

# Who Pays the Costs of Development?

Common patterns and trends of rights violations  
in hydroelectric projects financed by  
Multilateral Development Banks in Guatemala

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Cover picture: A community member of the Ixquisis micro-region regrets the quality of the water of the Negro River due to the work of the hydroelectric plant in February 2017. Credits: Protection International.



Jotay: Acting Together Program is a joint program in Guatemala of five European ecumenical organizations: Norwegian Church Aid, Christian Aid, Act Church of Sweden, Bread for the World and the Lutheran World Federation. We accompany organizations, groups and social movements of civil society in Guatemala, including indigenous peoples, women, and faith-based organizations, in their efforts to establish an inclusive and sustainable society, with policies that guarantee respect for human rights.



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BIC is an independent, non-profit, non-governmental organization that advocates for transparency, accountability, sustainability, and inclusion in development finance. BIC partners with civil society in developing and transition countries to monitor and influence the policies and operations of the World Bank Group and other international financial institutions (IFIs). In partnership with international, regional, and local CSOs, BIC conducts research and advocacy aimed at reforming and improving IFI policy and practices.

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## List of abbreviations and acronyms

<b>IDB</b>	Inter-American Development Bank
<b>WB</b>	World Bank
<b>MDB</b>	Multilateral Development Bank
<b>CAO</b>	Compliance Advisor Ombudsman
<b>CEDER</b>	Center for Rural Development
<b>CIFI</b>	Inter-American Corporation for Infrastructure Financing
<b>CPLI</b>	Free Prior and Informed Consent
<b>EIA</b>	Environmental Impact Assessment
<b>FI</b>	Financial Intermediary
<b>WBG</b>	World Bank Group
<b>IFC</b>	International Financial Corporation
<b>LRIF</b>	Latin Renewables Infrastructure Fund, L.P.
<b>MENR</b>	Ministry of Environment and Natural Resources
<b>MEM</b>	Ministry of Energy and Mines
<b>MICI</b>	Independent Consultation and Investigation Mechanism
<b>MIGA</b>	Multilateral Investment Guarantee Agency
<b>MW</b>	Megawatts
<b>PS</b>	Performance Standards
<b>PAC</b>	Civil Self-Defense Patrols
<b>NCP</b>	National Civil Police
<b>ESMS</b>	Environmental and Social Management System

## Executive Summary

The aim of this study is to analyze patterns and trends of systematic human rights violations in three hydroelectric projects financed by Multilateral Development Banks (MDBs) in Guatemala: (1) [Canbalam](#) in Santa Cruz Barillas (2011), (2) [Santa Rita](#) in Corbán (2012), and (3) the Ixquisis hydroelectric complex (2013), which includes the projects of [Generadora San Mateo](#) and [Generadora San Andrés](#) in the microregion of Ixquisis<sup>1</sup> financed by the International Finance Corporation (IFC), the private lending arm of the World Bank Group and the IDB Invest, the private arm of the Inter-American Development Bank, respectively.

The project affected communities of the three hydroelectric projects in Guatemala submitted complaints to the accountability mechanisms of those Banks (Compliance Advisor Ombudsman -CAO- and the Independent Consultation and Investigation Mechanism -MICI-) claiming a number of social and environmental harms and impacts, as well as human rights violations that are related to non-compliance with IFC's Performance Standards (PSs)<sup>2</sup> and lack of correct supervision of the implementation of the PSs.

In the three cases, patterns of systematic rights violations of the project-affected people and harm to the environment are evident and repeated:

- 1. Violations of the rights of Indigenous Peoples.** Self-identification as an indigenous people has been denied to the population of the microregion of Ixquisis, granting the project a lower social and environmental risk category. In the other projects, the specific impacts on Indigenous Peoples were not taken into account, and the right to free, prior and informed consent (FPIC) was not respected.
- 2. Lack of access to information, meaningful consultations, and FPIC.** The affected communities report that in the three cases the right to information and the right of Indigenous Peoples to free, prior, and informed consent and consultation has not been fulfilled.
- 3. Rupture of the social fabric and increase in social conflict.** The projects have eroded the community's social

fabric in the territories. Companies sought acceptance of the projects using patronage practices, offering families certain benefits in exchange for their support without informing them about the risks and impacts that the projects may have had. When discussion roundtables organized by government entities were implemented, they served to identify and criminalize opposition leadership to the project.

- 4. Community Safety: Retaliation Against Communities.** In the three cases analyzed, the companies and governments facing community organization and actions in opposition to the projects, responded with attacks (making use of private and public security forces) on the life, integrity, and freedom of those who opposed the construction of hydroelectric plants.
- 5. Differentiated harm to women.** In all of the cases, little or no assessment of gender impacts and risks was performed during the environmental and social impact assessment processes. Nor were complementary studies, such as comprehensive gender assessments, carried out. Therefore, no differentiated risks and impacts on women were identified to avoid, prevent, or mitigate them. Nor were measures established to prevent gender violence caused by the influx of outside workers into the construction area.
- 6. Environmental risks and impacts.** The hydroelectric projects were approved with numerous information gaps regarding the impact on water flows, which makes it difficult to assess their technical feasibility or to know the exact extent of the impact of the work. The deficiencies in the environmental and social management and monitoring systems make it impossible to avoid or minimize impacts on the environment or to make sustainable use of resources, in particular water. As a result, there are impacts on biodiversity, as well as, the maintenance of ecosystem services.
- 7. Fraudulent land purchase.** The communities claim fraudulent purchase of land. This action produced the closure of

1 For the aim of this study, we are considering the projects Generadora San Andrés and Generadora San Mateo as one project since both hydroelectric projects are part of a large hydroelectric complex in the microregion of Ixquisis. Both projects are developed by the same implementing company, in the same location, and with the same environmental and social impacts and risks. Also, the request to the MICI describes the situation of residents of various communities in northern Guatemala, in the area where the Generadora San Mateo and Generadora San Andrés Hydroelectric Power Projects are located.

2 The three projects apply the IFC's PSs. In the projects approved prior to the IDB's Invest Sustainability Policy, such as the case of Generadora San Mateo and San Andrés, IDB Invest recommended that clients use IFC's Performance Standards since the IDB Invest Policy allowed the Bank the use of third-party policies.

the roads that people in the different regions used to access lands and the rivers.

## 8. Damage and destruction of sacred and ceremonial sites

**of Maya Indigenous Peoples.** During the construction of the project in Ixquisis, part of the archaeological sites were destroyed, and the communities claim that archaeological objects are missing. In Santa Cruz Barillas, the hydroelectric

project has posed a threat to the communities since it proposes to divert the natural stream of the river, which would affect three natural waterfalls that communities consider to be sacred.

For information on lessons learned, conclusions, and recommendations go to page 34.



A blue-tinted photograph showing protest signs and rocks. One sign in the foreground has the word 'PAZ' (Peace) and '4500' written on it. Another sign in the background has text in Spanish: 'ENSADEN', 'TERRITORIO', 'LA MADRE', and 'ARRAILEZ'.

## Energy policy, hydroelectric dams, and resistance in Guatemala

## Energy policy, hydroelectric dams, and resistance in Guatemala

The Multilateral Development Banks (MDBs) began investing in dams in Guatemala in the 1980s, with the Chixoy State Project (originally “Presa Pueblo Viejo”). It was built during the bloodiest years of the Internal Armed Conflict, and the affected communities underwent a very long process to achieve some reparation for the harms and human rights violations suffered from the construction of this dam. Unfortunately, after years of lessons learned and with better environmental and social policies, hydroelectric projects financed in recent years by the private arms of the MDBs in Guatemala have not proven to be any better.

The objective of this study is to reveal patterns of human rights violations caused by three hydroelectric projects financed by MDBs in Guatemala, specifically by the World Bank Group (WBG) and the Inter-American Development Bank Group (IDBG). In so doing, the social and environmental impacts identified by the project affected communities are analyzed through the study of the complaints presented to the accountability mechanisms of the [International Finance Corporation](#) (IFC), the private arm of the World Bank Group, and [IDB Invest](#), the private arm of the Inter-American Development Bank Group. This study seeks to understand the mistakes made by the MDBs, the Guatemalan government, and the implementing companies in order to learn from these experiences and obtain recommendations that serve to: a) understand how private companies operate in conjunction with governments and their limitations to protect and respect human rights; b) identify the project induced harms and human rights violations of individuals and communities, showing common trends of non-compliance with environmental and social safeguards in the three projects; and c) offer reflections so that the MDBs, the government of Guatemala, and the implementing

companies incorporate lessons learned in future operations and strengthen the implementation of social and environmental safeguards and accountability.

The hydroelectric projects analyzed are: (1) [Canbalam \(2011\)](#), (2) [Santa Rita \(2012\)](#), and (3) the Ixquisis hydroelectric complex (2013), which refers to the projects of [Generadora San Mateo](#) and [Generadora San Andrés](#).<sup>3</sup> All three have been financed by the arms of the MDBs that offer loans and technical assistance to the private sector (such as private companies or banks). The objective of these entities is to promote economic growth by supporting the private sector, creating employment, and improving living standards in emerging and low- or middle-income countries.

The projects began in Guatemala during the government of the National Unity of Hope (2008-2012) under an energy policy with economic incentives for renewable energy projects<sup>4</sup> that promoted the diversification of the energy matrix, with a focus not only on the supply of the domestic market, but also on the export of electricity<sup>5</sup>. However, this “diversification” was limited to the production of electricity only through hydroelectric projects. The governments that followed, although from different political parties, also continued with the implementation of this energy policy to the point that it was planned to double the electricity generation capacity with the installation of 47 hydroelectric projects throughout the territory<sup>6</sup>. This systematic support of the energy policy initiated in 2008 led to large and medium-sized hydroelectric projects. Investments in hydroelectric projects were questioned, resisted, and ultimately, rejected by project affected communities and stakeholders for their violations of the rights of people and the environment. However, the different governments,

3 For the aim of this study, we are considering the projects Generadora San Andrés and Generadora San Mateo since both hydroelectric projects are part of a large hydroelectric complex in the microregion of Ixquisis. Both projects are developed by the same implementing company, in the same location, and with the same environmental and social impacts and risks. Also, the request to the MICI describes the situation of residents of various communities in northern Guatemala, in the area where the Generadora San Mateo and Generadora San Andrés Hydroelectric Power Projects are located.

4 The incentives are mainly fiscal and consist of tax exemption for the importation of equipment, as well as during the first ten years of financing the renewable energy project. Source: [Incentives Law for the Development of Renewable Energy Projects in 2003 Decree No. 52-2003 and its regulations](#).

5 The Energy and Mining Policy 2008-2012 was approved at the end of the previous government. Source: MEM (October 2007) [Energy and Mining Policy 2008-2015](#) and the National Unity of Hope government brought it to life with the expansion plans of the national electricity system. Source: MEM (2008) [Expansion Plans of the Guatemalan Electric System - A long-term vision](#).

6 The installed capacity was 2,700 megawatts (MW) in 2012, according to the energy policy and with the installation of these hydroelectric plants, 3,166 MW would be added. Source: MEM (2014) [Indicative Expansion Plan of the Generation System 2014-2018](#).

through their state machinery, managed to impose their will on the territories so that the projects were carried out anyways.<sup>7</sup>

The two departments prioritized for their high hydro potential are Alta Verapaz (802 megawatts -MW- with 12 projects) and Huehuetenango (five projects with a total capacity of 561 MW)<sup>8</sup>. Both departments are mostly inhabited by Indigenous Peoples, who are historically marginalized and without reliable access to basic services such as electricity<sup>9</sup>. These regions were also victims of massacres carried out by the army and paramilitary groups, such as the Civil Self-Defense Patrols (PAC by the Spanish acronym)<sup>10</sup> during the Internal Armed Conflict that plagued the country for more than 36 years<sup>11</sup>. The trauma of the conflict is something that the populations affected by these extractive projects relive systematically in different ways.

Faced with the increase of authorizations for megaprojects in Guatemala (not only hydroelectric plants but also mining<sup>12</sup>, agribusiness, infrastructure, etc.), Indigenous Peoples organized to defend their territories and assert their rights, in particular, the right to free, prior, and informed consultation and consent. Huehuetenango is the department where most good faith community consultations were held<sup>13</sup>. Twenty-nine consultations were carried out between 2006 and 2015<sup>14</sup>. Likewise, in March 2012 the “Indigenous, peasant, and popular march for the defense of Mother Earth, against evictions, criminalization, and for Comprehensive Rural Development” was organized. In this protest representatives of indigenous communities walked 200 kilometers from Cobán to Guatemala City to deliver their demands to the President of the Republic, demanding consultation on the Santa Rita hydroelectric project and the withdrawal of the military camp from the community of Monte Olivo, one of the communities affected by the project.<sup>15</sup>

7 Otto Pérez Molina (president from 2012 until his resignation in 2015 due to the corruption cases in which he was involved) was personally at a meeting in Santa Cruz Barillas on September 3, 2013 to discuss the issue of the Canbalam hydroelectric plant. Source: Castillo, Mike (September 3, 2013) [Hydroelectric in Barillas. Tension due to the visit of Pérez Molina. Free Press](#). Hydroelectric in Barillas: Tension due to the visit of Pérez Molina. Free Press. Otto Pérez personally visited the hydroelectric plants in San Mateo Ixtatán on July 17, 2014 and decided to maintain the military camp and the substation of the National Civil Police (NCP) in the village of Ixquisis. Source: Castillo, Mike (July 18, 2014) [Government will maintain vigilance in San Mateo Ixtatán. Free Press](#). On August 7 of the same year, the president is an honorary witness at the signing of an agreement between the Santa Rita hydroelectric plant, the Cobán municipality, and alleged representatives of 14 communities. Source: MEM (August 7, 2014) [Municipality and 14 Communities sign agreement with hydroelectric plant](#).

8 Source: [MEM 2014](#).

9 The departments of Alta Verapaz and Huehuetenango have a high proportion of indigenous population, 93.2% and 65.2% respectively, compared to the national average of 43.7% (Source: INE (2018) [XII National Census of Population and VII of Housing](#)). Total poverty in 2014 reached 83.1% in Alta Verapaz and 73.8% in Huehuetenango, which is much higher than at the national level (59.3%), according to data from the National Institute of Statistics (Source: INE (2015) [Republic of Guatemala: National Survey of Living Conditions 2014 - Principal results](#)). The electricity coverage rates of the municipalities affected by the hydroelectric plants studied are also low (61.90% for Cobán, 66.83% for Santa Cruz Barillas, and 87.95% San Mateo Ixtatán), compared to a national average that reached 89.586% in 2013 (Source: MEM (2013) [Electricity coverage index year 2013](#)).

10 The Civil Self-Defense Patrols (PAC) were paramilitary organizations made up of adult men from many villages; in some cases, it was voluntary, but the majority was under duress and threats, and under the command of the military forces. (Source: IIARS (2015) [Recent history. A content book on the Internal Armed Conflict in Guatemala](#))

11 Alta Verapaz and Huehuetenango are the departments where the most massacres were perpetrated after the department of El Quiché, with respectively 62 and 41 massacres out of a total of 422 documented by the Interdiocesan Project for the Recovery of Historical Memory. (Source: [Office of Human Rights of the Archdiocese of Guatemala - ODHAG \(1998\) Report of the Interdiocesan Project for the Recovery of Historical Memory - REMHI, Volume 2](#))

12 Three large open-pit metal mineral exploitation projects have a ruling from the Constitutional Court of Guatemala that orders the closure of activities until a consultation is made. This is Project VII Derivative (known as La Puya) of the Cappes & Cassidy company, the Fenix and Montúfar exploitations of the Pronico-CGN company, and the Escobal mine of the Minera San Rafael company. In addition, there are injunctions against four exploration licenses in the west of the country. Sources: Choc, Carlos Ernesto (June 25, 2020) [CC issued a final judgment in favor of “La Puya”](#), Prensa Comunitaria, and Prensa Comunitaria (February 26, 2016) [“La Puya: CSJ resolved that mining company should suspend exploitation”](#).

13 The Municipal Code, Decree No. 12-2002, regulates the consultation of neighbors and the consultation of the indigenous communities or authorities of the municipality in articles No. 63 to 66. In addition, several international treaties recognize the right to free, prior, and informed consultation and consent, such as Convention 169 of the International Labor Organization, the United Nations Declaration, and the Inter-American Declaration on the Rights of Indigenous Peoples.

14 Huehuetenango has 33 municipalities, so consultations were carried out in the vast majority of municipalities between 2006 and 2010. Source: Katz, Eleanor and Torres, Selvin (November 15, 2017) [Community consultations in Guatemala: How many, where, when?](#) Centro de Políticas Públicas para el Socialismo - CEPPAS.

15 Source: CUC (March 28, 2012) [Agreements reached when indigenous, peasant, and popular march arrived in Guatemala](#).

