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# Analysis of the Role of the Central American Bank for Economic Integration in Nicaragua





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for Economic Integration in Nicaragua**



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Analysis of the role of the Central American Bank for Economic Integration in Nicaragua

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Thank you for always fighting for the protection of human rights and the dignity of peoples.

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# I. Introduction

The Central American Bank for Economic Integration (CABEI) emerged as the financial arm of Central American integration and development more than 60 years ago. Since then, it has been a sui generis organization, both in terms of its wide scope of competence and operations, as well as in terms of its purpose and founding principles. Its mission is to promote "the economic integration and balanced economic and social development of the Central American region, which includes the founding countries and non-founding regional countries, attending to and aligning itself with the interests of all partners", and strives to be "the referent in terms of the sustainable development and economic integration of the region, and to have an effective impact on the welfare of society".

From the time it was founded, CABEI has become the multilateral entity that provides the most financing to Central American countries and manages a portfolio of numerous regional and national projects, and much of the international cooperation for development or climate financing is increasingly being channeled through CABEI. According to its 2020 Results Matrix, for example, CABEI approved operations for an amount of US\$1,462.2 million for climate change mitigation and adaptation and 18 projects in six countries for a total amount of US\$2,910.7 million for Sovereign Public Sector projects aimed at supporting economic growth, poverty reduction and climate change. Part of this financing comes from cooperation banks, such as the German development bank KfW, which currently has nine active projects with CABEI, totaling US\$486 million, most of which are focused on programs to promote renewable energy and improve access to water in the region. Another increasingly important source of financing is environmental funds, such as the Green Climate Fund (GCF).

Since 2017, CABEI has signed a framework cooperation agreement with the GCF, which allows the bank to channel financial resources for its mitigation and adaptation programs and projects at both national and regional levels. Currently there are three projects receiving GCF funding: the regional project CAMBioII (US\$15.5 million), Light Rail Transit for the Greater Metropolitan Area (GAM) in Costa Rica (US\$271.3 million) and Bio-CLIMA in Nicaragua (US\$64.09 million), and there are six concept notes under evaluation that could total more than US\$400 million. This is in line with CABEI's 2020-2024 strategy, which states that the Bank seeks to assume a more relevant role in the achievement of the region's major objectives, and to work on structural change solutions that

improve the competitiveness of Central American economies, provide better financial conditions to member countries and become a better instrument to access financial markets. One of the projects, Bio-CLIMA, has had strong opposition, even before it was approved, and communities reported that there was no proper consultation prior to project approval and a lack of transparency from CABEI.

Green Climate Fund accreditations must be reapplied for every five years; therefore, this 2021 CABEI must apply for re-accreditation. Given the economic importance of CABEI's actions in the Central American economy and because it has become Nicaragua's largest financier, we have prepared this "Report on Compliance with CABEI's Environmental and Social Policy and Code of Ethics".



## II. CABEI in Nicaragua

A report written by the NGO South-North Nexus (SNN) about the loans approved by the World Bank (WB), the Inter-American Development Bank (IDB), the International Monetary Fund (IMF) and CABEI for Nicaragua in the period between April 2018 and August 17, 2021, states the following about the publications on the websites of these entities:

*...Information from these sources related to the disbursement and use of loan funds is not always easy to find or interpret, with the exception of certain data from the World Bank and the IDB, which are noted in this document. However, the IMF has extensive formal reporting on its loans on its website. CABEI's information on the implementation and progress of its loans and projects is even more limited. This is relevant given that CABEI provides the largest amount of IFI [International Financial Institutions] funding to Nicaragua. The information on the website is highly restricted, it provides access to news articles related to its loans, and has limited or no information to formal reports or data.<sup>1</sup>*

CABEI's country profile page on Nicaragua provides a table detailing CABEI's annual operations in Nicaragua between 2015 and 2019, from which we can observe the following:

1. Approved amounts have tripled between 2015 and 2019, despite the fluctuation in the private sector and provision of zero funds in 2016 and 2018 respectively;
2. The amounts disbursed have been consistent, with the exception of an increase of US\$318.5 for the public sector in 2018, as well as an increase of US\$216.4 for the private sector in 2019; and
3. The total portfolio as of 2019 is US\$1,369.3 and the public sector to private sector ratio is now almost 5:1, compared to the amount of less than 2:1 in 2015<sup>2</sup>.

The list of CABEI loans to Nicaragua, approved after April 18, 2018, the date on which the citizen protests and the State's violent response began, recorded in reports by the Office of the United Nations High Commissioner for Human Rights (OACNUDH), <sup>3</sup> the Interdisciplinary Group of Independent Experts (GIEI,

Spanish acronym)<sup>4</sup> and the Inter-American Commission on Human Rights (IACHR),<sup>5</sup> which accused the highest authorities of the Nicaraguan State of having committed Crimes against Humanity against citizens who were peacefully protesting, a fact that has led to a profound socio-political and human rights crisis that still persists in Nicaragua. Despite these adverse circumstances, CABEL loans granted to Nicaragua, far from stopping, have increased and are estimated at US\$1,414,554.00 as follows:

Annual Operations 2015-2019 (US\$ Million)						
Operations	Year					Total
	2015	2016	2017	2018	2019	
<b>Approvals</b>	<b>196</b>	<b>379.8</b>	<b>478.8</b>	<b>365.1</b>	<b>656.1</b>	<b>2,075.8</b>
Public sector	156	379.8	468.8	365.1	585.3	1,955.0
Private sector	40				70.8	120.8
<b>Disbursemen</b>	<b>197.5</b>	<b>208.9</b>	<b>213.1</b>	<b>405.9</b>	<b>334.1</b>	<b>1,359.5</b>
Public sector	113.6	131.0	139.3	318.5	117.7	820.1
Private sector	83.9	77.9	73.8	87.4	216.4	539.4
<b>Portfolio</b>	<b>793.4</b>	<b>880.2</b>	<b>965.3</b>	<b>1,253.4</b>	<b>1,369.3</b>	
Public sector	498.8	603.1	703.9	1,001.4	1,118.0	
Private sector	294.6	277.1	261.4	252.0	251.2	

