

# Input for the thematic studies of the Expert Mechanism on the Right to Development:

## The Duty to Cooperate and Non-State Actors

Submitted on December 31<sup>st</sup>, 2021 by:

Legal Clinic of Torcuato Di Tella University School of Law <https://www.utdt.edu/>  
Bank Information Center (BIC) <https://bankinformationcenter.org/>

### Table of Contents

<b>1. Introduction .....</b>	<b>2</b>
<b>2. The right to development and the duty to cooperate .....</b>	<b>2</b>
<b>3. Case Studies .....</b>	<b>4</b>
<b>A. Cases.....</b>	<b>4</b>
Projects "Generadora San Mateo" and "Generadora San Andrés" (MICI-CII-GU-2018-0136).....	4
CIFI-01/ Santa Cruz Hydro .....	4
Real LRIF-01/Coban.....	6
Alto Maipo Hydroelectric Project (MICI-BID-CH-2017-0115).....	7
<b>B. Obstacles and best practices.....</b>	<b>9</b>
Development of specific rights .....	9
Accessibility .....	11
Global/local articulation .....	12
Limitations on the enforceability of recommendations and residual damages.....	13
Independence: at the level of institutional and expert design .....	14
Procedural aspects.....	14
<b>4. Conclusion.....</b>	<b>14</b>

## 1. Introduction

In October 2020, UN Human Rights Council Resolution 45/6<sup>1</sup> requested the Expert Mechanism on the Right to Development to pay particular attention to the international dimension of the right to development and how this aspect would make the practical implementation of this right effective at the international, regional and local levels. In response to this request, the Mechanism is preparing five thematic studies, including a report on the duty to cooperate and non-state actors.<sup>2</sup> The input to the report on the duty to cooperate, to which the Legal Clinic of the Torcuato Di Tella University and the Bank Information Center (BIC) will contribute<sup>3</sup>, is to clarify the current framework of the duty to cooperate within the meaning of Art. 13 of the draft convention on the right to development for non-State actors and Intergovernmental Organizations in particular<sup>4</sup>.

The objective of this report is to provide information on the operationalization of the duty to cooperate in the context of the right to development from both theoretical and practical aspects. The approach will combine the analysis of the scope of the legal framework and the effectiveness of the non-judicial accountability mechanisms of the Multilateral Development Banks, with the study of real case studies representative of the conflicts that arise in the application of the right to development in Latin America. The cases presented in the report arise from communities and individuals who claim to have been negatively affected by projects financed by the Inter-American Development Bank (the IDB or Bank) and the International Finance Corporation (IFC),<sup>5</sup> who took their claims to non-judicial dispute resolution mechanisms within multilateral organizations.

The report is structured as follows. First, it introduces the theoretical framework on the right to development and its link to the duty to cooperate. Second, it analyzes the actions of the Independent Consultation and Investigation Mechanism (MICI) and the Compliance Advisor Ombudsman (CAO) in cases of human rights violations arising from hydroelectric projects. In total, the report will draw conclusions from four cases processed before the accountability mechanisms of hydroelectric projects installed in Guatemala (3) and Chile (1), allowing for the identification of obstacles and good practices regarding the development of specific rights, accessibility, global/local articulation, enforceability of recommendations and residual damages, independence, and procedural aspects.

## 2. The right to development and the duty to cooperate

The right to development can be defined from the 1986 Declaration on the Right to Development as the right of every human being to participate in, contribute to and benefit from economic, social, cultural and political development.<sup>6</sup> The evolution of this right within the human rights framework is an opportunity to develop an approach that pays attention to structures, processes and outcomes; recognizes the rights of individuals and collectives, including future generations; and places equity, equality and justice as primary determinants of development; and simultaneously promotes the full realization of fundamental freedoms. Although debates on the right to development have been framed within the paradigm of the North-South divide, globalization and the global economic crisis have made it clear that the right to development is relevant to all countries, regardless of their level of development. Indeed, in countries where the human rights record has been generally positive, growing inequalities and social precariousness have jeopardized the realization of the right to development.<sup>7</sup>

The right to development started from an effort to link human rights and development.<sup>8</sup> During the 1970s, a trend emerged in international human rights law discourse advocating a "structural approach" to human rights that accounts for the structural causes in which human rights violations emerge.<sup>9</sup> Mohammed Bedjaoui, former president of the International Court of Justice, went so far as to argue that the right to development is "the precondition of freedom, progress, justice and creativity" and "the alpha and the omega of human rights, the first and the last human right, the beginning and the end, the means and the goal of human rights".<sup>10</sup>

The normative framework of the right to development in international human rights law is still in the process of consolidation. The 1986 Declaration on the Right to Development is relevant in that it affirmed the intentions of much of the international community to recognize the right to development as a human

right. However, at the time of approving a first development document, the United States voted for the negative and eight other developed Western countries abstained.<sup>11</sup> This put a brake on the international community's efforts to transform this declaration into a binding document. Consensus was finally reached at the Second United Nations Conference on Human Rights in 1993. There, a declaration was adopted, supported by the United States, reaffirming the nature of the right to development as a human right that is part of economic, social and cultural rights and establishing the obligation of the international community to cooperate in the realization of these rights.<sup>12</sup>

In 2015, a series of consensual international commitments reaffirmed the right to development, such as the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Sendai Framework for Disaster Risk Reduction 2015-2030 and the Paris Agreement on climate change. These new commitments have generated momentum for the protection, promotion and fulfillment of the right to development at the national and international levels.<sup>13</sup> On the 30th anniversary of the adoption of the Declaration on the Right to Development, the Human Rights Council established the position of Special Rapporteur on the right to development through Resolution 33/14.<sup>14</sup> The current situation of the right to development has also been of concern to the United Nations High Commissioner for Human Rights (OHCHR) due to the levels of extreme poverty, vulnerable labor conditions and precarious housing conditions.<sup>15</sup> In September 2019, the Human Rights Council adopted Resolution 42/23, which established the mandate of the Expert Mechanism on the Right to Development.<sup>16</sup>

Along with advances in state obligations regarding the right to development<sup>17</sup>, there is a need to recognize the obligations and guarantees with respect to human rights and the duty to cooperate in particular that fall on non-state actors. The importance of their actions also being subject to the future normative framework generated by the convention lies in the great influence that certain non-state actors have on the development of communities, transcending, in many cases, state sovereignty. Intergovernmental development banks and their non-judicial accountability mechanisms are a clear example of this, and have been covered by Principle 31, "Effectiveness Criteria for Non-judicial Grievance Mechanisms" of the UN Guiding Principles on Business and Human Rights. This principle details key criteria that should be taken into account for the design and implementation of non-judicial accountability mechanisms. It states that they should be legitimate, accessible, culturally appropriate, predictable, equitable, transparent, rights-compatible, prevent, report and respond to retaliation, and be a source of continuous learning based on engagement and dialogue. Adherence to these principles is essential to create an effective grievance mechanism. In this framework, and called by the issue of contributing to the scope of the duty to cooperate of non-state actors, we consider it vital to deepen the knowledge on how these mechanisms contribute to the duty to cooperate, which is included in the draft convention on the right to development, currently set out in article 13.3.<sup>18</sup>

Multilateral Development Banks have peculiarities in terms of governance. These institutions are formally accountable only to the governments of their member countries, which are represented on their executive boards; they are governed in their operations primarily by their own policies, not by international law; they provide financing to governments that are accountable to their citizens for the activities supported by the MDBs; they also finance private sector projects; they have large-scale, high-visibility operations; and they are called upon to set strict parameters for environmental management and social responsibility. These unique characteristics have led most multilateral development banks to establish special bodies known as independent accountability mechanisms (IAMs).<sup>19</sup>

Prior to the 1990s, multilateral development banks left it to borrowing governments to respond to the concerns and complaints of communities in project areas. In the wake of the 1992 Rio Summit and critical assessments of the World Bank's adherence to its safeguard policies, environmental and other NGOs began to demand greater transparency and direct accountability from the multilateral development banks for their actions, especially those with the potential to harm the environment or affect defenseless or marginalized communities.<sup>20</sup> This new push for external accountability led to the establishment of a "legally relevant" relationship between an international organization and individuals in a non-contractual relationship with it. By establishing its Inspection Panel in 1993, the World Bank was the first multilateral development bank to formally recognize this "legally relevant" relationship between the World Bank and affected persons. It was followed shortly thereafter by the IDB, with the creation in 1994 of the

Independent Investigation Mechanism (IIM) as a precursor to the MICI.<sup>21</sup> The CAO was created in 1999 to address complaints related to IFC and Multilateral Investment Guarantee Agency (MIGA) projects and to improve the environmental and social outcomes of these projects.<sup>22</sup>

In the following section we will present information on the barriers to the operationalization of the duty to cooperate in the framework of the right to development, contrasting the research carried out by non-judicial accountability mechanisms and their recommendations, with the experiences of communities in the territories when presenting claims before these mechanisms.