Four years later, a new march was held, the March for Water, Mother Earth, Territory, and Life in April 2016. It consisted of a mobilization of thousands of Guatemalans who demanded the fight for water in a journey that began on three slopes: Huehuetenango (La Mesilla), south slope (Tecún Umán, San Marcos) and north slope (Purulhá, Baja Verapaz). The March for Water was an exercise by several organizations that demand and fight against a system that favors transnational companies to the detriment of the environment and nature. For 11 days thousands of peasants and indigenous people marched to the capital city emphasizing problems related to water, pollution, and diversion of rivers by mining and hydroelectric plants, the use of chemicals in the planting of agro-industrial products, the importance of community radio, and the quality of electricity service. Source: Sosa, Mario (April 19, 2016) [The March for Water: a strategic struggle for all. Plaza Pública](#).

# 1.

## Canbalam Hydroelectric Plant



The [Canbalam hydroelectric plant](#) is a small project on the Canbalam River in the municipality of Santa Cruz Barillas (department of Huehuetenango). It has a capacity of 4.96 MW<sup>16</sup> with the construction of an electrical substation and the installation of a 5.8 kilometer high-voltage line to transport the electricity produced up to the substation of the municipality of Barillas<sup>17</sup>. As a result of community resistance, the project has not had notable material progress apart from the installation of the camp.

In 2008, the IFC approved financing for the [Inter-American Corporation for Infrastructure Financing](#) (CIFI, by the Spanish acronym) of two loans for a total amount of US \$70 million and a capital investment of US \$10 million. Of these funds, in 2011, CIFI invested in Hidro Santa Cruz with a loan of US \$20 million and a mezzanine capital fund of US \$10 million. The IFC granted it a social and environmental category of Financial Intermediary (FI) because the investment was made through CIFI, which operates as a financial intermediary between the IFC and the construction company (see table N1).

Table N1: IFC and Financial Intermediaries

**The IFC can provide loans or invest directly in private companies to implement a specific project (investment loan), or it can also provide loans or invest in financial institutions such as banks and investment funds, and then these entities lend the money to the companies that implement the project in the territory (loan via financial intermediaries).**

An investment made through a financial intermediary (FI) means that it is difficult for affected communities to know that there is a MDB financing the projects that they see in their territories since the MDBs do not report on the final projects financed, but only on the loans to financial intermediaries. For affected communities, it is more difficult to have access to information on which subprojects are financial intermediary finances since this information is not published.

When IFC invests through a financial intermediary (such as CIFI), it is the IFC's responsibility to ensure that the client implements an Environmental and Social Management System (ESMS) and applies IFC's Performance Standards. Ultimately, the client is responsible for ensuring that the companies they finance respect the Performance Standards (PS) on the ground, and this should be written in the investment contract<sup>18</sup>. The financial intermediary is the one who has to ensure that each subproject implements the ESMS well and is accountable to the IFC for its compliance with the problems encountered and the actions taken to remedy them. In the contract, there are stipulated times to raise the problems that could jeopardize compliance with the PS, as can be seen in the CAO's compliance report on the grievance filed in the Canbalam case.

In 2015, the communities of several Maya-Q'anjob'al towns in the municipality of Santa Cruz Barillas denounced the Canbalam hydroelectric project developed by Hidro Santa Cruz and submitted a [claim](#) to the compliance function of the IFC's accountability

mechanism, the Office of the Compliance Advisor Ombudsman (CAO) to verify IFC's compliance with social and environmental Performance Standards.

16 Hydroelectric plants under 5 MW in Guatemala have a simpler implementation procedure since they do not require the approval of the Ministry of Energy and Mines, according to the [General Electricity Law](#) (Article 8 of Decree No. 93-96).

17 Source: [Guereña, Arantxa y Zepeda, Ricardo \(December 2012\) El desarrollo que no queremos - El conflicto en torno al proyecto hidroeléctrico de Hidralia Energía en Guatemala](#). Intermon Oxfam Research Reports.

18 Natalie Bugalski, Inclusive Development International (January 2017). [Community Guide to the International Finance Corporation: An action resource for people affected by IFC-funded projects](#).

## 2.

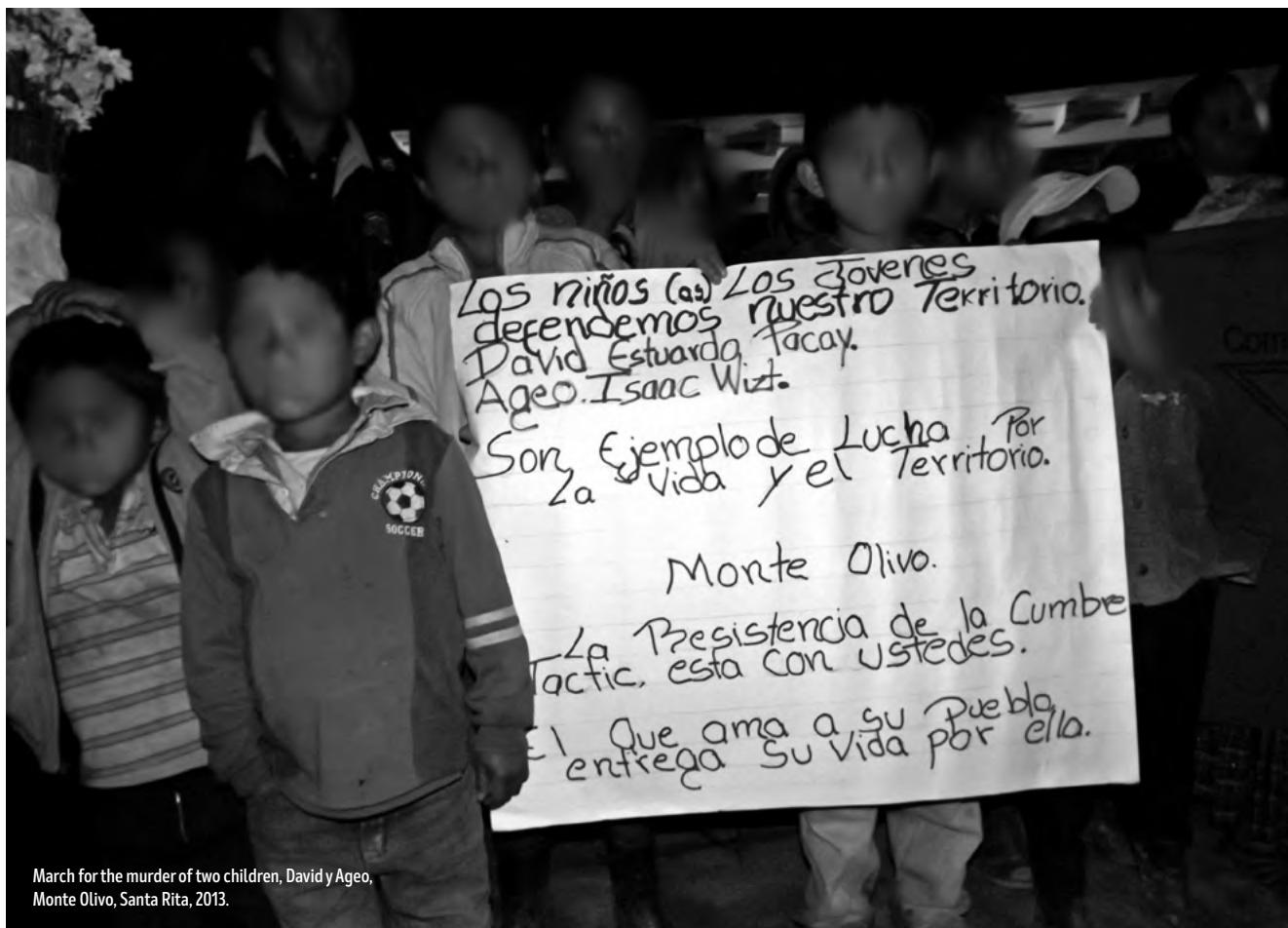
### Santa Rita Hydroelectric Plant



A second project is the [Santa Rita hydroelectric plant](#), a 17.5-meter high dam that would flood 33 hectares (47 blocks) to generate 23 MW with the waters of the Icbolay River in the Dolores River region of the Cobán municipality (Alta Verapaz department). The implementing company was initially owned by a Guatemalan hydroelectric project developer. This project was also carried out through a financial intermediary, so its social and environmental category is F1. In 2012, Real Infrastructure Capital Partners LLC<sup>19</sup> received US \$15 million of investment capital from the IFC through the Latin Renewables Infrastructure Fund, L.P. (LRIF) that acts as a

financial intermediary. The fund also invested and became a partner in the hydroelectric plant.

In 2014, the Maya-Q'eqchi' communities of the Dolores River affected by the project of the Santa Rita Hydroelectric Company submitted a complaint to CAO requesting the compliance function to investigate whether or not the IFC had complied with its safeguards policies. The [investigation report produced by CAO](#) within the compliance investigation made it possible to prove the basis for some of the harms claimed by the project affected communities.



### 3.

## Ixquisis Hydroelectric Complex: San Mateo and San Andrés Hydroelectric Plants



**Ixquisis refers to a hydroelectric complex to be developed by the companies Generadora San Mateo and Generadora San Andrés, both Guatemalan companies created in 2012.** It is made up of three hydroelectric projects on several rivers in the Ixquisis micro-region, San Mateo Ixtatán municipality (Huehuetenango department). In 2013, IDB Invest approved two different loans for [Generadoras San Mateo](#) and [San Andrés totaling](#) US \$13 million. The projects have had a material progress that should be close to 30% of the total works<sup>20</sup>.

The estimated capacity of the Pojom II hydroelectric plant of the Generadora San Mateo is 20 MW and it will use waters of the Río Negro and Pojom river, the San Andrés hydroelectric plant, has a projected capacity of 10.65 MW and will use waters of the Primavera, Varsovia, and Palmira Rivers. The works are more complex than

those of the Canbalam project with six dams, two daily storage ponds, and two powerhouses<sup>21</sup>.

In 2018, the Maya-Chuj, Maya-Q'anjob'al and mestizo communities of the Ixquisis micro-region submitted a grievance to the Independent Consultation and Investigation Mechanism (MICI) of the IDB Group, the compliance function for the group of projects of the Generadoras San Mateo and San Andrés.

Unlike the Chixoy project, a large state hydroelectric project financed by the World Bank and IDB in the 1970s and 1980s (see table N2), these projects are small to medium in size. However, they have generated great environmental and social impacts (even despite the limited physical implementation) that have brought memories of the times of the armed conflict to the affected communities.

Table N2: Chixoy Hydroelectric Plant

Chixoy is the largest hydroelectric plant in Guatemala (281 MW of effective power, according to [data from the National Electric Energy Commission](#)). It was built between 1975 and 1983, with the financial support of the World Bank and the Inter-American Development Bank. The hydroelectric project caused enormous damage with the flooding of 2,000 hectares, which meant that 23 towns, 471 homes, 45 archaeological sites, as well as the associated natural environment disappeared<sup>22</sup>. In addition, between 1980 and 1982, five massacres were perpetrated against the Río Negro community by the army and the PACs, as well as the persecution and annihilation of community leaders<sup>23</sup>. The World Bank financed the project's pre-feasibility study in 1974 for an amount of US \$7 million, Project #545 GU-IBRD, according to information from COCAHICH<sup>24</sup>. During the government of General Lucas García (1978-1982), the World Bank and the Inter-American Development Bank approved loans to the government of Guatemala for the construction of the dam for respective amounts of US \$72 million ([Project #P007189](#)) and US \$44.6 million ([Projects #P007195](#)).

In 2004, the Coordinator of Communities Affected by the Construction of the Chixoy Hydroelectric Plant (COCAHICH) was established on behalf of 33 project affected communities and the Association for the Integral Development of Victims of Violence in the Verapaces, Maya Achí (ADIVIMA). Two years later, the Political Table for Dialogue and Negotiation began, made

20 Among the works built are the Pojom II sand trap, tunnel, and storage pond, the bases of the powerhouse of the Pojom II and San Andrés projects, and a sand trap and three catchment works for the San Andrés project.

21 Source: El Observador (July 16, 2018) [Análisis de los procesos de aprobación de las centrales hidroeléctricas en el municipio de San Mateo Ixtatán, departamento de Huehuetenango](#). El Observador, Informe Especial No. 16.

22 Source: COCAHICH (November 9, 2009) [Informe de identificación y verificación de daños y perjuicios ocasionados a las comunidades afectadas por la construcción de la hidroeléctrica Chixoy](#). Round-table Discussion between the Government of the Republic of Guatemala and the Coordinator of the Communities Affected by the Construction of the Chixoy Hydroelectric Plant (COCAHICH).

23 Source: CIDH, [Sentencia del 4 de septiembre de 2012](#). Caso Masacres de Río Negro vs. Guatemala - Official summary issued by the Inter-American Court of Human Rights.

24 Source: [COCAHICH, 2009](#), p.5.

up of the two organizations, the government of Guatemala, and the Organization of American States (OAS), which participated as mediator. The result of this table was the [Report of the Identification and Verification of Damages and Losses](#) (2009), which recognized that, despite the existence of a Resettlement Plan, there were negative impacts on families due to the reports' late preparation; therefore, the following year a Reparation Plan was established. This plan was never implemented, so the communities continued to carry out advocacy actions, particularly in the United States of America, until President Barack Obama sanctioned the Consolidated Appropriations Bill that conditioned the loans of the IDB and the World Bank, as well as the military aid to the Guatemalan government, to fulfill the reparations agreed upon in the Reparation Plan. The Plan was signed and published through Government Agreement No. 378-2014 on November 6, 2014<sup>25</sup>. However, COCAHICH and ADIVIMA continued to denounce the little progress of the Plan<sup>26</sup>. In September 2020, the disappearance of the government institutions in charge of monitoring compliance with the commitments assumed by the Peace Accords, among other assignments, puts compliance with the reparation agreements at risk<sup>27</sup>. Despite a long process of negotiation and international advocacy actions at the highest level, the agreements reached are at risk of not being fulfilled. This case, despite the fact that no formal claim was submitted to the MDB's accountability mechanisms, is illustrative in several ways: a) it showed that the affected communities have the right to be compensated; b) the Table of Dialogue and Negotiation served as a tool to empower the communities and make themselves heard at the international and national level; c) reparations can be achieved when working with public sector and international actors, and that it is possible to generate reparations plans that, far from being perfect, can bring relief and a sense of justice to affected communities

Chixoy Hydroelectric Plant,  
the biggest in Guatemala.



## Are socially and environmentally sustainable hydroelectric plants a possibility?

In this section, the report analyzes the community identified harms to the environment and people generated by hydroelectric projects. This analysis demonstrates systematic trends of non-compliance in the implementation of social and environmental safeguards in the three projects and the resulting human rights violations. The lack of application of social and environmental safeguards led communities to initiate complaints in the accountability mechanisms of the IFC and IDB Invest. In the cases

of Santa Rita and Canbalam, some of the findings of the CAO investigation on the actions of the IFC are also presented. For the Ixquis compliance case, the results of the MICI investigation are not yet available, so only the harms identified by the communities are presented. Currently, the demanding communities are awaiting the delivery of the Compliance Report by MICI, which has suffered several delays and is expected by the end of March 2021.

25 Source: ACOGUADE (March 13, 2015) Después de 30 años se cumplirá la reparación prometida a las comunidades de Chixoy.

26 Source: Escobar, Irving (January 21, 2016) [Afectados por Chixoy retiran bloqueo y aceptan diálogo](#). Prensa Libre; Morales, Sergio (November 6, 2018) [Plan de resarcimiento por caso hidroeléctrica Chixoy tiene escasos avances, dicen afectados](#). Prensa Libre.

27 Source: ADIVIMA y COCAHICH (September 2020) [Campo Pagado](#).

## Social and Environmental Safeguards: The Performance Standards of the IFC

The social and environmental policies or safeguards of the MDBs are a system of norms or standards that serve to mitigate, prevent, and reduce the negative risks and impacts associated with the projects that the MDBs finance. They are based on the principle of *do no harm* and are mandatory requirements for operations financed by MDBs. They establish minimum standards and procedures that borrowers or clients, and the Bank must follow and comply with in preparing and implementing projects financed by the MDBs.<sup>28</sup>

While MDBs have the mission of promoting sustainable development, the consequences of their activities often run counter to the notion of sustainability; projects can damage or deplete natural and human assets rather than protecting them or ensuring their continuity for current and future generations. Some projects they finance include: the construction of roads, dams, electricity generation, and transport plants; mining and extraction of other natural assets; and projects that promote large-scale agricultural development that can harm the environment, often irreversibly. In many cases, these projects displace people and negatively affect their livelihoods. **Therefore, the safeguards are designed to provide the environment and people (especially the most marginalized populations) with minimum protections against the negative impacts of operations financed by MDBs.**<sup>29</sup>

Although they do not use human rights language, safeguards protect the rights of project affected communities in the implementation of projects financed by MDBs. Civil society has always advocated for environmental and social safeguards to be aligned with the highest international standards.

IFC's environmental and social policies were updated in 2012 to adopt the Sustainability Framework consisting of the Environmental and Social Sustainability Policy, the Performance Standards, and the Access to Information Policy. The [Performance Standards \(PS\) on Social and Environmental Sustainability](#) define the responsibilities of clients in the management of environmental and social risks.