Source: <https://www.bcie.org/paises-socios/fundadores/nicaragua>

No	Date	CABEL Projects	Dollars
1	April 6, 2018	Bluefields Water Sanitation - Sanitary Sewerage – Project	\$38,804.000
2	August 18, 2020	National Program for the Construction of Social Interest Housing	\$171,650.000
3	August 21, 2020	Support Fund to the Financial Sector for the Financing of MSMEs	\$50,000.000
4	October 15, 2020/ formalized with Nicaragua on June 2, 2021	Emergency Preparedness and Support Program for COVID-19 and Economic Reactivation. Shared with Guatemala, Honduras and Belize, for Nicaragua specifically, this loan was the COVID-19 Vaccine Deployment Plan	\$100,000.000
5	November 24, 2020	Multisectoral Program for Economic Reactivation and Social Protection of the Republic of Nicaragua	\$300,000.000
6	February 19, 2021	National Program for Sustainable Electrification and Renewable Energies (PNESER, Spanish initials)	\$143,000.000

7	March 23, 2021	Nicaraguan Electricity Transmission System Expansion Program	\$40,100.000
8	March 26, 2021	Project to "Strengthen the Capacity of the Health Care Services Network in Prioritized Health Units"	\$114,600.000
9	April 27, 2021	Project to Improve the Technical and Operational Capabilities of Puerto Corinto (Extension)	\$21,000.000
10	June 29, 2021	Project "Sanitation Program for the South Shore of Managua Lake"	\$151,400.000
11	July 14, 2021	Nine Road Construction and Rehabilitation Projects	\$1.188,000.000
12	October 25, 2021	Credit Line Agreement to Support Liquidity Management of the Central Bank of Nicaragua	\$200,000.000
13	December 15, 2020; and November 4, 2021	Bio-CLIMA Project - the National Assembly of Nicaragua approved Loan Agreement No. 2266 signed between CABEL and the Republic of Nicaragua.	\$84,000.000
		TOTAL	\$1,414,554.00

<sup>1</sup> Saneamiento para Bluefields en beneficio de su población. 6 de abril de 2018. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/saneamiento-para-bluefields-en-beneficio-de-su-poblacion/>

<sup>2</sup> BCIE firma préstamo con Nicaragua por un monto de US\$171.65 millones para vivienda social. 18 de agosto de 2020. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/bcie-suscribe-contrato-de-prestamo-por-us17165-millones-para-viviendas-de-interes-social-en-nicaragua>

<sup>3</sup> BCIE. US\$50.0 millones para MIPYMES afectadas por la pandemia COVID-19 en Nicaragua 21 de agosto de 2020. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/bcie-us500-millones-para-mipymes-afectadas-por-la-pandemia-covid-19-en-nicaragua>

<sup>4</sup> BCIE ante COVID-19. BCIE. Recuperado de: <https://www.bcie.org/bcie-ante-covid-19/> BCIE formaliza apoyo para la adquisición de vacunas contra la COVID-19 y el fortalecimiento de la red hospitalaria en Nicaragua. BCIE, 2 de junio de 2021. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/bcie-formaliza-apoyo-para-la-adquisicion-de-vacunas-contra-la-covid-19-y-el-fortalecimiento-de-la-red-hospitalaria-en-nicaragua>

<sup>5</sup> BCIE aprueba US\$300.00 millones al Programa Multisectorial para la Reactivación Económica y Protección Social de la República de Nicaragua. BCIE, 24 de noviembre de 2020. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/bcie-destina-us30000-millones-al-programa-multisectorial-para-la-reactivacion-economica-y-proteccion-social-de-la-republica-de-nicaragua>

<sup>6</sup> *Ibidem*.

<sup>7</sup> BCIE: Más de 56 mil personas en Nicaragua serán beneficiadas con la ampliación del Sistema de Transmisión Eléctrica. BCIE, 23 de marzo de 2021. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/bcie-mas-de-56-mil-personas-en-nicaragua-seran-beneficiadas-con-la-ampliacion-del-sistema-de-transmision-electrica>

<sup>8</sup> BCIE financiará proyecto de servicios hospitalarios que beneficiará a 3 millones de nicaragüenses. BCIE, 26 de marzo de 2021. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/bcie-financiera-proyecto-de-servicios-hospitalarios-que-beneficiara-a-3-millones-de-nicaragüenses-1>

<sup>9</sup> Con un financiamiento de US\$184.6 millones, BCIE contribuye al mejoramiento de capacidades operativas de Puerto Corinto en Nicaragua. BCIE, 25 de mayo de 2021. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/con-un-financiamiento-de-us1846-millones-bcie-contribuye-al-mejoramiento-de-capacidades-operativas-de-puerto-corinto-en-nicaragua>

<sup>10</sup> BCIE financia obras de agua potable y saneamiento alrededor del lago de Managua en beneficio de más de 1.4 millones de habitantes. BCIEI, 29 de junio de 2021. Recuperado de: <https://www.bcie.org/novedades/noticias/articulo/bcie-financia-obras-de-agua-potable-y-saneamiento-alrededor-del-lago-de-managua-en-beneficio-de-mas-de-14-millones-de-habitantes>

<sup>11</sup> Proyectos de infraestructura vial financiados por el BCIE benefician a más de 2.2 millones de nicaragüenses. BCIE, 14 de julio de 2021. Recuperado de: <https://www.bcie.org/en/news-and-media/news/article/proyectos-de-infraestructura-vial-financiados-por-el-bcie-benefician-a-mas-de-22-millones-de-nicaragüenses>

