in Ixquisis support those carrying out the sit-in or blockade against the Projects at the FTN. The caravan was threatened with gunfire by the PNC in the early hours of the morning. When they withdrew from the FTN, upon leaving Ixquisis, they reportedly heard gunshots and noticed the presence of armed subjects; however, the PNC was no longer present.</td>
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<tr>
<td>12 October 2018</td>
<td>A member of the Resistencia Pacifica movement was allegedly attacked with a gun when he was returning from the sit-in at the FTN. The alleged assailant was reportedly his neighbor and a Project employee. The victim was injured and expressed fear of returning to his community.</td>
</tr>
<tr>
<td>12 October 2018</td>
<td>A group of people carried out an armed attack at the Project’s facilities in the early hours of the morning. They burned down machinery and destroyed part of the perimeter wall. A Project employee was reportedly wounded by a gunshot after leaving his working day, later dying from this cause.</td>
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<tr>
<td>12 October 2018</td>
<td>A group of police officers armed with anti-riot gear allegedly prevented a group of women who were on their way to a meeting in San Mateo Ixtatán from getting through, with tear gas. The women of Yulchen allegedly recognized employees of the hydroelectric company, residents of other communities, dressed in PNC uniforms. The police also fired shots in the air, and while the people tried to flee from the alleged police attack, a community member was wounded. The women also reported that they had received insults and threats.</td>
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<tr>
<td>20 October and 7 November 2018</td>
<td>Alleged harassment and use of tear gas against community members, which reportedly cause the poisoning of children and pregnant women.</td>
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<tr>
<td>21 October 2018</td>
<td>Presumed death threat to and advocate opposed to hydroelectric projects in Huehuetenango.</td>
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<tr>
<td>Date</td>
<td>Event Description</td>
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<tr>
<td>22 October 2018</td>
<td>Alleged death threat against two community leader advocates, members of the Resistencia Pacifica.</td>
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<tr>
<td>30 October 2018</td>
<td>A group of people wearing ski masks allegedly burned 247 tubes of the pressure pipeline and the geomembrane of the regulation pond at the GSM hydroelectric project site.</td>
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<tr>
<td>31 October 2018</td>
<td>A group of people wearing ski masks fired shots in the community of San José las Flores and knocked down three Transmission Line poles.</td>
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<tr>
<td>4 November 2018</td>
<td>A group of armed people wearing ski masks looted the projects’ workshop site, and private vehicles were also seen transporting stolen material.</td>
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<tr>
<td>9 December 2018</td>
<td>Alleged aggression against the second-level regional president of the Yich K’isis Micro-region, and against two women from his family, one of whom was pregnant. Two men reportedly arrived at his house in a van, tried to run him over and hit him with stones, punched him and kicked him. They also assaulted his daughter and daughter-in-law, both of whom are 18 years old, the latter being pregnant. The events were reported to the PNC.</td>
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<tr>
<td>16 December 2018</td>
<td>Murder of two brothers opposed to the Projects, whose dead bodies had gunshot wounds to the head in the surrounding areas of the village of Bella Linda.</td>
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<tr>
<td>8 January 2019</td>
<td>A group of armed people wearing ski masks allegedly knocked down an estimated 16 transmission line poles using specialized machinery.</td>
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<tr>
<td>22 February 2019</td>
<td>A community leader allied with the Ixquisis Peaceful Resistance movement, along with members of his family, were allegedly detained and tortured by members of another community. His captors allegedly extorted his partner, asking for money in exchange for his release. The community leader was allegedly beaten for eight hours straight, while they accused him of having prevented the development of hydroelectric projects. Before releasing him, they had him sign a letter in which he promised not to oppose the Projects. Likewise, two female members of the family were attacked, threatened and insulted, one of whom was forced to undress in front of a group of men.</td>
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<tr>
<td>23 March 2019</td>
<td>A group of people armed with bats, machetes and rifles reportedly entered the home of a community advocate to attack him. Failing to find him, they allegedly held the advocate’s wife captive for almost a day. During her captivity she was allegedly physically assaulted and threatened to be burned alive with gasoline.</td>
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<tr>
<td>28 April 2019</td>
<td>Alleged murder attempt against a leader of the Ixquisis Resistencia Pacifica movement. The leader was walking with family members when she was attacked by armed men who shot her directly.</td>
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<tr>
<td>9 May 2019</td>
<td>Presumed attempted murder of a leader and her father. People allegedly entered her house with the intention of setting it on fire.</td>
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<tr>
<td>29 August 2019</td>
<td>Alleged illegal detentions and extortions against various community members and leaders. They were allegedly taken to a communal hall, beaten and threatened. Captors allegedly demanded money in exchange for their release and that they did not go to the Public Prosecutor.</td>
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<tr>
<td>26 January 2020 - 3 February 2020</td>
<td>A leader of the Resistencia Pacifica movement was arrested and prosecuted. He was accused of the crimes of instigation to commit a crime, illegal meetings and protests, illegal groups of armed people, attempted murder and damage. He was released on parole. The Client was allegedly a joint complainant in the process. According to the Requesters, this accusation is part of a strategy to prosecute and criminalize social protests in the region, focused on its main leaders.</td>
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<tr>
<td>8 February 2020</td>
<td>Client workers fired shots at the house of a family that lives in front of the Project machinery camp.</td>
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<tr>
<td>26 March 2020</td>
<td>Local authorities reportedly set up, autonomously, a checkpoint to verify the health status of people who came from outside the region, in order to identify COVID-19 infections. Within the scope of these activities, in the village of Bella Linda there was opposition to and aggressive actions against medical staff by people related to the Projects.</td>
</tr>
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### 26 July 2020
Transit of armed people, at least seven pickups, around 70 people and entry of machinery in the Ixquisis micro-region. Community members alleged that they were trying to enter the machinery through deceit, with the support of armed staff, without identifying and without permission from local authorities. Given the confusing situation, local authorities have denied entry to their communities. The association of 23 communities in favor of the Projects indicated that they had hired the machinery to fix the main street of the village of Yalanhuiltz and that they were threatened by these events.