The 8 Performance Standards are:

- **Performance Standard 1:** Environmental Assessment & Management of Risks and Impacts;
- **Performance Standard 2:** Labor and Working Conditions;
- **Performance Standard 3:** Resource Efficiency and Pollution Prevention and Management;
- **Performance Standard 4:** Community, Health, Safety, and Security;
- **Performance Standard 5:** Land Acquisition and Involuntary Resettlement;
- **Performance Standard 6:** Conservation of Biodiversity and Sustainable Management of Living Natural Resources;
- **Performance Standard 7:** Indigenous Peoples; and
- **Performance Standard 8:** Cultural Heritage.

The IDB Invest approved in 2020 the new [Environmental and Social Sustainability Policy](#) adopting the IFC Performance Standards. In fact, in the projects approved prior to this new Policy, such as the case of Generadora San Mateo and San Andrés, IDB Invest recommended that clients use IFC's Performance Standards since the IDB Invest Policy allowed the Bank the use of third-party policies.

**Social and environmental standards represent an opportunity for project affected communities and stakeholders in general to have an effective participation in projects and to access the necessary information to ensure meaningful involvement and access to project benefits.** If the affected communities believe that a project is not complying with these social and environmental policies, they can demand their effective implementation from the MDBs. They can also file a grievance with the independent accountability mechanisms of the MDBs.

28 Source: Bank Information Center (2020) [Toolkit for activists: An information and Advocacy Guide to the World Bank Group](#).

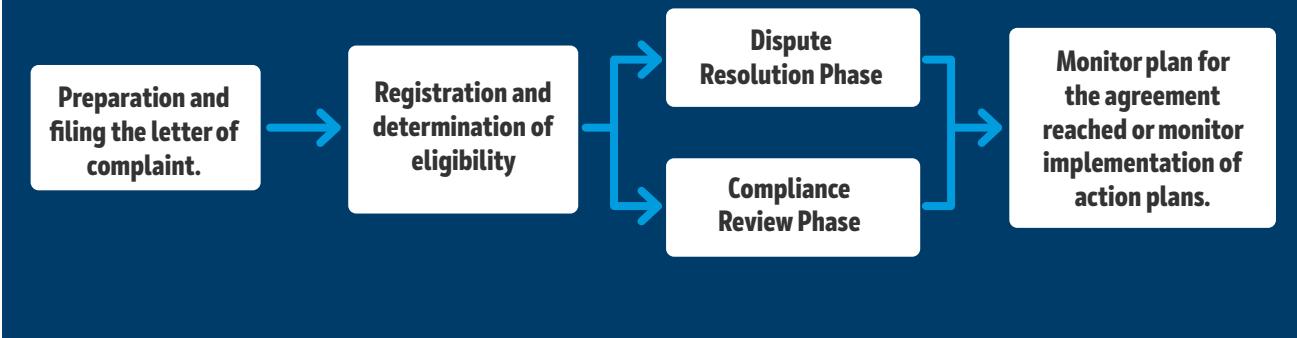
29 Source: Bank Information Center (2020) [Toolkit for activists: An information and Advocacy Guide to the World Bank Group](#).

### Table N3: Accountability Mechanisms, CAO, and MICI

The IFC's accountability mechanism is the [Office of the Compliance Advisor Ombudsman \(CAO\)](#). This mechanism receives grievances from individuals or communities that have been or may be affected by projects financed by the private arms of the World Bank Group, IFC, and the Multilateral Investment Guarantee Agency (MIGA).

The [Independent Consultation and Investigation Mechanism \(MICI\)](#) handles harms claims for financing from any IDB Group institution. Both mechanisms are independent from the administration of the banks that implement the projects since they respond directly to the president in the case of CAO and to the board of directors in the case of the MICI.

The two accountability mechanisms make decisions about grievances made by communities and have two ways of dealing with a grievance, through: a) the dispute resolution function; and/or b) the compliance function that verifies whether or not there was a breach of the safeguards by the Bank. The following graphic shows the process of the mechanisms:



## Risks and impacts identified by the project affected communities and the grievance processes at the Accountability Mechanisms

In all three cases, the communities submitted grievances to the accountability mechanisms for a compliance investigation, in which the mechanism conducts an investigation related to the harms identified by the project affected communities to establish whether or not the Bank complied with the social and environmental safeguards. The main Performance Standards cited for noncompliance by the communities in their grievances submitted to the accountability mechanisms are 1, 3, 4, 5, 6 and 7. As will be analyzed below, the project affected communities resisted these projects from the beginning because they left the communities aside, without consulting them about the risks and impacts that the projects might have had or about access to benefits that the projects might have entailed. This lack of consultation is how the projects end up violating individual and collective rights of the affected people.

### 1. Violations of the rights of Indigenous Peoples

**The communities affected by the projects in the Ixquisis micro-region were not identified by the project developer and IDB Invest as Indigenous Peoples.** As a result, PS 7 in connection to Indigenous Peoples was not applied as it should have been. This means that the specific protections for Indigenous Peoples considered in the standard did not apply, such as, human rights of Indigenous Peoples and the requirement of free, prior, and informed consent (FPIC) in circumstances where there are adverse impacts that threaten the collective ways of life.

The IDB Invest establishes for both projects in its [review of environmental and social issues](#) that “*the majority of the inhabitants of the areas adjacent to the project are ladinos (that is, Spanish-speaking Guatemalan citizens who do not follow an indigenous lifestyle).*” Inhabitants of the region contest this status by expressing,

*“we identify ourselves as an indigenous people and those who finance in the bank, they do not recognize our identity, so we want them to respect our dignity. They violate the rights of Indigenous Peoples”<sup>30</sup>.*

It is not clear how and why it was determined that the inhabitants of the areas adjacent to the project are not indigenous, nor consequently, the decision to not apply the requirements of PS 7 since it is a fact recognized in the environmental impact assessment of hydroelectric plants<sup>31</sup>. PS 7 also establishes that the client may request the opinion of one or more qualified experts on the subject to determine whether a particular group should be considered an Indigenous People for the purposes of PS 7, which has not been done in this case (or at least there is no evidence that it has).

This determination did not respect the right of Indigenous Peoples to self-identification recognized in PS 7 as one of the characteristics that define an Indigenous People<sup>32</sup>. Because PS 7 was not applied, no consultations occurred to obtain the FPIC of the affected Indigenous Peoples. This point could not enter the MICI investigation since the mechanism’s policy does not allow addressing impacts that have pending trials or litigation in the country, and this was legally denounced in Guatemala<sup>33</sup>.

Subsequently, IDB Invest **granted the project a social and environmental category B risk (medium risk) and not A (high risk)**, which indicates lower risks related to the implementation of the project. **Minimizing risks also reduces the attention and monitoring necessary to prevent and manage risks in implementation related to Indigenous Peoples and other affected communities.** The same problem with categorization also occurred in the case of the Santa Rita project; however, the IFC revised the project’s categorization after members of project affected communities

<sup>30</sup> Interview with representative of the micro-region in January 2021.

<sup>31</sup> The EIA of Pojom II (2010) recognizes that 96% of the population of San Mateo Ixtatán is indigenous. Consult [IDB Invest page on the Generadora San Mateo](#).

<sup>32</sup> [IFC Performance Standard 7](#) point 5.

<sup>33</sup> MICI (2019) [MICI-CII-GU-2018-0136 Memorandum de Determinación de Elegibilidad - Proyectos “Generadora San Mateo S.A. y Generadora San Andrés S.A.” \(GU3794A-01 Y GU3798A-01\)](#), paragraph 513.

requested it on a trip to Washington, D.C., where they participated in the annual meetings of the World Bank to adapt the categorization to that of the FMO Dutch development bank, since “*the project entailed considerable environmental and social impacts that were diverse, irreversible, or unprecedented*”<sup>34</sup>.

In the case of the Santa Rita hydroelectric plant, CAO established that the IFC did not properly supervise the client’s environmental and social due diligence, which led to PS 7 not being applied correctly. Furthermore, CAO concluded that the project did not comply with the consultation and disclosure requirements and that the IFC examination was insufficient to ensure that the client correctly applied PS 7, in particular the requirement of “*Free, Prior, and Informed Consent (FPIC) in projects that affect land and natural resources under traditional systems of ownership or customary use*”<sup>35</sup>.

The report mentions that the IFC should have required the client to reevaluate its performance, particularly in relation to Indigenous Peoples, when opposition to the project increased<sup>36</sup>. Likewise, CAO identified that the Canbalam hydroelectric project lacked an adequate social impact assessment or socio-economic baseline study, and a specific assessment of impacts on Indigenous Peoples was lacking<sup>37</sup>.

These errors in the application of the requirements of PS 7 are explained by the lack of independent analysis carried out by the MDBs, excessive reliance on unverified information passed on by the client (information that does not come from meaningful consultations with the communities), and failure to carefully review project information, such as assessment of environmental impacts. Indigenous Peoples repeatedly claimed violations of their indigenous rights during the implementation of the projects, starting with the lack of consultation.

These cases exemplify the lack of due diligence and supervision carried out by IFC and IDB Invest, where the capacity of clients to manage risks is overestimated, and at the same time, the risks and impacts on project affected communities are underestimated and inadequately evaluated, particularly to the loss of Indigenous Peoples. Consequently, in the afore mentioned case, a social and environmental category of medium risk was assigned, and it was

determined that the impacts were limited (between reversible and mitigable)<sup>38</sup>, despite the fact that the social context on the ground was complex.

## 2. Lack of access to information, free, prior, and informed consultation and consent.

In all three cases, the affected indigenous communities identify that the main source of the problems engendered by the projects began with the **approval of the Environmental Impact Assessments (EIA)**<sup>39</sup>, the granting of the environmental license, and the authorization to use state assets (water) **without consulting with the communities in order to obtain FPIC** and without ensuring **access to information regarding the environmental and social impacts and risks that such projects represented**. The EIA of the three projects shows that social impact assessments did not correctly identify and characterized the affected people. Furthermore, the areas of direct impact were not correctly identified nor was a baseline study conducted to understand the impacts. According to PS1 “*Clients should identify the range of stakeholders that may be interested in their actions and consider how external communications might facilitate a dialogue with all stakeholders*” and “*where projects involve specifically identified physical elements, aspects and/or facilities that are likely to generate adverse environmental and social impacts to Affected Communities the client will identify the Affected Communities and will meet the relevant requirements described below.*”<sup>40</sup>

The lack of access to information is a pattern that characterized the three projects, thus **denying** not only the **possibility of knowing and understanding the risks, impacts, and opportunities that the projects entail**, but also the right of people to organize and show their opposition to a project (guaranteed by Guatemalan law). **The lack of disclosure of information about the project** is not in line with PS1, which requires the client to disseminate and disclose relevant information to project affected communities about “*a) the purpose, nature, and scale of the project; b) the duration of activities; c) any risks to and potential impacts on such communities and relevant mitigation measures; and d) the envisaged stakeholder engagement process; and (v) the grievance*

34 The FMO is also an investor in the hydroelectric project. Source: CAO (July 31, 2015) [Evaluación inicial sobre cumplimiento: Resumen de los resultados - Real LRIF \(Proyecto n.º31458de IFC\)](#).

35 Source: CAO (August 21, 2017) [Investigación de la CAO relativa al desempeño ambiental y social de la IFC en el Fondo de Infraestructura de Energía Renovable para América Latina con relación a la reclamación relacionada con la Hidroeléctrica Santa Rita](#), p.3.

36 Source: [CAO\\_2017](#).

37 Source: CAO (December 19, 2018) [Informe de Investigación sobre Cumplimiento](#) - IFC investment in the Inter-American Corporation for Infrastructure Financing, S.A. (IFC Project # 26031) Claim 01.

38 Sources: [CAO \(2015\)](#) and IDB Invest pages on projects [Generadora San Mateo](#) and [Generadora San Andrés](#).

39 In Guatemalan environmental institutions, the tool developed is an Environmental Impact Study, but in the semantics of MDBs, it is environmental impact assessment, so this formulation is used in this document.

40 [IFC Performance Standard 1](#), see Stakeholder Analysis and Engagement Planning, points 26 and 27, page 8.

**mechanism”<sup>41</sup>. Without information, the affected communities have not had opportunities to participate effectively and actively since the projects’ beginning.**

In the case of Canbalam, the communities became aware of the project when “*people outside the area began to take measurements of the land and the flow of the river*”<sup>42</sup>. This procedure violates the right to prior consultation guaranteed not only by national legislation but also by PS 1, which establishes that project affected communities must be involved from the beginning and throughout the project cycle, since it is established that “*stakeholder engagement is an ongoing process*”<sup>43</sup>. Nor does it comply with international standards for the rights of Indigenous Peoples<sup>44</sup>.

Archivo de Sarajuate, Piensa Comunitaria



In Santa Cruz Barillas, when the project was reported, the construction company and the government simply highlighted the project’s benefits, presenting hydroelectric plants as sources of “*clean and cheap energy*”. The company even praised the social and environmental benefits, including job creation, local economic development, and reforestation<sup>45</sup>. Again, this procedure is not in line with **PS 1 that requires the client to carry out consultations, understanding consultations as a two-way process that offers project affected communities opportunities to express their opinions on the risks, impacts, and measures of mitigation of the project for the client to consider and respond to.**<sup>46</sup>

Informing is not the same as consulting in a meaningful way, a process where there is back and forth communication, answers to questions from the population, and improvement of the project approach, taking into account the contributions made by the communities and the knowledge they have of the territory.<sup>47</sup>

The manager of the company Hidro Santa Cruz displayed a strong ignorance of the rights of Indigenous Peoples protected by national legislation and by IFC Performance Standards when he stated: “*We thought it was a case such as it happens in Spain where it was sufficient to publish the project in the BOE (Official State Gazette by its Spanish acronym)*”<sup>48</sup>. This lack of knowledge on the part of a high authority of the company shows the **lack of supervision and guidance by the IFC of the client to ensure that the client is in a position to comply with its environmental and social policies**.

A review of an EIA completed by the Ministry of Environment and Natural Resources (MENR) includes public participation that consists of publishing project information in largely circulated newspapers, with a period of 20 business days in which project affected persons can file to oppose to its approval<sup>49</sup> (and eight days in the procedure of the Ministry of Energy and Mines -MEM). In the case of Ixquisis, during the EIA, the company that carried out the consultation only completed a series of surveys on the **“local perception of the project”, a procedure that is not equal to an effective, informed, meaningful, and inclusive consultation** such as required in PS 1. Likewise, meetings were held, but **there is no detailed information on their content (there are no minutes or records of those meetings), there is no information on the people who participated to corroborate if they were representatives of the affected population or if they were organized to obtain the opinion of the participants regarding the project. Nor was there the proper translation** (Chuj, Q’anjob’al and Akateko) **or formats that are culturally appropriate and inclusive** (taking into account high levels of illiteracy, as well as, ways and time for decision-making in consultation and consensus of communities), both basic criteria that must be taken into account to safeguard that the people who participate in the consultations have the necessary conditions to be able to do so effectively.<sup>50</sup> Once the

41 [IFC Performance Standard 1](#), see definition of Disclosure of Information point 29, page 8.

42 Source: Alianza por la Solidaridad (2015) [Una hidroeléctrica española contra los pueblos indígenas - El caso de la empresa Ecoener-Hidralia en el norte de Guatemala](#), p.20.

43 [IFC Performance Standard 1](#), see definition of Stakeholder Engagement point 25, page 8.

44 Convention 169 of the International Labor Organization, the United Nations Declaration and the Inter-American Declaration on Indigenous Peoples, the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

45 Source: Rodríguez-Carmona, Antonio and Luis Romero, Elena (June 2016) [Hidroeléctricas insaciables en Guatemala](#), p.85.

46 [IFC Performance Standard 1](#), see definition of consultation point 30 page 9.

47 [IFC Performance Standard 1](#), see definition of informed consultation and point 31 page 9.

48 Source: [Rodríguez-Carmona and Luis Romero, 2016](#), p.84.

49 [Reglamento de Evaluación, Control y Seguimiento Ambiental](#) (Government Agreement No.137-2016), Articles 45 and 47.

50 Source: Bordatto, Anne (July13, 2016). [Irregularidades e impunidad ambiental en los tres proyectos hidroeléctricos en San Mateo Ixtatán, norte de Huehuetenango](#). El Observador, Informe especial No.3.

communities presented the grievance to MICI, IDB Invest took action for the first time on the matter and hired the consulting firm [Social Capital Group](#) to contact the communities that made the grievance (it coincided with the moment in which MICI reported on their visit dates to the territory). This procedure exhibits that the IDB Invest administration only recently took concrete action to address complaints made by communities when the complaint was registered with MICI; prior to the grievance, they never responded to the concerns<sup>51</sup>. Had they worked with affected communities to understand the problems that were being identified and worked to address them effectively, their response would not have been reactive. Before lodging the complaint, project affected communities asked that the Bank work with its client to listen to the disagreements, clarify the doubts of the communities, respect the consultation in good faith that the Municipality had carried out, and thus avoid the harms that later occurred.