### 3. Case Studies

#### A. Cases

##### **Projects "Generadora San Mateo" and "Generadora San Andrés" (MICI-CII-GU-2018-0136)**

Generadora San Andres S.A. ("GSA") and Generadora San Mateo S.A. ("GSM") were created in 2012 for the development, construction and operation of two run-of-river hydroelectric projects, with very high capacities for the production of electricity. The generators are located in the municipality of Ixquisis, department of Huehuetenango, Guatemala. In 2018, the Maya-Chuj, Maya-Q'anjob'al and mestizo communities located in the micro-region of Ixquisis filed a complaint before the MICI<sup>23</sup> concerned about the situation faced by residents of the communities of northern Guatemala, areas where these hydroelectric projects are located. The communities based their complaint on the fact that IDB Invest neither carried out a complete and adequate evaluation of the environmental and social impacts on the population in the project areas; nor carried out adequate procedures for prior consultation and access to information. As a consequence of these actions and omissions, the Requesters allege environmental impacts, especially the contamination of water sources, an essential resource for the inhabitants of the region, which affects sustainability and biodiversity. In addition, they allege aggressions to the safety and integrity of the inhabitants, registering an increase in the levels of insecurity, in the rupture of family and community fabrics, and in the general disruption of public order. Finally, the claimants allege impacts on the culture and traditional life of indigenous peoples and damage to sacred and archaeological sites located near the projects<sup>24</sup>.

On September 21, 2021, the Board of Directors of IDB Invest endorsed the findings contained in the Compliance Verification Report, a report intended to establish whether any action or omission by IDB Invest with respect to the operation financed by it has resulted in non-compliance with its relevant operational policies and has contributed or could contribute to the generation of a substantial and direct harm to the Requesters. The Board of Directors accepted the 29 recommendations made by the MICI and has instructed Management to prepare an Action Plan for their implementation<sup>25</sup>. In addition, given that the MICI will be responsible for its follow-up, once the Action Plan is approved, the Mechanism will prepare a Follow-up Plan in consultation with the parties.<sup>26</sup>

##### **CIFI-01/ Santa Cruz Hydro**

The CIFI-01/Hidro Santa Cruz case arose from a complaint filed in 2015 by residents of the Department of Huehuetenango on behalf of themselves and other community members before the CAO,<sup>27</sup> arguing that the project had never been adequately consulted with the communities and that opposition to the project had led to violence and repression by the company and the government.<sup>28</sup> The hydroelectric project had been supported by the IFC-backed Inter-American Infrastructure Finance Corporation (ICIF or "the fund"), which invested in Hidro Santa Cruz (HSC) for the construction of the Canbalam hydroelectric plant in Santa Cruz Barillas, Huehuetenango, Guatemala in 2011. Construction of the project began in 2012.<sup>29</sup>

The affected communities belong to Mayan communities located around the Cambalam River.<sup>30</sup> A central aspect in the rejection of the project lies in the meaning that the local population attributes to the

Canbalam River and its close interdependence with the right to land. Water and territory operate as associated rights, whose enjoyment depends on physical access to the riverbed. In fact, the river has an articulating meaning for the territory in the local cosmovision. It ancestrally receives the name Q'an Balam, which means Yellow Tiger, as a symbol of divinity and respect for Mother Earth.<sup>31</sup>

As in the case of the San Mateo and San Andres Generators, the installation of the project generated violence against community members. On May 1, 2012, a community member was shot and killed and two other people were injured. The complainants claimed that one of the perpetrators was a security guard hired by the project. Hidro Santa Cruz acknowledged that one of the two people charged in connection with the shooting had worked for the project's security contractor, but denied any involvement in the incident. The event sparked a violent protest involving hundreds of local residents, following which the Guatemalan government declared a state of siege in Santa Cruz Barillas and mobilized the police and army to the area for nearly three weeks.<sup>32</sup>

The communities' opposition to the project generated growing support from social organizations that led to an attempt to file a complaint with the CAO. In 2014 the Guatemalan organization, Asamblea Departamental de Huehuetenango (ADH) publicly denounced the company, claiming that its actions had "resulted in the persecution, intimidation and co-optation of community leaders" and accusing the Bank of being complicit in human rights violations. In 2015, the international organization Oxfam supported local communities in Guatemala to make the presentation to the CAO, after making the case visible through its publication *The Suffering of Others*, of the same year.<sup>33</sup> Alianza por la Solidaridad, Amigos de la Tierra and the Guatemalan Women's Association and the international organizations Re-Course and NISGUA and, at a national level the organization Ceiba also intervened in the case.<sup>34</sup>

The installation of the project adversely impacted the communities. The escalation of violence against those opposing the project resulted in the death of one community member, left two community members seriously injured, and led to the arrest of 17 other community members. Episodes of violence and abuse against women in the communities were also reported, as well as health and safety issues for the entire population. In addition to the violence against the communities, traditional access to land and natural resources has been limited due to the construction of a perimeter fence around the project site.<sup>35</sup> This was done without respecting the communities' right to free, prior and informed consent, especially considering that a waterfall impacted by the project is considered sacred by the local Maya-Q'anjob'al community.<sup>36</sup>

CAO determined that the complaint was eligible for assessment in August 2015 and an assessment visit was conducted in October 2015.<sup>37</sup> The violence and harm suffered by the communities made it not possible to initiate a dialogue process with the project operator and was referred to CAO's compliance function. The compliance appraisal report was issued in August 2016 and concluded that an investigation was due in response to this complaint. This investigation was completed in December 2018 and in June 2020, the President of the World Bank Group authorized the release of CAO's compliance investigation report and IFC's response.

In its report, CAO made several findings of noncompliance in relation to IFC's review and supervision of its investment, including its response to the subproject incident. CAO found that IFC's pre-investment environmental and social review (E&S) of the company's environmental and social management system (ESMS) was not commensurate with the risk. CAO identified deficiencies in IFC's appraisal of: (a) the client's track record in implementing ESMS; and (b) the client's ability to implement its ESMS to IFC's standards. On the other hand, IFC's responsiveness and support to the client in relation to the subproject was found to be insufficient. IFC's lack of oversight to ensure that the client was implementing an adequate ESMS, one that was sufficient to assess and monitor the risks and impacts arising from investments in projects such as Canbalam I, contributed to a situation where project activities were allowed to commence prior to adequate risk assessment and implementation of the mitigation measures envisaged by the Performance Standards. Following the violent incidents in May 2012, the client suspended disbursements to the project and notified IFC. When IFC is notified of a serious incident at the project level, IFC has a duty to respond in accordance with its own environmental and social procedures. This includes requirements to ensure that the root cause of the incident is assessed and measures are

implemented to prevent recurrence. However, IFC did not engage with the client in relation to the project or the violent incident as required by its environmental and social procedures.<sup>38</sup>

CAO found that IFC did not comply with its major incident response procedures, nor did it take the necessary steps to ensure that the client's response reflected the requirements of the Performance Standards to address project impacts throughout the project cycle, including project closure. Finally, in November 2015, CIFI cancelled its loan to the project developer and the project Hidro Santa Cruz was abandoned in December 2016.<sup>39</sup>

While the project was abandoned in December 2016, the available evidence supports the complainants' assertion that residual impacts persist. Although aware of these impacts during the financing period, IFC did not engage with its client to ensure that the residual impacts of the project were assessed, reduced, mitigated, or compensated, as appropriate, including at project closure, as required by IFC's Performance.<sup>40</sup> As of June 10, 2020, CAO released its compliance investigation report. CAO is monitoring IFC's response to the findings of noncompliance made in this investigation, because the IFC response denied many of CAO's findings and, therefore, there is no exit plan.<sup>41</sup>

### **Real LRIF-01/Coban**

The Santa Rita project proposed the development of a hydroelectric plant on the Icbolay River in Alta Verapaz, Guatemala by a local company, Hidroeléctrica Santa Rita (HSR), which is partially owned by the Latin Renewable Infrastructure Fund (LRIF or "the Fund"). The Fund operates as the financial intermediary and holding company for Hidroeléctrica. LRIF is the direct recipient of IFC financing.<sup>42</sup> Like Hidroeléctrica Santa Rita, it has links with prominent players in Guatemala and the region, as well as international investors and funds. It is a prominent player in Guatemalan and Central American hydroelectric development, with other developments and projects under its responsibility.<sup>43</sup> The IFC granted US \$15,000,000 to the Fund to finance the project.<sup>44</sup> When development of the project began in 2013, and upon seeing the preliminary impact on the water and sediment bed and flow of the Icbolay River, the community took action to stop the project.<sup>45</sup> The communities affected by the Santa Rita hydroelectric project are the indigenous peoples Maya-Q'eqchi' and Poqomchi' of Alta Verapaz, especially those of the Dolores River region centered in the community of Monte Olivo. They have a subsistence economy based on the Icbolay River, so the project itself is a threat to development in their communities and ecosystems.<sup>46</sup>