<sup>12</sup> BCN Suscribe Renovación de Contrato de Línea de Crédito por US\$200 Millones con BCIE. BCN, 25 de octubre de 2021. Recuperado de: <https://www.bcn.gob.ni/divulgacion-prensa/bcn-suscribe-renovacion-de-contrato-de-linea-de-credito-por-us200-millones-con-1>

<sup>13</sup> Asamblea Nacional aprueba crédito del BCIE para programa Bio-Clima en Nicaragua. La Voz del Sandinismo, 17 de noviembre de 2021. Recuperado de: <https://www.lavozdelsandinismo.com/nicaragua/2021-11-17/asamblea-nacional-aprueba-credito-del-bcie-para-programa-bioclima-en-nicaragua/>

## **A. The Bio-CLIMA Project: Integrated climate action to reduce deforestation and strengthen resilience in Bosawás and Río San Juan Biosphere Reserves**

According to a CABEI Press Release dated December 15, 2020, CABEI approved funding for a total amount of US\$84 million to the Republic of Nicaragua for the implementation of the "Bio-CLIMA Project: Integrated Climate Action to Reduce Deforestation and Strengthen Resilience in the Bosawás and Río San Juan Biosphere Reserves". This project includes a loan and a grant.<sup>6</sup>

Weeks before the approval date, the GCF approved funding for the Bio-CLIMA Project for a total of US\$64.1 million, of which US\$37.9 million will be provided as a loan to the Government of Nicaragua and US\$26.1 million as a grant. This total amount of funding will be complemented by a CABEI loan to the Government of Nicaragua through the Poverty Reduction and Economic and Social Exclusion Program (PRPEES, Spanish acronym) for an amount of US\$19.9 million, as well as a grant from the Global Environment Facility (GEF) for an amount of US\$8.3 million.<sup>7</sup>

The institutions responsible for compliance with the objectives and scope of the project's results, as well as for the rational use of allocated resources and compliance with CABEI policies, would be the Ministry of the Environment and Natural Resources (MARENA, Spanish acronym) and the Ministry of Finance and Public Credit (MHCP, Spanish acronym). The conditions of these funds, because of the combination of CABEI resources and the FVC loan, will be a fixed annual interest rate of 0.50% and a term of up to 40 years, including a 10-year grace period.<sup>8</sup>

In another release, on May 25, 2021, CABEI reports the approval of an extension of US\$24.3 million to fund the "Bio-CLIMA Project: Integrated Climate Action to Reduce Deforestation and Strengthen Resilience in the Bosawás and Río San Juan Biosphere Reserves" on the Caribbean Coast of Nicaragua.<sup>9</sup>

In a press release, CABEI states:

*Overall, Bio-CLIMA will enable Nicaragua to increase its carbon absorption capacity by 14% in relation to the reference scenario for 2030, by promoting agro-ecological production of permanent crops under the shade of trees, more resistant to the impacts of climate change; reducing extensive grazing and introducing cocoa*

*silvopastoral and agro-forestry systems, establishing planted forests on idle or degraded forest land; prioritizing the use of native tree species for natural regeneration; restoring and conserving ecosystems and ecosystem services, taking advantage of adaptation and mitigation synergies, with special emphasis on watershed management and risk reduction, such as biodiversity conservation and protected areas.*<sup>10</sup>

However, CABEI has not published relevant information for this loan on its website; relevant information related to this loan and project will be found on the Green Climate Fund website.<sup>11</sup>

The Bio-CLIMA Project to be implemented on the Caribbean Coast of Nicaragua was approved by the Board of Directors of the Green Climate Fund during its 27th meeting, with the stated objective of restoring the forests of Nicaragua's Caribbean region — the richest area in biodiversity — and channeling investments toward sustainable forest management.<sup>12</sup>

CABEI and the Government of Nicaragua signed the agreements of the Bio-CLIMA Project, and established May 2022 as the deadline to start its execution<sup>13</sup> — all of this, despite criticism from citizens and environmentalists who have seen no signs of a genuine commitment on the part of the State to stop deforestation and protect indigenous peoples.<sup>14</sup>

On November 4, 2021, the National Assembly of Nicaragua approved, through urgency procedure, which prevented a thorough discussion, Loan Agreement No. 2266 subscribed between CABEI and the Republic of Nicaragua, for US\$108 million.<sup>15</sup>

## **1. Indigenous peoples and the Bio-CLIMA Project**

The Constitution of Nicaragua and the Nicaraguan legislation recognize the collective rights of these peoples, determined by their cosmovision, traditional modes and livelihood that they share as a community, such as: the right to self-determination, language, culture, access to the natural resources of their traditional, historical and/or ancestral territories.<sup>16</sup>

The indigenous and Afro-descendant peoples in the Caribbean Coast Autonomous Regions of Nicaragua constitute 304 communities in 23 territories, whose lands have been titled to them since 2006, under the collective ownership regime, and together make up a territorial extension of 37,841 km<sup>2</sup>, representing 31.16% of the national territory. These peoples are constituted by communities that live off of agriculture for self-consumption: they hunt in the forests; they fish

in the rivers, bays and seas; they cut wood only for the construction of their houses and canoes, which are their main means of transport. The economy of these peoples is a subsistence economy and depends exclusively on the collective land and mainly on the forests.

The Bosawás and Rio San Juan Biosphere Reserve, where the Bio-CLIMA Project will be implemented, are located on indigenous and Afro-descendant territories; they were declared legally protected areas in 2001 and 2003, respectively; and they were also recognized by UNESCO for their high environmental and human value.

