

**THIRD MONITORING REPORT**  
**Of the Independent Complaint Mechanism**  
**of FMO, DEG, PROPARCO**

**for the Barro Blanco Hydroelectric**  
**Project in Panama (Case 14-002)**

[October 4, 2022]

The report has been approved by the Independent Expert Panel of the Independent Complaints Mechanism of the Deutsche Investitions- und Entwicklungsgesellschaft (DEG) / Dutch Entrepreneurial Development Bank (FMO) / Proparco

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## 1. Introduction: Final Monitoring Report - ICM compliance monitoring

This is the third monitoring to assess whether actions taken by DEG and FMO address the non-compliances stated in the Compliance Review of the Barro Blanco Hydroelectric Project (“BBHP”) in Panama.<sup>1</sup> In accordance with para. 3.2.22 of the ICM policy, the purpose of this review is to assess the major developments related to the project since the last monitoring report, which was issued in November 2017<sup>2</sup>, and to assess whether material non-compliances have been addressed. The ICM intends to close monitoring with this report. The client has paid back the loans to FMO and DEG in April 2021. Thus, the financial relationship has ended. With a closed financial relationship DEG and FMO have limited possibilities to further assure implementation of remedial actions. The Independent expert panel (IEP) of the ICM thus are of the view to make this the final monitoring report. Already in 2019, the ICM prepared a draft third monitoring report which was based on a document review. It shared this draft report with the complainants and relevant DEG and FMO operational departments. In a letter from November 2019, the complainants and their advisors (Both Ends and SOMO) stated that they disagreed with the conclusions of this draft report. They further stated that a site visit was needed to review the situation as the project has become operational and impacts have become visible.

Recognizing that there are substantial differences of views on progress made and outstanding issues, the ICM decided that a site visit would be necessary. A site visit that was originally scheduled for March 2020 had to be postponed due to COVID travel restrictions. The ICM then tried to engage a consultant in 2020 to carry out a site visit for monitoring, but it was impossible to find a qualified expert that would have been able to travel to Panama during the Covid-19 outbreak. In September 2021, the ICM was finally able to conduct its final monitoring visit.<sup>3</sup>

The first two ICM monitoring reports focused on the status of implementation of measures laid out in the DEG/FMO Management Response<sup>4</sup>, which was issued by FMO and DEG Management in response to the Compliance Review Report. The monitoring reports were based on information provided by the complainants, FMO and DEG as well as the client of both banks. The scope of this third monitoring report is broader as the ICM also focuses on the issues raised by the complainants in their letter dated from November 2019. The ICM agreed that the final monitoring visit should also follow-up the demands raised by the complainants in a letter of November 2019 for responsible last steps for action.

The site visit for the third monitoring report was originally planned to be conducted in parallel with a site visit by the two NGOs which advise the complainants (SOMO and Both ENDS). However, both NGOs’ representatives were eventually not able to travel. Instead, a Panamanian NGO, a partner of SOMO and Both ENDS, the Alianza para la Conservación y del Desarrollo (ADC), represented by Licda. Susana A. Serracín Lezcano joined the ICM during its visit to the complainant community.

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<sup>1</sup> The compliance report can be found on the DEG Website: [https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Barro\\_blanco\\_final\\_report\\_EN.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Barro_blanco_final_report_EN.pdf)

<sup>2</sup> The second monitoring report can be accessed: [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/2017-ICM-Monitoring-report-BBHP\\_FINAL.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/2017-ICM-Monitoring-report-BBHP_FINAL.pdf)

<sup>3</sup> The monitoring visit was realized in September 2021 (see the programme and the list of interview partners in Annex 1).

<sup>4</sup> The Management response was published on the 29 of May 2015. It can be accessed on the ICM website: <https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Management-response.pdf>

## 2. Background

### 2.1 The Project and The Complaint

The Barro Blanco Hydroelectric Project (“BBHP”) is a 28.56 MW hydroelectric project located on the Tabasara River in the district of Tolé in the Chiriqui Province of Western Panama. The project has been developed and built by Generadora del Istmo S.A. (GENISA), a Honduran company established in 2006 and registered in Panama.<sup>5</sup> The project financing by DEG and FMO took the form of a secured project finance loan of approximately US\$50 million. The financing agreement was signed in August 2011. The dam is in operation since 2017.

In May 2014, complaints were lodged with the ICM of FMO and DEG by the M10 movement together with Silvia Carrera, the Cacica General of the Comarca Ngäbe-Buglé.<sup>6</sup> In the complaint it is stated that the lenders should have ensured that the project respects the rights of the indigenous Ngäbe people, in particular the right to free, prior and informed consent (FPIC). The complaint argued that lenders failed to comply with standards they are required to apply, in particular the IFC’s Performance Standards, FMO’s Human Rights Policy, the relevant DEG policies and the OECD Guidelines on Multinational Enterprises. While FPIC of indigenous peoples was not yet part of the IFC performance standard in 2011, there are other legal frameworks, both in Panamanian and Dutch law, which should have been analysed for the applicable participation standards. For example, the ILO Convention 169, which was ratified by the Netherlands in 1998, and requires FPIC with Indigenous Peoples. Moreover, Panama is part of the American Convention and the jurisprudence of the Inter-American Court of Human Rights, that already required prior consultation with Indigenous peoples before 2011.

### 2.2 Summary of the ICM’s compliance findings

On 29 May 2015, the Panel issued its Compliance Review report<sup>7</sup>, in which it found non-compliances with FMO and DEG standards.

The Compliance Review Report stated that at the time of credit approval the project did not fully to comply with all relevant policies and standards.<sup>8</sup> Consequently, DEG and FMO had not been able to identify and require appropriate actions in the **initial** Environmental and Social Action Plan (ESAP), although subsequently actions were identified and agreed upon with the project developer. The Compliance Review Report noted noncompliances with land acquisition and use; quality of consultations with the affected communities; inundation of cultural heritage sites; as well as biodiversity and ecosystem impacts (see pages 4-7 of the Panel’s report).

The ICM monitoring report focuses on five core issues:

- (1) **related to land acquisition process.**<sup>9</sup> There was noncompliance with IFC Performance Standards 5 and 7 as the land required for the project was not clearly identified prior to project approval and before the ESIA was conducted. The affected land size was only a few hectares,

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<sup>5</sup> <https://www.bnamericas.com/en/company-profile/generadora-del-istmo-sa-genisa>

<sup>6</sup> Cacique general is the highest elected representative of the indigenous comarcas in Panama

<sup>7</sup> The report was published on May, 29, 2015 and can be found here: [https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Barro\\_blanco\\_final\\_report\\_EN.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Barro_blanco_final_report_EN.pdf)

<sup>8</sup> The Environmental Impact Assessment as well as the legal assessments on land issues done before project approval was deficient in many aspects (see the IEP compliance review report from 2015 para 73 – 87).