The complaint against the Real LRIF-01/Coban project came to the CAO through a complaint filed by a group of civil society organizations, including Colectivo Madre Selva and Consejo de Pueblos de Tezulutlán, representing local and autonomous communities. The affected communities raised concerns about the design and impact on subsistence water resources generated by the hydroelectric plant and the violence, repression and criminalization suffered by those opposed to the project.<sup>47</sup> In this context, and as a result of the link between the developer and influential people in the region such as farmers, mayors, and the police, the military, intense violence was generated against the Monte Olivo community.<sup>48</sup> Specifically, there were attacks by thugs with machetes and fire arms, there was an attempt to install a military camp, and an eviction of the Monte Olivo and Nueve de Febrero communities. A state of siege was declared against the community and a virtual siege of the community, which maintained its resistance to the developer and the political establishment through food self-sufficiency and semi-autonomous territorial organization.<sup>49</sup> These tools, and their preservation, were part of the motivation for resistance against the project, along with protest marches from Alta Verapaz to the capital of Guatemala.<sup>50</sup> The river and the territory have been pillars for the community and others for hundreds of years.<sup>51</sup> The conflict resulted in the total blockade of the area by 2014 and the murder of community members<sup>52</sup>, including children living in the area.<sup>53</sup>

The impact on the communities is related to the preservation of the environment, the economy and the lifestyle of the local communities. The hydroelectric project would mean damage to the usefulness of the water resource on which the locals depend for their economic productivity. Likewise, the preservation of the river and its water, in addition to the ecosystem, has an intrinsic value based on the cultural, ethnic

and religious history of the native peoples, who determine various rites and traditions based on the care of the resources and the spirit they find in them.<sup>54</sup> This impact would occur due to the impact of the dam on possible flooding of the region, on the flow of water and sediments.<sup>55</sup> Added to this are the great asymmetries of the native communities in the legal, political, and especially police arena that the claim has exposed. The communities have been victims of persecution, and those politically imprisoned have reportedly been victims of various abuses.<sup>56</sup> Light has also been shed on the economic inequalities of these communities, which have faced a great challenge as they have been offered various rewards in exchange for their support for the project. The very social fabric of these communities has suffered enormously from the damage that the crisis and the siege have generated.<sup>57</sup>

The case was handled by the CAO's compliance function rather than under an arbitration process at the request of the residents of Monte Olivo and surrounding areas. In 2015, after an appraisal of IFC's performance, CAO Compliance decided to initiate investigations and reviewed IFC's pre-investment analysis process. It was concluded that the investment was correctly categorized as high socio-environmental risk, but that the pre-investment screening was not commensurate with the risk, and that the Fund lacked experience in Socio-Environmental Risk management.<sup>58</sup> IFC did not have an adequate understanding of contextual risk, nor did it consider the challenges in implementing updated standards pertaining to indigenous peoples. The Fund's due diligence analysis was insufficient, with gaps in analyzing risks and impacts and recommended impact mitigation measures.<sup>59</sup> The CAO was of the opinion that IFC did not consider that the previous study was related to a smaller scale version of the project, a social impact study had not been conducted, and the ecological, economic and socio-environmental impact analysis was not complete; nor was it known whether the dam met World Bank design and safety standards, nor was the requirement for free prior informed consent satisfied.<sup>60</sup> According to the CAO, IFC's efforts to reduce tensions did not go far enough, as it left the violence and high socio-environmental impacts unresolved. Currently, the CAO is constantly monitoring with compliance reports. In the wake of this case, IFC improved its processes for screening, project selection and supervision, legal requirements for noncompliance, and contextual risk analysis. The CAO has noted that the complainants claim that there are residual impacts and that the fund continues to own and control the project. The case remains open to this day.<sup>61</sup>

### **Alto Maipo Hydroelectric Project (MICI-BID-CH-2017-0115)**

The Chilean context in which the Alto Maipo project is framed is characterized by the fact that it was born within the new Chilean free market economic policy, which in the energy sector was manifested with the enactment of the General Electric Services Law that initiated the privatization process of state-owned electric companies.<sup>62</sup> The Alto Maipo Hydroelectric Project (PHAM) consists of the construction, operation and maintenance of two hydroelectric plants, Central Alfalfal II and Central Las Lajas, located southeast of the city of Santiago, in the district of San José de Maipo, in the upper basin of the Maipo River.<sup>63</sup> In the Cajón del Maipo area, where the PHAM is located, the main economic activities are tourism (trekking, rafting, horseback riding, fishing, and kayaking), mining, hydroelectric power, agriculture, and livestock. In fact, the area was declared a Zone of National Tourist Interest by the National Tourism Service in 2001.<sup>64</sup>

On October 16, 2013, the IDB Board of Executive Directors approved a US\$200 million non-sovereign guaranteed loan<sup>65</sup> to the PHAM (CH-L1067) to Alto Maipo SpA. Other international financial institutions, such as the IFC and the U.S. Overseas Private Investment Cooperation (OPIC), and multilateral and commercial banks, participated or are participating in the financing to the PHAM.<sup>66</sup>

The request before the MICI was filed by 23 people who live and work mainly in the commune of San José del Maipo. They were represented by the Coordinadora Ciudadana de No Alto Maipo, the organization Ecosistemas and other NGOs that supported the cause (Fundación Terram, Glaciares Chilenos, Defensoría Ambiental, among others).<sup>67</sup> The request alleges a series of environmental and social damages derived from the Project that would be affecting the quality of life of the claimants. Among these alleged damages are the shortage of drinking and irrigation water with direct effects on the inhabitants of the city of Santiago and the surrounding Metropolitan Region; the acceleration of the

desertification process in the area that would affect biodiversity and natural resources, putting at risk the environmental services offered by the Cajón del Maipo, the protected areas of cultural interest for their archaeological and paleontological contribution; and the economic, agricultural and tourism activities that mainly support the region; and health impacts due to air and water pollution in the watershed. On the other hand, it states that the resettlement of families near the project area took place and that this process was not carried out according to the parameters established by the Bank. Finally, it also complains about the lack of clear information on the impacts of the project and the lack of citizen inclusion.<sup>68</sup>

The application was timely filed on January 23, 2013 and was found to be eligible. The Compliance Review process then began, and the investigation found that the Bank had failed to comply with several requirements of its operational policies. The Board of Executive Directors endorsed the findings of the Compliance Review report and accepted the recommendations made by the MICI. For implementation, the Board of Executive Directors instructed management to develop an action plan in consultation with the MICI. The MICI then issued the compliance review report and the final decision of the Executive Board. In the latter, the Executive Board approved management's action plan to address the MICI's recommendations.<sup>69</sup>

The MICI investigation concluded in its findings that the bank carried out an Environmental and Social Due Diligence process, in which it identified different breaches to the Operational Policies and required concrete actions from the client in order to comply with them. It also monitored the environmental and social requirements included in the loan agreement. However, despite identifying certain non-compliances and requiring additional studies, the Bank approved the Project without having some of these studies, some of which are still pending.

The research focused on five specific issues: 1) The alteration of river flows, particularly with respect to recreational and economic activities in the area (kayaking and rafting); 2) The deterioration of economic activities in the area, particularly tourism and recreation; 3) The high migration of workers, with emphasis on gender-differentiated impacts; 4) The impact on the inhabitants of the El Alfalfal community; and 5) The absence of adequate consultation processes, as well as information disclosure regarding the impacts and their management.

The MICI found<sup>70</sup> that despite having identified during the due diligence that the Alto Maipo project could generate impacts to tourism and recreational uses of the rivers due to altered flows, and that it was necessary to conduct an assessment of these impacts in consultation with the affected population, as of the date of issuance of this Compliance Verification report,<sup>71</sup> there is no such assessment and those potentially affected have not been adequately consulted. The project was approved stating that, as soon as possible, and well ahead of the operation stage, a study of the impacts on recreational uses of the rivers involved would be carried out. However, despite the supervision of this requirement, in the six years since the project was approved, the bank has not been able to get the client, who was informed of the urgency and need for such an assessment, to complete the study.

Although during the environmental and social assessment the bank considered that the Alto Maipo project would require a maximum of 2,500 workers during construction and confirmed some mitigation measures for the impacts that migration would likely generate, the MICI concluded that these were not met during project execution and a large number of workers are housed in lodges within the communities. Moreover, the actual number of workers exceeded 5,000, without the bank assessing whether such substantive change would generate additional or different impacts than those initially foreseen. In this regard, the MICI concluded that the Bank failed to comply with directives B.5 and B.7 of OP-703 regarding the management of worker migration.<sup>72</sup>

Regarding the lack of analysis of the impact of the Alto Maipo project from a gender perspective, the MICI concluded that the social impact assessments did not adequately consider the differentiated risks and impacts that the migration of workers could generate on women and girls in the commune. With respect to the measures that were taken, such as induced migration, community relations, and zero tolerance for sexual harassment in the workplace, it was noted that these are tools that do not constitute specific impact assessments or management measures with a gender perspective.<sup>73</sup>



MICI also identified shortcomings in the management of the impact of noise generation and mitigation measures, since they were limited to reactive actions once noise excesses occurred; regarding the impact of dust, the bank failed to comply by not requiring a specific assessment, unlike air quality, which is being properly monitored. Regarding complaints about the social division generated by the project, the MICI found an absence of assessment. Community consultation and participation processes were organized with only one community group and no efforts were made to inform and establish dialogue with the Neighborhood Council (Junta de Vecinos).<sup>74</sup>

In light of the findings mentioned in the Compliance Review Report, the MICI included a series of project-specific recommendations, general recommendations for the IDB group, and recommendations for an action plan for consideration by the Board of Executive Directors.<sup>75</sup> In general terms, these recommendations establish study plans to evaluate the impact of the measures, their dissemination, mitigation measures, action execution schedules, measures within the IDB itself regarding gender violence and the inclusion of vulnerable groups for participation, as well as the development of an action plan for the implementation of the recommendations, among others. Beyond the recommendations, compliance with them has been almost nil.<sup>76</sup> On June 12, 2020, the Board of Executive Directors accepted the recommendations and endorsed the findings of the Compliance Review report. For implementation, the Board instructed Management to prepare an Action Plan in consultation with the MICI.<sup>77</sup> Currently, the Board of Executive Directors approved Management's Action Plan to address the MICI recommendations.

