

COMPLAINTS MECHANISM

SG/E/2023/28

# **BOLIVIA MI AGUA WATER AND SANITATION (BOLIVIA)**

INITIAL ASSESSMENT REPORT

2 AUGUST 2024



# SG/E/2023/28

## Bolivia Mi Agua Water and Sanitation (Bolivia)

### Initial Assessment Report

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**Complaint confidential:** No

**External distribution**

Complainant

**Internal distribution**

Inspector General  
Relevant EIB services

**Disclaimers**

This report is based on the information available to the EIB Group Complaints Mechanism Division up to 10 June 2024.

In case of discrepancies between language versions, the English version prevails.

## The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism is a tool enabling the resolution of disputes if any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgment of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, applicable law or the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions and may include the environmental or social impact of the EIB's projects and operations.

One of the main objectives of the Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the Complaints Mechanism please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

## The Initial Assessment Report

The initial assessment generally aims to:

- Clarify the concerns raised by the complainants and gain a better understanding of the complainants' position as well as the views of other stakeholders (e.g. project promoter, national authorities).
- Understand the validity of the concerns raised.
- Assess whether and how the stakeholders (e.g. the complainants, the relevant EIB Group project team and the project promoter) could seek resolution of the issues raised by the complainants.
- Determine if further work by the EIB Group Complaints Mechanism Division is necessary and/or possible (investigation, compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the complainants.

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## EXECUTIVE SUMMARY

In October 2023, the European Investment Bank (the EIB or the Bank) Complaints Mechanism (EIB-CM) received a complaint concerning the Drinking Water System Palacio Tambo sub-project that is part of the Bolivia Mi Agua Water and Sanitation investment project in Bolivia. For this sub-project, water is abstracted from the Japo community territory and delivered to the Palacio Tambo community.

The complaint was submitted by a representative of the Japo community. The complaint alleges instances of non-compliance with the EIB Environmental and Social Standards and, in particular, lack of prior and meaningful stakeholder engagement, lack of free prior and informed consent and violence and retaliation as part of the sub-project implementation.

Following the initial assessment of the gathered information at this stage, the EIB-CM decided to proceed with a compliance review regarding the reported allegations, with a view to investigating possible maladministration by the EIB. The enquiry will assess the project documentation and the reasonable due diligence and monitoring of the project by the Bank.

# 1 THE PROJECT

- 1.1 On 18 September 2018, the EIB Board of Directors approved the financing of the Bolivia Mi Agua Water and Sanitation investment project loan (the project) in Bolivia for an amount of up to USD 63.5 million (about € 55 million).
- 1.2 The objective of the project is to expand the coverage of water and sanitation services in the country, predominately in under-served, low-income, rural areas. The project finances about 240 water and sanitation sub-projects in the rural areas of Bolivia, including the Drinking Water System Palacio Tambo (the sub-project). These investments are part of the MI AGUA Programme V. This programme is based on the National Plan for Irrigation Development (*Plan Nacional de Desarrollo del Riego – PNDR*), approved by the 831 Supreme Decree of March 30, 2011.
- 1.3 The MI AGUA programme's promoter is the Bolivian Ministry of Environment and Water (MMAyA) and is executed by the National Fund for Productive and Social investment (FPS), in coordination with the beneficiary municipal autonomous governments (GAM).
- 1.4 The EIB completed its appraisal of the project in July 2018. The finance contract was signed in December 2018. The EIB disbursed a portion of the funds allocated to the sub-project in January 2023.

# 2 THE COMPLAINT

- 2.1 On 22 October 2023, the EIB-CM received, via the Bank services, a complaint from an individual alleging that the sub-project was not in compliance with the EIB Environmental and Social Standards (EIB E&S Standards) in relation to stakeholder engagement and indigenous people rights.
- 2.2 The complainant claims to be representing the Japo community. The complainant shared messages and video recordings of representatives of the Japo community addressed to the EIB-CM. The complainant exchanged information with the EIB-CM between November 2023 and April 2024 and a number of telephonic conversations also took place over this period, during which the complainant provided further information regarding the allegations.
- 2.3 The complainant expressed that:
  - i. the conflict between the Japo and Palacio Tambo communities started in May 2022 following a change in the sub-project design and concerns of members of the Japo community on the insufficiency of the residual waterflow.
  - ii. the Japo community requested that agreements<sup>1</sup> for the sub-project implementation be revised and, pending said revision, refused to provide access to the intake site that is located in the community territory and did not agree for works to continue;
  - iii. the access to potable water by the Japo and other communities along the pipeline route was not considered during the early sub-project design;
  - iv. the conflict escalated and led to inter-community violence in October 2023, when the contractor (together with the intervention of the Palacio Tambo villagers) tried, without consent from the Japo community, to access the intake site to continue the works<sup>2</sup>;