<sup>9</sup> In general, the project was classified as a Category A project in relation to its social and environmental impacts, because it is a greenfield investment involving land-use conversion in a sensitive area of indigenous peoples.

there was no full clarity on the number of people affected by required land acquisition, the ownership rights were impacted. The handling of the issue on land rights of indigenous people (IFC Performance Standard 7) could not be properly identified before the project was approved. Therefore, the panel noted that the lenders should have done more to seek a greater degree of clarification on the legal situation related to land acquisition of indigenous territory, particularly who should give consent or agreement in the process on the side of the indigenous Comarca.<sup>10</sup>

- (2) **Participation and consultation with indigenous communities** was deficient. The report on indigenous peoples from E&S Advisor from June 2011 already indicated that the directly affected communities were against the project and that the issues, which indigenous council or institutions had to consent was under debate and not clear (see para. 135 f Compliance Review report). The Panel concluded in its Compliance Review Report (see para. 218) that lenders have not taken the resistance of the affected communities seriously enough, also because there was an agreement on using the land between the project and a regional council of the Comarca, also indicating some support in the leadership of the Comarca for the project. The legitimacy of this agreement was and is challenged from the beginning by other bodies, including the general council of the Comarca (see below summary in Chap. 4). Moreover, in 2015 the lenders urged the institutional authority to resume project construction, even knowing the resistance of communities.<sup>11</sup>
- (3) The **Environmental and Social Impact Assessment** was deficient in several areas, inter alia related to the biodiversity assessment linked to the loss of the gallery forest along the river through inundation. In addition, the project's expected impacts on water quality and the water levels were not fully assessed (see para. 205 of Compliance Review Report), no plan was prepared to regulate the flooding, and no baseline assessment on fish and other aquatic resources had been done.
- (4) In respect to impacts on **cultural heritage** (flooding of holy petroglyphs), the Compliance Review Report noted that the responsibility of finding adequate solutions were in the responsibility of the government, but the Panel requested that the lenders and the project (§ 167 and 220) should review progress over time in order that adequate solutions might be found.
- (5) **Concerning the forced easement<sup>12</sup>, i.e. the required forced transfer of land use**, the Compliance Review report noted that the amount of land and people affected were limited. It also stated that the process of land transfer is in the responsibility of the government, but noted that at the time of the project appraisal and at first disbursement the number of persons affected and the amount of land used were not properly identified.

### 2.3 FMO and DEG's Management Response to compliance findings

In response to the findings of the Compliance Review Report, the Management Boards of FMO and DEG presented a joint Management Response (May. 29,2015)<sup>13</sup>. The management response covers lessons learned by the Management of DEG and FMO from the Compliance Review report with the purpose of improving the quality of their appraisal and monitoring process of environmental and social risks and impacts. These lessons learned are covered by three commitments made in the response. In

<sup>10</sup> See para 85 and 86 of the IEP report from 2015.

<sup>11</sup> A report about this was reported about in 2015: <https://www.volkskrant.nl/nieuws-achtergrond/nederlandse-druk-op-panama-om-bouw-dam~bc8ac7a5/>

<sup>12</sup> An *easement* is a nonpossessory right to use and/or enter onto the real property of another. Force easement can be decided when it e.g. for public investments or decisions deems to be necessary.

<sup>13</sup> <https://www.deginvest.de/DEG-Documents-in-English/About-DEG/Responsibility/Management-response.pdf>

addition, the Management Response included two project-specific commitments. The commitments are summarized below. The IEP focused its monitoring reports of 2016 and 2017 particularly on the commitments 4 and 5.

The Commitments of the Management Response were as follows [*hereafter “the commitments”*]:<sup>14</sup>

1. Further raise the bar on the required level of information on stakeholder consultation available at the time of credit approval.
2. Have a more comprehensive Environmental and Social Action Plan (ESAP) at the time of signing of the credit agreement and not as a condition precedent to first disbursement.
3. Strive for a more elaborate formal opinion from lawyers or other experts, with defined expertise in indigenous peoples' rights and the local and international legal context, on the matter of the formal representative structures in relation to indigenous communities affected by projects and to structurally consider this for future investments.
4. Seek, together with the client in the BBHP, an acceptable environmental solution for the remaining fraction of the total shoreline where access is still under discussion.
5. Commitment of the lenders that explanation efforts to the project-affected communities related to flood levels need to be continued as well as information related to water quality, management, and monitoring. The regular provision of this information is of significant importance and should therefore be subject to the Lenders' ongoing reviewing of the project.

## 2.4 Findings of the First and Second Monitoring Report

In August 2016, the ICM published its first Monitoring Report and in November 2017 the second.<sup>15</sup>

### **First Monitoring Report issued in August 2016**

As part of this monitoring process, the IEP reviewed monitoring reports prepared by environmental and social consultants to FMO and DEG. The reports which the IEP reviewed are of good professional quality and identify a range of outstanding issues that need to be resolved. The consultants have met with the communities and reflect the broad views of the communities in their report. However, the reports also identified the continued limitations that are currently placed on GENISA's actions<sup>16</sup>, which on the one hand derive from GENISA's own failure to directly engage with communities, and on the other hand from an ongoing real or perceived hostility to GENISA, which restricts their ability to engage. In the view of the IEP, consultant reports clearly do provide FMO and DEG with sufficient information to make informed decisions. Consultant reports reflect a good understanding of the complex and politically charged decision making context of the indigenous communities. Reports concluded that non-compliances laid out in the ICM Compliance Review Report were still not adequately addressed. In contrast, reports noted that both FMO and DEG, had implemented adjustments in their processes to assure improved assessments of environmental and social impacts of proposed and approved projects.

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<sup>14</sup> Published on August 1, 2016 see: [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/160817\\_ICM-Monitoring-report-BBHP\\_FINAL.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/160817_ICM-Monitoring-report-BBHP_FINAL.pdf)

<sup>15</sup> The public documents related to the case can be accessed under <https://www.deginvest.de/%C3%9Cber-uns/Verantwortung/Beschwerdemanagement/Barro-Blanco/>

<sup>16</sup> The dam is built and operated by the company GENISA (Generadora del Istmo, SA) an electric power generation company of Panama, controlled by Honduran owner.