## B. Obstacles and best practices

### **Development of specific rights**

Non-judicial accountability mechanisms have, in some cases, allowed for substantial progress in the development of human rights, such as the recognition of the right to free, prior and informed consultation and consent and a gender approach. While the case studies note that the right to water, another right that is evolving within the human rights framework, does not have the same degree of progress in the area of non-judicial accountability mechanisms.

#### a. Free, prior and informed consent

The communities frequently identify that the main source of the problems generated by the projects begins with the approval of the Environmental Impact Assessments (EIA), the granting of the environmental license and the authorization for the use of state assets (water) without consulting the communities to obtain the FPIC and without ensuring access to information on the environmental and social impacts and risks that these projects represent.<sup>78</sup> Within the communities affected by the hydroelectric projects, a constant feature is the lack of information regarding how they will be implemented and what specific benefits they will bring to the communities.<sup>79</sup>

This aspect was addressed by the MICI, which has detected that the Generadoras San Mateo and San Andrés projects conducted local perception surveys, as well as community assemblies or informative meetings, reflected in minutes and letters of endorsement, and IDB Invest validated these processes, conducted between 2008 and 2014, as consultation processes adjusted to the Relevant Operational Policies (POP). However, these meetings do not reflect community consultation and engagement processes designed on the basis of a comprehensive and systematic identification of all stakeholders. Nor do they reflect two-way discussions in which communities were informed of either the adverse impacts or benefits of the Projects. It was not found that the minimum required information had been disseminated or disclosed to the communities or that there had been feedback and consideration of opinions and comments from the affected communities, as required by the POPs.<sup>80</sup>

What the meetings validated by IDB Invest as consultation processes show are informative sessions that were mainly about the construction process and the benefits of the projects. Although IDB Invest formally required the design and implementation of consultation processes, community participation mechanisms and the availability of a grievance mechanism at the project level, IDB Invest failed to ensure that the

consultations carried out in practice were meaningful and that the community participation processes and grievance mechanism would comply with the requirements of the POPs (regarding the relationship with the population opposed to the projects, the availability and dissemination of information and the adaptation to the specific circumstances and context of the area).<sup>81</sup> Neither the construction companies nor IDB Invest have respected, complied with or enforced the right to information or consultation and free, prior and informed consent of the indigenous peoples provided for in the POPs<sup>82</sup>. The role of the MICI, in this sense, operated as a receptive instance for the recognition of non-compliance with the duty of consultation and free, prior and informed consent in an international forum, in a context where the state did not guarantee that the company complied with it, nor did it give rise to the claims filed by the communities before the institutional channels at the national level.

#### b. Gender approach and intersectionality

The magnitude of the impact of development projects on women's lives is immeasurable. Women cannot move alone in territories that belong to them, but must do so in groups to fetch water or food, or when they want to go for a walk or attend school for their educational development.<sup>83</sup> The general social, political and legal context, and discrimination against indigenous women in particular, is exacerbated by externally imposed development models that do not have the support or participation of the communities. An example of this worsening of discriminatory conditions occurred when a policeman raped a 14-year-old girl from one of the communities affected by a hydroelectric project, who became pregnant. As a form of compensation, it was informally agreed to pay 3,000 USD for the child's maintenance. This situation generated unrest due to the girl's family attitude of accepting the payment from the men of the community because the family did not report the situation and the girl's father left the passive resistance,<sup>84</sup> which shows the complexity of the way in which gender relations are intertwined at the structural and community level.

In the case of the San Mateo and San Andres Generators, for example, IDB Invest requested that women's equal participation in consultations and benefits be guaranteed and that there be a gender equity policy in the hiring of labor. However, their oversight of these requirements was limited to the issue of gender equity at the labor level. In this regard, the Compliance Review Report has identified different aspects whereby IDB Invest's gender equity policy has been insufficient. While IDB Invest has validated the consultation processes, there is no evidence that efforts have been made to consult or ensure the equitable participation of women through gender-sensitive processes<sup>85</sup>. These processes should take into account the formats and the time and space requirements more appropriate to the socio-cultural characteristics of the women who are part of the communities in the area, especially indigenous communities. Nor is there any record of any particular measures having been required, until 2019, with respect to the risk of gender-based violence, despite the risk posed by the migration of foreign workers and the deployment of security forces in small and remote communities. Therefore, in terms of gender-differentiated impact assessment and management, IDB Invest failed to comply with its policy on women in development. Another relevant issue regarding the lack of a gender approach is that the project did not guarantee women's participation. The bank claimed to have taken this type of consideration into account but, nevertheless, the projects do not include any type of research or consultation taking women into account at the pre- and post-project stages<sup>86</sup>. Finally, there was also no consideration of how the impact on water from hydroelectric projects can affect women's community life. This affectation imposes additional burdens on access to water, cultivation and animal husbandry for food<sup>87</sup>. Cutting off the water or affecting its circulation or potability would imply a whole change of life for the women of the community<sup>88</sup> and this was not considered at any time by the IDB invest. Recourse to the MICI allowed the affected people to have the importance of women's participation in development projects recognized in their substantive and not merely formal aspects.

#### c. Right to water

The Alto Maipo case reflects limitations in the reception and development of the right to water in line with the evolution of this right in the human rights framework by non-judicial accountability mechanisms. The UN Special Rapporteur on the Human Right to Water and Sanitation, Léo Heller, has already stated that the Chilean government has failed to comply with its international human rights obligations if it prioritizes economic development projects over the human rights to water and health.<sup>89</sup> Regarding the Alto Maipo project in particular, the organization Glaciares Chilenos warned that the project will cause the desertification of the area, hastening the melting of glaciers and snow, impacting natural areas and national monuments. They explain that the Maipo River is the main supplier of drinking water in the region, but today this area faces a shortage of water resources. The project has presented irregularities from the beginning and directly violates the security of drinking water reserves.<sup>90</sup> However, the MICI did not elaborate on the impact of the project on water, since the potential impacts on the sedimentological regime of the Maipo River and the potential impacts on the water rights of third parties were not included in the investigation, but only on the recreational aspect of the water resource.

### **Accessibility**

Although formally the accountability mechanism is presented as easily accessible to the communities, i.e. there is no need for legal representatives and/or accompaniment, this is not the case in practice. The case studies show that a very strong articulation with the community and partner organizations was necessary to accompany the process at local, national and international levels and within the framework of a long-term strategy. The accessibility of the mechanisms is limited because they are not adjusted to the reality of the communities.

This was evident in the case studies. In the case of Hidro Santa Cruz it was reflected, for example, in the need to articulate with civil society organizations in order to promote their claims. Even though the communities were very well organized and had developed their own forms of resistance, they required the support of civil society organizations for translations, documentation, writing and archival work.<sup>91</sup>

In the Real LRIF-01/Coban case, the communities also had difficulty accessing the protections granted by the banks and their accountability mechanisms. These difficulties were overcome and they were able to successfully access the mechanism and resist the project, but this is largely due to the degree of self-sufficiency and organization of the Monte Olivo community. This is a region without electricity and weak phone service. The language of the communities is not Spanish and they face systematic legal and political discrimination at the local, regional and national levels, which is a continuation of a past of persecution and genocide during the Guatemalan civil war. On the other hand, they have a high level of community organization. They have a dynamic of community organization that includes a training school of law and self-determination<sup>92</sup> that allowed the community to lead the tools of resistance to the project. In this process, they had the support of civil society organizations Colectivo Madre Selva, Consejo de Pueblos de Tezulutlán, and organizations that are part of the Coalition for Human Rights in Development to bring the process before the CAO.<sup>93</sup> The communities found allied civil society organizations that acted as translators (of the Spanish language and legal jargon), through which they were able to bring the case to the CAO.<sup>94</sup> The international presence, according to the NGOs involved, was an influence in reducing violence to a minimum, mitigating the intensity of the conflict. In addition, the legal process gave the communities an opportunity to learn which actors in the region were in conflict or allied with them.<sup>95</sup> For its part, the CAO appears to have had scarce human resources to send to analyze the dispute and situation in the field, and to overcome the linguistic and cultural distance, compared to MICI's team in the case of Generadoras San Mateo and San Andres, for example.<sup>96</sup>

Accessibility is then limited by the extra burden of producing evidence of their own complaints, that weighs on the affected communities and that they partially resolve by generating alliances with organizations with capacity and expertise in these tasks. However, it is the accountability mechanisms themselves that should guarantee them in order to avoid this process of revictimization. This is directly related to the lack of knowledge about the realities of the communities where the projects in question are installed. It is necessary for the mechanisms to know the territory and understand how the communities live, what they need, and then act on that basis.<sup>97</sup>

## **Global/local articulation**

A positive aspect of non-judicial accountability mechanisms observed in all cases is that it favors a virtuous relationship by bringing actors with international presence into play in contexts of extreme constraints at the local level.