<sup>1</sup> Initial agreements refer to an act of 17 August 2017 where Japo and Palacio Tambo agreed to exchange access to water from Japo against land from Palacio Tambo and subsequent acts in 2021 and 2022 of land donation and celebration of works (*acta de challa*).

<sup>2</sup> See also videos and posts on Facebook page Central Valle Andino searching for the words “valle andino japo”.

- v. retaliation was taking place, including the complainant and a representative of the Japo community being made *personae non-gratae* by a decision of the local indigenous authority<sup>3</sup>; and
  - vi. the Japo community was unwilling to engage in a mediation and requested a compliance review from the EIB-CM<sup>4</sup>.
- 2.4 The complainant raised allegations of non-compliance with the EIB E&S Standards that may be grouped as follows:
- i. lack of prior and meaningful stakeholder engagement with the Japo community;
  - ii. lack or loss of free, prior and informed consent (FPIC) from the indigenous people of the Japo community following changes to the design of the sub-project<sup>5</sup>; and
  - iii. lack of conflict resolution (see paragraph 2.3iv above) and retaliation risk management (see paragraph 2.3v above) in the context of the conflict and of the sub-project implementation.

### 3 REGULATORY FRAMEWORK

#### EIB Group Complaints Mechanism

- 3.1 Article 3 of the EIB-CM Policy states that maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule of principle that is binding upon it, including its own policies, standards, and procedures. Maladministration may relate to the EIB Group's decisions, actions or omissions, and may also relate to the environmental or social impact of the EIB's projects and operations.
- 3.2 The EIB-CM Policy specifies that it is the role of the EIB-CM to review the EIB's activities with a view to determining whether maladministration attributable to the EIB has taken place<sup>6</sup>. This review may include a substantive review of the project compliance with environmental and social standards<sup>7</sup>.
- 3.3 Compliance of a project with international, EU, national or local standards is the responsibility of the relevant project promoter and local authorities. However, the EIB Group has a duty to verify compliance with its applicable policies, procedures and standards. Complaints may relate to any aspect of the planning, implementation or impact of EIB Group projects, including but not limited to:
- i. the due diligence of the project;
  - ii. the adequacy of measures for the mitigation of the social and environmental impacts of the project;
  - iii. arrangements for involvement of the affected communities, minorities and vulnerable groups in the project;
  - iv. the monitoring of the project<sup>8</sup>.

<sup>3</sup> See decisions from the indigenous group highest authorities (council of caciques, [act of 13 March 2023](#), and resolution 02/2023 of 28 November 2023 from the Council of Caciques of 30 November 2023.

<sup>4</sup> According to communications of 10 and 11 April 2024 from the complainant and Japo community representatives

<sup>5</sup> The intake location moved at least 90m and this would allegedly affect the location of the Right of Ways (RoW) on land used for the sub-project and, therefore, also the agreement for land rights donations to the Japo community.

<sup>6</sup> Section 5.3.3 of the *EIB Group Complaints Mechanism Policy*.

<sup>7</sup> Section 5.3.3 of the *EIB Group Complaints Mechanism Policy*.

<sup>8</sup> Section 4.3.14 of the *EIB Group Complaints Mechanism Policy*.

## EIB Group Environmental and Social (E&S) Standards

- 3.4 The E&S applicable regulatory framework includes, beyond national regulations, the EIB Statement of Environment and Social Principles and Standards (the Statement)<sup>9</sup>, the EIB's Environmental and Social Handbook (the Handbook)<sup>10</sup> describing the procedures for the appraisal and monitoring of projects by the Bank and the EIB E&S Standards applicable at the time of approval of the financing of the project<sup>11</sup>. The allegations of this complaint concern the EIB appraisal and the monitoring of the sub-project's compliance with the EIB E&S Standards, in particular, compliance with: (i) Standard 1 on the management of environmental and social impacts and risks, (ii) Standard 7 on the rights and interests of vulnerable groups and indigenous people, and (iii) Standard 10 on stakeholder engagement.