**Findings of Second Monitoring Report, November 2017<sup>17</sup>**

- The second ICM monitoring report noted improvements in the engagement between lenders and affected communities and representatives of the Comarca. This has involved a series of calls and meetings between FMO and DEG officials and indigenous community representatives, including a visit by FMO and DEG in June 2017. Both the affected communities and FMO / DEG were positive in their feedback on this visit and the openness with which both sides were able to express their point of view. The Panel noted that this was the first time that FMO and DEG staff, rather than consultants engaged by DEG and FMO, had visited the area impacted by the project.
- The Government of Panama<sup>18</sup> has taken a leading role in seeking to broker an agreement between the indigenous communities and the government on how the operation of the project should continue. The government declared publicly in that period to potentially rethink the project including inter alia to replace the project's operating company by another operator.<sup>19</sup> Therefore, GENISA was not included in this process organized by the government to find an acceptable solution for the indigenous communities. It was based on a series of dialogues between government representatives and various indigenous community representatives. GENISA and FMO/DEG report that the government has asked GENISA to refrain from seeking dialogue or engagement with the communities at various points in time. FMO was also asked to refrain from such contacts related to the dialogue process. This explains why communication between FMO and DEG and the affected communities were limited for quite some time. This government-led process created expectations by representatives of indigenous communities, who were frustrated when it did not lead to any result or consequences.
- The dam reservoir was filled in 2016 for technical testing. The complainants explained to the Panel that there had been substantial impact on the affected communities. It appears that the affected communities were not informed by the Panamanian government about the timing of the test filling, the likely impact of the test filling nor the duration during which the water level would rise. However, the National Authority for Public Services (ASEP)<sup>20</sup>, in their communications at the time, claimed that all relevant authorities had been informed and that they clearly communicated the time period for testing – 24 May 2016 to 3 August 2016.
- The project became operational with the authorization to start commercial operation by the Panamanian Government in April 2017, following the completion of technical testing in March 2017.
- In the second monitoring report, the IEP expressed grave concern that test flooding of the reservoir was carried out without appropriate prior notification of affected communities and prior to any definitive agreement being reached through the dialogue with indigenous authorities. The test fillings of the reservoir without consultation with affected communities and the resulting multiple impacts, led to a significant deterioration in the relationship between project operators and affected communities. It is important to note that the way in which the test flooding was implemented did not only angered the communities which already were hostile to the project, but also angered other communities living at the river which previously had not expressed opposition to the project.

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<sup>17</sup> Published in November 2017: [https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/2017-ICM-Monitoring-report-BBHP\\_FINAL.pdf](https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/2017-ICM-Monitoring-report-BBHP_FINAL.pdf)

<sup>18</sup> The government was led between 2014 and 2019 by President Juan Carlos Varela.

<sup>19</sup> The process came to an agreement in 2019 (see below and was later not implemented by the new government that took power in 2019).

<sup>20</sup> Autoridad Nacional de los Servicios Públicos, <https://www.asep.gob.pa>

***Impacts of the test flooding and filling of the reservoir***

- The IEP has been informed by various parties that the test flooding and the subsequent operational flooding of the reservoir has had a range of impacts on the directly affected communities.<sup>21</sup> These include lack of access to the petroglyphs, which are claimed to have religious significance by residents of the directly affected villages and other members of the Mama Tadtá belief<sup>22</sup>, some flooding of land used for agricultural purposes, and some flooding of property, although in 2017 the exact number of properties was still a matter of some dispute because the forced easement process was not finalized. The fact that there have been direct negative impacts is not contested based on the information provided to the lenders and independently to the panel.<sup>23</sup>
- Given that the test flooding and filling of the reservoir took place without clearance of vegetation and forest on the shoreline of the river close to the affected communities, those communities were particularly affected. The IEP notes that a failure to clear the trees and vegetation may be one of the factors that led the Government of Panama to take the unprecedented step of effectively deregistering the project from the Clean Development Mechanism.
- To address the situation, the client of FMO and DEG started to remove debris from the reservoir, but the frequency and location of that removal is debated among the different stakeholders.

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<sup>21</sup> Around the lake are several villages. The communities Kiabda and Quebrada Cana that belong to the Ngöbe-Buglé are the only villages with Nuevo Palomar that are directly at the shoreline of the reservoir. Other villages are close but not so directly affected.

<sup>22</sup> Also written as Mama Tata or Mama Chi. This is a Christian syncretistic religion found in parts of Panama and in the Comarca of the Ngöbe-Buglé.

<sup>23</sup> See for the argumentation: Jordan, Osvaldo (2018): The Privatization of Environmental Discourse: Clean Development and Indigenous Territoriality in Western Panama, in: Revista Sobre Acesso À Justiça e Direitos Nas Américas, V.2,N.1 – 2018, ISSN 2526-6675



### 3. The Third Monitoring

#### 3.1. Project Related Developments since 2017

The following developments have occurred since publication of the second monitoring report:

- The project is operating and produces electricity for the Panamanian national grid;
- The government-mediated roundtable ended with a written agreement to resolve disputes around the project. The agreement was signed between the Government of Panama and the Comara as parties to the agreement. GENISA was not involved and did not sign the agreement. The agreement has never been published officially by parties involved in the negotiations. It contained promises such as the transferring of the project operation of the project from GENISA to another party, which has not been implemented up today.
- ASEP (National Authority for Public Services)<sup>24</sup>, the responsible State agency, has commenced a forced easement process with compensation packages for the land holders. The process took much time and was formally finalized in 2019, but not fully accepted by affected land owners.
- There have been significant ongoing political disputes between the government and indigenous authorities and within the indigenous communities about the decision-making process in the Comarca. The question of which institution has the right to take decisions on the use of certain parts of land that belongs to the Comarca remains under discussion.<sup>25</sup>
- There was significant environmental harm in mid-2018 when the water level of the dam reservoir was reduced for a repair of the dam. This particularly caused a loss of fish.

#### 3.2. The Monitoring Process

The IEP had already prepared a draft third monitoring report in October 2019, which was based on interviews and document reviews but without a site visit. In this draft monitoring report, the IEP stated that this would be the last monitoring report. In a letter dated November 2019, the complainants and NGO advisors (SOMO and Both ENDS) protested against the Panel's intention to close the monitoring in light of still existing outstanding non-compliances. They demanded that the ICM should monitor the situation on the ground. Moreover, they requested that the monitoring report should not only focus on FMO's and DEG's responses commitments made in the Management Response. The complainant M10 insisted that there was no greater degree of engagement between FMO and DEG and the complainants beyond the one-time visit of FMO and DEG staff mentioned above. The complainants have not been informed for a long period about the compensation process led by ASEP and whether that process would be in accordance with resettlement and indigenous people policies of FMO and DEG. As a result of the objections raised by the complainants and their advisors, the IEP decided not to issue the draft monitoring report prepared in October 2019 but instead to conduct a site visit on which the monitoring report would be based and written upon.

The site visit took place in September 2021. The IEP represented by one panel member was able to visited the company and the complainants. The IEP expert met with representatives from the villages of Kiabda (Kiad) and Quebrada Caña, held interviews in Nuevo Palomar and met some other neighbours who attended the public meeting in Kiabda organised by M10 as part of the visit.

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<sup>24</sup> . Autoridad Nacional de Servicios Públicos (ASEP) is the government institutions responsible for handling the process of compensation payments for a land transfer (in forced easement) if land is transferred without full legal transfer or expropriation for another use and the affected persons get compensation.

<sup>25</sup> Comara (in geographical, social and cultural homogenous region) is the term used in Panama for indigenous territories. The Comarca of the Ngöbe-Bugle is one of five indigenous territories in Panama and has a size of close to 7.000 square kilometers.