### 7 October 2020
Three burned bodies were found in the Ixquisis Microregion. Community authorities went to the place where the bodies were found, but do not know what happened or who is responsible. The resistance movement has alleged that some media attempted to link them to these events, causing further stigmatization and increasing the risk of members of the movement.

### December 2020
A meeting at the municipality of San Mateo Ixtatán, presumably called to discuss the installation of an electrical substation and the reactivation of construction of the Projects, ended in a violent confrontation between people in favor and against these measures. Several people were apparently injured and one of them allegedly died as a result of their injuries.
Annex VI. Statements by Women from the Communities on Project Impacts

This annex does not constitute a determination of verified facts. Regarding the events reported by the women, MICI just has their statements. Given the type of many of the events and situations reported, there are no other means to confirm this information, whether that be investigations or documentary evidence, within the scope of an investigation to verify compliance with operational policies.

Relevant Parts of the Statements by Women

1.1 The MICI exclusively held meetings with the women from the communities. This annex contains the relevant parts of some of the statements by women, collected within the scope of said meetings, to illustrate and complement gender aspects in the Compliance Review Report in the case MICI-CII-GU-2018-0136.

1.2 On the intimidation they suffer when walking alone through the territory:

How can we say that they banned us, women, from walking? They blocked the road, saying that we, women, weren’t allowed to walk. They no longer let us get through. If you’re a woman, they would make you go back, even though you needed to go to run an errand. They would make you go back and block the road there. And after they did so many things to us, we never abandoned, well, we’re not leaving this place because we know we have every right to be here, not because we’re causing harm to the company.

We, women, are fighting to defend our water. […] These people should go (inaudible) -- we no longer want any more threats or discrimination against us, women.

The other people who support the company are threatening us, discriminating against us, making us nervous when we walk right in front of them.

