

TRECSA - Comments to the Environmental and Social Review Summary (ESRS)

This document presents observations and recommendations the IDB Invest should take into account in the Environmental and Social Review Summary (ESRS) for the [Trecsa Guatemala Green Transmission Line project](#). The recommendations and comments follow the order of the ESRS document.

Environmental and Social Categorization and Rationale

When examining the project's categorization, it's crucial that all social and environmental risks are taken into account accordingly and relate to the category of the project. As a Category A project, the IDB Invest's due diligence should be robust and comprehensive. However, the current [ESRS](#) demonstrates the opposite, as it ignores relevant contextual risk factors and information that is key to assessing the social and environmental risks and impacts of the project.

The TRECSA project will impact Mayan Indigenous communities, and the ESRS does not specifically mention them nor include them when assessing the social and environmental impacts and risks. In Guatemala, this is particularly concerning since the energy sector in this country has historically been a driver of social and environmental conflicts. Such conflicts are typically magnified in Indigenous territories when there is a lack of recognition and inadequate characterization of Indigenous People. In the context of development projects, this lack of recognition often results in a project's failure to obtain the Free Prior and Informed Consent (FPIC) of Indigenous communities, as demonstrated by the [MICI investigation report on Generadora San Andrés and Generadora San Mateo](#) (page 4) in which an inadequate characterization of Indigenous Peoples groups led the IDB Invest not to apply PS7 and OP-765.

Environmental and Social Context

This section needs to be revised completely as it provides general information rather than describing the specific project area. The lack of focus on the project area hinders the ability to identify and address context specific social and environmental issues and challenges that are likely to arise during project implementation. For example,

3.2 CONTEXTUAL RISKS

- It is concerning that this section only provides general information about Guatemala (information that one could easily find in Wikipedia). There is no mention of the project sites, the local history, or the project-affected communities. Neither is the risk of reprisals mentioned in this section (or anywhere in the entire ESRS). **TRECSA has criminalized at least 28 people, including community authorities and human rights defenders, for exposing the illegal actions of the company.** The company has also presented charges against community members who have raised questions about the project. Many community members now fear engaging because of reprisals (some HR defenders are also suffering direct attacks against their life, tracking, and stigmatization).

- The ESRS mentions that the company has been talking with a series of stakeholders but it does not mention for example the Coordinadora of Communities Affected by TRECSA. Many members of this group had been negatively impacted by this project and have been trying to sue TRECSA internationally since at least 2016.¹ This is a major gap, and the fact that the ESRS does not even mention the issue of reprisals and that the company has criminalized members of the Coordinadora of Communities affected by TRECSA is seriously concerning and shows a huge gap in the analysis.
- Also, while the ESRS mentions that poverty and inequality are reflected in the rural electrification index, as an example of the lack of access to basic services, the document does not mention that in Guatemala there is an electricity non-payment strike due to the increased cost of the private services and the impact that this is having on the economy of rural and Indigenous families. It is concerning that the ESRS does not take into account the troubling fact that the fourth extension of the contract will take place in 2021 “with the recognition of 25 new major forces that affected the normal development of the project, which support the claims for additional costs and expenses associated with them.”²

4. ENVIRONMENTAL RISKS AND IMPACTS AND PROPOSED MITIGATION AND COMPENSATION MEASURES

IDENTIFICATION OF IMPACTS:

4.1.C.II ANALYSIS OF ALTERNATIVES

- While this section mentions that the company held consultations with Indigenous communities in order to discuss the location of the project, there is no evidence of any meaningful engagement with the Indigenous Peoples.
- The company is operating without municipal licenses near to and in protected areas in San Bartolomé Milpas Altas³ and Sumpango.⁴ These areas are of high cultural and environmental importance since they are water-producing forests and cultural heritage places. Such sites include Mirador Dieguez Oliverri in the Cuchumatanes Mountains (Chiantla, Huehuetenango department; the Cuchumatanes Mountains are internationally recognized areas),⁵ and La Antigua Guatemala (Sacatepéquez department; designated as a United Nations Educational, Scientific and Cultural Organization -UNESCO- World Heritage Site. Civil society organizations have been denouncing the PET-1-2009 project since 2012 for its effects on the green belt that is part of the cultural heritage, including the Cerro Cucurucho).⁶

4.1.C.III CUMULATIVE IMPACT ANALYSIS

- The ESRS mentions that cumulative impact analyses were conducted for all the departments and municipalities where the transmission lines (TLs) and transmission stations (TSs)⁷ for the Project are located. However, parts of the lines in lots A and F are being built in parallel, and the company has not conducted a cumulative impact analysis for those lots. Two high tension transmission lines are being placed together, extending the right-of-way easement strip.⁸ These lines are likely to impact high biodiversity value ecosystems and communities living in the area.