Additional interviews with other experts and observers took place in David and Panama City.<sup>26</sup> The IEP also met with GENISA, the project operator, as well as with several other stakeholders (see Annex 1).

### 3.3. Project Impacts as described by the affected communities

The following impacts have been reported by the affected communities:

<b>Impacts as described by the affected communities:</b>	
<b>Related to non-compliance findings (3): Environmental and social impacts</b>	
<b>Environmental impacts</b>	
Changing water levels	The water level of the reservoir fluctuates with a range of up to 10 meters between the rainy season and the drier ones. The level oscillates between 103 and 92 or 93 meters. When the water level is low, the communities are confronted with a muddy shoreline and can hardly access the boats for transportation nor the river (see Photo 1). These constant alterations are affecting the day-to-day life of the communities. In some periods villagers may remain stuck in the respective village for days
Debris / Pollution	Due to the fact that not all gallery forests at the shoreline were cut during construction – in part due (1) to the resistance of the affected communities – which is now contributing to debris in the lake. (2) Additional pollution (e.g., plastic bottles) can be observed. GENISA is cleaning the debris once per year partially, but it affects the accessibility of the water for bathing and washing of clothes. The clearing of sediments, debris and other pollutants is primarily done in the area around the reservoir’s dam. Clearing is not across the full extent of the reservoir, thus also not on the reservoir’s quite large areas in proximity of the affected villages of Kiad and Quebrada Caña affected from the water fluctuation
Water / quality	Data about the water quality is not made available to the affected communities on a regular basis. <sup>27</sup> Because such information is relevant for the quality and availability of water for the communities, this lack of communication is considered by the communities as a breach of their right to water. The complainants assume that the reduced water quality could be one reason for the reduced availability of fish in the lake.  According to the communities, the use of water for domestic hygiene is very limited. It is reported that people bathing in the reservoir have repeatedly suffered allergies or skin rashes
<b>Sustainable livelihoods</b>	
Access to washing / bathing	The communities are not using the lake any longer for washing of clothes and bathing, as they did before the flooding in 2017. Access to drinking water is coming from wells in or above the villages. The amount of water in the wells is limited according to the information of the affected communities, a fact that IEP could not

<sup>26</sup> See programme of the visit in Annex 1. The meetings covered civil society experts, the former Vice minister of indigenous affairs and different representatives of the Comarca Ngöbe-Bugle.

<sup>27</sup> The water quality measurements done by GENISA following legal obligations are documented in the E&S reports (see: Trias, Margaret (2020): Environmental & Social Monitoring. Barro Blanco Hydropower Project, Panama, January 2020, accessible for the ICM.

	verify. What is missing since the lake has been filled, is water for domestic use (which is part of the human right to water), i.e., water for personal hygiene and washing. <sup>28</sup>
Transportation	<p>The river can no longer be crossed as easily as before the reservoir was created. Prior to the construction of the reservoir, during the dry season people could easily cross the river by walking and during rainy seasons they could use simple boats. There was also an option to use the path along the river’s shoreline, which does not exist any longer. Now transportation takes place on paths crossing the hills, which is more challenging and time consuming. Boats are needed for day-to-day transportation. GENISA has provided two boats which are operated by private persons. The fee is 3 US-Dollar one way. This creates considerable costs for the communities.<sup>29</sup> Because of the high fee, communities build and commonly utilize their own improvised rafts as a means of transportation across the reservoir. They report that maneuvering these rafts is risky. People have reported accidents and losing their belongings.</p> <p>People also lost the path along the bank of the river, which was often used for visits to and from neighboring communities. Opportunities for interactions, such as for socializing purposes or cultural celebrations between the villages, have been reduced as taking the way across the hills is cumbersome and time consuming.</p>
Temperature / mosquitos / health	The communities report that there is a slight increase of temperature. The health situation is affected by a larger number of mosquitos. With the disappearance of the gallery forest, the communities say that they have lost access to medicinal plants,
<b>Income related effects</b>	
Loss of land	The communities report that they have lost some of the most fertile land at the bank of the river, and that therefore harvests reduced.
Fish stocks	The communities were reporting that the stock of fish in the lake has been dwindling. They estimate that the emptying of the reservoir in 2018-19 for a repair of the dam has contributed to a considerable reduction of fish. While some communities report that only one type of fish is left (tilapia) <sup>30</sup> , other communities (in Nuevo Palomar) observed that hardly any fish is left. While the company is highlighting that the communities were never fishing communities, the affected communities are highlighting that fish was always a regular part of their diet.
Reduction in agriculture yields	The communities describe that the yield of corn and other products has significantly reduced since the reservoir is filled.
Transportation costs	The transportation costs are an additional financial burden for all family budgets. They are relevant for selling of parts of their harvest, for using medical or other services in the city of Tole.

<sup>28</sup> See: UN-Committee on Economic, Social and Cultural Human Rights (2002) General Comment No 15 The right to water, UN-Doc: E/C.12/2002/11, 20 January 2003.

<sup>29</sup> Average income for community jobs are 10 US-Dollar a day.

<sup>30</sup> The tilapia is not a native fish species. It has been introduced only recently in the altered habitat of the reservoir, probably through its use in fishponds. The tilapia may also have caused further decline of fish species.

Income from hosting visitors to petroglyph sites	The Communities reported that the loss of the petroglyphs also involves the loss of a pilgrimage site for people from other communities in the Comarca. Local communities used to have stalls in proximity of this pilgrimage site to sell artisanal products and food products to the visitors. Communities report that an average of 40 people from outside of the project-affected area used to visit the petroglyphs on a weekly basis.
Loss of wood and forest products	With the loss of the gallery forest, the communities describe a loss of supply of wood for construction as well as the loss of non-timber forest products they could use in their day-to-day life, such as fruit trees and medicinal plants.
<b>Related to non-compliance finding (4): cultural heritage</b>	
<b>Impact on culture / religion</b>	
Loss of access to petroglyphs	The communities claim that they lost the access to petroglyphs, holy sites for the Mama Tadta religion. The sites with the holy petroglyphs are flooded now. They were used to educate children about the local history and religion. During the UN-dialogue process organized before 2015, which was supposed to search for a solution to the situation, <sup>31</sup> it was promised by the government that the sites should be studied from an archaeological as well as cultural perspective. However, these studies were never undertaken. Today the petroglyphs are covered by the water for most of the year, while in dry months they can be seen in the middle of the water.
Psychological / mental impacts	Some psychological impacts have become evident: - a sense of resignation among elderly with regards to the irreversible alteration of the river's flow, affecting wellbeing as part of people's unique relationship with their ancestral territories and combined with a sense of guilt towards younger generations for adults' inability to prevent the construction of the hydropower dam in the first place. - Protestors against the project faced with criminalization and stigmatization by state security forces at numerous occasions. This has caused psychological stress as well as monetary costs for legal defense against unfounded charges.
Change in overall habitat / environment	In general, the complainants describe their habitat as altered by the filling of their reservoir due to the various negative impacts. For them, some impacts are not compensable, as they lost their "paradise". That is why they opposed the construction of a dam from the beginning.