The cases processed before non-judicial accountability mechanisms for complaints about hydroelectric projects in Guatemala share a social, political and legal context that operates by conditioning the affected communities and, simultaneously, enabling specific resistance strategies that emerge in their interaction with the local scale. In 1996 the Peace Accords were signed in Guatemala that put an end to an internal armed conflict that lasted more than 30 years. The content of the agreements represented the most concrete attempt to propose a consensual vision for the country's development. In fact, since the signing of these agreements, the spirit of the Guatemalan population and indigenous peoples has been to transcend confrontation and establish mechanisms that lead to understanding, harmony, happiness, peace and development.<sup>98</sup> In recent years, however, they have promoted state policies strongly aligned to an economic development model oriented to foreign direct investment in extractive sectors, completely opposed to the agreements signed between the government and the guerrilla.<sup>99</sup>

In the current regulatory and political framework, the State has little or no intervention in development plans, which remain mainly in the hands of companies. In turn, the predominant role of companies is exacerbated by institutional weaknesses and corruption in favor of oligarchic groups that influence the executive and the judiciary. Most of the licenses and concessions for the exploitation of natural resources, especially in the case of oil, mining, forestry and hydroelectric exploitation, are based on measures taken in the form of co-optation of the State to favor the privileges and interests of the business sector. After more than 30 years of war and genocide, local communities continue to suffer the basic needs of the populations.<sup>100</sup>

This development model, which fits into what is called "development aggression", strongly affects indigenous and mestizo communities by failing to obtain free, prior and informed consent to carry out "development" projects in their territories.<sup>101</sup> strongly affects indigenous and mestizo communities by failing to comply with the duty to obtain free, prior and informed consent to carry out "development" projects in their territories. Obtaining licenses without complying with environmental and technical standards, through corrupt actions by the Ministries of Environment and Energy and Mines, has exacerbated a conflict of national dimensions between the State and the companies on one side and the indigenous and mestizo peoples and communities on the other, who with their struggle defend their fundamental means of life such as water, land, forests and in general their territories and common natural goods.<sup>102</sup> Extremely serious situations such as assassinations reflect the violence faced by Guatemalan communities that oppose development projects.<sup>103</sup> Likewise, the Guatemalan community, particularly those directly affected by these projects, observe a militarization of the construction zones. This military presence influences the daily lives of most of the inhabitants who allege physical violence, defamation, uncertainty and threats that permeate every moment of the day.<sup>104</sup>

In the case of the San Mateo and San Andrés Generators, resorting to the MICI made it possible for the people directly affected to talk to the researchers and independent experts who went to the field and, therefore, for their claims to transcend borders, in a local context conditioned by obstacles to access to justice by the state; the criminalization of those who oppose the hydroelectric projects and the presence of private security from the companies.<sup>105</sup> This possibility was of vital importance for the community if we take into account that the escalation of criminalization and threats reached a point where people from the communities with health problems or in need of economic sustenance could not leave the communities, because of the arrest warrants against them.<sup>106</sup> Resorting to the mechanisms made it possible to interfere with the excessive imbalance in the responses offered by local authorities to the communities in comparison with the companies. The articulation between the local and the global operated in a similar way in the Hidroeléctrica Santa Rita case in the sense that the political persecution happening at the local level only diminished once the claims were projected to the international level. Similarly, the state apparatus operates in favor of companies and groups belonging to the oligarchy, protected by corruption

and connections to local and national politics.<sup>107</sup> The balance between global/local articulation is, in this sense, extremely positive.

The flip side of virtuousness in the global/local articulation is that appreciating it as a positive aspect, overlooks the fact that the intergovernmental funding organizations themselves are the ones who in principle should be reviewing access to justice in the countries and local regions where they are investing<sup>108</sup>, and not their accountability mechanisms when complaints arrive and, in many cases, it is already too late. This perspective opens up the possibility of thinking of ways to prevent the installation of projects in contexts where the minimum conditions for democratic participation in development projects are not in place, such as public information on projects, consultation and free, prior and informed consent, and environmental impact reports. Even in contexts of recent conflict such as in Ixquis, companies take advantage of these conditions to use militias to protect their interests.<sup>109</sup> Focusing on these conditions would allow redirecting development from below, from the needs of the communities where the projects plan to be installed.

### **Limitations on the enforceability of recommendations and residual damages**

The investigation and evidence gathering process, which is highly beneficial in terms of global/local articulation, is deficient in the lack of concrete legal consequences it generates. The fact that the MICI recommendations are not binding or enforceable contributes to community skepticism of the investigation mechanisms.<sup>110</sup> This leads communities that have resorted to the mechanism, for example in the case of the San Mateo and San Andres Generators, to perceive the MICI as an outward appearance of a democratic process, but without being democratic in practice.<sup>111</sup> A notorious example of this came from what the mechanism calls the "findings" of the MICI investigation on the situation of persecution of those who opposed the project. While many of these findings do indeed constitute crimes, they cannot be used judicially or legally against the bank or the company.<sup>112</sup>

The complaint for the Alto Maipo project reflects similar limitations regarding the lack of effectiveness of compliance mechanisms and non-compliance with some of the grievances of affected stakeholders. On June 12, 2020, the Board of Executive Directors accepted the recommendations and endorsed the findings of the Compliance Review report. For implementation, the Board instructed Management to prepare an Action Plan in consultation with the MICI.<sup>113</sup> Currently, the Board of Executive Directors has approved Management's Action Plan to address the ICIM's recommendations. Those who have resorted to the mechanism point out that the MICI does not comply with its own action plans and neither do the companies involved. In response, they suggest that it would be important to change compliance policies within the accountability mechanism itself and the IDB, such as the inclusion of a zero tolerance policy for non-compliance.<sup>114</sup> However, resistance has been ongoing for more than a decade, and the project is 90% complete. Although it seems unlikely that the results demanded by the affected people will be achieved, there are still people who are very committed to the struggle and promise to continue.<sup>115</sup> On the other hand, there is the difficulty of establishing reparations for the damages generated by a project that is already advanced. The challenge lies in the regulation of compensation; not only economic reparations, but also other options such as declarations and public apologies.

The complaint in opposition to the Hidro Santa Cruz and Hidroeléctrica Santa Rita projects is key to identifying flaws in the functioning of the accountability mechanism to account for residual damages once the project was abandoned. Residual damages include specific issues such as fences limiting access to the rivers, in the case of Hidro Santa Cruz, and even properties that remain in the hands of the banks who financed the project. The latter is particularly serious and a latent threat given that by maintaining ownership of the land<sup>116</sup>, the possibility of the banks to auction the properties so that other developers initiate new projects remains latent. At the same time, the damage continues in the breakdown of community harmony: the criminalization of those who oppose the project persists while many people are still under arrest warrants and threats. This reaches extreme points such as elderly people at risk of losing their sight because they cannot go to health centers due to an arrest warrant.<sup>117</sup>

A novel aspect of the implementation of the MICI's recommendations is displayed in the case of the San Mateo and San Andres Generators, since they may enable the possibility of a responsible exit from the project. The main expectation is that the recommendation will be accepted due to the irreversible damage and unfeasibility of the projects. A responsible withdrawal plan was proposed by the civil society, in which the need to assume responsibility for what happened was raised<sup>118</sup>. However, a limitation in this regard is that the mechanism lacks directly related reparations.<sup>119</sup>

### **Independence: at the level of institutional and expert design**

Regarding independence at the institutional level, in the case of the MICI, it has been pointed out that although it is called an independent mechanism, this is not the case at the level of its institutional design. The MICI is a mechanism that does not have a clear legal nature. The bank's executive board of directors maintains decision-making power in grievances who, in turn, have specific interests involved.<sup>120</sup> MICI must seek permission from the IDB board to analyze and enforce accountability. The CAO, on the other hand, does not need this requirement, it only has to report.