1 For example, the case was presented in the Latin American Water Tribunal in 2016 [Veredicto TRECSA | Tribunal Latinoamericano del Agua Veredicto TRECSA | El Tribunal Latinoamericano del Agua es una instancia internacional, autónoma e independiente, de justicia ambiental, creada con el fin de contribuir a la solución de controversias relacionadas con los sistemas hídricos en América Latina. \(tragua.com\)](#)

2 The project PET-1-2009 was meant to be finished in 2013, but was extended in 2013, 2015, and 2017. The Special Prosecutor's Office against Impunity in Guatemala has investigated different disbursements made to the Minister of Energy and Mines by the company Edemtec prior to the first contract renewal (Corruption mechanism in the Ministry of Energy and Mines case). The last extension was in 2021, source and translation from: [Prórroga para la ejecución de obras del plan de expansión de transmisión \(PET\) que desarrolla Trecca en Guatemala - BNAmericas.](#)

3 Parque Regional Municipal Astillero Cerro Nimachay; Resolution of the National Council of Protected Areas No.366/2007

4 Parque Regional Municipal Astillero Municipal Sumpango, El Rejon, Chirres y Los Encuentros; Resolution of the National Council of Protected Areas No.258/2008

5 Source: [MICI-CII-GU-2018-0136](#)

6 The “Cerro Cucurucho” was declared a closed area by governmental agreement dated November 12, 1981.

7 “TL” stands for 230 kW electric power transmission line and “TS” for new transforming stations.

8 15-meters strip on both sides of the transmission lines.

4.1.C.V CLIMATE CHANGE EXPOSURE

- The climate change exposure details included in the ESRS are only relate to the risks of the project feasibility, but do not address the potential climate risks that are likely to impact project-affected communities such as deforestation and the selective pruning in the 15-meter strip on both sides of the transmission lines. Among the different TL design alternatives, no criteria for climate exposure was taken into account. For example, there was no consideration of water recharge areas, which is a major concern in regions where there is a high rate of deforestation and population density in departments of Sacatepéquez or very sensitive and delicate ecosystems such as the Cuchumatanes Mountains. This issue is based on the report from San Bartolomé Milpas Altas and the court sentence to cease deforestation and the rejection of the construction.⁹

4.1.F EMERGENCY PREPAREDNESS AND RESPONSE

- The ESRS mentions that some of the measures adopted to deal with the health emergency resulting from the COVID-19 pandemic, include the use of masks and glasses and social distancing of all people entering the Project's offices or work areas. However, this measure is not being respected as the project-affected communities in Sumpango observed and documented workers that were not respecting the correct use of face masks; as well as subcontractors' transport workers in trucks not respecting social distancing measures nor using masks.

⁹ Judicial File No.03003-2020-00523, Criminal Court of First Instance for Drug Trafficking and Crimes Against the Environment from La Antigua Guatemala, Sacatepéquez Department.



4.1.G MONITORING AND REVIEW

This section mentions that TRECSA has set up a system to control and monitor compliance with the established environmental and social commitments required by the project. However, project-affected communities had been raising questions about the effectiveness of this system and its capacity to monitor compliance with the environmental and social commitments:

- The Environmental Impact Studies (EISs) have had numerous updates and changes throughout the process. The changes did not include all the impacted territories, and there is a concern that the company is not following up on and reflecting all the changes and commitments included in the EIS into the control and monitoring system.
- The EIS and other complementary assessments do not comprehensively include a social dimension of risks, and therefore, there are only a few social commitments to monitor under the control and monitoring system.
- Affected communities and local organizations have raised issues of non-compliance with the municipal licenses. Basically, the company is operating at the municipal level without a municipal license, including in La Antigua Guatemala,¹⁰ Santa Lucía Milpas Altas,¹¹ and Sumpango (Sacatepéquez department). In San Bartolomé Milpas Altas (Sacatepéquez department), the company was also operating without complying with municipal commitments, resulting in the municipality revoking the license. Also, non compliance was observed at the technical roundtable in Santiago Sacatepéquez (Sacatepéquez department).