Communities describe that these impacts have altered their lives in a way that this has also threatened their traditional livelihoods and indigenous identity. Life has become more difficult, and access to essential services has become more complicated (Transport, Water availability for domestic use, loss of basic food products (such as fish)). The communities opposed the project from the beginning because they were afraid that the project would substantially alter their life and livelihood. From their perspective, this is exactly what happened.

<sup>31</sup> The process has been summarized in the panel report from 2015

### 3.4 Status of implementation of FMO/DEG Commitments in Management Response

**Commitment 4:** The FMO/DEG Management Response committed to “seek together with GENISA for acceptable environmental solutions of the small remaining fraction of the total shoreline...”. The IEP notes that no progress has been achieved regarding this commitment. Due to the fluctuation in the water level of the lake between approximately 103 meters during rainy seasons and 92 to 93 meters in dry seasons, the communities face problems which were not addressed. When the water level is low, the communities hardly have access to the river or the boats for transportation because the slope is extremely muddy. The changing water levels do not allow for activities of reforestation in front of the villages. At a level of 103 meters, the water covers all former riverbanks and reaches up to the level of the villages of Kiabda. The IEP is not aware of any plan to limit or reduce the size of the water level fluctuation. Moreover, there is no early warning system in place which would inform the villages about a rapid increase of water level which might occur as a result of heavy rains in the mountains where the river comes from.

Because most of the gallery forest in front of the villages was not fully cleared before the lake was flooded, a lot of debris is still in the lake. GENISA is cleaning the debris that comes down the river every year. It also cuts some remaining tops of trees which are still standing in the water. Nevertheless, the water is partially covered with debris particularly close to the shoreline, where the communities’ washing, and bathing used to take place (see annexed photos).

**Commitment 5:** the FMO/DEG committed to “ensure that explanation efforts related to flood levels continue and that the water quality management and monitoring remains of significant importance and therefore subject to the Lenders’ ongoing reviewing of the project.”

The Panel notes that there is basically no **communication** between GENISA and the affected communities about flood levels. This has been confirmed by both sides during interviews. Consultations with indigenous peoples are required under IFC PS 7 (Indigenous Peoples). No communication took place neither at the moment of the test flooding in 2016, nor when the reservoir level was lowered in 2019. The lowering of the water levels, with associated impacts including fish deaths, suspension of transportation across the reservoir, etc., lasted for one month. Furthermore, there is no evidence to demonstrate that GENISA communicated in advance – or during the lowering – with the affected communities. The negative impacts caused by the lowering of the water levels were set out in the report of the Ministry of Environment of Panama, which stated that a considerable number of dead fish were observed on May 13 and 14. The lowering of the Barro Blanco Reservoir was carried out without considering the potential effects to the biological aspects of the river. The incident caused direct consequences on the aquatic biota and nearby communities who depend on the river and the fish to meet their basic needs. The protocol used to empty the reservoir was not known, nor is the date the lowering began, the capture and release efforts were not carried out in parallel with the lowering of the reservoir and therefore caused fish death.<sup>32</sup>

**Water quality (IFS PS 3: Resource Efficiency and Pollution Prevention):** The Environmental and Social (E&S) consultant of the lenders is checking the monthly water quality analyses undertaken by GENISA. The E&S reports show that all parameters were normally within permitted statutory levels for coliforms, with the exemption of a few months when levels were above the maximum permitted level. This situation is comparable to the baseline data of the river before construction and is caused by cattle farming and herding in the watershed and along the shorelines. GENISA monitors surface water at

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<sup>32</sup> Quoted from the unpublished Monitoring Report in October 2019, page 5f.

Kiabda, Nuevo Palomar and the dock. The available reports (both from 2020) of the E&S consultant showed that almost all parameters were within acceptable limits.<sup>33</sup> The information on water quality monitoring was not made available to the communities. A communication about such findings would be useful, particularly when the water collection points are just in front of the villages.

The latest available **study on biodiversity (IFC PS 6)** and aquatic fauna prepared by the lenders' E&S consultant was issued in 2018, before the lowering of the water levels that has contributed to potential dying of fish in 2019. The extent of loss of aquatic fauna since then is debated among the stakeholders. According to GENISA, studies show that plenty of fish is still available.<sup>34</sup> However, a recent study states that the affected communities report that the amount of fish has drastically reduced and that only tilapia can be found. There is also a dispute to what extent communities are actually involved in fishing. GENISA argues that the indigenous people do not fish. The communities agree that they are not fishing communities, but that they – while living at the bank of a river since decades, have regularly fished and that fish is an important component on their diet. The IEP notes that this information is missing from the baseline assessment conducted at the beginning of the project.

### **3.5. Submissions presented by the parties involved during the site visit**

In 2021, the project operator GENISA decided to prepay back their loan with DEG and FMO which ended the contractual relationship with GENISA. The complainant M10, as well as the affected communities and the accompanying NGOs, protested strongly about not having been informed in advance of this step. In an open letter dated June 4, 2021, they state that they only took note of this development when it was made public on FMO's website on April 20th, 2021. The president of the movement M10 declared in that letter that, even with the termination of the contract, in their view, the responsibility of FMO and DEG for the damages they have caused does not end. They demand in this open letter (1) that the banks cannot withdraw from this project without considering their own responsibility; (2) a public apology for the human rights violations they contributed to in the community of indigenous people Ngäbe Buglé; and (3) compensation for the harm caused for the entire lifetime of the hydropower. They mention the time span of 50 + 50 years, because the formal concession for the Barra Blanco dam is 50 years and the compensation should cover the double of this period. In the letter, they mention to expect a responsible business conduct from the banks linked to an apology and compensation, and ask for a responsible exit of the banks. In their response, sent in the end of June 2021, the banks expressed regret for not having communicated earlier about the unilateral decision of GENISA to prepay the loans. The banks referred to the planned monitoring visit of the ICM and noted that they are expecting the IEP's recommendations to DEG and FMO based on its independent findings. Additionally, the banks organized direct communications with communities over the summer and it was agreed that the banks should visit the communities in December 2021, a visit that has been postponed to February 2022.

During the monitoring visit, the ICM met with the project operator GENISA. GENISA representatives explained that it complied with all requirements for the operation of the plant from the Government of Panama. They asserted that GENISA transferred the compensation payments for the forced easement to ASEP in time and that it tried to address all other requirements related to environmental issues, such as regular water quality monitoring. They have financed two boats for transportation services on the lake, and have cleared the lake from debris and waste several times. More frequent

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<sup>33</sup> See Trias (2020), *ibid*, p. 20f

<sup>34</sup> See: Genisa (2021): ESTUDIO DE MONITOREO DE FAUNA ACUÁTICA, CENTRAL HIDROELÉCTRICA DE BARRO BLANCO PROYECTO NO. 0129189, INFORME NO. 025, Panamá, Marzo 2021 and Environ and Social Consulting, S.A., Estudio de Monitoreo de Fauna Acuática para la Central Hidroeléctrica de Barro Blanco, Octubre de 2020.

and better communication with the affected communities was not possible, according to GENISA, because inhabitants did not allow them to enter the zone of the affected communities. GENISA staff was threatened when approaching the areas. This is different with other reservoir neighbors as GENISA indicated that they are in regular contact with the communities of Nuevo Palomand Coglé, as well as with representatives from the comarca Ngäbe Buglé. The threatening atmosphere further hindered the clearance of shoreline forests in front of the villages of Kiabda and Quebrada Cana. GENISA claimed that there are no problems with fish in the lake. GENISA referred to a study which supposedly provides evidence for this statement.