A member of the affected community in Río Dolores states,

*“During 2008 we began meetings with our colleagues to seek solutions because we did not want problems. The 22 affected communities did not agree to the contamination of the river. It was not until 2012 that we sought out the government and reached out to the governor to request a consultation, but they never responded to our request. We did not want any problems, but they did not attend to our requests. Neither in Cobán, nor in Guatemala City did they respect our rights. The 20 communities met and called for it to be demanded outside the country so that the government of Guatemala stops violating our rights as indigenous peoples.”<sup>52</sup>*

Since it is common practice for the national government to deny the right to consultation, the communities have organized and carried out their own consultation processes in community assemblies. Normally, it is a matter of seeking the support of the municipality for the legal recognition of its self-determination, through the regulations of the Municipal Code<sup>53</sup> and thus using the right to deny the municipal building license. **The project affected communities in the three cases have systematically denounced the lack of representation in the supporting minutes presented by the companies, since they do not reflect decision-making processes in the assembly.** For example, in the case of Ixquisis, the communities of San Mateo Ixtatán had carried out a consultation in good faith in May 2009 against extractive projects (mining and hydroelectric), which was ratified by municipal act<sup>54</sup>, but was not respected by the same mayor who issued it. In 2017, several amparos were filed with the Supreme Court of Justice of Guatemala to claim that their rights violated by the MENR and the MEM<sup>55</sup>. The same was repeated in the case of Santa Rita, where the 23 affected communities held community and regional assemblies between 2010 and 2012 on several occasions to express their rejection of the project and to request, among other things, the withdrawal of the military camp. The communities delivered these results to the Municipality of Cobán and the Departmental Government without achieving any recognition of their consultation processes or a hearing. In the case of Barillas, the Municipality of Santa Cruz Barillas convened an assembly consultation process starting in 2012, at the community and municipal level, which showed that the population mostly rejected the Canbalam hydroelectric project<sup>56</sup>, but it was aborted by the State of Siege declaration at the beginning of May 2012.

All these examples show once again that **neither the clients, nor the construction companies or IFC /IDB Invest have respected, complied with, or enforced the right to information or to free, prior, and informed consultation and consent of Indigenous Peoples** provided for in PS 1 and PS 7. Ultimately, a weak consultation process has negative repercussions throughout the entire project because without social license and effective involvement of the affected communities, megaprojects of this type eventually generate rejection by communities, exacerbating social con-

51 In 2016, several approaches were made with the administration via email exchanges, telephone meetings, and a face-to-face meeting. There was no great interest on the part of the IDB Invest team to understand the demands of the affected communities, and there was no follow-up on their part to the offer to contact community representatives in order to understand the problems that were being identified and thus address them effectively. When they did not obtain more answers, the community chose to present the grievance.

52 Mesoamerican Caravan for Peoples in Resistance (2015) [El pueblo O'eqchi de Monte Olivo defiende su territorio](#).

53 The Municipal Code regulates the consultation of neighbors and consultation with the indigenous communities or authorities of the municipality.

54 Act No.020-2009 of the Municipality of San Mateo Ixtatán.

55 Amparo No.1031-2017, Amparo No.1044-2017, and Amparo No.1265-2017 before the Supreme Court of Justice. Source: [MICI 2019](#).

56 In 102 statements, the result was: 82 communities opposed to the hydroelectric project, three in favor, ten neutral or supporters of the dialogue, and seven undecided. At the Municipal Assembly, representatives of 300 Community Development Councils expressed the rejection of the hydroelectric plant proposed by Hidro Santa Cruz. Source: [Rodríguez-Carmona and Luis Romero, 2016](#).

flict in the territories. The report [Four Decades of Infrastructure Project-Related Conflicts in Latin America and the Caribbean](#) prepared by the IDB, which investigates the nature and consequences of conflict in infrastructure projects in Latin America and the Caribbean, identified that the lack of stakeholder engagement and proper consultation, along with poor planning, reduced access to resources, and lack of community benefits, were the most important drivers of conflict in the region. In many cases, conflicts escalated because community grievances and concerns accumulated and went unresolved for many years.

### 3. Rupture of the social fabric and increase in social conflict

Relating to the previous point, **the lack of effective and real consultations** with project affected communities from the beginning and throughout the project cycle, **the lack of information regarding risks and impacts, and the differences with respect to the projects created the conditions to erode the community's social fabric in the territories** (which is still trying to recover after the internal armed conflict).

This point is an issue the project affected communities in the three cases have emphasized in claims to the accountability mechanisms. Inhabitants of the Ixquisis micro-region report that

*“before, we all greeted each other, there was no enmity. Now there are people who no longer greet me, they pass by and turn their faces (...) To those of us who say that we must take care of the river, they treat us like we have four legs, like animals. They call us “Indians”, that we are guerrillas (...) We have an open wound, that does not need to be scratched any more”<sup>57</sup>.*

The companies took advantage of existing social differences to co-opt community leaders to support the project, thus widening the polarization between those in favor, against, or neutral to the project, and exacerbating social conflict. PS 1 requires the client to undertake a consultation process to offer the communities opportunities to express their opinions on the risks, impacts, and mitigation measures of the project so that the client can consider them and review the works and actions in order to avoid or mitigate those risks and impacts. The standard also makes it explicit that the consultation- in addition to starting at an early stage in the process of identifying environmental and social risks and impacts and being based on the disclosure and dissemination of relevant, transparent, objective information- must be free from outside manipulation, interference, coercion, or intimidation. Likewise, consultations must be documented.<sup>58</sup>

In the projects analyzed, the construction companies used strategies that are far from what is expected of a transparent and objective consultation process, free from outside manipulation and interference. **The companies sought acceptance of the project using patronage practices**, offering families certain benefits in exchange for their support of the project, **without informing about risks and impacts**. In San Mateo Ixtatán, the company that developed the hydroelectric projects offered the electrification of houses to the communities, which is legally impossible<sup>59</sup>, but appears as a condition imposed on the company by the Municipality to approve the construction license<sup>60</sup>. The company pressured the government, with support from IDB Invest, to change priorities in the rural electrification plan<sup>61</sup>. Likewise, the women of Ixquisis said that medical consultation days, the delivery of shirts, toys, etc., or training sessions were implemented and that the lists of participants were used as a sign of the support of the population<sup>62</sup>. Another way used in Ixquisis to gain accessions was by offering jobs to community leaders as security service or park rangers<sup>63</sup>.

In 2017, the government and the company promoted actions for dialogue with the financial support of the IDB after the approval of US \$300,000 fund in August 2017 to implement the technical

57 Interviews conducted in May 2018.

58 [IFC Performance Standard 1](#), see definition of consultation point 30 page 9.

59 Article 7 of the [General Electricity Law](#) (Decree No. 93-96) stipulates that only generation plants of up to 5 MW may generate, transport, and distribute electricity.

60 Acts No. 29-2011 and 31-2011 of the Municipality of San Mateo Ixtatán.

61 Source: [Response from IDB Invest Management to the Request MICI-CII-GU-2018-0136](#) regarding “Generadora San Mateo S.A.” and “Generadora San Andrés S.A.” projects in Guatemala on August 19, 2018, paragraph 1.3.

62 Source: Interviews with women from the micro-region to prepare the document “The women of the Ixquisis region - Impacts on women due to the construction of the Pojom II and San Andrés dam”, AIDA (2018).

63 Source: El Observador (July 12, 2017) [San Mateo Ixtatán entre el embate del capital nacional y transnacional, y la restauración de las estructuras paramilitares contrainsurgentes: el caso del proyecto hidroeléctrico de la empresa Promoción de Desarrollo Hídrico Sociedad Anónima](#) (PDH, S.A). El Observador, Informe Especial No.10.

cooperation project “[Public-Private Strategies for the Development of Huehuetenango and other Departments with High Mayan Population](#)” with the aim of specifically addressing social conflict in 23 communities around the Pojom II and San Andrés hydroelectric projects.<sup>64</sup> Organizations accompanying the communities in peaceful resistance in Ixquisis think that this was part of the financing of “Dialogues for Peace and Development in the municipality of San Mateo Ixtatán” that the developer company implemented together with the government of Guatemala, the municipal council of San Mateo Ixtatán, and representatives of communities of that municipality. This process involved the municipal mayor, an association called “Trece Democracia”, and representatives of 23 communities which the affected communities do not recognize as legitimate representatives. These dialogues concluded with a framework document, the [Agreement for Peace and Development](#). Unfortunately, the space for dialogue created and the content of the agreement ended up repeating patterns of other similar cases in which the government of Guatemala only pays attention to, and is interested in the territories where historically marginalized populations live, only for the purpose of promoting the interests of private companies and facilitating their intervention in indigenous territories<sup>65</sup>. **The lack of adequate representation and invitation to participate in Ixquisis created a climate of general distrust on the part of the project affected communities towards the institutions involved in the project, as well as a feeling of rejection and disgust towards the construction** since they felt, from the first moment, ignored and abandoned by the actors involved in the implementation of the project.

In the case of Santa Rita, the Center for Rural Development (CEDER by its Spanish acronym)<sup>66</sup> association has been in charge of holding meetings in the Dolores River region since 2009 to offer the communities different assistance projects such as donations of water tanks, batteries, scholarships for students, desks and school

supplies, among others. Once known in the region, CEDER began to condition this aid to the approval of the hydroelectric project, a fact that is reflected in statements of support to the hydroelectric plant<sup>67</sup>. Another factor that accentuated the divisions was the implementation of roundtable discussions organized by the government with actors who were not representative of the affected communities and who operated to identify those who opposed and supported the project. In 2013, the Departmental Government of Alta Verapaz implemented a roundtable discussion with representatives of communities that supported the hydroelectric plant. The minutes of the meetings state that the participants were asked to give information about the communities and leaders involved in the peaceful resistance and to activate arrest warrants to destroy the movement<sup>68</sup>.

Along the same lines, the Hidro Santa Cruz company stated that it had invested in social programs, such as medical consultation days for children, scholarships, or support to process documents in order to achieve local acceptance of the Canbalam hydroelectric project<sup>69</sup>. Likewise, a group of women complained to the mayor of Santa Cruz Barillas that different government institutions had come to their communities to offer electricity, road, and school projects in exchange for accepting the company's project<sup>70</sup>. The company also offered jobs with salaries above what is earned in those regions<sup>71</sup>. As in the previous cases, two attempts were made to implement roundtable discussions, but they were frustrated by the high distrust between the parties, and it had been previously seen that the **roundtable discussions organized by government entities** had served to **identify the opposition leadership to the project and criminalize them**<sup>72</sup> instead of promoting open, transparent, and meaningful dialogue between the parties.

The conflict that was exacerbated with the arrival of hydroelectric

<sup>64</sup> The objective of [Project #GU-T1270](#) is to: “develop a strategy to address the existing social conflict in the communities, which articulates public and private interventions and strategies to generate comprehensive and sustainable human development for the communities of the municipality of San Mateo Ixtatán of the department of Huehuetenango and other municipalities of the departments of Alta and Baja Verapaz and El Quiche”.

<sup>65</sup> The first actions of the current government, 10 days after its investiture, has been the inauguration of the headquarters of the Justice of the Peace and the Public Ministry and the agreement was institutionalized through [Government Agreement No 30-2020](#) that created the Commission of Verification and Monitoring (Coves) of the Agreement for Peace and Development of San Mateo Ixtatán. These events have been denounced by the Plurinational Ancestral Government of the Akateko, Chuj, Popti, Q'anjob'al First Nations as measures that will generate repression in the municipality (Source: Girón, Margarita (January 24, 2020) [Giannmattei irá a Ixtatán: comunidades se pronuncian](#). La Hora) and indeed, the next day, the NCP arrested a Maya Chuj authority and human rights defender from San Mateo who remains linked to proceedings against him (Sources: Frontline Defenders (2020) [Indigenous human rights defender Julio Gómez Lucas detained](#); Rivera, Nelton (February 14, 2020) [San Mateo Ixtatán: Ofrecen paz y desarrollo encarcelando líderes](#). Albedrio.org).

<sup>66</sup> It is a non-governmental organization (NGO) that works in conflict resolution, in particular hired by companies that develop hydroelectric projects. It started working in November 2014 in Santa Cruz Barillas in support of Hidro Santa Cruz. Source: [Rodríguez-Carmona and Luis Romero](#), 2016.

<sup>67</sup> Source: El Observador (December 2, 2019) [La Resistencia del Río Dolores, Cobán, Alta Verapaz, en su lucha frente a la Hidroeléctrica Santa Rita y otros proyectos de inversión](#). El Observador, Informe Especial No.20.

<sup>68</sup> The two men were the victims of attacks by the bodyguards of the landowner of the farm where the hydroelectric project is being implemented. Source: CPT and Colectivo MadreSelva (October 27, 2014) [Letter of complaint regarding the Santa Rita hydroelectric project \(23.2MW\), Cobán municipality, Alta Verapaz department, Guatemala: IFC finances through Real LRIF \(Project number: 31458\)](#).

<sup>69</sup> Source: [Rodríguez-Carmona and Luis Romero, 2016](#).

<sup>70</sup> Source: [Rodríguez-Carmona and Luis Romero, 2016](#).

<sup>71</sup> Source: [Rodríguez-Carmona and Luis Romero, 2016](#).

<sup>72</sup> Source: [Rodríguez-Carmona and Luis Romero, 2016](#).



Domingo Baltazar and Rigoberto Juárez, ancestral authorities, criminalized and imprisoned for accompanying the communities in Santa Cruz Barillas.

projects in the territories also implies a lack of compliance with PS 4 since this standard requires the client to evaluate and identify *“the risks and impacts to the health and safety of the Affected Communities during the project life-cycle”* and establish *“preventive and control measures consistent with good international industry practice”* and propose *“mitigation measures that are commensurate with their nature and magnitude. These measures will favor the avoidance of risks and impacts over minimization.”*<sup>73</sup> In the three cases reviewed, the history of the armed conflict has left a relative social harmony, susceptible to being called into question at the first sign of disagreement. These were the very cracks that the projects came to reopen in the territories, ignoring the requirements of PS 4. **PS 4 makes explicit that the level of risks and impacts may be higher in projects located in areas where there are or have been conflicts exacerbating “an already sensitive local situation and stress that scarce local resources should not be overlooked as it may lead to further conflict.”**<sup>74</sup> It is clear that in the three projects’ environmental and social risk and impact assessment process, the **clients should have carried out contextual risk assessments to complement the environmental and social risk and impact assessment process.**

## 4. Community Safety: Retaliation Against Communities

Apart from anticipating and avoiding adverse impacts on the health and safety of the affected communities (as mentioned in the previous point), PS 4 also aims to **ensure that the protection of personnel and company property is carried out in accordance with relevant human rights principles in order to avoid**



Police force that occupied the community of Monte Olivo, Cobán (Alta Verapaz), August 15 to 16, 2014.

**or minimize risks to project affected communities.** Since the IFC updated its PS, major changes have been made to provide best practices in security and human rights, partly in response to the evolution of risks in society. In this sense, PS 4 is outdated in this matter since it does not take into account, for example, the [Voluntary Principles on Security and Human Rights](#) (VPSHR), and the [Montreux Document](#) that has clarified the best practices for the use of force with respect to the operations of private military and security companies. By not including these developments, the standard has large gaps in terms of gender security and gender violence, protections for human rights defenders, and other forms of violence and intimidation against local populations. Regarding the use of private or public security personnel, PS 4 establishes that *“there should not be use of force, unless it is for preventive and defensive purposes proportional to the nature and scope of the threat”*.<sup>75</sup> Similarly, in cases of illegal or abusive events by the security personnel, the client has the obligation to investigate, take measures to avoid repetition, and notify the competent authorities.<sup>76</sup>

**In the three cases** analyzed, facing community organization and actions in opposition to the projects, **the companies and governments (based on the use of private and public security forces) responded with attacks on the life, integrity, and freedom of those who opposed the construction of the hydroelectric plants.** Human rights defender communities have been stigmatized and criminalized by traditional media and social networks. It reached such an extreme that murders were suffered in the communities: two children by a hydroelectric worker and two men in Rio Dolores<sup>77</sup>, a man in Santa Cruz Barillas by workers from the hydroelectric company<sup>78</sup>, and two men including an older man in Ixquisis during a peaceful demonstration in front of the company’s

<sup>73</sup> [Performance Standard 4](#), Community Health and Safety Requirements, point 5, page, 2.

<sup>74</sup> [Performance Standard 4](#), Security Personnel, point 2, page 1.

<sup>75</sup> [Performance Standard 4](#), Security Personnel, point 14, page 3.

<sup>76</sup> [Performance Standard 4](#), Security Personnel, point 14, page 3.

<sup>77</sup> One was paralyzed and died of the consequences of his injuries two years later.