4.1.H STAKEHOLDER ENGAGEMENT

The ESRS mentions that the public participation process for this project was challenging because there were a lot of communities that strongly opposed it. For this, TRECSA hired a consulting firm to solve conflicts and gain social acceptance around the project. As part of the stakeholder engagement strategies, a Shared Value Program (SVP) was created.

However, project affected communities are concerned about this SVP because the strategies that the company have put in place aim to force social acceptance instead of holding effective and meaningful consultations to actually address the concerns and requests of the communities and obtaining FPIC. Among the problems observed, the following are the most concerning:

- **The concerning role the SVP gives to the private sector:** The SVP establishes that the company needs to negotiate with private sector stakeholders (without including all private owners, civil society representatives, or members) to obtain the approval for municipal licenses. In most cases, the company is forcing the approval of municipal licenses. In other cases, the company started the construction without the proper municipal license, alleging that people can do what they want on private property and that they can even usurp land from those who refused to negotiate.
- **The concerning role the SVP gives to community councils:** They negotiate projects with Community Councils (despite being on municipal lands with no community support) to buy their support. For example, the Community Councils of Santa Marta and San Rafael El Arado, in Sumpango municipality, asked the Municipality to give the municipal license of construction to TRECSA as they accepted to receive funds from the company for investments in other projects, despite a municipal decision taken to refuse the project in 2016.
- **TRECSA benefits from irregular territorial demarcation and institutional chaos:** As per the SVP, TRECSA benefits from existing territorial conflicts to construct towers, poles, and cabling without the pertinent municipal authorizations (as is the case between Sumpango and Santiago Sacatepéquez, La Antigua Guatemala, etc.). In other words, TRECSA benefits from the Guatemalan

10 On July 12, 2021, representatives of civil society together with the auxiliary mayor of Vuelta Grande filed complaints against TRECSA for having broken the seals and the yellow tape placed by the Municipal Affairs Judge, which constitutes a crime (Files No.MP003-2021-3211 of the District Attorney's Office of Sacatepéquez and No.EXPJM 120-2021 before the Municipal Affairs Court).

11 On November 30, 2021, the Court of Municipal Affairs enforced the demolition order of a pole built by TRECSA on the public road without municipal authorization; Resolution No. JAM 0918112021.

institutional disorder and dysfunctionality. The National Geographic Institute has a map of the territories, the Registry of Cadastral Information has another one and the National Institute of Statistics another one, which creates a lot of confusion for the demarcation of territories in the country. However, as per the national legislation, the only maps that are legally binding are those of the National Geographic Institute — meaning the land is registered and the National Geographic Institute is the only regulatory body that has the ability to certify the location of the works.¹² In response to the actions of the municipal councils, lawyers of TRECSA threatened to denounce council members and judges of municipal affairs for exceeding their functions and abuse of authority.

- **Construction is happening without governmental permits and licenses:** Forced construction is happening in La Antigua Guatemala, San Bartolomé Milpas Altas, Santa Lucía Milpas Altas, and Sumpango (Sacatepéquez Department) without municipal construction license. Also, part of Lot A was built in Sumpango without an environmental license approved by the Ministry of Environment and Natural Resources.
- **Irregular and weak engagement with Indigenous Peoples:** Sumpango is a Kaqchikel municipality, and TRECSA is not respecting the Municipal Development Council (COMUDE in Spanish acronyms) decision made in 2016 to deny the municipal construction license (the company built part of Lots A and F and is now forcing the review of a municipal decision through two Communitarian Development Councils- COCODE, in Spanish acronyms). Another action is to draft municipal procedures to deny the right to participation in places like Ejidos in Santa María Nebaj (El Quiché department). Moreover, there's a legal procedure against this municipality that shows that Indigenous Peoples were denied their right to participate.¹³ Also a legal action was filed in December 2020 against the Municipal Council of Chiantla's endorsement of the company due to a lack of consultation with Indigenous Peoples.¹⁴