#### 4. Assessment of Non-compliance Status

The following table presents an overview of the status of implementation of promises and commitments made by the lenders, comparing the status of implementation in relation to the non-compliance findings from the 2015 report of the Panel. It shows that all but one of the non-compliances stated in the Compliance Review Report (2015) remain unresolved, despite that the environmental and social action plans produced after the compliance review in 2015 were covering these issues and the lenders tried to solve the outstanding issues.

One of the core issues, the land-related forced easement process, has been finalized even though it was done late (only two years after the project started) and without adequate communication with the affected communities. However, complainant communities and their legal advisors have not collected their cheques yet, because they disagree with the calculation made by the government institution. Part of the monetary compensation is to be paid to the traditional authorities of the Comarca. There are groups in the Comarca who are searching for solutions and who would be willing to accept the compensation offered. Still, neither the directly affected individuals and villages nor the Traditional Authorities of the Comarca have collected their cheques.

##### 4.1. Implementation status

<b>Status of non-compliances found in the ICM Compliance Review Report (2015)</b>	
<b>(1) Land acquisition process</b>	<p><b>Indigenous decision making:</b> The question which of the indigenous authorities would have been recognized as an authorized representative for the indigenous Comarca to take a decision whether such a dam should be constructed or not, is relevant.</p> <p>The regional Comarca council had supported the project in the initial period, while the directly affected communities from the annexed land always objected to the project. The former Vice Minister of Indigenous Affairs explained to the IEP that the decision of the regional council was probably correct, as the law of the Comarca only requires the formal decisions of the general council for decisions related to issues that affect the whole Comara. On the other hand, the president of the national organization of indigenous peoples from Panama (COONAPIP) explained that in the other Comarcas of Panama these decisions are regularly taken by the general council and that this decision-making principle has proven to be useful, because it has helped to avoid conflicts inside Comarcas. Up to today, the issue of which authority should have taken the decision remains open. It is hoped by many that, with a new leadership inside the Comarca, a common understanding can be found. The elections are foreseen for 2022.</p> <p>In 2011, IFC Performance Standards did not require FPIC with indigenous peoples.<sup>35</sup> But at the time of approval of the project by FMO and DEG, there was already public knowledge about firm resistance of communities against this project. Moreover, while in 2011 FPIC was not required under FMO and DEG policies, there were legal frameworks which required FPIC. Both in Panamanian and Dutch law, it was already a legal requirement to organize free, prior and informed consultations under the ILO Convention 169, ratified by the</p>

<sup>35</sup> The recent IFC Performance Standards, which contains an FPIC provision are valid since 2012, while the project was already approved in 2011.



	<p>Netherlands in 1998. Moreover, Panama is part of the American Convention and the jurisprudence of the Inter-American Court of Human Rights, that had already required prior consultation with Indigenous peoples before 2011.</p> <p>Therefore, the conclusions of the Compliance Review report from 2015 are still valid: (1) “The Panel is .... of the view that the lender could have done more to seek a greater degree of clarification on the legal situation related to land acquisition and use through the commissioning of a formal legal opinion....” (IEP 2015: para 128). And (2) moreover, the IEP noted: “... that, while there is uncertainty in the communities about the likely levels of flooding, this stems from a breakdown in communication... , the Panel is of the view that the lack of communication on this issue was out of line with that anticipated in PS 1.” (IEP 2015; para 154).</p>
<p>(2) <b><i>The participation and consultation with indigenous communities</i></b></p>	<p><b>Communication with indigenous peoples (IFC PS 7):</b> Communication (from GENISA) with the indigenous communities in Kiabda and Quebrada Caña are basically non-existent. There have been insufficient attempts by GENISA to engage with these communities. It should be noted that the communities also did not want to engage with the GENISA. The Company reported that several times staff has been threatened by stone throws.<sup>36</sup> Government institutions also report that company visits have been basically impossible due to such forms of threat (Ministry of Culture, MINSA). Reports from communities in Nuevo Palomar and Coglé indicate on the other hand that communication (on boat transport, water quality, maintenance of the school solar panel in Nuevo Palomar etc.) with the company and the government was rather difficult.</p> <p>The communication with FMO and DEG was restricted to one visit only. During the period of the government-led reconciliation process with the indigenous peoples (which finally ended without implementation), the two banks were discouraged to engage with the communities affected.</p>
<p>(3) <b><i>Assessment of environmental and social impacts</i></b></p>	<p>The Compliance Review report stated non-compliances with IFC PS1. See the finding in chapter 3.2 related to the monitoring commitments related to flood level fluctuation, gallery forest water quality, biodiversity and livelihood impacts</p> <p>The original Environmental Impact Assessment was deficient and therefore many baseline information is missing. . This includes information with respect to fish diversity and availability of aquatic resources, and also data on the use of fishing resources through local population. Some information was gathered on the availability of species, but assessments were incomplete and findings were thus not sufficiently robust. As a result of this lack of information, many impacts were not adequately addressed.</p>
<p>(4) <b><i>Cultural heritage</i></b></p>	<p><b>Cultural Heritage issues (IFC PS8):</b> particularly the inundation of petroglyphs and the loss of access to holy sites, are completely unresolved. Already in 2015,</p>

<sup>36</sup> At the back of this difficult relationship is the deterioration of company-community relations that also results from the history of peaceful protests being violently repressed at the hands of the State’s security forces at the early stage of the project planning. In other nonviolent protests held in 2015-2016, protesters suffered physical injuries such as broken arms and lost eyes, and some of them suffer the consequences of these incidents of excessive violence to these days. Communities strongly reject that the episode of stone throwing continued after 2016, and reiterate that GENISA never tried to establish relations with the affected communities in the last six years.