For those who have complained to the MICI, one of the limitations in terms of the independence of the researchers is that these experts are selected from a roster in which there is a predominance of professional profiles related to the world of investment and arbitration, private international law, and not so much public international law. On the other hand, the list does not specify expertise in gender and intersectional approach. In the specific case of the claimants in the case of the San Mateo and San Andrés Generators, the professionalism of the people who carried out the investigation was highlighted.<sup>121</sup> On the other hand, in the process before CAO, permanent staff of the institution is appointed, regardless of their specialization in the issues raised by the complaints, and there is little direct contact with the people in the territory during the research, even when there are local offices. There is a need for greater connection with the reality of the communities.<sup>122</sup>

### **Procedural aspects**

Although the process before the MICI is relatively accessible and easy to initiate, since no lawyer or accompaniment is required, a serious procedural limitation is that it is not possible to stop a project in progress. This is a procedural obstacle inherent to the mechanism<sup>123</sup> that is reflected in a generalized manner in the case studies. On the other hand, it is worth noting that the prohibitive review clause applied by the MICI when the case was in a judicial instance was modified after the Alto Maipo case.<sup>124</sup>

The mechanisms do not comply with the schedules that they indicate in their websites. In the case of the San Mateo and San Andres Generators, the extensions that hindered the process are highlighted as an obstacle. In the case, there were situations at the procedural level that operated as an obstacle in the correct functioning of the mechanism. For example, in the complaint, 5 extensions were granted.<sup>125</sup> It is also an obstacle that in the process before MICI it is necessary to begin reaching out to the IDB team in charge of the project.<sup>126</sup> Moreover, in the Alto Maipo complaint, it was pointed out that delays in resolution by the mechanisms generate helplessness in the affected community.<sup>127</sup>

## **4. Conclusion**

The cases presented allow us to identify a series of barriers and good practices of intergovernmental development banks and, in particular, their non-judicial accountability mechanisms, in order to apply them when operationalizing the duty to cooperate in the context of the right to development. An encouraging aspect is the progress in the development of specific human rights such as free, prior and informed consent and gender focus in the right to development. However, the limitations in the reception and development of the right to water in line with the evolution of this right in the human rights framework by non-judicial accountability mechanisms are worrisome. On the other hand, the mechanisms favor a virtuous relationship between the global and the local by bringing actors with an international

presence into play in contexts of extreme constraints at the local level. However, intergovernmental funding organizations do not act in a preventive manner, investigating whether the minimum conditions for democratic participation in development projects are in place. The possibility of redirecting development based on the needs of the communities where the projects are planned to be installed is lost. There are also serious limitations in terms of accessibility, which is related to their lack of adaptation to the reality of the communities. In practice, this is reflected in an extra burden that weighs on the affected communities themselves.

The possibility of advancing in the implementation of responsible exits from development projects when it is concluded that they failed to comply with their policies is promising. Progress in this area is key to overcoming the serious limitations in the actions that can be taken by the mechanisms, including the remedial measures that are ordered and the recognition of residual damages generated by the projects. Added to this is the current impossibility of stopping project installations when complaints are filed. This situation is aggravated if one takes into account that this delay affects the resolution of claims involving human rights violations.

<sup>1</sup> Human Rights Council. (2020, October 1). Resolution 45/6: The right to development. A/HRC/45/L.23. Retrieved from <https://undocs.org/A/HRC/45/L.23>

<sup>2</sup> The report is framed within the theme set by expert Koen De Feyter in the first report of the Expert Mechanism on the Right to Development as the fifth of the planned thematic reports. See Human Rights Council. (2020, 14 Sept.-2 Oct.). Annual report of the Expert Mechanism on the Right to Development. General Assembly. A/HRC/45/29. par. 27. Retrieved from <https://undocs.org/es/A/HRC/45/29>

<sup>3</sup> Project under the direction of Cecilia Gebruers, Professor of the Legal Clinic I of the School of Law of the Universidad Torcuato Di Tella and Carolina Juaneda, Latin America Coordinator of the Bank Information Center, developed by the students of the legal clinic: Nicolás Lazovich, Valentina Gonzalez Medina, Tomas Kook Weskott, Giancarlo Pizzoleo, Facundo Rodriguez and Astrid Nottebohm.

<sup>4</sup> The duty to cooperate is set out in Article 13 of the draft convention on the right to development. - Working Group on the Right to Development, Human Rights Council. (2020, January 17). Draft Treaty on the Right to Development. A/HRC/WG.2/21/2. Retrieved from <https://undocs.org/A/HRC/WG.2/21/2>

<sup>5</sup> This is the private sector lending arm of the World Bank Group.

<sup>6</sup> UN General Assembly. (1986, December 4). Resolution 41/128: Declaration on the Right to Development. Retrieved from [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/41/128](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/41/128)

<sup>7</sup> Schrijver, N. (2020). A new Convention on the human right to development: Putting the cart before the horse? *Netherlands Quarterly of Human Rights*, 38(2), 84-93. Recuperado de <https://journals.sagepub.com/doi/10.1177/0924051920924547>

<sup>8</sup> In 1972, the Senegalese judge Keba Mbaye devoted his inaugural lecture at the study session of the International Institute of Human Rights (Strasbourg) to the right to development as a human right and, in the same year, the Institute's director, Karel Vasak, launched the concept of "third generation human rights", later better known and perhaps more appropriately called "collective rights" (as cited in de Feyter, K. (1986). *The Right To Development And The Development Of Human Rights*. *Studia Diplomatica*, 39(3), p. 269. Retrieved from <http://www.jstor.org/stable/44832343>)

<sup>9</sup> See Schrijver, supra at note vii.

<sup>10</sup> Bedjaoui, Mohammed. (1991). "The Right to Development" in Bedjaoui, Mohammed (ed.) *International Law: Achievements and Prospects*. Paris: Martinus Neuhoff. 1182.

<sup>11</sup> The countries that abstained were Denmark, Finland, West Germany, Iceland, Israel, Japan, Sweden and the United Kingdom. - Draft Treaty on the Right to Development. A/HRC/WG.2/21/2. Retrieved from <https://undocs.org/A/HRC/WG.2/21/2>, cited in Sengupta, A. (2002). On the Theory and Practice of the Right to Development. *Human Rights Quarterly*, 24(4), 840. <http://www.jstor.org/stable/20069637>.

<sup>12</sup> "(...) The international community should support the strengthening and promotion of democracy, development and respect for human rights and fundamental freedoms throughout the world." - Vienna Declaration and Program of Action. (1993, June 14-25). World Conference on Human Rights. Vienna, Austria. Paragraph 8. Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/142/36/PDF/G9314236.pdf?OpenElement>

<sup>13</sup> OHCHR : About the right to development. (n.d. ). Retrieved from <https://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/About.aspx>

<sup>14</sup> Human Rights Council. (2016, October 5). Resolution 33/14: The right to development. A/HRC/RES/33/1. Retrieved from <https://undocs.org/A/HRC/RES/33/14>

<sup>15</sup> The 2015 Millennium Development Goals report indicated that 800 million people were still living in extreme poverty and going hungry. In 2015, more than 160 million children under the age of five were still suffering from the consequences of malnutrition. Nearly fifty percent of the world's workers were still working in vulnerable conditions. Today, it is estimated that more than 880 million people live in slum-like conditions in cities across the developing world." OHCHR | Special Rapporteur on the right to development. (n.d. ). Retrieved from <https://www.ohchr.org/en/issues/development/srdevelopment/pages/srdevelopmentindex.aspx>

<sup>16</sup> Human Rights Council. (2019, October 1). Resolution 42/23: The right to development A/HRC/RES/42/23, Retrieved from <https://undocs.org/A/HRC/RES/42/23>

<sup>17</sup> Article 1(3) of the Charter of the United Nations (the Charter) establishes the duty of States Parties to "achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all (...)". According to Articles 55 and 56 of the Charter, the Member States undertake to take joint and separate action to promote: a) high standards of living, full employment, and conditions of economic and social progress and development; b) the solution of international economic, social, health, and related problems and international cooperation in the fields of culture and education; and c) universal respect for, and observance of, human rights and fundamental freedoms without distinction as to race, sex, language, or religion". The Charter goes on to state that all members of the United Nations Organizations "pledge themselves to take joint and separate action in cooperation with the organization for the achievement of these ends". - Charter of the United Nations, October 24, 1945, 1 U.N.T.S. XVI. Retrieved from <http://www.un.org/es/charter-united-nations/index.htm>. This broad obligation to cooperate internationally in the realization of the human rights that States owe each other is reinforced by the obligations of "international assistance and cooperation" explicitly to realize economic, social and cultural rights provided for in the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the obligation of international cooperation to ensure the socio-economic rights of children, found in the Convention on the Law of the Child. From the affirmation in the 1948 Universal Declaration of Human Rights of a right to an international order in which human rights can be realized, through the General Assembly's call in the 1970s for a New International Economic Order, to the 1986 Declaration on the Right to Development, and the affirmation in the Millennium Declaration of a shared responsibility to address poverty, it seems incontrovertible that international cooperation aimed at ensuring the exercise in the first instance of basic human rights can be found among the traditional sources of international law. - Salomon, M. (2021). The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights: An Overview of Positive 'Obligations to Fulfil'. *EJIL: Talk!* Retrieved from <https://www.ejiltalk.org/the-maastricht-principles-on-extraterritorial-obligations-of-states-in-the-area-of-economic-social-and-cultural-rights-and-its-commentary-an-overview-of-positive-obligations-to-fulfil/> The 1993 Vienna Declaration, which established the consensus on the right to development as a human right, reaffirms the solemn commitment of all states to fulfill these obligations in accordance with the Charter and that the international community should promote effective international cooperation for the realization of the right to development. - See Vienna Declaration and Program of Action. (1993, June 14-25), supra note xii, paras. 1 and 10. In particular, Article 4.2 of the Declaration on the Right to Development. It states that States have a duty, individually and collectively, to formulate international development policies to facilitate the realization of the right to development. It recognizes that sustained action is required to promote the rapid development of developing countries and goes on to state: "As a complement to the efforts of developing countries, effective international cooperation is essential to provide these countries with appropriate means and facilities to foster their comprehensive development....". - See UN General Assembly. (1986, Dec. 4), supra note vi.