<sup>78</sup> Source: [Complaint letter for IFC funding to Hidro Santa Cruz](#), July 1, 2015.

facilities<sup>79</sup>. This does not comply with what is established in PS 4 **regarding the use of security forces; however, both IFC and IDB Invest have done little in this regard to enforce compliance of PS 4 by clients**. Also, the fact that in all three projects the environmental license was authorized without a complete social impact assessment made it possible for contextual risks not to be identified.

In the case of Canbalam, the government of Otto Pérez Molina strongly supported the implementation of the project with the use of public force. In 2012, a 21-day State of Siege was decreed in Santa Cruz Barillas<sup>80</sup>. The government mobilized 480 troops from the Army and 350 from the National Civil Police (NCP), who **carried out violent raids and arbitrary arrests, with violence reminiscent to what the community had suffered during the armed conflict**. Thus, several leaders made the decision to take refuge in the mountain to avoid persecution<sup>81</sup>. After CIFI reported on the murder of Andrés Pedro Miguel and the state of siege, an external evaluation<sup>82</sup> was carried out in 2012 at the request of the IFC. The report specifies that the development of the project had “possibly” not complied with the consultation requirements and FPIC, nor with the use of security, but it determines without question that the project “*had generated significant adverse impacts in the social context*”<sup>83</sup>. Despite the violence of the incidents and the opening of court cases, the IFC did not find the results of this evaluation important, until three years after it was prepared, when the client sent it to them.

Throughout the project cycle, the affected communities reported violent attacks against them, with some leading to the death of individuals, thus evidencing that the companies advanced with the implementation of the projects in complex social conditions and context, as CAO defines in its report, “*a post-conflict indigenous community with a history of opposition to external projects*”<sup>84</sup>. CAO was emphatic about the lack of compliance with PS 4 in the case of the Canbalam project because the client omitted a risk assessment of the use of security forces. According to CAO, the

company implementing the project should have investigated the accusations against its security personnel (the murder of Andrés Pedro Miguel and the attack against the two men who survived the attack)<sup>85</sup>.

In the case of Santa Rita, when the media published a news item announcing the signing of an agreement between 14 communities in the Río Dolores area and the government of Guatemala, with the President of the Republic as an honorary witness at the Palacio de la Cultura in Guatemala City in support of the project<sup>86</sup>, an escalation of violence was unleashed against the affected communities<sup>87</sup>. In August 2014, **the communities of Monte Olivo and Nueve de Febrero suffered violent evictions, occupation of Monte Olivo by the police, destruction, and burning of houses and crops**.

**“We had to flee to the mountains because of the fear generated by the police. We spent several days and nights in the mountains, enduring hunger and thirst, especially our children. Those days the police were occupying our houses, consuming the food that we had left in our houses”**<sup>88</sup>.

Five people were arrested on the first day, causing many to take refuge in the mountain until a humanitarian caravan arrived in the community of Monte Olivo to negotiate the departure of the police.<sup>89</sup> The CAO report on this point concludes that due to social unrest, coupled with incessant concerns from affected communities, IFC should have carried out more solid oversight, and in the event of a serious incident, the IFC had to make a visit to the project in order to request “*the preparation of an analysis of the underlying causes and an action plan that fully responds to the corrective needs*”<sup>90</sup>. None of this was done by the IFC, showing

79 On August 26, 2015, a community member who had announced to the company that he was not going to sell the company the right of way was assassinated and on January 17, 2017, Sebastián Alonso Juan was assassinated in the demonstration. Source: [Complaint letter for IDB Invest funding to Generadora San Andrés and Generadora San Mateo](#), August 8, 2018.

80 Source: [Complaint letter for IFC funding to Hidro Santa Cruz](#), July 1, 2015.

81 Source: [Rodríguez-Carmona and Luis Romero](#), 2016.

82 By an environmental and social consultant in October 2012.

83 Source: [CAO\\_2018](#), p.4.

84 Source: [CAO\\_2018](#), p.4.

85 Although an investigation would not have clarified much either since, if the same company conducts the investigation, the objectivity of the results can be questioned as in the case of the murder of the two children in the Santa Rita case (the company's investigation served to show that the worker acted on his own account). Not even the trials carried out in front of the Guatemalan justice system have succeeded in showing independence.

86 Source: [MEM\\_2014](#).

87 Earlier in 2012, the government installed a military camp in the community of Monte Olivo, but the communities of the Río Dolores managed to influence their withdrawal. Source: [CPT and Colectivo MadreSelva\\_2014](#).

88 Story of an inhabitant of Monte Olivo, Source: [Mesoamerican Caravan for Peoples in Resistance 2015](#).

89 Source: [El Observador\\_2019](#).

90 Source: [CAO\\_2017](#), p.14.

that social and environmental due diligence was weak, and that the client was not closely supervised to ensure compliance with environmental and social Performance Standards. In addition, in terms of safety, CAO's assessment establishes that whether the dam complied with the [World Bank's operational policy and procedures on dam safety](#) was not assessed.

In Ixquisis, the fact that the construction company hired former members of the Civil Self-Defense Patrols and former military commissioners of the Yalahuitz micro-region (who are not directly affected by the projects) as private security, has exacerbated historical tensions between the communities. In 2014, **a military detachment and a police substation were installed, both on company property in the Ixquisis region. Resultingly, the people who inhabit the area suffered the control of their movements, disproportionate repression of their demonstrations, harassment, and shootings of the houses in the San Francisco hamlet, which is located in front of the entrance to the hydroelectric camp. Another example is that company workers illegally detained four men and handed them over to the NCP for trial.**<sup>91</sup> In addition, more than 60 people from the Peaceful Resistance of the Ixquisis Micro-region have been charged, and while not all have active arrest warrants, they have been accused<sup>92</sup> of serious crimes. Recently, the national government decreed a curfew across the country for several consecutive Sundays for 4 months as part of the restrictions put into practice due to the COVID-19 pandemic. However, in July 2020, the affected communities reported that residents of Yalahuitz (a community that supports the constructions) wanted to bring machinery into the region to continue the construction work. The communities of the micro-region of Ixquisis, in peaceful resistance, managed to prevent them from entering with the machinery to continue the work, yet this meant another abuse of the communities by the construction company. It was also striking that the NCP called community leaders to ask them to let the machinery pass, when, as members of the government, they should have respected and enforced the curfew ordered by the national government.

As shown in the three cases, **PS 4 was not implemented correctly since the clients should have evaluated the contextual risks that the security arrangements would imply for the project affected communities.** Nor were they guided by the international principles and practices mandated by PS 4.<sup>93</sup> Furthermore, **the Banks did not do much to require clients to bring their**

91 Source: [El Observador 2017](#).

92 Source: Information from the legal firm that accompanies the communities of the Ixquisis micro-region.

93 [Performance Standard 4](#), Security Personnel, point 12, page 3: "In accordance with the United Nations Code of Conduct for Law Enforcement Officials and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials."

94 Testimony collected during the workshop held on May 11 and 12, 2018, by lawyers from the Inter-American Association for Environmental Defense (AIDA) and members of the International Platform against Impunity and International Protection. Recovered in Ixquisis Complaint.

**practices into line with PS 4, nor did they take measures to protect the affected communities from attacks and threats. PS 4 is and has been too outdated to respond to the region's challenges by preventing reprisals and attacks on human rights defenders. For this reason, the IFC (2018) has generated declarations of non-tolerance of reprisals and additional guidelines that seek to bridge the gaps in the issue of reprisals and retaliation, as well as, the proper use of security forces. Along the same lines, the new [IDB Invest Sustainability Policy](#) also states that retaliation, such as threats, intimidation, harassment, or violence, against those who express their opinion or oppose projects, will not be tolerated. However, there is still a long way to go for MDBs to ensure that their clients effectively comply with their assumed commitments on retaliation.**

## 5. Differentiated harm to women

All three projects had profound gender impacts, including sexual harassment and abuse, as well as disproportionately severe impacts on women; however, **little or no assessment of these impacts and risks was performed during the environmental and social impact assessment processes.** Nor were complementary studies such as **comprehensive gender assessments** carried out. This lack of evaluation led to the failure to identify gender-differentiated impacts and risks to take adequate mitigation and/or compensation measures in the environmental and social management plan for those differentiated impacts. Likewise, **the participation of women in the consultations on the design and implementation of the projects was almost non-existent, which led to differentiated harms being generated for women in the case of the three projects.** A concrete example of this can be analyzed in the case of Ixquisis where the diversion of water flows and changes in water quality negatively affect food security and the family economy. Water is essential in the daily life of Mayan women, whether they are Q'eqchi'es, Q'anjob'ales, Chuj, Akatekas, or mestizos since it is the first thing they connect with when they get up in the morning:

**“Water is very important to us, everything we women do is with water. The defense of water is connected with our daily living”**<sup>94</sup>



Protección International

It is essential for their home care tasks and backyard economy where they grow medicinal plants, vegetables, raise animals, and even for their fishing activities. In Ixquisis, many women raise fish in pools or tanks in their houses. Water pollution affected access to livelihoods such as fish and livestock. Additionally, their care work increased since there were cases of illnesses in children due to contact with the water of the rivers where company waste is dumped. This differentiated impact on women was not correctly identified, mitigated, or avoided in the design and implementation of the project.

Moreover, the construction works of the projects brought an influx of workers and public security forces from outside the communities, so many women began to fear for their safety and stopped moving freely. As a result of this, they have lost their peace of mind and are afraid to carry out their daily activities freely in their territory, for fear of any attack against their integrity. Several incidents were reported in which the life and safety of women and young people in Ixquisis were threatened, in particular a case of rape of a minor by a member of the NCP, a case that has been silenced<sup>95</sup>.

In the case of Barillas, **the excessive use of force to repress community movements has caused significant harm to women**, such as sexual assaults during the state of siege in Santa Cruz Barillas. In the Santa Rita project, the health of eight pregnant women was endangered during the violent actions of August 2014 against the communities of Monte Olivo and Nueve de Febrero<sup>96</sup>.

95 Source: AIDA, 2018.

96 One of them gave birth when she returned to the community, but her daughter had complications due to fetal distress during childbirth. An accompaniment was organized to ensure safe conditions for childbirth for the following seven.

97 Source: CMI (June 10, 2016) Communiqué: Families of political prisoners demand their freedom. Independent Media Center.

With the process of criminalization of leaders and their situation of preventive prison, families suffer the weight of the imprisonment of the father of the family, and women have to bear the economic and care responsibilities, plus those assumed by their husbands. In the case of the political prisoners of Santa Cruz Barillas, they were imprisoned in Guatemala City, which has caused more economic strain for the families, and their wives have reproached the psychological torture suffered by their families<sup>97</sup>.

This not only represents a violation of the human rights of people, and especially women, but also contradicts the MDBs' commitments to gender equality and their environmental and social Performance Standards. The IDB Group had a [specific Operational Policy for Gender Equality in Development \(OP-716; 2010\)](#) that was not applied in this project because the IFC Performance Standards were applied, standards that are too outdated to identify and address the complexities in the area of gender of this project. In this sense, **due to the lack of proper ESIA processes or comprehensive gender assessments, no differentiated risks and impacts were identified for women to avoid, prevent, or mitigate them**. Further, there is also no evidence of any effort made by clients to ensure that women participated in consultation processes. Nor were mechanisms established to prevent gender-based violence caused by the influx of workers and security forces, public or private, from outside the construction area.



Group of police officers in front of a peaceful demonstration in Ixquisis in October 2019.



Mayan Ceremony in Ixquisis in June 2019.



Tear gas bombs used by the National Civil Police during a peaceful demonstration in October 2019.



Powerhouse in Ixquisis in June 2019. The company denied in the environmental impact studies the flood risks in the project area.

## 6. Environmental risks and impacts

In the three hydroelectric projects reviewed, communities depend on water to ensure their traditional ways of life (drinking, bathing, washing, fishing, recreation, and transportation). **The hydroelectric projects were approved with numerous gaps in information regarding the environmental assessment, in particular the impact on water flows, which makes it difficult to assess their technical feasibility and to know the exact extent of the works.**<sup>98</sup>

The Santa Rita and Ixquisis projects are defined as “run-of-river”, meaning they are unobstructed rivers using a small reservoir or no reservoir to generate electricity without the environmental and social costs of traditional dams, but they are projects with storage daily<sup>99</sup>. **These conditions produce brutal flow changes** during peak hours of consumption for the most advantageous price of electricity. Brutal flow changes generate sedimentation and adverse conditions for the resilience of the river’s biotics. In Santa Rita, the Rio Dolores communities were concerned when work began on the bed of the Icbolay River as the water filled with sediment<sup>100</sup>. The CAO report in the Santa Rita case identified that, in IFC’s environmental and social due diligence, the hydroelectric project’s environmental information was deficient, in particular due to the increase in size from 18 to 23 MW. In addition, errors were seen in the assessment of river flows in the cases of the hydroelectric plants in Cobán and San Mateo Ixtatán, which did not ensure that the projects were designed properly<sup>101</sup>. A common practice in Guatemala is to leave an ecological flow of only 10% of the low water flow, based more on economic than ecological criteria, and this obviously creates strong competition with other uses of water, such as human consumption, and the ecological balance of the ecosystems.<sup>102</sup> In the case of the Canbalam hydroelectric plant, the communities had no concerns about the environmental impact of the hydroelectric plant due to its size, but the social and environmental consultant requested more detailed information on the ecological flow<sup>103</sup>.

In Guatemala, it is necessary to improve the quality of EIAs, including more adequate regulations for the determination of flows (with in situ measurements and not only assessments) and ecological flow, as well as adding social impact studies to prevent the many disputes engendered by hydroelectric projects. It is important since, at the national level, the EIA is the only tool available for establishing the environmental baseline, and it lays the foundations of the project’s Environmental Management System, with the elements to reduce possible impacts in designing, mitigating, and repairing residual harm. However, **currently in Guatemala this tool does not consider the social dimension of projects**<sup>104</sup>, so MDBs should require the preparation of complementary studies to comply with the Performance Standards that require identification and mitigation environmental and social impacts. As already explained in points 1 and 4, this gap caused the EIAs to not identify social impacts and risks of the projects. This was recognized in the CAO report in the case of Santa Rita, as the report identified, among the deficiencies of the social and environmental due diligence process, **the lack of a social impact assessment**.<sup>105</sup>

In the case of Canbalam, CAO also acknowledges that the client did not conduct an **adequate social impact assessment or develop a socioeconomic baseline of the communities affected by the project**. Although the implementation of the Environmental and Social Management System was the responsibility of CIFI (with insufficient personnel contracted for supervision and monitoring), the IFC had a central role in supporting and helping CIFI fill the existing gaps. CAO concludes the IFC did not proceed with environmental and social due diligence throughout the project cycle<sup>106</sup> and, an important point, it did not do it at the time of the project closure<sup>107</sup> either. CAO even establishes that the lack of supervision by the IFC to ensure that CIFI implemented an adequate and sufficient ESMS to assess and monitor risks and impacts “*contributed to a situation in which project activities were allowed to begin before an adequate risk assessment and the implementation of mitigation measures provided for in the Performance Standards.*”<sup>108</sup>

98 References: Accumulated Amparos 1031-2017, 1044-2017 and 1265-2017; Opposition to the EIA Santa Rita.

99 Source: International Rivers. [El Engaño a los Ríos: Energía Hidroeléctrica de Filo de Agua](#).

100 Source: Testimony of community members.

101 Sources: El Observador, 2018 and 2019.

102 To establish an ecological flow regulation, it would first be necessary to recognize all uses of water and to evaluate the quantities necessary to supply them. In EIAs, indicator species are normally established that should be able to demonstrate the health or not of an ecosystem, with an operational environmental management system, to take corrective measures. However, no more diffuse legislation can be created in the country on the issue of water without first creating a water law built by the peoples of Guatemala.

103 CAO (December 19, 2018) [Investigation Report on Compliance](#) - IFC Investment in the Inter-American Corporation for Financing of Infrastructure, S.A. (IFC Project # 26031) Claim 01.

104 If the social impact evaluation is not carried out systematically, it is a tool provided for in Article 3 of the [Environmental Assessment, Control, and Monitoring Regulation](#) (Government Agreement number 137-2016), “in cases established in this regulation or technically justified”. However, there are no cases established in the regulation.

105 Source: [CAO, 2017](#), page 3.

106 CAO believes that it would have been necessary to develop with the client (and that IFC follows-up) **an action plan to address gaps in the environmental and social management system** and thus try to ensure its implementation and compliance with Performance Standards. IFC also did not ensure that the action plan between the client and Hidro Santa Cruz fully responded to addressing the incidents generated by the project and remedied the problems caused.

107 Source: [CAO, 2018](#).

108 Source: [CAO, 2018](#).

In the projects in the Ixquisis micro-region, **the EIAs underestimated the risk of flooding** despite the fact that there are risk maps at the municipal level that show that these are risk areas. The construction of the powerhouse was carried out in an area that was flooded<sup>109</sup>. On the other hand, the inhabitants of the region, in particular El Platanar and Bella Linda, report events during tropical storms<sup>110</sup>. In fact, with Tropical Storm Iota<sup>111</sup>, the waters overflowed into the work areas of the hydroelectric projects and the tunnel built was flooded. The main fear is that “*the water pressure will affect the structural integrity of the tunnel, which could cause geotechnical problems around it and mass removal phenomena, thus affecting the communities of El Platanar, Bella Linda, San Francisco hamlet, Las Flores, Primavera and other hamlets*”<sup>112</sup>.