My daughters walk around, go and chop [cardamom] with the neighbors and […] they went right by the place where they were fencing their turbines. There were three company assistants […] and when they were coming back, my daughter said the man asked her, “Where did you go?” […] “So, where did you go? Did you come by alone to judge, to see how many machines our businessman had here? Why are you going against the company, you little guerrilla member?” And [when she] replied, “I’m not a guerrilla member. I coming back from work. [She questioned what the men wanted.] She says they asked her, “Are you asking me what I want

1 For the sake of offering gender-sensitive venues, the MICI held meetings, in separate venues, with the exclusive presence of women: the two women who are members of the MICI investigation team, a female translator of the Chuj and Q’anjobal languages, the female representatives of the Requesters and women from the communities of Ixquisis, Pojom, Nuevo San Mateo, Ixquisis, Caserío San Francisco, San Jose de las Flores, Nueva Concepción, Yulchen Frontera, Bella Linda and El Platanar who voluntarily participated.
with you? Is what you want for me to grab you by the hand and take you to see where the mountain is?" That’s what she says they asked. […] “I’m going to ask […] the young man’s mother […] why she did this to my daughter,” he said. But she says that the man told her: “If you’re going to run off and tell, if you’re going to sue, you better not come by here tomorrow because we have our Army and we have our Police.

There are two policemen or soldiers who beat women. They’re sexist here. They’re not afraid of beating a woman up, even if she is pregnant or disabled.”

1.3 **On how they used the rivers and how this has changed:**

In the past, they would go to the river, where they cooked with their family, washed (inaudible,) but now we see that the river has mud. It wasn’t like that before. Now the river is made of mud, because of them, because of the machinery.

As women, we’re very sensitive to this abuse, and sometimes we become ill, we fall into a depression, because we’re scared. We can no longer go to the river because they might rape us by the river, or even kidnap us. God knows how many things can happen to us. So, we’re no longer free to go for a walk as we used to. So, it really is a situation that really concerns us as women. As I mentioned before, water for us means life and those who defend the water are defending life, not only ours but the lives of our future children.

And most women are indigenous and we don’t know how to read or write, so they take advantage of that. We might not know how to read or write, but we’re happy with our place and our land. But with them, they come - excuse the word - and screw our lives. It’s not like it used to be and we’re fine. They come to ruin everything.

1.4 **On the lack of consultations and consideration of their opinions:**

The situation of us, women, is tougher or more complicated than the situation of men. Because they consider us, women, as being worth nothing, having no rights. In other words, we’re not allowed to speak up; we’re worthless to them.

There they discriminate against us. “There go the guerrilla members.” […] As they’ve said so much that it hurts us, at least we also have our value, like other nations, […] We have our value in our place, so if you come to take this information, please make it reach the company owner, whichever nation, and please say why we’re here. We’ve gone to large protests for more than 12 years now, (inaudible) in this place, long before, claiming that we don’t want mining, that we don’t want megaprojects, we’re basically not worth much. Where do our words go?
1.5  **On intimidation and harassment due to their opposition to the Projects:**

They’ve told us that we’re whores because we protest, that when we protest, we’re the resistance. They’ve said we’re whores and that we’re going to offer to leave with them, that we’re guerrilla members, that we’re murderers, and that we’re thieves. They say a lot of nasty things to us, and we’re really tired of being mistreated by these men.

It really bothers us and makes us quite sad that this company has come to destroy our lives, our way of living, our way of thinking, and what we do. We’re no longer free. We’re always afraid now. We can’t go run an errand because the police get in our way and block our path. […] When they attack us, they put their helmet, shield and a club like that. And they use that to beat us up. But when they see that there’s a Commission overlooking, they hide. They hide and even wave “goodbye,” and are friendly. How hypocritical can they be?! It’s not fair that we have to sustain all that mistreatment. And when we’re alone, that’s when they block our path and ask, “Where are you going? What are you going to do?” They don’t even let us get through anymore.