<sup>18</sup> Article 13: States Parties undertake to ensure that financing for development and all other forms of aid and assistance provided or received by them, whether bilateral or within any international institutional or other framework, shall be consistent with the provisions of this Convention. - Working Group on the Right to Development, Human Rights Council. (2020, January 17) Draft Treaty on the Right to Development. A/HRC/WG.2/21/2. Retrieved from <https://undocs.org/A/HRC/WG.2/21/2>



- <sup>19</sup> Office of Evaluation and Oversight. (2013). Evaluation of the Independent Consultation and Investigation Mechanism: Interim Evaluation of IDB-9 Commitments. Washington DC: Inter-American Development Bank. Retrieved from <https://publications.iadb.org/publications/spanish/document/IDB-9-Mecanismo-Independiente-de-Consulta-e-Investigaci%C3%B3n.pdf>
- <sup>20</sup> Bissell, R. E. & Nanwani, S. (2009). Multilateral Development Bank Accountability Mechanisms: Development and Challenges, Central European Journal of International and Security Studies, Vol. 3, Ed. 2, pp. 154-197. Retrieved from <https://www.researchgate.net/publication/>
- <sup>21</sup> Bradlow, D. D. (2005). Private Complainants and International Organizations: A Comparative Study of The Independent Inspection Mechanisms in International Financial Institutions. Georgetown Journal of International Law, Vol. 36. Retrieved from [https://digitalcommons.wcl.american.edu/facsch\\_lawrev/931/](https://digitalcommons.wcl.american.edu/facsch_lawrev/931/)
- <sup>22</sup> World Bank. (2021, June 28). IFC/MIGA Independent Accountability Mechanism (CAO) Policy. [Board Report.] Washington, D.C.: World Bank Group. Retrieved from <http://documents.worldbank.org/curated/en/889191625065397617/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy>
- <sup>23</sup> Bordatto, A. & Juaneda, C. (2021, January). Who pays the costs of development: Common patterns and trends of rights violations in hydroelectric projects financed by Multilateral Development Banks in Guatemala. ACTuando Juntas Guatemala, International Platform Against Impunity, and Bank Information Center. Retrieved from [https://bankinformationcenter.edn.prismic.io/bankinformationcenter/cd7ccd08-bf48-4379-ad3c-e853bbaeb282\\_ENG-Quienes+pagan+los+costos+del+Desarrollo.pdf](https://bankinformationcenter.edn.prismic.io/bankinformationcenter/cd7ccd08-bf48-4379-ad3c-e853bbaeb282_ENG-Quienes+pagan+los+costos+del+Desarrollo.pdf)
- <sup>24</sup> Application detail | IADB. (2018, August 6). Inter-American Development Bank. Retrieved from <https://www.iadb.org/es/mici/detalle-de-la-solicitud?ID=MICI-CII-GU-2018-0136&nid=23508>
- <sup>25</sup> Id.
- <sup>26</sup> Independent Consultation and Investigation Mechanism, Vargas, A. R., director of the MICI (2021, September 21). Notification [Press release]. Retrieved from <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-1779>
- <sup>27</sup> Compliance Advisor Ombudsman (CAO). (2016, May). CAO EVALUATION REPORT: Complaint regarding IFC's investment in CIFI (Project # 26031), Santa Cruz Barillas, Guatemala. International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). Retrieved from [https://www.cao-ombudsman.org/sites/default/files/downloads/CIFI\\_CAOWInformeEvaluacion\\_Mayo\\_2016\\_Spanish.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CIFI_CAOWInformeEvaluacion_Mayo_2016_Spanish.pdf)
- <sup>28</sup> Guatemala: CIFI-01/ Hidro Santa Cruz. (2020, September). Office of the Compliance Advisor Ombudsman (CAO). Retrieved from <https://www.cao-ombudsman.org/cases/guatemala-cifi-01-hidro-santa-cruz>
- <sup>29</sup> Id.
- <sup>30</sup> Guatemala Human Rights Commission. (2011). SANTA CRUZ BARILLAS. Retrieved from <https://www.ghrc-usa.org/our-work/current-cases/santa-cruz-barillas/>
- <sup>31</sup> Rodríguez-Carmona, A., & De Luis Romero, E. (2016). Insatiable hydroelectric dams in Guatemala (p. 7). Retrieved from [https://www.tierra.org/wp-content/uploads/2016/10/hidroelectricos\\_insaciables\\_guatemala.pdf](https://www.tierra.org/wp-content/uploads/2016/10/hidroelectricos_insaciables_guatemala.pdf)
- <sup>32</sup> See Guatemala: CIFI-01/ Hidro Santa Cruz. (2020, Sept.), supra at note xxviii.
- <sup>33</sup> Alzugaray, G. (2020, April 28). World Bank board silent on review of Guatemala dam investigation after February meeting. Brettonwoods Project. Retrieved from <https://www.brettonwoodsproject.org/es/2020/04/junta-del-banco-mundial-guarda-silencio-sobre-la-revision-de-la-investigacion-de-una-represa-en-guatemala-tras-la-reunion-de-febrero/>
- <sup>34</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).
- <sup>35</sup> See Guatemala: CIFI-01/ Hidro Santa Cruz. (2020, Sept.), supra at note xxviii.
- <sup>36</sup> See Alzugaray, G.. (2020, September), supra at note xxxiii.
- <sup>37</sup> See Guatemala: CIFI-01/ Hidro Santa Cruz. (2020, Sept.), supra at note xxviii.

38 Id.

39 Id.

40 Id.

41 Id.

42 Guatemala: Real LRIF-01/Coban | CAO Data Hub. (2019). Cao-Ombudsman.Org. Retrieved December 17, 2021, from <https://www.cao-ombudsman.org/cases/guatemala-real-lrif-01coban>

43 The Observer. (2013, December). Hydroelectric dams in the Icbolay river basin: behind the scenes of the Santa Rita hydroelectric dam. <https://elobservadorgt.org/wp-content/uploads/2020/07/Bolet%C3%ADn-Enfoque-No.-31-Hidroel%C3%A9ctricas-en-la-cuenca-del-r%C3%ADo-Icbolay-entre-telones-de-la-hidro-Santa-Rita.pdf>

44 Guatemala: Real LRIF-01/Coban. (2019, August 14). Office of the Compliance Advisor Ombudsman (CAO). Retrieved from <https://www.cao-ombudsman.org/cases/guatemala-real-lrif-01coban>

45 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

46 Cucul, G. (2021, October 19). Cobán: Monte Olivo has resisted hydroelectric dam for three years. Prensa Comunitaria. Retrieved from <https://www.prensacomunitaria.org/2017/08/coban-monte-olivo-ha-resistido-tres-anos-frente-a-la-hidroelectrica/>

47 The Observer Team. (2019, December 2). Special Report no. 20: The Resistance of the Dolores River, Cobán, Alta Verapaz, in its struggle against the Santa Rita Hydroelectric Plant and other investment projects. El Observador. Retrieved from <http://www.albedrio.org/hm/otrosdocs/comunicados/ElObservador-InformeEspecialNo.20-2020.pdf>

48 Quesada, J. Q. (2015, April 20). Ríos De Sangre: Planeta Futuro. EL PAÍS. Recuperado de [https://elpais.com/elpais/2015/04/06/planeta\\_futuro/1428343054\\_368326.html](https://elpais.com/elpais/2015/04/06/planeta_futuro/1428343054_368326.html)

49 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

50 Barreto, B. (2014, October 27). Santa Rita sinks into the sands of time. Plaza Pública. Retrieved from <https://www.plazapublica.com.gt/content/santa-rita-se-hunde-en-las-arenas-del-tiempo>

51 Id.

52 EFE. (2018, December 17). Bodies of two activists found who were against hydroelectric dam in Ixquis: The Human Rights Ombudsman's Office (PDH) reported Monday that the bodies of two members of the resistance against a hydroelectric dam in the region of Ixquis, in Huehuetenango, were found. Prensa Libre. Retrieved from <https://www.prensalibre.com/ciudades/huehuetenango/hallan-dos-cadaveres-de-activistas-contra-hidroelectrica-en-ixquis/>

53 Real World Radio. (2013). The face of horror: Guatemala: two children killed at point blank range by hired assassin of Santa Rita SA hydroelectric company in Monte Olivo, Alta Verapaz. Retrieved from <http://www.radiomundoreal.fm/7055-el-rostro-del-horror>

54 Id.

55 Ba Tiul, K. M. (2014, August). HYDRO SANTA RITA, A HISTORY OF REPRESSION. HUMAN RIGHTS AND HIDRO SANTA RITA INVESTMENT. Carbon Market Watch. Retrieved from [https://carbonmarketwatch.org/wp-content/uploads/2013/09/Maximo-Ba-Tiul\\_Hydro\\_presentation.pdf](https://carbonmarketwatch.org/wp-content/uploads/2013/09/Maximo-Ba-Tiul_Hydro_presentation.pdf)

56 See Equipo El Observador, supra at note xlvii.

57 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>58</sup> Compliance Advisor Ombudsman (CAO). (2015, June). CAO ASSESSMENT REPORT: Real LRIF (Project #31458) Cobán, Guatemala. International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). Retrieved from [https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport\\_RealLRIF\\_June23\\_2015\\_SPANISH%20%281%29.pdf](https://www.cao-ombudsman.org/sites/default/files/downloads/CAOAssessmentReport_RealLRIF_June23_2015_SPANISH%20%281%29.pdf)

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> Hydropower in Chile: Memoriachilena. (2018). Retrieved from <http://www.memoriachilena.gob.cl/602/w3-printer-611.html>.