In the Santa Rita project, the CAO report identified, within the limitations of IFC's environmental and social due diligence, that **the project's impacts on biodiversity, land use –including the economic displacement that would result–, drinking water, and cultural heritage were not correctly assessed.**<sup>113</sup>

With the beginning of the construction of the hydroelectric projects in Ixquisis, the communities have observed **effects on the water sources**. The entry of materials and machinery for construction and land removal has seriously altered the composition of the communities' water sources and supply systems.

**“We drank water from the Negro River; it was a large water, and it also served to bathe and wash ourselves. They ripped up land with machinery, and we can no longer use the water. We cannot find any more water to drink from. Many people arrived a few days ago, and the workers and the security of the hydroelectric plant use it as a bathroom. The children got sick with vomiting, diarrhea, hives.**

*Since they arrived again, they finished with the water. Only at night can we go get water, because they stop working, otherwise everything is mud”<sup>114</sup>.*

It is observed that the water no longer arrives with the same frequency and quality as before, with frequent cuts, without prior warnings, and there is a lack of certainty about the reasons for the cuts and how long they will last<sup>115</sup>. In the communities near the construction of the projects or company locations, the water is contaminated by the inappropriate use of the river by workers and the NCP, with waste, oils, greases from machinery, and even use as a toilet<sup>116</sup>. Affecting water sources has led to the disappearance of crabs, snails, and fish from rivers, causing a significant loss of food sources for families<sup>117</sup>. Logging and destruction of hills, particularly for construction material banks, have also been observed<sup>118</sup>. IFC PS 3 states that “*when the project is a potentially significant consumer of water, in addition to applying the resource efficiency requirements of this Performance Standard, the client shall adopt measures that avoid or reduce water usage so that the project's water consumption does not have significant adverse impacts on others.*”<sup>119</sup> It is clear that in the case of Ixquisis, the measures adopted by the client were insufficient to guarantee that the use of water did not have significant adverse impacts on the project affected communities as there were effects on the water sources that then negatively impacted the communities dependent upon it.

The hydroelectric plants in the Ixquisis micro-region are implemented on three rivers that are tributaries of the Santo Domingo River, located on the border of Mexico. Consequently, Mexican river-dependent communities such as Benito Juárez, San Pedro, Zacualtepán, Gallo Giro, Las Nubes, Democracia, Amatitlán, Peña Blanca, Rodolfo, and San Mateo could also suffer a significant reduction in the quality and access to water as a result of the implementation of the project. Therefore, they could be at risk of suffering **transboundary environmental and social impacts similar** to those faced by the populations of the Ixquisis micro-re-

109 Source: [El Observador, 2018](#).

110 Source: [Bordatto, 2016](#).

111 From November 13 to 18, 2020.

112 Source: AIDA (November 25, 2020) [Press Release - Mayan Communities at Risk for Climate Events Aggravated by Hydroelectric Projects](#).

113 Source: [CAO, 2017](#).

114 The works had ceased since January, but workers and machinery began to enter again as of April 24, 2018, which coincided with the announcement of the public hearing in the Supreme Court of Justice. Source: interview with inhabitants of the Ixquisis micro-region in May 2018.

115 Source: Interviews with women from the Ixquisis micro-region on May 11 and 12, 2018 compiled in AIDA, 2018.

116 Interviews with people from the micro-region.

117 Sources: [El Observador, 2018](#) and interviews with inhabitants of the Ixquisis micro-region.

118 Sources: Interviews with women from the Ixquisis micro-region on May 11 and 12, 2018 and [Bordatto, 2016](#).

119 [Performance Standard 5](#), point 9, Water consumption, page 3.

gion, in addition to affecting community tourism projects on the Mexican side<sup>120</sup>. This point regarding the transboundary environmental impacts of hydroelectric plants in Mexican territory could not be included in the MICI investigation since, according to MICI, there must be representatives of Mexican communities among the those lodging the complaint for it to be included.

**In the three hydroelectric projects, the cumulative impacts of the projects have not been evaluated.** The projects in Ixquisis is a set of three projects<sup>121</sup> with four hydroelectric plants in three micro-basins, all tributaries of the Santo Domingo River. Communities in Santa Cruz Barillas recognized that the Canbalam project itself would not have major impacts but expressed concern about cumulative impacts with the development of a second project<sup>122</sup>. In the case of the Santa Rita hydroelectric plant, two other hydroelectric projects were also in development on the same Ixcolay river: the Rocjá Pontilá plant (40 MW) that was going to affect the last communities in the Santa Rita impact area and the Raaxhá hydroelectric plant (10 MW), which is the only one that has been built and is operating.

In Guatemala, **the contributions of hydroelectric projects to climate change continue to be denied with the greenhouse gas emissions** that are generated with the degradation of ecosystems in dams<sup>123</sup>, and this is one of the claims that was also made in the case of hydroelectric projects in the Ixquisis micro-region. In this sense, it can no longer be declared indiscriminately that hydroelectric projects reduce greenhouse gas emissions, one of the objectives of PS 3, since that depends heavily on the designs of the power plants.

**These impacts and risks were not properly identified or addressed in the EIAs of the projects, nor were they addressed in the environmental and social management plans.** PS 1 is intended to anticipate, avoid, minimize, offset the risks and impacts of an MDB investment. A well-applied mitigation hierarchy in PS 1 enables compliance with all other Performance Standards as

risks and impacts are identified and management plans are created to address them. PS1 should allow the involvement of project affected communities in the identification of potential impacts and risks, but **in all three cases, the communities have lacked communication channels with the companies developing the projects to express their doubts and disagreements**. There was also noncompliance with the requirement of PS 1 that the client must establish a grievance mechanism to receive concerns and grievances from communities about environmental and social performance and to facilitate their resolution.<sup>124</sup> As the communities never heard about the existence of these channels, they always made their claims to the State, asking that they ensure due compliance with their rights. In Ixquisis, for example, with tropical storm Iota, the communities convened a meeting with representatives of the NCP and the Army to request that they take their complaints to the State asking that it take the necessary actions to close the works that represent risks<sup>125</sup>. In general, hydroelectric project developers see the EIA tool as a simple administrative procedure to complete requirements, not as a process to improve design and to build relationships and involve impacted communities.

**In sum, the environmental harm and the adverse impacts inflicted upon the environment and people demonstrate that the environmental and social impact assessments and the management of social and environmental risks were deficient and insufficient in all three cases.** PS1 not only requires the client to establish and follow a process to identify the environmental and social risks and impacts of the project, but also to undertake and maintain, in coordination with the relevant government agencies, an environmental and social management system that incorporates the following items: “(i) policy; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; and (vii) monitoring and review”<sup>126</sup>.

**Deficiencies in the environmental and social management and monitoring systems affected clients' capacity to effectively**

120 Source: [Bordatto, 2016](#).

121 In addition to the Pojom II and San Andrés projects, the procedures for the implementation of the 10.2 MW Pojom hydroelectric plant, developed by Generadora del Río, began. This plant has not had any physical progress and is not included in the IDB Invest financing.

122 In 2012, the affected communities learned that the Hidro Santa Cruz company was initiating procedures with the MEM for the implementation of the Canbalam II project with a higher capacity, between 5 and 15 MW. Source: Rodríguez-Carmona and Luis Romero, 2016, p.79.

123 Several publications can be consulted that show how hydroelectric plants generate greenhouse gases (AIDA (2009). [Grandes Represas en América: Peor el remedio que la enfermedad? Principales consecuencias ambientales y en los derechos humanos y posibles alternativas](#); Betancour, Analia (2009). [El 4% del calentamiento global se debe a gases generados en las represas](#); Cambio Climático. org; International Rivers (2011) [Wrong Climate for Big Dams: Fact Sheet: Destroying Rivers Will Worsen Climate Crisis](#) and Taylor Maavara et al. (2017) [Global perturbation of organic carbon cycling by river damming](#). Nature Communications, No. 8, article No.15347).

124 Performance Standard 1, point 35, Grievance Mechanism for Affected Communities.

125 Source: [AIDA press release](#) (11/25/2020).

126 [Performance Standard 1](#), Environmental and Social Assessment and Management System, point 5, page 2.



Water Sources polluted by construction works in the micro-region of Ixquisis, February 2017.

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**comply with the other Performance Standards.** For example, compliance with PS 3 was affected by not avoiding or minimizing the impacts on the environment, as well as not guaranteeing a sustainable use of resources, in particular water. It also failed to comply with PS 6, especially, the protection and conservation of biodiversity, and the maintenance of environmental ecosystem services in the project affected communities.

## 7. Fraudulent land purchase

In the case of Santa Cruz Barillas, the purchase of land was made through third parties, and it was thought that it was for the planting of coffee plantations, cardamom, or for pasture<sup>127</sup>. This lack of knowledge and transparency about the acquisition of land and how it was going to be used once again indicates the lack of information existing around the project and absence of meaningful consultation with the communities. Regarding Ixquisis, large amounts of land were acquired compared to the size of the projects<sup>128</sup>. For the populations affected by Canbalam, the fences that were installed around the acquired land are a key problem since **they closed the roads that the inhabitants of the region were accustomed to using to access the river, affecting their way of life**<sup>129</sup>. They also endured economic displacement because the lands that were acquired were used by members of the community to plant subsistence crops.

For the Santa Rita hydroelectric plant, the company bought less than what the hydroelectric plant was going to occupy, in

particular the fields of crops that were going to be flooded<sup>130</sup>. It was even reported that the hydroelectric company in Ixquisis invaded land that they had not bought. Describing one of the murdered men's land, a community member stated, *"We went to the capital to denounce that the company had seized land from my father and a few days after we returned, we found to several of our dead animals, poisoned"*<sup>131</sup>.

PS 5 on "Land Acquisition and Involuntary Resettlement" recognizes that there is not only physical displacement of the population from the purchase of the land where they are located, but also physical displacement can occur due to **loss of assets or access to these assets during project implementation**. On the one hand, the communities of Río Dolores complained that the construction of the dam would flood their agricultural lands and that this had not been negotiated; on the other hand, in the Ixquisis micro-region, the company bought or grabbed a large amount of agricultural land in a border region where food insecurity is high. PS 5 also recognizes that the implementation of a project may **inadvertently modify access to land and natural assets, as well as customary use by Indigenous Peoples** in PS 7. This occurred with the construction of fences on lands that affected roads and access to rivers in the Canbalam and Ixquisis cases, but **none of the implementing companies took measures to mitigate this impact**. CAO acknowledges in the Canbalam report that the land acquisition agreements provided by the IFC did not meet the requirements of PS 5 and PS 7<sup>132</sup>, such as identifying and consulting affected people, compensating displaced people, and hiring specialized experts.

127 Source: [Guereña and Zepeda, 2012](#).

128 Source: [EL Observador, 2018](#).

129 Source: [Rodríguez-Carmona and Luis Romero, 2016](#).

130 Source: [EL Observador, 2019](#).

131 Source: Interview with inhabitants of the Ixquisis micro-region, May 2016.

132 Source: [CAO, 2018](#).

#### Table N4: Governments, corruption, and denounced projects

Hidro Santa Cruz was owned by two Spanish multinationals, the brothers Luis and David Castro Valdivia. Luis Castro Valdivia began his activities abroad because he faced several legal processes in Galicia, Spain, since 2007 for an alleged crime of influence peddling, prevarication, and bribery in the award of concessions for wind farms and hydroelectric plants<sup>133</sup>.

Former president Otto Pérez Molina, who supported the imposition of hydroelectric projects in indigenous territories, resigned from the presidency on September 3, 2015, in the face of popular mobilization, and has since been imprisoned for accusations in cases of corruption discovered by the Public Ministry and the International Commission against Impunity in Guatemala. Still in December 2020, the Public Ministry brought to light cases of corruption in the Ministry of Energy and Mines of Molina's government with the Xacbal and Xacbal Delta hydroelectric plants (Chajul, El Quiché)<sup>134</sup>. The communities of Ixquisis exposed and denounced the illegalities in the process of the construction of hydroelectric plants that affected them<sup>135</sup>. The Minister of Environment and Natural Resources, Roxana Sóbenes, had to resign from her position because she was accused of facilitating the approval of the EIAs carried out by her environmental consultants, which prepared most of the EIAs of the Ixquisis hydroelectric plants<sup>136</sup>.

In the case of the Ixquisis projects, a grievance about cases of corruption was also filed with the IDB [Office of Institutional Integrity](#) in May 2019. The grievance analysis process is carried out confidentially, so the people who file a grievance for corruption do not have access to information on the actions carried out by the Office nor its progress, unless it needs additional information.

## 8. Damage and destruction of sacred and ceremonial sites of Maya indigenous

It should be clarified that PS 8 is specific for Cultural Heritage, but it does not apply in the case of indigenous territories, but rather PS 7. PS 7 establishes that the free, prior, and informed consent of the Affected Communities of Indigenous Peoples must be obtained if the significant impacts of the project on critical cultural heritage cannot be avoided.

In the case of Ixquisis, this was one of the great harms caused by the project. For the Mayan population, water is a living being, and so a strong cultural shock is suffered with the implementation of hydroelectric plants because they depend on this natural good and have a spiritual bond with this element. In the implementation site of the hydroelectric projects in San Mateo Ixtatán, there are two archaeological sites, Pojom and Ixquisis, and it is claimed

that the construction of works has destroyed part of the sites and that archaeological objects have been extracted<sup>137</sup>.

In the case of Canbalam, the river and the site of the hydroelectric plant, Poza Verde, is a particularly sacred and recreational site for the Q'anjob'al population, specifically its three waterfalls<sup>138</sup>. The name of the Q'an Balam river means "yellow tiger", and it is a symbol of divinity and respect for Mother Earth. There is a belief that the falls play a key role in the microclimate of Barillas, by producing clouds of water that rise up the valley to irrigate it with moisture and rain. A legend connects the falls with the square in the center of the town of Barillas, where there would be an enormous wealth of minerals. Another legend is that a boy and a girl with golden hair appear to the community members in the form of two statuettes that shine like the moon. In the last appearances, the boy was missing a hand and then only the girl appeared. The legend attributes the disappearance of the boy to the action of a foreigner in the territory<sup>139</sup>.

133 Source: [Rodríguez-Carmona and Luis Romero, 2016](#).

134 Source: Arana, Lourdes (December 11, 2020) [FECL: Archila recibió Q794 millones de empresas con contratos o autorizaciones](#). La Hora.

135 Source: [MICI, 2019](#).

136 Source: [Bordatto, 2016](#).

137 Source: [Bordatto, 2016](#).

138 Source: [Complaint letter for IFC funding to Hidro Santa Cruz, July 1, 2015](#).

139 Source: [Alianza por la Solidaridad, 2015](#).



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Assembly in the Park of Barillas and the table of “dialogue” | CMI Guatemala Riberas del Rio Q'anb'alam appropriated by the Hidralia company, 2013.

In a context marked by high levels of violence, assassinations, and social and environmental harm, the affected communities had to organize to resist and protect themselves from companies, governments, and the projects they implement. The harms and impacts denounced by the affected communities in the Santa Rita, Canbalam, and Ixquisis hydroelectric projects, show common patterns of systematic violations of individual and collective rights. These violations are generated by MDBs' lack of supervision and monitoring of their clients, as well as, noncompliance by clients in project design and implementation. In this sense, it remains to be asked, what is the added value of MDBs and the application of social and environmental safeguards in these projects? The exis-

ting distance between the formal commitments they subscribe to on paper and the reality of countries and the ability of clients to effectively implement and comply with the PS of MDBs is visible here. IFC and IDB Invest as “Development” Banks speak of improving lives, sustainable development, and poverty reduction. However, these projects show that, in their actions, both MDBs ended up acting like any other commercial or investment bank by failing in their environmental due diligence processes, supervision, and support of the client to comply with the PS. There are environmental and social Performance Standards, strict due diligence processes, and accountability mechanisms, but when it comes to enforcing them, it seems there is still a long way to go.