We, as women, are suffering a lot. […] We mostly suffer in terms of water. In terms of water and also our rights, because they don’t value us as women or even as people. […] When we want to talk about the issue of our rights or to defend ourselves as women and talk to them because of what they say to us, what do they say? They say that [our] husbands, that […] nobody screws us at night, that nobody can tell them what to do, i.e., that we’re street women, […] we’re like dogs that are useless. […] They’re people from the company, company people. But we’re suffering all that from the company.

Us, women, as being worth nothing, having no rights. In other words, we’re not allowed to speak up; we’re worthless to them. […] And when we get up to say that we do have the right and why they won’t recognize our right, that’s when they start to threaten us, to intimidate us, so we don’t -- just as long as we don’t speak up or defend our right. And who are the ones doing this? It’s the company. In other words, [strangers] aren’t the ones doing this to us, but rather our countrymen, acquaintances. Sometimes even relatives turn against us, because the company pays them. They receive money from the company. So the company is the one that pays people’s wills: “do what you want with this woman because this woman is worthless.”

1.6  A young woman gave a statement about a situation of harassment that she had suffered when she was a child, allegedly by security guards, after which she stopped going to school.
They had private security there because [...] they followed me. They offered me money saying, “if you want to come, come here with us; we’re going to give you 100 quetzals.” But I wouldn’t respond, because I’m a girl. I didn’t know what to say to them. So [...] we went on our way. They would talk behind us, like that, but we would be scared, which is why we didn’t respond to them. So we would pass by and they would come (inaudible) and we told our parents that we weren’t going to go anymore because this is what these men would do to us on the road, but my father said, “no, you better not listen to them, you have to go because you have to study.” That’s what my dad said so I kept going to school. And later they said, “if you want, we’re going to go there to Ixquisis.” They’d say that, since we were three young girls, perhaps I was eight years old, but we wouldn’t respond. They would then follow us and come after us, and we would be really scared and would start running, [...] 

Then there was a day that we went by there with my mother, and we went to visit my family, and they told us, women, who were passing by at that moment, that the road was now private, “it makes you want to screw them,” [...] but we didn’t respond. [...] We kept walking. I mean, why would we even respond? Just because they’re men? What if they harm us?

This one time, [a man] from the company told me to take or steal my father’s, brother’s and mother’s DPI [Personal ID Document] and give them to him, saying that it was just to take a photo and that they would give it back. “We’re going to give them 500 quetzals,” said a man I don’t know nor do I know where he is, but I do know he’s from the company. [...] We didn’t respond and they followed us. Well, they walked behind us and were talking, “yes, please take your father’s, brother’s and mother’s DPI, and if you have documents, if you know where your family keeps their documents, you should bring them. We’re going to give them money, [...], they said. When we got home, I told my dad what that company security guard said to us. [...] So, after that event, my father withdrew me from school. He no longer let me go to school. We also contacted another guy there. We weren’t allowed to go to school because of the company. We were left without an education.

1.7 On the emotional effects that all the violence is having on the community:

When Sebastián died, it was so very painful, because the children were also scared. They saw the body of the man; that also disrupts children, [...] that affects children. And whenever there’s a protest, they hold a peaceful protest, but the others, those who protect the company, become violent. And nowadays, whenever [...] they hear a gunshot, they go with their children to the mountains to hide them for fear of losing them, of being killed, since no one defends their rights as woman, as the mother of children.

When the company came, it came to Pojom. It came to deceive us, women [...] They look at us as if we’re useless or worthless or that we don’t know anything, have no knowledge, so they came to deceive us, just like when the company
arrived, they came to buy fruits, oranges, pumpkins, chayotes, tomatoes, what we grow here, back then saying that the company was going to support the women of Pojom. So, we were confident back then, but that was because they failed to mention the truth about what they were going to do, to build or destroy our territories, our rivers and to invade our rights […] as natives of this territory here.

We’re getting very sick from so much thinking, so much worry, so much intimidation of what the people of the company have done to us. For example, she said that she feels threatened, as does her entire family. She explained that they also shot her brother months ago, and they also cut her brother with a machete. Why? It’s just to defend our right, and how the situation of our women is tougher than the situation of men.