These reserves have been historically preserved by the indigenous and Afro-descendant peoples that inhabit them, who derive their livelihoods, the foundation of their cosmovision, culture and spirituality, from these reserves. Since 2005 these peoples have received the titles of these lands under the procedure of Law No. 445, the Law of Communal Property, approved in 2003. This law establishes a five-step process for indigenous and Afro-descendant communities to obtain effective legal protection over their land.<sup>17</sup>

The fifth stage of the legalization procedure, the land property clearance, which constitutes the legal definition of the rights of third parties within the indigenous and Afro-descendant territories, has not yet been implemented by the State of Nicaragua.

## **2. Cancellation of the World Bank's carbon fund component**

In early July 2019, the World Bank's BioCarbon Fund preliminarily approved a project proposal submitted by the Government of Nicaragua for forest conservation and carbon emission reductions. In August, the Alliance of Indigenous and Afro-descendant Peoples of Nicaragua (APIAN, Spanish acronym) pointed out that the project in question had been included in the five-year plan of the regional governments of the Caribbean Coast, thus creating a serious conflict with the communities by usurping the representation of their traditional, communal and territorial authorities, in violation of the principle of free, prior and informed consent.<sup>18</sup> On October 9, Nicaraguan civil society organizations called on the World Bank to suspend the carbon sequestration project during a PRE-COP 25 event on climate change in Costa Rica. On February 23, 2021, the carbon sequestration project was cancelled. Regarding the cancellation, bilaterally agreed between the World Bank and the Nicaraguan Government, the Fund Management Team (FMT) explained that:

*...unfortunately, we cannot move forward with the ERPA [Emission Reduction Payment Agreements] at this stage. ERPAs are complex projects that require the implementation of very robust systems from the outset, particularly to ensure full benefit sharing with indigenous communities. They also require frequent on-site monitoring and evaluation, ongoing supervision, and third-party certification of results. While the government has worked very hard, even with World Bank support, to implement the necessary systems for environmental and social management, monitoring and evaluation, and independent certification of results...<sup>19</sup>*

In absence of a robust environmental and social monitoring system and benefit sharing plan, especially considering the lack of free, prior and informed consent and the presence of parallel governments, which are vital and are required to monitor, supervise and certify ERPAs from FCPF, the World Bank was cautious in view of the high reputational and financial risk of not meeting the project's objective. Under these conditions, it would mean implementing the project in the context of violence, forced displacement and devastation of the territory that the indigenous peoples of the Caribbean Coast of Nicaragua are currently facing in their traditional territories.

### **3. Questions about the Bio-CLIMA Project**

Similarly, other voices from the civil society, environmentalists and indigenous peoples have questioned, even before its approval, the implementation of the Bio-CLIMA Project in the precarious security circumstances of the territories of the indigenous and Afro-descendant communities on the Caribbean Coast of Nicaragua. About the Bio-CLIMA Project, REDD-Monitor<sup>20</sup> believes:

*“ ... that the Bio-CLIMA project will likely undermine the Land Property Clearance phase instead of upholding the full implementation of Law No. 445, the Green Climate Fund project will push indigenous and Afro-descendant communities to sign "peaceful coexistence and forest conservation agreements" with settlers who have invaded their lands, cut down their forests and harassed, threatened, and in some cases even murdered members of indigenous communities".<sup>21</sup>*



Inexplicably, the violation of Nicaraguan law and the lack of implementation of the land property clearance phase was not explicitly discussed during the GCF Board meeting.<sup>22</sup>

In addition, the Oakland Institute points to the titles granted to the communities as "empty promises, given the continuous land invasions and violence faced by the communities". There are even allegations that the government encourages the invasion of indigenous and Afro-descendant territories.<sup>23</sup>

On November 9, 2020, the World Rainforest Movement had already sent an open letter to the Green Climate Fund requesting its Board of Directors to reject the "Bio-CLIMA Project" under the following argument:

*"The biased and incomplete description of the drivers of deforestation and the worrying activities that result from this inadequate analysis presented in FP146 expose (REDD) once more as a concept that has failed to contribute to addressing the drivers of deforestation. Worse, its implementation puts people's livelihoods and even lives at risk and exacerbates conflict, both between state agencies and REDD project proponents and communities exercising their customary rights to land as well as between and within communities".<sup>24</sup>*

In November 2020, APIAN had also written an open letter to the Green Climate Fund Board asking it to reject the Bio-CLIMA proposal, stating that, although Nicaragua has excellent legislation for environmental conservation and indigenous peoples' rights due to the existence of Law No. 28, The Autonomy Statute and Law No. 445, this does not mean that the public policies implemented by the national government have respected its own legislation. In addition, APIAN states:

*For several decades, the State of Nicaragua has been promoting the advance of the agricultural and cattle ranching frontier over the forests of our traditional territories, whose ownership title has been granted by the State itself, which is contrary to the prevention of deforestation, which exacerbates the effects of climate change that REED/FCPF seeks to alleviate. The State refuses to implement the Joint Management of protected areas with indigenous and Afro-descendant communal and territorial governments, in violation of the provisions of Law 445 since 2003, and contradicting the principles promoted by REED/FCPF. Nicaragua's indigenous and Afro-descendant territories are being colonized; the Indio-Maíz Biological*



*Reserve has been entered by güiriseros (artisanal miners) and armed groups have often threatened families of the indigenous Rama and Afro-descendant Kriol peoples; Similarly, in the BOSAWAS Biosphere Reserve, groups of armed men with war weapons have caused the forced displacement of entire communities, communities of the Miskitu and Mayangna indigenous peoples, and the State has failed to protect them despite multiple requests, and these cases are currently in the Inter-American Court of Human Rights.*<sup>25</sup>

Despite the clear objections presented to the GCF by environmental organizations and by the indigenous and Afro-descendant peoples of Nicaragua themselves regarding the serious pre-existing situations that still persist, due to state action and omission, the GCF Board of Directors approved the Project; however, it was approved with certain conditions.