## Lessons Learned, Conclusions and Recommendations

## Lessons Learned

*What did the project affected communities achieve from these processes? Were their rights recognized and repaired? What was learned from the resistance of the communities to the projects through the grievance processes?*

- **The grievance process has been beneficial for the communities and human rights defenders since it allowed them to organize and empower themselves due to the international visibility of the cases, which led to a significant reduction in the attacks on the life and physical integrity of the people who inhabit the project implementation areas.** The international dimension of their claims puts MDBs at the center of the scene and forces them to answer for things that are not working well, to review, and sometimes to improve the monitoring and supervision of projects, such as was seen in the case of the actions undertaken by IDB Invest in the Ixquisis micro-region with the roundtables (which are implemented with the support of the government but are highly criticized by the affected communities). When MDBs strengthen their monitoring, companies no longer feel free to act with impunity. Likewise, the three cases show that the grievance processes of the accountability mechanisms allow affected people to use these opportunities to tilt the balance of forces in their favor. The mechanisms opened the possibility for grassroots actors to be officially heard by global institutions.
- **The IFC's role and performance in environmental and social due diligence and oversight has been extremely poor and limited.** In the Santa Rita case report, CAO questions “*the effectiveness of the IFC's control of compliance when it comes to the application of environmental and social standards in high-risk investments by financial intermediaries*”<sup>140</sup>. In other words, CAO recognizes a large part of the communities' grievances are due to the lack of monitoring and control over the client's compliance with the PS. However, the IFC's response to the CAO report was not effective in addressing noncompliance nor in taking proactive action to remedy for the harms alleged grievances. For example, in Hidro Santa Cruz, the IFC decided to withdraw financing as a way to limit the impacts of the conflict that the project had created, leaving many problems in the territory without solving or accounting at all for the harms

it had caused. In this case, with the departure of the IFC, many issues remained unresolved:

- » The harms suffered by the communities and the environment were not repaired.
- » A responsible exit plan was not implemented to prevent possible risks and impacts from continuing or to address the problems generated by the project prior to the IFC's effective exit.
- » The IFC was not held accountable for the harms and problems generated by the projects, and now that the IFC is out, it is even more difficult to get clients or governments to do so.

- **A lack of recognition by the IFC of the CAO findings entailed a failure to address the issues of noncompliance identified in the CAO investigation.** In other words, the IFC failed to respond effectively to the CAO findings. The IFC claimed that communities went directly to the compliance phase without first attempting to mediate (using the dispute resolutions function) with the company.<sup>141</sup> However, they do not seem to understand that conflict and mistrust were so high in the case of the Santa Rita hydroelectric plant that it was impossible for the Dolores River communities to accept a conflict resolution process, even if mediated by CAO. The IFC responded to the CAO report acknowledging that “*the Administration is dismayed by the impacts derived from the disturbances and the subsequent declaration of the state of siege in Santa Cruz Barillas*”<sup>142</sup>, but, on the other hand, it points out that these consequences have not been attributed to Hidro Santa Cruz, because it is not recognized in this way by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Human Rights Procurator (PDH by its Spanish acronym)<sup>143</sup>. The IFC's argument has no basis since the sources are not cited in the Administration's Response. Also, there are no specific official documents of these two official human rights entities in the country (apart from their annual reports) that examine the particular situation of Santa Cruz Barillas. Ultimately, they ignored the relationship between the acts of violence and the project.

<sup>140</sup> Source: [CAO, 2017](#), p.4

<sup>141</sup> Source: IFC, October 6, 2017, [IFC's Management response to the CAO Investigation Report on Latin Renewable Infrastructure Fund, as related to Santa Rita complaint \(project #31459\)](#).

<sup>142</sup> Source: IFC (April 23, 2020) [Management Response to the CAO Investigation Report on Compliance - Inter-American Corporation for Financing of Infrastructure S.A. \(Project No. 26031\)](#), p.3.

<sup>143</sup> The OHCHR does not mention Hidro Santa Cruz as responsible, but the PDH does in fact report that the conflict has been exacerbated by the project.

- **Seeking access to remedy? In the grievance process, it is essential that communities are aware and realistic about what the complaint mechanisms can offer and the opportunities they can open.** It is important to know that making use of accountability mechanisms does not necessarily guarantee access to redress for communities. In none of the cases in Guatemala where there were compliance investigations (Canbalam and Santa Rita), have the communities achieved remedy for the harms inflicted on people and the environment. In the case of Santa Rita, CAO delivered the first monitoring report<sup>144</sup> showing that the LRIF fund continues to own the project,<sup>145</sup> but the IFC does not seem to monitor the case or take measures to resolve the impacts claimed by the project affected communities, especially the residual impacts caused by the project<sup>146</sup>. CAO notes that project affected communities continue to claim that residual impacts remain unaddressed, but that the IFC “*has not adequately supervised the Fund to ensure that it has assessed residual project impacts and, as appropriate, minimized, compensated for or otherwise remedied them in accordance with IFC’s Sustainability Policy (para. 6) and Performance Standard 1.*”<sup>147</sup>
- **MDBs’ non-responsible exit and residual harms.** There are persistent residual harms in the territories that are a direct consequence of the projects, such as cases of criminalization that worry and impact the lives of community members<sup>148</sup>, as well as, effects on the way of life and economic impacts for families. In both Santa Cruz Barillas and the Río Dolores region, the communities are concerned that the lands acquired by the projects remain in the hands of the banks<sup>149</sup> that participated in the financial package of the projects, meaning they can sell them at auction, and new projects could come with new impacts on the communities. In Canbalam, the IFC pulled out of the project but remains invested in the fund that financed the Santa Rita project (however, this fund is not investing in Santa Rita anymore). It is problematic that in both cases, the IFC exited the projects without first addressing any of the problems that their investment generated. This makes it even harder for the IFC to account for the social and environmental outcomes.<sup>150</sup>
- **Access to accountability mechanisms continues to be a challenge for communities.** In the three experiences, the communities needed external support to identify that there were MDBs involved in the projects that affected them. The communities learned about the accountability mechanisms and the possibility of filing a complaint thanks to civil society organizations that supported the communities when they began to organize and resist the way in which the projects were being implemented.
  - » **Mechanisms have a particular language.** The mechanisms apply the language of the Performance Standards that is not that of human rights, a language that is more universal and therefore more accessible to communities that are more familiar with denouncing violations of their rights in terms of human rights.
  - » **A grievance process requires project affected communities collect evidence of impacts and concerns throughout the entire grievance process.** It is important for communities to document, to the greatest extent possible, all the concerns and impacts suffered to show the grievance mechanism evidence of what is being reported. In these cases, analyzed, it was never possible to have sufficient funds in the grievance investigation processes to carry out complementary studies, for example, water quality studies when cases of contamination have been claimed.
  - » **Compliance assessment processes are slow, lengthy, technical, demanding and may incur delays. Time is an important variable.** An enormous amount of time and effort must be invested in these processes, so the opportunity cost of that time is a variable that should be taken into account when engaging in a grievance process. It took three years for the communities of Río Dolores and five years for the communities of Santa Cruz Barillas to see the investigation report carried out by CAO. In the case of the MICI compliance report, the publication of the draft report has already been delayed and extended four times. Support from civil society organizations that can accompany communities during the grievance process with financial and human resources, strategies, advocacy, etc. can greatly alleviate the burden on the project affected communities.

144 Source: CAO (August 8, 2019) [First compliance monitoring report](#) - IFC investment in the Latin America Renewable Energy Infrastructure Fund (LRIF) related to the claim against the Santa Rita Hydroelectric Plant (Project # 31458).

145 Source: [CAO 2019](#), p.7.

146 Source: [CAO 2019](#), p.9.

147 CAO (August 8, 2019) [First compliance monitoring report](#), page 9.

148 Criminalization is generally directed against parents. Because they work as day laborers or need to be able to mobilize to sell their production or attend to their businesses, with arrest warrants, they have to limit their movements outside their communities, even if it is for their health or running errands for the family. The costs of lawyers to solve their situation are another problem they face.

149 They are commercial banks in general established in the country, which are not financial intermediaries for the project, but receive financing from IFC in other projects, such as Banco Industrial and Banco Agromercantil that appear in the Santa Rita Trust.

150 The 2018 CAO report on the grievance for the Canbalam project states that: “*in November 2015, CIFI suspended its loan to the project developer, and the project was abandoned in December 2016.*” Furthermore, in the 2017 CAO report on the grievance for the Santa Rita project, CAO mentions that “*The Fund has advised CAO that it no longer plans to develop the project.*”

- » **Complaints should be one more tactic in an otherwise more comprehensive advocacy strategy.** Complaints to the specific grievance mechanisms should be complemented with other advocacy actions at local, regional and national levels.
- » **Accessibility and inclusion.** CAO translates its reports into the indigenous language of the project affected communities, which MICI does not. The IFC's responses, on the contrary, are published in English and very rarely in Spanish, so it is necessary to support communities with the appropriate translations so that they can participate and respond effectively throughout the grievance process. It has been particularly frustrating for the Río Dolores communities that CAO did not visit the territories to share the results of the investigation as the claimants had many questions and concerns about the report that they were unable to address.
- **“Business as usual” vs Sustainable Development:** The [IFC](#) and the [IDB Invest](#) websites show that all current investments in Guatemala are through national banks (primarily Banco

Agromercantil, Banco Industrial, and Banco Promérica) and could be through other financial intermediaries that operate more at the regional level, so it is very difficult to know if they finance any kind of extractive projects that meet their definition of small and medium-sized enterprises<sup>151</sup>. Access to information for affected communities remains challenging and highly complex<sup>152</sup>. With the loans that the State of Guatemala has taken to address the COVID-19 pandemic, a program called “Bono Familia” has been implemented that should allow “poor” families access to three monthly payments of Q1,000<sup>153</sup> to ensure the economic possibility of respecting the confinement to stop the spreading of the virus. The Acción Ciudadana association revealed in a virtual forum that the funds assigned for the payment of this bonus were mainly assigned to Banco Industrial, a private bank with very little coverage in rural areas of the country compared to Banrural<sup>154</sup>. Supposedly, the IFC invests in financial intermediaries because it allows them to reach smaller companies that it otherwise would not reach; however, as Banco Industrial is the largest bank in the country, it owns more public debt securities and pays less taxes at the same time.<sup>155</sup>

<sup>151</sup> The funds invested by IDB Invest and IFC are for investing in SMEs.

<sup>152</sup> IFC is implementing a pilot plan since 2019 where Financial Intermediaries can publish key project information (name, year, sector, country) on IFC and FI websites if they have the consent of the sub-borrowers. Source: [IFC 2020](#).

<sup>153</sup> The payment has not covered families that do not have access to electricity since they were given access to the bonus through electricity bills and the third payment was made up to November for an amount of just Q250.

<sup>154</sup> The Guatemalan Banking Association reports that 575,000 accounts were opened to receive this payment at Banco Industrial, compared to 440,000 in Banrural.

<sup>155</sup> Source: Andrés, Asier and Rodríguez Pellecer, Martín (2017) [La deuda pública y el BI, el mayor comprador y que paga menos impuestos](#). Nómada.

## Table N 5: Alternative to the imposed energy model: Community proposals for energy sovereignty<sup>156</sup>

### ***Development from and for the communities: A socially and environmentally sustainable model***

In the Latin American region, it is common practice to label communities that oppose large infrastructure projects financed by MDBs or private business groups as “anti-development”. However, little attention is paid to understanding the reasons why they resist these projects and to considering what are the responses and proposals put forward by the community bases to live better and provide concrete solutions to the problems and challenges of development, such as the issue of energy. In Guatemala, Indigenous Peoples claim the right to self-determination to build public policies<sup>157</sup> that respond to their needs<sup>158</sup>. In this sense, from their own collective reflection processes, Indigenous Peoples have created alternatives of their own, viable, self-managed energy model with great potential to scale up if there were appropriate investments and/or subsidies, public policies aimed at supporting these models, and the national and international political will to make these proposals prosper and help these peoples sustain themselves in the future. These types of models and investments are in contrast to traditional energy projects financed by MDBs, such as those analyzed in this study. This experience built from the grassroots, by and for the communities themselves, has proven to be successful in solving the energy problem, but at the same time doing it in a way that is socially and environmentally sustainable, bringing employment and prosperity to those regions.

### ***Energy Sovereignty: An economically possible model***

The marginalized and isolated communities, in particular the Communities of People in Resistance (CPR)<sup>159</sup>, since the 2000s have sought ways to access electricity service on their own account, as an exercise in self-determination. Some communities organized to install and maintain solar panels in areas where the sun was the most accessible source of energy, and a dozen community hydroelectric plants were installed in different parts of Guatemala. The communities obtained the support of NGOs, such as the MadreSelva Collective, to strengthen their organization, carry out the design and technical support for the installation of the power plants, train for the administration, repair, and maintenance of the turbine, and the distribution networks of the electricity.

The financing of these community projects came from international cooperation, the contribution of local labor and materials by the communities and, in some cases, the government of Guatemala. The most common form of organization for the administration of projects is through the associations, since it allows the preservation of traditional forms of decision-making in assembly (elect the board of directors that ensures ordinary operation, reviews rates, makes important decisions, and organizes work commissions for repair and maintenance, etc.) so that high levels of transparency and accountability can be guaranteed. The rates are defined in assembly and are more accessible than what users connected to the national electricity grid pay. The hydroelectric plants installed are run-of-the-river and small since they are designed to ensure the current and future needs of the families of the communities. For this reason, they use only a minimal part of the river's flow, contrary to private projects such as those presented above that prioritize their economic benefit over the life of the ecosystems. In addition, the community organization has also made it possible to consider actions to take care of the hydrographic basin, the installation of improved stoves to reduce the use of firewood, and its impact on the health of families. Not all communities have managed to achieve economic sustainability<sup>160</sup> or integrate gender issues, but these are processes that are still under construction and learning, as there are still few, despite the great need that still exists in the country<sup>161</sup>.

<sup>156</sup> Energy sovereignty is the right of conscious individuals, communities, and peoples to make their own decisions regarding the generation, distribution, and consumption of energy, so that these are appropriate to their ecological, social, economic, and cultural circumstances, always and when they do not negatively affect third parties. Source: Various authors (Summer 2014) [Definiendo la soberanía energética](#). Ecologista, nº 81.

<sup>157</sup> Policies are called public, but they are a sum of private and unconsulted interests, as has been the case with energy policy, for example.

<sup>158</sup> The vision of indigenous peoples in Guatemala is towards a plurinational state where all its inhabitants can aspire to a sustainable, comprehensive, and inclusive development, a dignified life in harmony with nature and the cosmos, where ancestral wisdom and traditions, and historical forms of organization, administration of justice, and the care of natural assets are respected.

<sup>159</sup> They are communities that took refuge and hid in the mountains during the internal armed conflict to escape the persecution of the national army. At the signing of the peace accords, they have fought for the state of Guatemala to give them access to land, such as the Unión 31 de Mayo in the Reyna Zone (municipality of Uspantán, department of El Quiché), to the CPR Sierra Chamá in the municipality de Chajul (department of El Quiché) and the Unión Victoria in Chimaltenango (department of the same name).

<sup>160</sup> Source: Cabría, Elsa and Villagrán, Ximena (November 6, 2019) [Una aldea ve morir su hidroeléctrica](#). Plaza Pública.

<sup>161</sup> In 2018, the level of electricity coverage reached 88.14% at the national level, according to data from the VII Population Census 2018, a figure that is well below the projections of the Ministry of Energy and Mines (MEM) that reached 92.06% in 2016.

Furthermore, some communities are not only reflecting on energy autonomy and social and productive uses of energy, but also on food autonomy, rethinking their form of agricultural production to meet their needs. Others are thinking about other forms of organization (such as cooperatives or private associations, since the latter are the quickest and cheapest to implement, although it greatly clashes with the vision of solidarity that drives these initiatives), financial contributions from communities, and other forms of innovative financing that allows them to scale up projects. Communities are also organizing to recover and strengthen municipal companies that have been abandoned by successive municipal governments.

Other proposals have been made by the Council of Mayan Peoples (CPO) for the democratization of electricity, community and territorial energy sovereignty, as well as for electricity to be seen as a human right<sup>162</sup> for the entire population rather than a form of profit for a few companies<sup>163</sup>. To date, two actions of unconstitutionality against the Electricity Law (decree 93-96) have been filed in the Constitutional Court at the end of 2020, to bring about changes in the national electricity model from the legal level. Although there is still much learning to do, this alternative energy model proposed from and for communities has shown, at least so far, to be much more effective, inclusive, sustainable, and economically viable than those analyzed in this study and financed by MDBs. It is time for MDBs to begin to recognize that these kinds of experiences are the ones which really improve lives, promote sustainability, and reduce poverty.



Community energy projects in the villages of the Reyna area with the support of the MadreSelva Ecologist Collective.

162 For their contributions to other human rights such as health, education, free movement, decent housing, economic well-being, a healthy environment, etc.

163 COPAE (2019) [Estudio sobre el modelo energético guatemalteco y su repercusión socioambiental y una campaña de incidencia relacionada](#).