<sup>63</sup> Villanueva, A., León, P., Navarrete, L., Gómez, R., Dugo, M. E., Ibacache, A. M. (...) & Márquez-Mees, V. (2018, May 30). Compliance verification report | IADB. Independent Consultation and Investigation Mechanism. Retrieved from <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1800453186-3884>

<sup>64</sup> Resolution 1138 Exempt - Declares the Commune of San José de Maipo a Zone of National Tourist Interest. Promulgated on November 13, 2001 and published on November 21, 2001 by the National Tourism Service. URL of the document: <https://www.sernatur.cl/transparencia/archivos/marco-normativo/actos-y-documentos/1138.pdf> , Retrieved from <https://www.bcn.cl/leychile/navegar?idNorma=191904>

<sup>65</sup> This is an investment to a private company and not to the public sector.

<sup>66</sup> See Villanueva, A. et al, supra at note lxiii.

<sup>67</sup> Mella, M. & Orrego, J. P. of No Alto Maipo and Ecosistemas (together with other national and international groups). (2017, January 23). Letter of Complaint: Alto Maipo Hydroelectric Project (Pham), Cajon del Maipo, Chile. Independent Consultation and Investigation Mechanism (MICI), Inter-American Development Bank. Retrieved from <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40837423>

<sup>68</sup> Application detail | IADB. (2017, January 3). In Inter-American Development Bank. Retrieved from. <https://www.iadb.org/es/mici/detalle-de-la-solicitud?ID=MICI-BID-CH-2017-0115&nid=21796>

<sup>69</sup> Id.

<sup>70</sup> Compliance verification report | IADB. (2018, May 30). Independent Consultation and Investigation Mechanism. <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1800453186-3884>.

<sup>71</sup> Dated June 20, 2015.

<sup>72</sup> See Villanueva, A. et al, supra at note lxiii.

<sup>73</sup> Id.

<sup>74</sup> Id.

<sup>75</sup> See Application Detail | IADB. (2017, Jan. 3), supra at note lxviii.

<sup>76</sup> Interview with Sarah Dorman, Attorney at Law, Center for International Environmental Law (CIEL) (2021, December 13).

<sup>77</sup> See Application Detail | IADB. (2017, Jan. 3), supra at note lxviii.

<sup>78</sup> See Bordatto, A. & Juaneda, C. , supra at note xxiii.

<sup>79</sup> Rosa Peña, Environmental and Human Rights Program Attorney, Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>80</sup> Villanueva, A. Fábrega, M. C., Guevara Mantilla, A., Dugo, M. E., Vázquez Aguilar, J. Nyheim, D., Wagner, J. (...) & Repetto Vargas, A. . (2021, September). Compliance verification report. Independent Consultation and Investigation Mechanism. <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-1774>

81 Id.

82 See Bordatto, A. & Juaneda, C. , supra at note xxiii.

83 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

84 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

85 See Villanueva, A. et al, supra note lxxx.

86 Interview with Mara Bocaletti, Regional Director of the International Platform against Impunity, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

87 Rosa Peña, Environmental and Human Rights Program Attorney, Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

88 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

89 Leblanc, N. (2021, January 28). Proyecto Alto Maipo: Cronología de 12 años de Destrucción Ambiental, Glaciares Chilenos: Reportajes. Fundación Glaciares Chilenos. Retrieved from <https://www.glaciareschilenos.org/reportajes/proyecto-alto-maipo-cronologia-de-13-anos-de-destruccion-ambiental>.

90 Id.

91 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

92 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

93 Ba Tiul, K. M. (2016, April 4). Watch This! Member under the floodlights: Tezulutlan village council. Carbon Market Watch. Retrieved from <https://carbonmarketwatch.org/es/2016/04/04/watch-this-miembro-bajo-los-proyectores-consejo-de-pueblos-de-tezulutlan/>

94 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

95 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

96 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

97 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

98 xcvi Rigoberto Juarez, General Coordinator of the Plurinational Ancestral Government, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

99 Some of the regulatory reforms that facilitated this model are the Petroleum, Mining, Electricity, Forestry and Telecommunications laws that were reformulated according to the Washington Consensus model, favoring privatization and placing strategic natural resources under the control of the corporate sector. - Madre Selva Collective, & Cruz, J. (2017, October). Hydroelectric dams in conflict in Guatemala. Carbon Market Watch. Retrieved from [https://carbonmarketwatch.org/wp-content/uploads/2017/09/Madreselva\\_Hidroel%C3%A9ctricas-en-Guatemala.pdf](https://carbonmarketwatch.org/wp-content/uploads/2017/09/Madreselva_Hidroel%C3%A9ctricas-en-Guatemala.pdf)

100 Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>101</sup> Doyle, C., & Gilbert, J. (2011). Indigenous Peoples and Globalization: From "Development Aggression" to "Self-Determined Development". In *European Yearbook of Minority Issues* (pp. 224-225). Leiden, Netherlands: Martinus Nijhoff. Retrieved from <https://repository.uel.ac.uk/item/86157>. [Also cf. Report of the UN Special Rapporteur, Rodolfo Stavenhagen, Mission to the Philippines, UN Doc. E/CN.4/2003/90, Add. 3, para. 30.]

<sup>102</sup> See Villanueva, Madre Selva Collective, & Cruz, J., *supra* at note xxx.

<sup>103</sup> The case of the Pedro brothers is the most representative. The brothers, from the community of Bella Linda, in the micro-region of Ixquisis, were opposed to the construction of hydroelectric dams and were murdered, presumably because of their opposition. The grandfather Sebastián Alonzo Juan was murdered during a peaceful protest against the hydroelectric projects. These cases were never clarified, nor were the culprits identified and tried. - See EFE, *supra* note lii.

Another very alarming case is the case of Mateo Pedro Francisco, a minor who was illegally arrested and subsequently detained on his way home from work. This case is even worse from the point of view of justice as it directly intervened when it ordered his transfer to a court 6 hours away from his community to be subsequently held in a National Civil Police (PNC) jail. - Illescas, G. (2016, March 26). Hydroelectric company and army behind anxiety in northern Huehuetenango. CMI Guatemala. Retrieved from <https://cmiguate.org/empresa-hidroelectrica-provoca-y-ejercito-detras-de-zozobra-en-norte-de-huehuetenango/>

<sup>104</sup> NISGUA (Network in Solidarity with the People of Guatemala). (2017, November 21). Resistance to Hydroelectric Dams in Guatemala: A Matter of Life and Death. Retrieved from <https://nigua.org/la-resistencia-a-las-represas-hidroelectricas-en-guatemala-una-cuestion-de-vida-y-muerte/>

<sup>105</sup> Rigoberto Juarez, General Coordinator of the Plurinational Ancestral Government, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>106</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>107</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>108</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>109</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>110</sup> Rosa Peña, Environmental and Human Rights Program Attorney, Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>111</sup> Rigoberto Juarez, General Coordinator of the Plurinational Ancestral Government, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>112</sup> Rigoberto Juarez, General Coordinator of the Plurinational Ancestral Government, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>113</sup> See Application Detail | IADB. (2017, Jan. 3), *supra* at note lxviii.

<sup>114</sup> Interview with Sarah Dorman, Attorney at Law, Center for International Environmental Law (CIEL) (2021, December 13).

<sup>115</sup> Interview with Sarah Dorman, Attorney at Law, Center for International Environmental Law (CIEL) (2021, December 13).

<sup>116</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>117</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>118</sup> Interview with Mara Bocaletti, Regional Director of the International Platform against Impunity, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>119</sup> Interview with Mara Bocaletti, Regional Director of the International Platform against Impunity, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>120</sup> Rosa Peña, Environmental and Human Rights Program Attorney, Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>121</sup> Rigoberto Juarez, General Coordinator of the Plurinational Ancestral Government, in an interview with the Interamerican Association for Environmental Defense (AIDA) (November 10, 2021) (2021, November 10).

<sup>122</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>123</sup> Interview with Mara Bocaletti, Regional Director of the International Platform against Impunity, in an interview with the Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>124</sup> Interview with Sarah Dorman, Attorney at Law, Center for International Environmental Law (CIEL) (2021, December 13).

<sup>125</sup> Rosa Peña, Environmental and Human Rights Program Attorney, Interamerican Association for Environmental Defense (AIDA) (2021, November 10).

<sup>126</sup> Interview with Anne Bordatto, Activist in Madre Selva Collective between 2014 and 2015; currently Regional Facilitator LAC of the Communitarian Resources Exchange at the Coalition for Human Rights in Development (2021, November 24).

<sup>127</sup> Interview with Sarah Dorman, Attorney at Law, Center for International Environmental Law (CIEL) (2021, December 13).