#### **4. Approval of Bio-CLIMA subject to compliance with conditions.**

The GCF has designated CABEI as a Direct Access Accredited Entity since 2016. Since this designation, CABEI has been able to mobilize resources in all of the available categories and windows of the GCF. The Bio-CLIMA Project is the second operation approved by the GCF for CABEI since its accreditation.<sup>26</sup> "The project will contribute to the strengthening of resilience to climate change and the reduction of exposure to climate risks of 614,721 people, mainly indigenous and afro-descendants and in situations of marginalization and poverty" (see table below).

The Green Climate Fund conditioned the Bio-CLIMA Project to the participation of the Accredited Entity, in this case CABEI, which must supervise the facilitation, negotiation and signing of the Agreements for the Peaceful Coexistence Regime (ECPR), and an independent third party or parties, such as the UN Special Rapporteur on the Rights of Indigenous Peoples, and the due completion of all procedures leading to the Free, Prior and Informed Consent (FPIC) of the project through the legitimate participation of indigenous and Afro-descendant peoples.

This is in compliance with the social and environmental safeguards required for the execution of this type of project. Without prejudice to the observation of the applicable International Finance Corporation (IFC) Performance Standards on the potential environmental and social impacts associated with the financial institution's clients/investment recipients, the financial institution should apply

the IFC Performance Standards as a reference for the detection and management of these risks.

#### Proposed conditions of FP146

I. Prior to the first disbursement of GCF Proceeds, the Accredited Entity will provide to the Fund, in form and substance satisfactory to the GCF Secretariat, a monitoring framework setting out the following, which is to be used by the Accredited Entity in project monitoring, supervision and reporting to the GCF:

- a) With respect to the process for facilitating the negotiation and signing of Peaceful Co-habitation Regime Agreements (“PCRAs”); to all free, prior and informed consent (“FPIC”) procedures; and to independent and legitimate participation of indigenous/Afro-descendent peoples and other relevant stakeholders in the project governance and decision-making process:
  - i. A detailed process for selecting, as per the Accredited Entity’s procurement policies, an independent third party or parties, such as the UN Special Rapporteur on the Rights of Indigenous Peoples or another UN specialized agency to oversee the facilitation, negotiation and signing of PCRAs, the application of all FPIC procedures and the legitimate and independent participation of indigenous/Afro-descendent peoples and other relevant stakeholders in the Steering Committee and the Interinstitutional Technical Committees of the national trust funds (SPR-TF, CAR-TF and RBP-TF) and the governing boards of the national funds (FONADEFO and FAN) (“Fund Committees”).
  - ii. A detailed process for selecting the independent, specialized entities entrusted with the facilitation of the PCRAs (as to Funding Proposal), as per the Accredited Entity’s procurement policies. This process shall ensure that these entities will be presented for approval to the Accredited Entity and the GCF Secretariat, which will jointly confirm the independent and specialized nature of the entities, and
  - iii. A detailed process that ensures that all FPIC procedures will be rigorously documented and disclosed to the public through the Executing Entity's website in order to enhance transparency and allow for public scrutiny.

b) With respect to project supervision:

- i. A detailed process for the Accredited Entity to report to the GCF Secretariat on the participation of the independent third party or parties mentioned under item Aa, and their assessments of the oversight processes mentioned under Aa, at every project monitoring and supervision event done by the Accredited Entity in order to strengthen the oversight of the project, and
- ii. A detailed mechanism for ensuring that any concerns raised by the independent third party or parties mentioned under (Aa) be properly considered and appropriate measures will be taken according to the Accredited Entity's Environmental and Social Safeguards, which receive and process serious complaints regarding the implementation of the project. Depending on the outcomes of the investigation of the Accredited Entity's Technical Working Group, the Accredited Entity will consult with the GCF Secretariat on the measures to be undertaken to address the concerns, including the withholding of funds to the Executing Entity, until appropriate corrective measures are taken.

II. Conditions to be met prior to the second disbursement by the GCF:  
Prior to the second disbursement of GCF Proceeds, the Accredited Entity will provide to the Fund, in form and substance satisfactory to the GCF Secretariat, a project operations manual setting out the following:

a) With respect to Activity 1.1.1.4 "Facilitate celebration and formalization of landscape restoration and forest conservation agreements":

- i. A detailed mechanism and process for facilitating the negotiation and signing of the PCRAs, and
- ii. A template of the PCRA for consultation among the stakeholders in accordance with the project's Environmental and Social Management Framework (ESMF) that includes the Indigenous Peoples Planning Framework (IPPF).

b) With respect to transparency and accountability of the project financial management: A detailed financial management and control mechanism of the

project, including the disbursement and financial control at the Accredited Entity, Executing Entity, and national trust fund and the national fund levels, in order to be able to monitor and audit the transparent use of project funds.

c) With respect to the governance of the national funds and the national trust funds: A detailed governance mechanism of the national funds and the national trust funds. As per paragraph 76 of the Funding Proposal, each of these funds will be governed by Fund Committees, in which relevant sectoral institutions and actors will participate. In addition to the actors mentioned in paragraph 76, a representative of the Accredited Entity will also participate in each Fund Committee on matters related to the project.

## **B. State policy of colonization of the Caribbean Coast is incompatible with the Bio-CLIMA Project**

In the last decade, violence against indigenous<sup>27</sup> peoples has been exacerbated; experts point to the presence of organized crime and drug trafficking in the area<sup>28</sup>; the expansion of the agricultural frontier and extensive cattle ranching<sup>29</sup>; and a policy of natural resources extractivism has been promoted, degrading the livelihoods and territories of indigenous peoples through deforestation caused by logging in general<sup>30</sup>, and by the Alba-Forestal company in particular<sup>31</sup>, the expansion of monocultures such as the African Palm (*Elaeis guineensis*)<sup>32</sup>, and the increase in mining activity<sup>33</sup>, with the state-owned Nicaraguan Mining Company (ENIMINAS), which establishes the economic participation of the State in all concessions awarded for mining exploitation;<sup>34</sup> the announcement of the concession of the Grand Interoceanic Canal (GCIN, Spanish acronym) of Nicaragua<sup>35</sup> and increasing internal migration of settlers into Autonomous Regions that overlap with protected areas in indigenous territories.