## 4 INITIAL ASSESSMENT

- 4.1 In December 2023, the EIB-CM acknowledged receipt and confirmed the admissibility of the complaint. Article 4.2.1 of the EIB-CM Policy<sup>12</sup> and article 2.1.3 of the EIB-CM Procedures<sup>13</sup> require the EIB-CM to carry out the initial assessment of the complaint<sup>14</sup>. The objective of the initial assessment is to clarify the concerns raised by the complainant, to understand its position, the validity of the concerns raised and to determine if further work by the EIB-CM is necessary and/or possible in order to address the allegation or resolve the issues raised by the complainant<sup>15</sup>.
- 4.2 During the initial assessment, the EIB-CM:
- i. engaged with the complainant to understand the information available and clarify the allegations and expectations of the complaint (see paragraphs 2.2 to 2.4);
  - ii. had initial meetings, followed by information exchanges, with the EIB concerned services on 19 January 2023, 10 April 2024 and 6 June 2024;
  - iii. had a virtual meeting with the project promoter (MMAyA) and its executing agency (FPS) on 11 April 2024; and
  - iv. reviewed EIB project documents, such as the appraisal and approval related documents, the finance contract, project reports and project related information made available on the EIB's project website<sup>16</sup>.
- 4.3 From this review, the EIB-CM identified the following stakeholders as part of the reported conflict:
- i. the Palacio Tambo community (representing the 620 beneficiaries of the sub-project), which is part of the *Ayllu*<sup>17</sup> *LLaqa Yucasa* under the indigenous group: *Territorio Indígena Originario Campesino (TIOC) of Marka Payqullu – San Lucas, Qhara Qhara Nation*, in Bolivia;
  - ii. the Japo community (which represents approximately 30 families) that is affected by the sub-project and is part of the *Ayllu Quillaja* and under the same indigenous group as the Palacio Tambo community;

<sup>9</sup> [EIB's Statement of Environment and Social Principles and Standards \(2009\)](#)

<sup>10</sup> [EIB's Environmental and Social Handbook \(2013\)](#).

<sup>11</sup> [EIB Environmental and Social Standards \(2018\)](#)

<sup>12</sup> Available [here](#).

<sup>13</sup> Available [here](#)

<sup>14</sup> In line with article 2.1.2 of the EIB-CM Procedures, for complaints related to social impact of EIB-financed projects, the complaints-handling process is formally structured in two phases: an initial assessment phase and a compliance review or collaborative resolution process phase.

<sup>15</sup> Article 2.2.1 of the EIB-CM Procedures.

<sup>16</sup> The EIB's project website available [here](#).

<sup>17</sup> Ayllu, or family clan, is the traditional form of a community in the Andes, it refers to a network of families in a given area with a common ancestor (see also: [Ayllu - Wikipedia](#)).