4.1.H.II INFORMED CONSULTATION AND PARTICIPATION

- The ESRS mentions that the company created stakeholder engagement strategies and public participation strategies. **However, communities have raised concerns around the consultation process and the lack of effective consultations to obtain FPIC in various departments.** It's important that consultation processes guarantee safe, transparent, robust, and meaningful consultations, especially for the most marginalized. In the case of consultations with Indigenous Groups, FPIC should be obtained as a result of the process.
- In Guatemala, “public participation or engagement” is regulated by the environmental evaluation, control, and monitoring regulations (Governmental Agreement No.137-2016). Public participation is not considered equivalent to consultation, also it includes the possibility to object a project (Art. 45) based on technical or legal arguments. **If one looks at the Environmental Impact Assessment (EIA) submitted by the company, the ‘consultations’ done by the company were weak not only in scope but also in substance. Several Indigenous Peoples that are affected by TRECSA had said that FPIC was reduced to public participation.** The company used a limited process, only sharing information through the media (press, radio) and meetings and interviews with selected actors — actions insufficient to obtain FPIC. **In several points of the ESRS, IDB Invest excuses the absence of FPIC to the lack of regulations at the national level, which is concerning.**
- In the Sustainability Policy, the IDB Invest promotes the responsibility of businesses to respect human rights and requires its clients to have a system in place to assess potential human rights risks and impacts, respect human rights, avoid infringement on the human rights of others, and address adverse human rights risks and impacts. Even more, as this project is part of a national plan for the electricity transport system expansion, the IDB Invest should encourage the Guatemalan government to conduct a national consultation for the implementation of this plan,

¹² Article 4 of Governmental Agreement 114-1999 “Regulations for the Administrative Organization of the National Geographic Institute.”

¹³ On November 11, 2021, the Mixed Multi-personal Court of First Instance Santa María Nebaj declared void the Regulation for the authorization of construction licenses for electric power towers in the jurisdiction of the Municipality of Santa María Nebaj, which sought to legalize the towers built in 2020 and those needed to impose the project in this municipality. Source: File No.14004-2020-00345.

¹⁴ File No.13003-2020-00303 in the Civil and Economic Court of First Instance of the Department of Huehuetenango

as the United Nations and Inter-American Declarations recognize the Indigenous Peoples' right to participate in all decision making that affects their rights, lives, and destiny.

- The ESRS does not address the following issues:
 - In Sumpango (Sacatepéquez Department), the Maya-Kaqchikel people of the municipality participated in a consultation in 2016 in a 'Consejo Municipal de Desarrollo' and said 'no' to the implementation of the PET-1-2009. TRECSA ended up imposing the project in March 2021 and now the company is facing four municipal demands against its infrastructure. TRECSA sued the municipality in the contentious administrative proceedings against the exercise of the municipal autonomy regulated by the Municipal Code (Decree No.12-2002, article 3) and during October 2020 COMUDE meeting, two COCODE demanded the approval of municipal construction license.
 - In Chiantla (Huehuetenango department), the Maya-Mam people's representatives filed an 'Amparo' based on the lack of consultation when granting the municipal construction license to TRECSA in December 2020.¹⁵
 - In Santa María Nebaj (El Quiché department), the Maya-Ixil Indigenous representatives sued the Municipality for denying the Ixil people the right to consultation and the right to make decisions about the administration of the Nebaj Ejido during the implementation of the electrical transmission line. The court ruled in favor of Maya-Ixil indigenous authorities from Nebaj and ordered the municipality to carry out a consultation process in accordance with ILO Convention 169.¹⁶
 - In San Juan Comalapa, there is no construction licence and the works are being completed without consultations with the Kaqchikel people of the municipality. The Ministry of Mines and Energy always denied that their territory would be affected.
 - Likewise, the ESRS mentions that the public participation process surveyed people to analyze the project's public perception. However, local people observed that the sample wasn't representative and only included 69 respondents from five municipalities when Lot F affected 13 municipalities in three departments (21 populated places, 5437 inhabitants). There is no description of the content of the workshops, whether the advantages and disadvantages of the PET-1-2009 project were explained, nor what treatment people received when they expressed their disagreement with the project. Moreover, the ESRS highlights that TRECSA held meetings with Indigenous leaders, but members from the communities have mentioned that there's evidence that during those gatherings, the company intimidated and threatened the participants to obtain support for the project.