However, the Bosawás and Río San Juan Biosphere Reserves, where the Bio-CLIMA Project is supposed to be implemented, have been under a state policy of internal colonization of the Caribbean Coast of Nicaragua for several years; and therefore are being deforested by the massive immigration of non-indigenous settlers who break into these territories favoring the advance of the agricultural frontier and extensive cattle ranching, the introduction of extractivist forest exploitation<sup>36</sup> and gold mining companies and the planting of monocultures such as the African Palm.<sup>37</sup>

A study sponsored by the IDB, on the Nicaraguan forestry sector in 2018, provides the following information on deforestation in the country:

*In 2000 there was 42% of forest cover and 36% of agricultural and ranching use. In 2010, forest cover continued to decrease, reaching 31% at the national level and the country crossed the threshold of 50% of agricultural and ranching use. In the last year of the study (2015), forest cover had reduced to 39,078 km<sup>2</sup>, which represents 30% of the national territory... Data obtained from the 2015 map, shows that forest cover reached 61% (22.92 3 km<sup>2</sup>), with a reduction of 20% compared to 1969. Agricultural use reached 15%, in all Indigenous Territories (IT). The major forest loss in the Protected Areas (Pas) in Indigenous Territories comes from a shift to agricultural and ranching use.... In 2000, the area dedicated to African palm was 4,561 ha, and in 2016 the area increased to 48,142 ha. Overall, between 2010 and 2016, the African palm had replaced 24.5% of the forest and 72.9% of the agricultural use.<sup>38</sup>*

In addition to the high rate of deforestation in the area adjacent to the Río San Juan Reserve, the State has planned infrastructure projects such as the Tumarían hydroelectric plant, the Bluefields-Nueva Guinea Highway and the Bluefields Deepwater Port, the last two being sub-projects of the Grand Interoceanic Canal of Nicaragua (GCIN) megaproject; the concession of these projects was approved through Law No. 840 in 2013, without due consultation until Free, Prior and Informed Consent was obtained (FPIC).<sup>39</sup>

Therefore, the Bio-CLIMA Project is expected to be implemented in the same areas as the GCIN, despite that these projects are incompatible with each other, since their implementation would directly affect the Rio San Juan Reserve. Similarly, the Bosawás Biosphere Reserve is also being affected by the multiple extractive activities promoted and/or permitted by the State, which makes it very difficult to preserve or restore the forests.

## **1. Lack of adequate prior consultation**

For the approval of the Bio-CLIMA Project, there was no consultation and participation of indigenous peoples in accordance with international standards on the matter. Since the Nicaraguan state undermines the self-determination of indigenous and Afro-descendant peoples through the Regional Councils, the entities administratively competent to certify the elections of indigenous and Afro-descendant authorities. However, instead, these institutions impose

authorities politically aligned with the governing party "parallel" to those legitimately elected by these peoples.<sup>40</sup> Once the functions of the indigenous or original governments are overstepped, the State can easily access and take over the land and other natural resources of these peoples.

In order to achieve their objective, state officials and members of the party currently in government take actions that range from threatening members of indigenous and Afro-descendant governments with denying them allocations from the General Budget of the Republic that by law they are entitled to, depriving them of participation in local or state projects, to even threatening them with harm to their integrity.<sup>41</sup> In addition, without having the legal competence to do so, the Regional Councils refuse to certify the authorities legitimately elected by the communities and extend the term of governments that are aligned with the party in the central government; illegally instruct the communities to carry out new elections and impose some or all of the members of the communal and territorial governments already constituted; they mainly impose the Coordinators/Presidents of the indigenous and/or Afro-descendant governments.

As a result, most of the indigenous and Afro-descendant governments have been replaced by "parallel" governments imposed by the regional governments and political operators of the current ruling party.<sup>42</sup>

In this regard, the Committee on Economic, Social and Cultural Rights expressed the following in October 2021:

*11. The Committee is concerned about reports received regarding the lack of adequate mechanisms to guarantee the right of indigenous peoples to be consulted in the making of decisions that could affect their rights, including their rights over the territories they have traditionally occupied. The Committee observes with concern that the State party has not carried out adequate prior consultation procedures before approving large investment projects that could affect the rights of indigenous peoples... Furthermore, the Committee observes with concern allegations that the State party has promoted the creation of parallel governments to supplant the representation of legitimately constituted indigenous peoples' communities, which affects consultation procedures and facilitates the usurpation of indigenous territories... The Committee is concerned about the serious social conflicts and violence generated around the possession and use of lands and territories between indigenous peoples and third-party occupants or third parties interested in the exploitation of natural resources occurring in such territories, particularly in the*

*territories of indigenous and Afrodescendant peoples on the Caribbean Coast of Nicaragua (art. 1).*<sup>43</sup>

As a corollary of this bad practice of imposing indigenous and Afro-descendant authorities, the Regional Council of the South Caribbean Coast Autonomous Region approved in March 2020 the issuance of the "Procedural Manual for Prior, Free and Informed Consultation" whose content was not previously known by the councilors who, in these circumstances, "approved" it, without consulting the indigenous and Afro-descendant peoples, to whom the manual will be applied. And in August 2020 the same Council approved the "Manual of Procedure for the Certification of Territorial and/or Communal Authorities of the South Caribbean Coast Autonomous Region" whose content constitutes a clear violation to the right of indigenous and Afro-descendant peoples to have their own authorities, given that such competence is taken away from them by the aforementioned Manual, which illegally confers such powers to the Regional Council. Both regulations were challenged as unconstitutional in the judicial system by the affected peoples, but the judicial system has not protected them.<sup>44</sup>

Therefore, the consultations carried out for the Bio-CLIMA Project with communal and territorial governments aligned or parallel to the Central Government do not comply with the international standard required to obtain the Free, Prior and Informed Consent of these peoples as established in the applicable regulations.