	<p>during the UN-Roundtable, INAC<sup>37</sup> promised to undertake two studies in order to make proposals for conservation measures of petroglyphs impacted by the project and submerged by the lake. None of these have been undertaken. GENISA has contacted INAC in 2019 requesting advice and guidance on how to handle conservation measures of the petroglyphs. GENISA states that the reports are still pending and that they have not received any response so far. In September 2021, the Ministry of Culture confirmed the importance of the petroglyphs and indigenous cultural heritages to the Panel, and mentioned the shortage of resources as the cause for the delayed process. With the transfer from INAC to the Ministry of Culture, more resources shall be available in future. An UN-investigation of 2013 suggested that the cultural heritage issues are the second key problem for the project, following the first key problem of land issues. The UN already concluded that it is not only the existence of petroglyphs that is important to the communities, but it is also the general relationship of indigenous communities with their territory and the environment.<sup>38</sup></p>
<p><b>(5) Compensation for to land use change (force easement)</b></p>	<p><b>Land, resettlement and compensation (IFC PS 5):</b> The compensation process dates back to 2013 when ASEP, Panama’s National Public Service Authority, decided to start a process of forced easement, with the objective to compensate land of the original seven landowners which were owning the 6.7 ha of Annexed Land before the Comarca was created. ASEP announced already in early 2014 that they would enter the place and start the process of forced easement. The process did not progress before the dam was constructed and not even before the reservoir was filled in 2017. FMO and DEG demanded actions on the compensation process from ASEP. While ASEP always mentioned that access to the place was difficult given the resistance of the affected communities against the project, they finally arranged the land valuation by drones and the notifications for the land were issued in 2019.</p> <p>A total of USD 86,597,50 is to be paid to the Traditional Authorities of the Comarca Ngäbe-Buglé and a total of USD 82,146,46 is to be paid to the beneficiaries from the Annex land Communities (Indigenous Communities).<sup>39</sup></p> <p>Other non-indigenous landowners outside the Annex Land Communities will also be paid. All cheques have been issued by GENISA for each of the beneficiaries and have been handed over to ASEP. So far, neither the notified individuals from the indigenous communities nor the traditional Authorities have collected their cheques. The communities believe that the compensation amounts offered for the land, houses and related trees etc. is insufficient and that it does not compensate for the loss of the living environment.<sup>40</sup></p> <p>GENISA itself believes that it has complied with the standard required under Panamanian law, by providing the money that was transferred to ASEP in order to be distributed to those entitled to the compensation. Community members highlight that they were not consulted and not informed by GENISA or any national institution about the compensation process for forced easement.</p>

<sup>37</sup> The Instituto Nacional de Cultural (INAC) has been transferred by the Government of Laurtentino Cortizo Cohen (since July 2019) into the new Ministerio de Cultura.

<sup>38</sup> See the report of the UN\_Special Rapporteur on Indigenous Peoples James Anaya from his visit to Panama in 2014: Informe del Relator Especial sobre los derechos de los pueblos indígenas, James Anaya. Adición La situación de los derechos de los pueblos indígenas en Panamá\* UN-Human Rights Council, UN-Doc No: A/HRC/27/52/Add.1, 07. May 2014

<sup>39</sup> The details of the transfer are documented in the report of the E&S advisor Trias, M. (2020).

<sup>40</sup> Communities and their legal advisors claim to further analyze this issue of payments for forced easement (and plan to communicate results directly to the banks in due course), documented evidence collected so far from ASEP shall shows that amounts paid by GENISA to ASEP are significantly lower than the those reported by Ms. Trias.

	<p>Communities and their advisors have noted that the documented evidence collected from ASEP so far, clearly shows that amounts paid by GENISA to ASEP are significantly lower than the those reported by the E&amp;S consultant.</p>
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The ICM recognizes that FMO and DEG were confronted with a difficult situation: at the heart of the complex dispute which has given rise to this complaint lies a fundamental opposition to the project on the part of the affected communities. This opposition is rooted in strong commitments on the part of the M10 leadership and the community they represent, which are rooted in spiritual and historical considerations for the protection of their livelihood, ancestral territory and living environment. The protest emerged already in 1999 when an older project was planned for the valley of the river Tabasara, a larger one than the current Barro Blanco dam. There are members of the community, both locally and in the wider comarca, who would accept the project, accompanied by some form of compensation, but these have not been the dominant political leadership for the local directly affected community.

A further complicating factor comes from disputes within the indigenous political leadership and apparent political rejection of those who seek some form of agreement. The president of the National Coordinating Body of Indigenous Peoples in Panama (COONAPIP) characterized the situation during the ICM monitoring mission in September 2021 by noting that, in the past few years, the Comarca suffered from a severe governance crisis. All are hopeful that the election of a new “cacique general”<sup>41</sup>, scheduled for spring 2022, might help to solve the situation.

The FMO and DEG have previously offered (after 2017) to facilitate a dialogue by identifying neutral parties that could play a constructive role as a mediator in this process. They have also offered the parties (client, government and complainants) to fund the costs for such mediation effort. However, it was a government decision to take the lead in this process and to ask the lenders and the client not to interfere with the process. An agreement between the government and the Comarca was reached in 2019 and was signed by Silvia Carrera, one of the complainants, in her function as Cacique General of the Comarca. However, this agreement was annulled by the Comarca general congress, because the Cacica General, in this case Silvia Carrera, does not have the mandate to sign agreements alone without the support of the congress, which, in turn, bears obligations related to direct consultations with their constituencies.<sup>42</sup> Thus, the agreement was not implemented by the new government that took office in July 2019.

**4.2. FMO and DEG: Institutional commitment and learnings**

Both FMO and DEG acknowledged, in response to the Panel’s Compliance review report, that certain aspects of the project should have been appraised more diligently. In particular, they mentioned the need to establish an understanding about who is the representative body of the indigenous community, which is authorized to represent the views of the communities, and is positioned to build agreement and finally to arrive at a consensus or to take a binding decision. Both FMO and DEG responded with a variety of actions, policy adjustments, increase of governance capacity, trainings,

<sup>41</sup> The leading chieftain of the Ngäbe-Buglé comarca.

<sup>42</sup> The new government of Panama is headed by President Laurentino Corio Cohen and started in 2019.

and changes in stakeholder engagement (see below). Since 2012, DEG and FMO have adopted the revised IFC PS7 performance standard which requires prior and informed consent if indigenous peoples are affected.

The IEP has been informed that the DEG Management Board already took a decision in December 2015 to improve the credit process in regard to the IFC Performance Standards No. 7 on Indigenous Peoples. For projects with relevant risk profiles, the DEG is seeking contextual information on IFC 7 and FPIC at an early state and before clearance in principle. These policy changes have been undertaken by DEG and FMO in response to the Compliance Review report from 2015. For obvious reasons, the IEP cannot judge if these policies are always implemented.

In the future, the environment and social due diligence (ESDD) will have a focus on indigenous peoples when such risks exist, and the consultancy team must include an expert on Indigenous Peoples' issues if IFC PS 7 is likely to be triggered. Between 2015 and 2017, DEG carried out reviews regarding Indigenous Peoples in different planned projects (not public) and looked into specific examples, conducted training workshops with support of external experts, and integrated the learnings into relevant institutional processes. Performance Standard 7 is now integrated into the context analysis tool, which is part of the general human right lens of the ESDD and should always be taken into consideration before clearance in principle decisions are taken.