4.1.H.III INDIGENOUS PEOPLES

- The ESRS mentions that the company conducted consultations and respected Indigenous Peoples' decisions. However, project affected communities say this is not true. There is no proof of this since no consultation was held, and when held by Indigenous Peoples themselves, they were not respected.

4.1.I.I EXTERNAL COMMUNICATION

- The ESRS mentions that the company has developed a solid communication strategy with various communication channels, including i) radio (in five different Mayan languages); ii) television; iii) print media (newspapers); iv) social media (website, Facebook fan pages, Instagram, and Twitter); v) business forums; vi) formal meetings; and vii) guided tours. Not surprisingly, there's evidence that social media channels were used to stigmatize the work and opposition from different human right defenders groups (particularly those based in La Antigua Guatemala).

¹⁵ The amparo proceeding has been halted due to the filing of two complaints by TRECSA (one solved and the other pending); File AMPARO 13003-2020-00303 in the Civil and Economic Court of First Instance of the Department of Huehuetenango.

¹⁶ The civil court of first instance constituted as a court of protection of the municipality of Santa María Nebaj annuls the municipal regulation for the authorization of the construction of electric power towers in the municipality of Nebaj that the municipality emitted in May 2020 (Judgment of November 11, 2021 to the constitutional action of protection No.14004-2020-00345). The Maya-Ixil indigenous authorities claim that this regulation aimed to regularise towers built in 2020 without any consultation and free, prior and informed consent.

4.1.I.II COMMUNITY GRIEVANCE MECHANISM

- According to the ESRS, TRECSA has a formal, robust, complex, and systematic mechanism for capturing and resolving questions, complaints, claims, and requests (QCCR): the “Ethics Channel” or Grievance Redress Mechanism at the project level (GRM). However, project-affected people and communities have identified concerns around the project-level grievance mechanism developed by TRECSA.
- First, the complaints are limited to “report those situations that may eventually qualify as alleged fraud and/or corruption or unethical conducts.” There’s no clarity on whether this channel can receive all kinds of complaints or not. The mechanism does not explicitly mention what falls under the ‘unethical criteria’ stated in its mission. It should be mentioned that communities can raise their problems and report them as concerns, suggestions, and/or comments in order to avoid, mitigate, or remedy impacts. Likewise, it should be clear that they won’t be targeted, stigmatized, threatened, or face any type of reprisals.
- Additionally, the suggestion boxes located in the community centers of the main communities within the Project’s areas of influence are not easily accessible or publicly known by community members. Many community members have not even heard about the existence of a project level grievance mechanism nor the “suggestion boxes.” Moreover, regarding the manner in which a complaint is being addressed, TRECSA has not been following what is mandated by the Sustainability Policy (“IDB Invest requires the client to establish a grievance mechanism to receive and facilitate resolution of concerns and grievances about the client’s environmental and social performance in accordance with PS 1”).
- The company is not receptive or open to dialogue, and has regularly used methods to engage with the communities that have put at risk their lives and integrity.
- In sum, all of the above demonstrates that the GRM established by the company is not legitimate, accessible, predictable, equitable, transparent, rights compatible, or based on engagement and dialogue. Also, the GRM is not prepared to receive and register a grievance; acknowledge, assess, and assign the grievance; propose a response to the grievance; and if there is agreement on a specific response, implement the agreed response. An effective GRM should establish social and environmental conflict prevention systems and should be prepared to offer solutions on the ground.

4.2.A.II WORKING CONDITIONS AND TERMS OF EMPLOYMENT

- The ESRS mentions that given the proximity of several communities to the route of the TLs, the Project did not need to establish camps for its employees. However, it’s been raised by the project-affected people that subcontractors have established camps for employees, and poor working conditions have been observed (long working hours, bad hygiene, and sanitation facilities, etc.). It’s also been observed that TRECSA supervisors visit the camps and oversee the activities.