## **2. Reserves and communities in the project area in grave danger**

The Miskitu, Mayangna and Rama indigenous peoples, and the Creoles/Kriol and Garífunas Afro-descendants of the Caribbean Coast of Nicaragua are currently facing violent dispossession of their territories; and the Bosawás and Río San Juan Biosphere Reserves, traditionally indigenous territories where the Bio-CLIMA Project is intended to be implemented, are also under threat.<sup>45</sup>

### **In the South Caribbean Coast Autonomous Region**

In the South Caribbean Coast Autonomous Region (RACCS, Spanish acronym), where the Indio-Maíz Biological Reserve is located, in the Río San Juan Biosphere Reserve, the invasion of settlers, the advance of the agricultural and cattle ranching frontier, the open-pit gold mining and the African palm

monoculture are destroying the reserve without the State exercising its duty to protect the reserve and the indigenous and Afro-descendant communities that have traditionally lived there, and whose property rights have been recognized by the Constitution of Nicaragua since 1987 and whose ownership titles have been given in favor of the Rama and Kriol peoples by the State since 2009.<sup>46</sup>

For example, the company *Palmares de El Castillo S.A. (PALCASA)* was established in the department of El Castillo in 2004. In 2005 PALCASA obtained an environmental permit from the General Directorate for Environmental Quality (DGCA) of the Ministry of the Environment and Natural Resources (MARENA) through Administrative Resolution No. 23-2005 for the rehabilitation of the African palm oil extraction plant in order to reactivate oil production. PALCASA, through an Environmental Impact Assessment (EIA), applied for permission to establish 2,400 hectares of African palm, but the DGCA of the Ministry of Environment and Natural Resources (MARENA) granted 3,600 hectares. At present, according to the survey conducted, the crop is extended over a total of 6,646 hectares, of which only 2,400 hectares have an EIA. The other 4,246 hectares do not have permits to operate.<sup>47</sup>

By 2000, the oil palm was present in two areas: Kukra Hill in the RACCS, and to the east of the municipality of El Castillo, in the department of Río San Juan. By 2016, oil palm cultivation was present in three areas: 1) the south part of the Prinzapolka municipality (RACCN); 2) Kukra Hill, which had already extended to the El Rama area; 3) and El Castillo. By 2018, the planted area had increased by 254% compared to 2011. In 2000 the palm area occupied 4,561 hectares, and in 2016 the planted area had increased to 48,142 hectares.<sup>48</sup>

The rapid expansion of African Palm cultivation directly impacts the surrounding communities and the small landowners from whom the land is purchased and who then move to the Río San Juan Reserve, which is directly affected in terms of biodiversity and natural resources: The soil, surface water and groundwater, broadleaf forests and mainly the Indio-Maíz Biological Reserve, of which 80% of the territory belongs to the indigenous Rama and Afro-descendant Kriol peoples.

In 2003, CABEL granted US\$6.5 million to strengthen African palm oil exports in the municipality of Kukra Hill, in Nicaragua's southern Caribbean, a program to be executed by Cukra Development Co. and Río Lindo Escondido Industrial.<sup>49</sup>

Similarly, the Indio-Maíz Biological Reserve, part of the Río San Juan Biosphere Reserve, is under a lot of pressure from non-indigenous invasions attracted by the constant announcements of the Grand Interoceanic Canal that the



Nicaraguan government is still stubbornly pushing for.<sup>50</sup> Among other consequences of such invasions is the so-called "Gold Rush" in the Indio Maíz Reserve, carried out by hundreds of artisanal miners, despite that the General Law of the Environment and Natural Resources prohibits mining activities in the core areas of Nicaragua's protected territories, due to the state's gold mining policy that has turned gold into the country's main export in recent years; the so-called *güiriseros* (artisanal gold miners) carry out their activities to the detriment of the reserve and its inhabitants, the Rama indigenous and Afro-descendant Kriol communities, with unregulated and uncontrolled open-pit gold mining.

### **In the North Caribbean Coast Autonomous Region (RACCN)**

In the North Caribbean Coast Autonomous Region (RACCN, Spanish acronym), in addition to African Palm plantations, the advance of the agricultural and cattle ranching frontier, and extractivism, mainly in the Bosawás Biosphere Reserve; non-indigenous settlers, oblivious to the customs and traditions of these peoples, violently invade indigenous territories, and overexploit natural resources; exposing the Miskitu and Mayangna indigenous peoples to food insecurity, causing forced displacement and, in many cases, death to defenders of their territories.<sup>51</sup>

### **The Killings**

Throughout the year 2021, there was a massacre in Kiwakumbay, resulting in at least 12 indigenous people killed and some of them (a 6-year-old and a teenager) mutilated. In addition to one Miskitu youth killed earlier, eight indigenous people have been injured in attacks and were left with long-term physical damage; two Miskitu indigenous women have suffered multiple sexual assaults;<sup>52</sup> as well as the criminalization of territory defenders (indigenous forest rangers) and human rights defenders while trying to protect these territories.<sup>53</sup>

In 2020, there were at least 13 murders (two of them 17-year-olds), eight people wounded in armed attacks with long-term physical damage, two kidnappings, the burning of homes, a church, communal buildings, theft and slaughter of livestock, the forced displacement of an entire community, mostly members of the Mayangna indigenous people and two assaults on underage Miskitu indigenous girls.<sup>54</sup>