FMO has updated or adopted a series of policies that reflect human rights and Indigenous People issues: FMO's new sustainability policy (2017), as well as its position statements on Human Rights (2017), Land Governance (2017), Gender (2017) and Hydro Power Plants (2016). FMO's Supervisory Board has established an Impact Committee and a new Impact and ESG Department was created. Human rights knowledge and capacity is part of mandatory training of the FMO today. The contextual risks analysis has been amended, now incorporating FPIC as an issue. Additionally, the bank improved stakeholder engagements with NGOs and with the multistakeholder platform of the Dutch banking sector. Substantive changes were also made with respect to transparency and disclosure related policies, both related to ex-ante disclosure of all planned transactions before contracting in order to allow stakeholders to share concerns, as well as with ex-post disclosure of all investments.

## 5. Conclusions and Recommendations:

The main impact of the project can be summarized as substantive alteration of the living environment of the affected communities. The IEP believes that the resistance of the indigenous communities in Kiabda and Quebrada Cana has been systematically underestimated probably because the size of the annexed land is quite small (6,7 ha). Yet, the impact on the livelihood of the communities is larger than the direct effects which can be measured on these 6,7 ha of land. Many statements during the interviews with affected communities and in the assembly in which the ICM participated in Kiabda demonstrate that the project breached, due to its impacts, an indigenous understanding of landscape and future development. They want to preserve their homeland, their livelihood, which represents their cultural identity to future generations as an unchanged environment, the same in which they grew up themselves. The resistance of the directly affected communities did make it difficult to agree on remedial measures. So far, all actions taken by GENISA to establish functioning communications were very limited and insufficient .

The project remains in non-compliance status on most issues laid out in the 2015 report (see table above). The ICM makes the following recommendations to address outstanding non-compliances and impacts:

- (1) FMO and DEG should publicly recognize that the project has had unintended impacts and should formulate a public apology to the affected communities, including a recognition that they have ignored concerns raised by the communities since the inception of the project. It is the combination of impacts that leads to a substantive alteration of livelihood and living environment of the affected communities. The summary of impacts is different from just compensating some of those impacts individually (such as buying another boat etc.). It is the overall livelihood impact that has been underestimated.
- (2) A core problem is the huge alteration in the water levels. The lake is practically uncontrollable in the day-to-day life of the communities. FMO and DEG should request the government to explore alternatives in managing the lake. FMO and DEG should finance a technical study in this regard. While the IEP does not know what options are available for broader solutions, there seems to be at least one option, which is to run the lake at a stable water level. This might have some impact on the amount of electricity produced, but it would allow a much more stable planning for boat landing infrastructure, pedestrian pathways, and replanting of gallery forest.
- (3) FMO and DEG should again ask the government, particularly the Ministry of Culture, to undertake the long-promised archeological and cultural heritage studies. The UN-Declaration of Rights of Indigenous Peoples requires in Article 11 that “[i]ndigenous Peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestation of their cultures”.
- (4) Even if communication with the affected communities has not been easy, the formats and rhythm of the communication needs to be improved. FMO and DEG should continue to encourage the project operator to improve it.
- (5) DEG and FMO should address several issues with the project operator: (a) transportation (cost and availability of boat transportation, and a stable access to boats (landing platforms), (b) the

availability of fish and (c) water for domestic use. These issues need to be addressed regardless of the withdrawal of lenders. Adequate measures need to be put in place to compensate the community for negative impacts.

- (6) The IEP recommends that DEG and FMO provide funds to finance remedial actions which would mitigate impacts on the Indigenous Peoples and their community, with particular focus on those who are directly affected. The IEP recommends that FMO and DEG could do so by establishing a fund for remedial action to mitigate those unintended or unforeseen or underestimated impacts on a voluntary base. Such a fund should be open for applications from the affected communities for remedial action and the communities should have an adequate voice and participation in decision making and governance of that fund.

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**Annexes:****Annex 1: Abbreviations**

ADC	Alianza para la Conservación y del Desarrollo
ASEP	Autoridad Nacional de Servicios Públicos
BBHP	Barro Blanco Hydroelectric Project
DEG	Deutsche Investitions- und Entwicklungsgesellschaft
E&S Advisor	Environment and Social Advisor
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Dilligence
FMO	Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V: = Dutch Entrepreneurial Development Bank
FPIC	Free prior and informed consent
GENISA	Generadora del Istmo, SA
Ha	Hectar
IAM	International Accountability Network
ICM	Independent Complaint Mechanisms of DEG, FMO and Proparco
IEP	Independent Expert Panel
IFC-PS	International Finance Corporation – Performance Standards
ILO	International Labour Organization
INAC	Instituto Nacional de Cultura de Panamá
M 10	Movimiento 10 de Abril
UN	United Nations
UN-CESCR	United Nations Committee on Economic, Social and Cultural Rights
USD	US-Dollar

<b>Annex 2: Visit to Barro Blanco in September 2021</b>						
Visita ICM (Michael Windfuhr) a Panama – Caso Barro Blanco.						
	<b>Domingo (12.09)</b>	<b>Lunes (13.09)</b>	<b>Martes (14.09)</b>	<b>Miercoles (15.09)</b>	<b>Jueves (16.09)</b>	<b>Viernes (17.09.)</b>
09.05 a.m. Vuelo de Berlin – AMS – Panama City		Visita a la presa con Genisa	Visita a Kiab - Nuevo Palomar, reunion con M10	11.00 reunion con Commission Justicia et Pax		09.00 a.m. reunion con el Defenso del Pueblo Eduardo Leblanc González
Arrival 4.45 P.m. Panama City (KL 757)	2 p.m. Vuelo de Panama City a David	Visita a la presa con Genisa	5 p.m. Reunion con M 22	Reunion (debriefing) con Gensia Sr. Wilfedo Arias	1 p.m. CONAPIP (Coordinacion Nacional de Pueblos Indigenas) Reunion con el Presidente Marcelo Guerra	11.00 a.m. reunion con el Minsterio de Cultura con la Directora of International Cooperation, Mrs. Yesenia Sanchez
	Preparación de la visita al Martes con ACD (Alianza para la Conservación y del Desarrollo) Susana Serazzín y Morris Smith	6.p.m. reunion con Prof. Evedilio Adams	6 p.m. reunion con Osvaldo Jordan	Reunion con Thorben Löppke (DEG)	4 p.m. Debriefing with ACD Susana Serazzin	
Hotel Bristol, Avenida Aquilino de la Guardia, Panama City Zona 10 PA	Hotel City Plaza David	Hotel City Plaza David	Hotel City Plaza David	Hotel Bristol, Avenida Aquilino de la Guardia, Panama City Zona 10 PA	Hotel Bristol, Avenida Aquilino de la Guardia, Panama City Zona 10 PA	6.50 p.m. Vuelo de regreso (KL 758)
Transportación: Taxi	Transportación: Taxi	Carro de Genisa	Alquilar un carro con un chofer	Transportación: Taxi	Transportación: Taxi	Transportación: Taxi