## Conclusions

- **Are the MDBs learning and incorporating the lessons of failed projects to improve future projects and avoid the repetition of circumstances and experiences such as the ones presented above? In light of these case studies, it seems that they have not.** It is not clear how the IFC has incorporated lessons learned from the Canbalam experience in the Santa Rita project or if the IDB Invest included these in the Ixquisis project as there is also no evidence of leaning lessons across institutions. The study of the three hydroelectric projects, Canbalam, Santa Rita, and Ixquisis demonstrates that there is a recurrent pattern of rights violations and a lack of accountability that continues to be repeated to this day, with no lessons learned to inform future projects. These projects, despite being financed by MDBs such as the IFC and the IDB Invest have environmental and social policies meant to differentiate them from traditional commercial banks, but present patterns of rights violations do not differentiate them from “business as usual” and keep occurring and repeating themselves over and over again. Even between the IFC and the IDB Invest, it seems that they do not look at each other to learn lessons from “bad” projects that ended up having adverse impacts on communities. The project affected communities have denounced major violations of their individual and collective rights, such as: the right to self-identification as Indigenous Peoples, access to information, to consultation, and to FPIC, the right to organize and to peace, the human right to water and a healthy environment, to land and territory, to food, and economic, social, and cultural rights, and even the right to life (including several murders among many other attacks on the physical integrity of human rights defenders of the affected communities). Despite the fact that these violations were denounced by the communities and some were confirmed by the accountability mechanisms, the IFC, its clients, and the Guatemalan government have not taken any concrete measures to mitigate and repair the damages generated, or to prevent these errors and harms from occurring again in similar projects. **The lessons from these three cases should influence not only the way MDBs implement projects on the ground but also the way MDBs operate to lead to greater accountability.** It is a positive sign that in 2019 the IFC launched a **review process of its environmental and social accountability processes as well as an analysis of CAO's effectiveness** in “*paying more attention to communities*” and “*doing more to engage with them in a meaningful way*”<sup>164</sup>. However, the impacts of those reforms have yet to be tested at the project level and response effectiveness for communities on the ground.
- **Are the supposed “beneficiaries”<sup>165</sup> of these hydroelectric projects receiving a benefit or being harmed? In light of these case studies, affected communities are actually being harmed.** Ultimately, those who should have benefited from the projects were the groups that were most affected by the projects’ social and environmental impacts and risks. There are various actors and factors that come together so that this type of investment, such as the hydroelectric projects analyzed, can take place in the manner analyzed: a) A State with little institutional capacity to fulfill and enforce rights<sup>166</sup>; b) Governments that have historically promoted investments that benefit traditional capital without addressing the needs of the population; c) Private companies that only look at the investment in an infrastructure project from a purely economic analysis based on costs and benefits; d) MDBs that offer financing to these companies without ensuring due diligence in the processes that their clients use to implement the high standards of which the banks (at least on paper) subscribe to, and a weak monitoring and supervision process of its clients throughout the project; e)

<sup>164</sup> Le Houerou, Philippe (June 13, 2019) Opinion: [Stepping up our game on environment and social issues](#). Devex.

<sup>165</sup> MDBs in project documents use beneficiary language to refer to the communities affected by projects. This language is old-fashioned and denotes passivity, as if the beneficiary is passively waiting for the benefits of the projects that others thought of for them to arrive, which is why it is no longer used. That is why many organizations treat affected people as partners.

<sup>166</sup> The MNR and MEM do not apply international standards regarding human rights and the rights of indigenous peoples; they do not integrate the need to evaluate not only environmental impacts but also social and human rights impacts for the projects they approve. The authorizations are seen as an administrative requirement, but never as ways to improve the design and performance of a project, as well as a way to initiate a coexistence in territories where a win-win relationship is built in good faith with all affected communities. On the contrary, wills of some people are bought, conditioning government support to the acceptance of the project.

Project affected communities that discover that no one has consulted them or involved them in these mega investment projects that will change their lives forever, and without having a voice or vote, their rights have been violated. In the cases analyzed, when the communities began to see that their rights were being systematically violated and none of the actors involved took measures to amend the situation, they decided to turn to the grievance mechanisms, CAO and MICI, to investigate compliance with the IFC Performance Standards. Although the communities report noncompliance with almost all of the standards (1, 3, 4, 5, 6 and 7), the reports that CAO delivered following the investigation of the Canbalam and Santa Rita cases primarily show flaws in: a) the environmental and social due diligence processes; b) lack of disclosure of information; c) lack of consultation from the beginning and throughout the project cycle; d) failure to comply with consultations to obtain FPIC (in the case of Santa Rita); e) lack and deficiency of social impact assessments of the projects to be implemented in indigenous territories (in both cases); f) lack of risk assessment in the use of security forces in the case of Canbalam. CAO primarily acknowledges the violations of PS 1, 4, and 7 and regrets the impacts they have had on communities.

- **The elephant in the room: Lack of involvement and effective participation of the communities from the beginning and throughout the entire project cycle.** In the three cases analyzed, there was a systematic non-compliance with the right to consultation. By not complying with the right to consultation from the beginning, a negative vicious circle is created where the lack of consultation leads to opposition to the project, opposition to the project leads to violence and reprisals, which in turn exacerbates social conflict and creates ruptures of the social fabric in the project territories. In Latin America there is a long history of non-compliance with consultation and FPIC processes in infrastructure projects. For the project affected communities, the information and consultation process has been a tool for defending the territory, with affected communities facing a possible threat from an extractive project or the imposition of a project using the consultation process to curb the company's biased actions. In the three cases analyzed, there was a systematic non-compliance with the right to consultation, and it seems that MDBs still have not learned from previous grievances where this pattern is repeated almost systematically. Companies and MDBs should understand that effective, free from manipulation, meaningful, and inclusive consultation, is the cornerstone from which to start for a project to be possible and sustainable over time, avoiding the exacerbation of social and environmental conflicts. Project affected communities must be key players in the design and implementation of projects. It is also important to guarantee the conditions for participation free of coercion, abuse, and reprisals, something that was not guaranteed in the projects analyzed.
- **To what extent was the outcome of the grievance redress processes beneficial to the communities?**  
**The results are mixed.** Although in the case of Canbalam and Santa Rita, the communities did not achieve any concrete reparations, the processes of access to accountability mechanisms was important for the project-affected communities because they helped to empower and organize the communities, as well as make their problems visible at the national and international levels. This led to a significant reduction in the attacks on the life and physical integrity of the people who inhabit the project implementation areas. It helped affected groups to balance power by making use of a space where affected communities have a status that allows them to question development projects that affect their lives.

In the case of Canbalam and Santa Rita, the two processes where the CAO report has already been published, the communities did not achieve any specific reparations, and the IFC has not recognized the results of the CAO report, arguing that after the fact it has improved its way of working and internal processes to avoid repetition. In the case of Canbalam, the IFC ended up withdrawing its financial support for the projects, without a responsible plan for its exit nor closure of the projects that addressed the claims made by the communities. The lands acquired by the projects remain in the hands of commercial banks that can sell them to other projects, and the criminalization of human rights defenders still persists.

- **Considering the environmental and social disasters caused by the hydroelectric projects analyzed, is it not the time to think about an alternative model of energy sovereignty stemming from and for the communities?** Faced with a historically exclusive energy policy, indigenous and mestizo peoples of Guatemala have also been looking for solutions to access electricity through systems managed by and for communities, such as small hydroelectric plants, as shown in the table N 5. In Guatemala, self-managed communities have considered and built an economically viable and socially and environmentally sustainable model that responds to one of the greatest development challenges, ensuring access to electricity (see table N 5). This experience offers an opportunity for various development actors to begin to value the benefits of these types of models. Along the same lines, an case of unconstitutionality of the General Electricity Law has also been presented in order to demand the construction of truly public policies from the people, for the people.
- **There are many gaps in the Performance Standards that need to be addressed to guarantee more rights to communities and offer stronger and clearer standards to clients in their operations.** The IFC's Performance Standards were updated in 2012, and in many respects, are out of date to meet current environmental and social challenges in the region and the world. Particularly, they are insufficient in matters of mitigation and adaptation to climate change, gender, the use of security forces, contextual risk analysis, reprisals, people with disabilities, stakeholder engagement, and Indigenous Peoples. Many of these deficiencies have been identified by the IFC itself through policy reforms and additional guidance<sup>167</sup>. As has been shown in the cases analyzed: a) the lack of a specific gender standard led to significant violations of women's rights; b) the standard regarding the use of security forces is not aligned with the best practices in the field; c) the lack of a specific stakeholder engagement policy also provoked consultation and information disclosure to be seen as simply an administrative matter that must be complied with rather than a real and effective practice; d) contextual risk and reprisals analysis should be explicitly included in the PS so that these analyses are carried out in projects in environmental and social categories A and B and specific measures are taken to mitigate risks. The IFC needs to learn from the experience of almost 8 years of applying the PS and incorporate these lessons learned into its Sustainability Policy.

<sup>167</sup> For example: In financial intermediaries, use of security forces, a contextual risk analysis and due diligence, reforms in accountability, reprisals against civil society in the process of project participation.

## Recommendations

### >Multilateral Development Banks (IFC & IBD Invest)

- 1. Incorporate effective learning and adaptation functions** so that lessons deriving from these experiences are actually taken into account. At the same time, this would require that the accountability mechanisms' (CAO's and MICI's) recommendations in relation to complaints made to the projects are considered to close the feedback loop. [The accountability review](#) currently taking place at the IFC/MIGA is a positive sign. In fact, the [external review report](#) found that the IFC did not actually have the tools to learn systematically from complaints. The report highlights problems with the culture of compliance, rather than with the wording of the rules *per se*. The review team recommends that the IFC develop a "*more active response culture*" and embrace direct engagement with affected people when problems arise. The results of this review process will only be effective if systemic changes are made in the institution to address the causes that undermine accountability and give access to remedy for project-affected people.
- 2. Establish dedicated financing mechanisms for corrective actions or remedial measures in response to environmental and social harm generated by projects.** MDBs should develop a stronger framework for corrective or remedial actions to address harms associated with noncompliance of social and environmental safeguards. This framework should include a redress fund through which funds can be set aside at the outset of an investment to enable the provision of financial remedy if harm materializes. This is achieved by embedding the funds for remedy (or a mechanism for accessing funds for remedy) in the investment agreement. This critical factor addresses one of the root causes of the systemic failure to provide remedy when MDBs investments lead to harm. These instruments avoid situations in which borrowers escape financial responsibility for remediation through dissolution or bankruptcy, or as a result of the MDB exiting the relationship. In the case of the IFC accountability review, the review team recommended a scheme where the client must agree, as a condition of IFC/MIGA support, to provide contingent funding to address environmental and social harm. This contingent funding should be included in the legally binding investment contracts and commit clients to use the remedy funds in the event that harms occur due to clients' failure to meet the Performance Standards. The joint submission on the external review of IFC/MIGA prepared by several civil society organizations "[Realizing the Right to an Effective Remedy within the IFC/MIGA Accountability Framework](#)" elaborates on some mechanisms for corrective or remedial measures that the MDBs could consider to enable access to remedy by persons whose human rights are adversely impacted in relation to their investments.<sup>168</sup>
- 3. Develop a disclosure and transparency policy for financial intermediaries (FIs).** From the way FIs operate, it seems that transparency is not an inherent process. However, these projects exemplify why it is time for operations via financial intermediaries to be more transparent. For example, FIs should be required to disclose all the information of the highest risk subprojects, including names, sector, and location of clients/projects on their own website and on the MDB website. Furthermore, they should include information related to environmental and social safeguards for those projects with the highest risk. Additionally, they should be required to make public the FI's involvement in the highest-risk subprojects at project sites among affected communities, including information on their grievance mechanism and clarifying that the FI client is a client of the MDB. Information disclosure and transparency should be an integral part of ESMS.
- 4. Require clients to analyze contextual risks on all Category A (high impact) projects and projects requiring resettlement, biodiversity offsets, and FPIC.** Projects which cannot guarantee that social conditions in the area will be respected should not be pursued. That is, projects should be cancelled or modified as required when conditions that will exacerbate existing conflicts in any given area are detected. This applies more so in regions where relationships have been historically complex. Therefore, it is recommended to require the client to perform contextual risk assessments that include risks of reprisals and impact on human rights. These assessments can provide the IFC and the IDB Invest with more information on pre-existing

<sup>168</sup> In annex, page 10, four funding options to support remedies when harm occurs are presented: 1) Common Performance Funds; 2) Project-Specific Escrow Funds; 3) Environmental and Social Performance Insurance and 4) Environmental and Social Performance Bonds.

situations, especially in indigenous and post-conflict territories, and allow them to carry out an assessment of the contribution of said project to development and thus better consider its financing. The importance of contextual and historical risks should be considered by MDBs in order not to finance projects that have previously caused negative impacts on human rights and the environment.

**5. Require clients to have community or third-party monitoring for all Category A projects and projects that require resettlement, biodiversity offsets, and FPIC.** This can promote long-term and sustainable project benefits, and to strengthen environmental and social governance at the project level. This approach implies that the costs associated with citizen participation and monitoring should be part of the project financing structure. This will allow the use of participatory methods that involve affected populations in addressing environmental and social impacts and risks from project design, where third-party monitoring serves to complement project supervision.

**6. Improve supervision of the implementation of the PS and strengthen support for clients who have low capacity to implement the PS.** The MDBs must incorporate structural changes in their processes that strengthen support to clients and their supervision processes. There is proof that if standards are only formally established “on paper”, not much is achieved. As has been demonstrated in the cases analyzed, non-compliance with PS is generally due to gaps in weak environmental and social due diligence processes, lack of capacity of clients to effectively implement the PS, and lack of proper monitoring and supervision of clients by MDBs.

**7. Design a comprehensive Exit Plan to obligate a Responsible Exit of the Projects.** It is necessary to implement a procedure with minimum requirements that obligate a comprehensive exit plan when the Bank decides to stop financing a project that has a grievance in a grievance mechanism. This exit plan must mitigate current and future impacts and risks, which must include, at least, a plan to return acquired lands to communities, a project closure plan and recovery of the initial state, as well as, a plan to repair the harm caused.

**8. Revise and update the IFC Performance Standards (PS).** The PS are out of date: they fail to respond to current challenges in climate change mitigation and adaptation, gender, the use of security forces, contextual risk analysis,

people with disabilities, stakeholder engagement, and Indigenous Peoples. Models for more current policies exist: for example, the EIB's [climate bank roadmap](#), the IDB's gender policy, and the World Bank's [ESS 10 \(and guidance note\)](#) on stakeholder engagement. Almost 8 years have passed since their approval, and it is time for all the lessons learned from these years of application to be incorporated into the IFC and IDB Invest Sustainability Policies. A major gap that should be addressed is the incorporation of a PS on stakeholder engagement and access to information, specifying minimum requirements for the client. Performance Standards are criteria against which the performance of MDBs is judged, if they are outdated and ambiguous, they lose the “teeth” that make them effective to assess compliance with MDBs' commitments.

#### >Grievance Mechanisms

- 1. Provide the necessary means and resources to carry out additional technical studies to effectively document the grievances of communities.** The mechanisms should take into account the difficulties communities face in carrying out technical studies. Such studies can, in many cases, complement the compliance investigation process and improve the attention to grievances from project affected communities.
- 2. Continue working to reduce barriers with project affected communities.** The mechanisms should not only go further into the territory to become widely known, but also be aware that their reports and investigations should be understood by the affected communities, and that their formats are not friendly enough for communities to understand what is established in reports and how a given report will benefit them through the recommendations it offers.
- 3. Present the final results of investigations to the communities in their territories in order to discuss the results with the groups of requesters.** Ways of monitoring reports could perhaps even be considered with communities to support the work of the mechanisms in the territory.

#### >Client Companies

- 1. Recognize that complying with social and environmental safeguards is not a net cost or an obstacle and a procedure to be fulfilled as quickly as possible, but rather a process to promote the effectiveness and reduce the risk of the**

**project.** If a project is designed from the outset with good faith consultations in tandem with the affected communities who are included in subsequent processes for identifying risks, impacts, and monitoring processes of the environmental and social management plan, the project has a greater chance of being successful.<sup>169</sup> Nor should the guiding principles of companies and human rights be seen as simple administrative processes, but as tools that can effectively guarantee a participatory, manipulation-free, meaningful, and inclusive consultation processes. Compliance with social and environmental safeguards will lead the company to strengthen its social and environmental governance, which will open new avenues for investments with positive social and environmental impact for affected communities and groups.

**3. Review the current ways of approving environmental impact studies and the requirements for granting use of public domain assets in order to comply with MDBs' safeguards.** This includes:

- Implement a process of free, prior, and informed consultation by the MENR and the MEM to obtain consent for the projects and therefore, grant or decline the corresponding administrative decisions.
- Include the social dimension in environmental impact studies.
- Improve the technical quality of environmental impact studies.
- EIAs should be tools for strategic decision making, not a list of requirements.

>**Government of Guatemala**

- 1. Enact public policies for the people instead of acting as the mechanism of social and environmental responsibility of private companies.** A first step towards a more inclusive, joint construction of public policies that maximize the benefits in the project areas should be to apply alternative models that seek to provide sustainable solutions to development problems such as education, access to energy, food sovereignty, and others. This should be conceived by the communities themselves, and for the communities.
- 2. Design an energy policy built by and for indigenous and mestizo peoples, which prioritizes the needs of the population, and not one imposed by private interests.** In addition, the necessary Strategic Environmental and Social Assessments and impact assessment on human rights should be developed in order to limit and mitigate the possible impacts of the energy policy.

<sup>169</sup> See [Gender, environment and social safeguards are good for bottom line, IDB studies show](#) (July 10, 2020).

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