- iii. the Council of Caciques, which is the highest authority of the above referred indigenous group;
  - iv. the Municipality of San Lucas, which supports and co-finances the sub-project's early development; and
  - v. the Ministry of Environment and Water (MMAyA) and the National Fund for Productive and Social investment (FPS).
- 4.4 Indigenous Nations and People of Peasants Origins (*Naciones y Pueblos Indígena Originario Campesino - NyPIOC*) are recognized by law as autonomous groups in Bolivia, subject to their own norms, principles, governing and judicial bodies. In the indigenous territory of Marka Payfullu, the Council of Caciques is the highest authority to decide on the norms that apply to the indigenous group and to assess whether these norms have been effectively applied or not. The Council of Caciques of Marka Payqullu has enacted several resolutions<sup>18</sup> deciding, among others, (i) that the Japo community has no right to block the sub-project, (ii) that the construction must restart, if needed granting access to the site by employment of public force, (iii) that the Japo community's free, prior and informed consent (FPIC)<sup>19</sup> is not required, (iv) that the previous agreements foreseeing to donate land to the Japo community are not valid, and (v) that the complainant and a representative of the Japo community are *personae non-gratae*.
- 4.5 With the objective to solve the issue and restart the construction of the sub-project, representatives of the Council of Caciques consulted the Constitutional Court of Bolivia about the application of the principle of prior informed consent in the context of the sub-project. Representatives of the Palacio Tambo community also brought a case to the public mixed civil and commercial court (public court) of San Lucas against representatives of the Japo community, the FPS and the Municipality of San Lucas, requesting that the Japo community respects the initial agreements by allowing access to the water intake construction site (see paragraph 2.3ii) and FPS restarts construction. In July 2023 and October 2023, the Constitutional Court and the public court respectively declared the cases as inadmissible. Both decisions refer to the resolutions already issued (see paragraph 4.4) and to the Council of Caciques as the relevant authority representing the autonomous indigenous group to which both the Japo and Palacio Tambo communities belong. The court cases do share views on the applicable laws supporting the arguments of both parties, but do not provide a judgement on the substance of the conflict itself. Both courts concluded that, since the Palacio Tambo and the Japo communities are members of the same indigenous group, they must resolve their internal disputes according to their right to self-determination and their own political and judicial systems<sup>20</sup>.
- 4.6 The EIB services were informed in August 2023 of the conflict between the Japo and the Palacio Tambo communities, as well as of the fact that the sub-project's works had been halted as a result. The Bank decided to withhold further disbursements to finance the sub-project until the conflict is resolved peacefully and in compliance with the EIB E&S Standards. Nevertheless, in early 2024, the EIB was informed that the sub-project's construction had already been completed in December 2023. The EIB relevant services contracted a social consultant to review the sub-project's compliance with the applicable and relevant EIB E&S Standards. After being informed by the EIB-CM of the risk of retaliation, the EIB services informed the promoter of the EIB's zero-tolerance towards retaliation and of the Bank's expectations that retaliation risks are mitigated in line with the EIB's guidance note for EIB E&S Standards on stakeholder engagement<sup>21</sup>.

<sup>18</sup> Caciques Resolution of 14 March 2024, 05 October 2023 resolution letter to FPS , 28 October 2023, 28 November 2023

<sup>19</sup> FPIC or in Bolivia "consulta previa" is enshrined in art. 30 of the Constitution (Art. 30. II. Inc. 15, CPE, see also : [Consulta Previa | Órgano Electoral Plurinacional \(oep.org.bo\)](https://www.oep.org.bo/))

<sup>20</sup> Resolution 1/2023 acción popular of 2 October 2023, public mixed civil and commercial court of San Lucas and Declaration constitutional 0031/2023 of 18 July 2023.

<sup>21</sup> See [Guidance Note for EIB Standard on Stakeholder Engagement in EIB Operations](#)

## 5 WAY FORWARD

- 5.1 Based on the initial assessment of the complaint, the EIB-CM has decided to proceed with a compliance review, which is, as well, in line with the complainant's request (see paragraph 2.3vi above).
- 5.2 As per article 1.4.5 of the EIB-CM Procedures, the EIB-CM review will not pass judgement on activities under the sole responsibility of third parties, notably those of the promoter or the borrower, or of authorities at local (including indigenous authorities), regional, or national level.
- 5.3 With regard to the closed court cases (see paragraph 4.4), as per article 2.4.1 of the EIB-CM Procedures, it must be noted that the EIB-CM is not a legal enforcement mechanism and will not substitute for the judgment of competent judicial authorities. In line with article 4.3.8 of the EIB-CM Policy, pending or concluded reviews of complaints against a third party before a judicial review mechanism do not preclude the EIB-CM from reviewing the actions of the EIB as regards possible maladministration.
- 5.4 The EIB-CM will therefore review the above allegations with a view to investigating possible maladministration by the EIB. The enquiry will assess the sub-project documentation and the reasonable due diligence and monitoring of the sub-project carried out by the Bank (see section 1).
- 5.5 The outcome of the compliance review will be communicated to the complainant through a conclusions report in line with articles 1.6 and 2.4.6 of the EIB-CM Procedures<sup>22</sup>.
- 5.6 In the meantime, the EIB-CM notes that the Bank services continue to monitor the sub-project. They will communicate the findings of its consultant's work (see paragraph 4.6 above) to the promoter with a view to supporting it in the implementation of their recommendations, if any.

### EIB Group Complaints Mechanism

<sup>22</sup> See also <https://www.eib.org/en/publications/complaints-mechanism-procedures>