4.3.B.IV MANAGEMENT OF NON-IONIZING RADIATION

The ESRS mentions that according to the easement agreements, owners and users of project-affected land can use those areas to develop agricultural or forestry activities or low stem fruit trees. However, according to the agreements that project-affected people received, these are more similar to expropriation agreements than easement ones. For example,

- The easement agreements with owners are not limited to the term of TRECSA’s contract with the Government of Guatemala (50 years) but perpetual. If the owner sells, encumbers, dismembers or disposes of the property, he/she must comply with all the obligations of the easement contract.
- Irrespective of whether the negotiation was for the passage of cables, the contract includes the clause that the owner of the servient estate, where necessary, leaves TRECSA free to locate tower sites within the easement zone.

- Agricultural and forestry uses are limited to a height of 2.5 meters, which is lower than the heights of the traditional white corn that is historically cultivated in Sacatapéquez and for why so many places are named “milpas altas.” The contract specifies that “such activities shall be carried out at the owner’s expense and risk.”
- Other activities and use of the property are also very restricted: “not to carry out any construction or other work within the easement area.” And also, “The owner of the servient estate is obliged to demolish or allow the demolition of the existing constructions in the easement strip, so that it is free of obstacles at the time of the beginning of the project.” And finally, no soil or other material may be accumulated within a distance of 5 meters or less from the cables.
- The contract limits mining activities to 20 meters from infrastructure bases, but rights are negotiated over 15 meters around the lines.
- In addition, these contracts contain a confidentiality clause that does not allow neighbors to inform about their negotiations and how it will affect their land, residence; nor to people who rent land for agricultural use, etc. The contract holds the landowner liable for any damage or harm to Trecca for breaching the confidentiality clause, even if it is due to simple negligence or carelessness. If it is due to the action of competent authorities, the owner must inform Trecca so that it can take the pertinent legal actions.

4.4.A.III ECOSYSTEM SERVICES & 4.6.B PROTECTION AND CONSERVATION OF BIODIVERSITY

- While the ESRS mentions that the company and the EIAs have considered the impacts on protected areas, **there is a current legal proceeding in San Bartolomé that maintains that the area of Antigua Guatemala is a historical and artistic site with a marvelous natural landscape filled with volcanoes and mountains that frame the city. Antigua’s cultural environment needs to be preserved and protected. It’s necessary for this project to consider this and evaluate its feasibility in Antigua’s area. This is not effectively addressed in the EIA or the environmental and social management system.**

4.5.A.II COMPENSATION AND BENEFITS FOR DISPLACED PERSONS, 4.5.A.IV GRIEVANCE MECHANISM, 4.5.A.III COMMUNITY ENGAGEMENT, 4.5.B.II ECONOMIC DISPLACEMENT

- These sections in the ESRS mention that TRECSA’s behavior has been very respectful of communities wishes and concerns and that every action the company has taken throughout the project cycle has considered the potential impacts and implemented corrective measures to mitigate them. **However, according to the project-affected people, communities, and organizations, TRECSA has not behaved in that manner, and has taken very questionable actions to keep implementing the project despite receiving concerns from local communities. In terms of legal permissions, for some locations the company does not have licenses, or the licenses were obtained with just the private sector consent, or by forcing community leaders to accept the project. These measures have included criminalization, targeting, threatening, and stigmatizing community leaders who opposed the project or who raised concerns around the project.**
- Additionally, the easement agreements promote unfair expropriation practices, and the company has not settled relocation agreements with those that might be displaced or affected. These contracts limit the property exploitation by their owners (they can’t use the lands for agricultural or other livelihood-related activities purposes).
- Likewise, and in collusion with the company, the government has delayed the reports and judicial complaint processes to let the TRECSA finish the project (files MP030-2020-205, MP030-2020-225 y MP-030-2020-226 Fiscalía distrital de Sacatepéquez).

4.7.A.I AVOIDANCE OF ADVERSE IMPACTS

- This section of the ESRS highlights that of the 25 families that were displaced by the Project, 13 are Indigenous. However, project affected people have reported that the number could be much higher since there's a fear of possible reprisals or retaliation from the company, as well as impacts due to high voltage transmission lines that are placed very close to housing and schools (15 to 20 meters).

FOR FURTHER INFORMATION ON THE ISSUES RAISED IN THIS REPORT, PLEASE CONTACT BANK INFORMATION CENTER AT:

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