Between 2011 and 2020, 49 Miskitu indigenous people were killed, 49 were injured, 46 were kidnapped and four people went missing. It is also estimated that due to the violence, around 1,000 indigenous people, mainly women, children and elderly people, have been forcibly displaced.<sup>55</sup> The acts of violence have also

generated a serious food insecurity problem among the indigenous people, as they have been deprived of their land and livelihoods by the armed settlers who occupy it. If this continues, it could result in the extermination of these peoples.<sup>56</sup>

### **The Impunity**

The impunity for these violent acts is practically absolute, despite that they have been occurring and have been reported for several years. The State has failed to report the number and status of investigations related to the reported murders and assaults; moreover, the State has not even complied with the protection measures ordered by the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR Court) that have heard about the attacks on 12 indigenous communities that occurred between 2015<sup>57</sup> and 2021<sup>58</sup>, and have issued precautionary and provisional measures, respectively.

Unfortunately, in the case of the Kiwakumbay massacre that occurred on October 23, 2021, the State has accused a group of Mayangna indigenous people, some of whom are volunteer forest rangers, of having perpetrated the massacre, despite that some of the victims belong to the same family as the accused natives; and as most of the victims were Miskitu indigenous people, the accusations against the Mayangna could generate inter-ethnic conflict; however, survivors of the massacre identified the aggressors as non-indigenous settlers and that the ammunition seized came from war weapons.<sup>59</sup>

Furthermore, the Mayangna indigenous people perceive the accusations against some of their members as a retaliation by the State due to their activism in defense of their land, the reports of aggressions made by them and their demands of prompt, impartial and professional investigations into the systematic attacks that they have been suffering in the Mayangna Sauni As territory since 2013.<sup>60</sup>

### **3. The Bio-CLIMA Project funds will aggravate the complex situation**

The current implementation of the colonization policy of the Caribbean Coast, the extractivist practices and the failure to protect, investigate, punish and compensate the victims of systematic attacks by armed settlers against indigenous peoples is incompatible with environmental protection and conservation of natural resources, as well as other human rights of the indigenous peoples who

inhabit the Bosawás and Río San Juan Biosphere Reserves, which is the objective of the Bio-CLIMA Project.

Moreover, there are currently no concrete actions from the State to stop the invasion of indigenous communal lands or the ongoing environmental degradation in the Reserves, in spite the following statements made by CABEI:

*The project will contribute to sustainable development with low CO2 emissions in Nicaragua by transforming extensive cattle ranching, agriculture and timber exploitation into forms of production that prevent deforestation and integrate the conservation of ecosystem services with sustainable production to increase the resilience of indigenous peoples and local livelihoods in the Caribbean Region of Nicaragua... Bio-CLIMA will finance conservation and restoration activities in protected areas, involving communities and indigenous peoples through the implementation of business plans for the creation and consolidation of sustainable community enterprises and sustainable forest management plans. These actions will be accompanied by technical and institutional capacity building at the local level, which will facilitate the formulation and implementation of these plans.<sup>61</sup>*

Therefore, based on current experiences, the injection of additional resources to the Government of Nicaragua, through the Bio-CLIMA Project, without clear supervision and oversight, and without any real consultation, the project will attract only higher levels of conflict and violence to indigenous and Afro-descendant communities, who are the most vulnerable, due to historical discrimination, immigration and attacks by settlers and extractivist companies. There are no reasons or guarantees to believe that the Bio-CLIMA Project funds will be truly used for the conservation of the environment and natural resources, as well as for the protection of indigenous and Afro-descendant peoples and the protection of their traditional territories, currently under clear colonization.

## **C. CABEI should not fund repression**

Members of Nicaraguan civil society through a petition on social media signed by more than 11,000 people — as well as Nicaraguan exiles in Costa Rica, more than 100,000 since the end of 2019 — protested outside CABEI's premises due to the bidding process for "*Procurement of means transportation for*

*Strengthening of Operational Capacities of the National Police-No.LPI-001-2019-BCIE-PN*,"<sup>62</sup> providing funds to the Nicaraguan government. Additionally, international human rights protection entities — OHCHR, the Interdisciplinary Group of Independent Experts and IACHR — accused the National Police, along with the highest authorities of the Nicaraguan State, of committing crimes against humanity against protesters during the peaceful demonstrations of 2018. One of the protesters expressed the following:

*They keep giving money for them to kill us, to keep repressing the people of Nicaragua, we only ask the Bank authorities to cancel the financing for the Nicaraguan police because they are persecuting us, they are killing us and we are the proof because we had to flee our country.*<sup>63</sup>

Once again, sectors of civil society and the Nicaraguan diaspora around the world, in the framework of the CABEI Annual Assembly of Governors, held on September 4, 2021, in Costa Rica, made public demonstrations and in a press release they stated the following:

*Spain, Colombia, Argentina, Mexico, Taiwan, South Korea, the Dominican Republic, Panama and the group of Founding Countries are requested not to approve or increase financing to the Government of Nicaragua, the second largest recipient of funds with 23% of its total loan portfolio. CABEI is the main financial support of the dictatorial regime of Daniel Ortega and Rosario Murillo.*<sup>64</sup>

Demonstrations were held in Costa Rica and Honduras outside CABEI's premises, demanding that they stop financing the Nicaraguan government.<sup>65</sup> Human rights activist Bianca Jagger, through her Twitter account, made the following statement on the matter:

*Dear governors of @BCIE\_Org, how can you justify financing the criminal regime of Daniel #Ortega, who perpetrated Crimes Against Humanity? Between 2015 - 2019 you awarded his regime more than \$2.075 billion, a figure that has been increasing since then. #Nicaragua.*<sup>66</sup>

Former Costa Rican President Laura Chinchilla urged Central American countries to act in response to the Nicaraguan crisis, which also has economic, social, humanitarian and political implications for Central America, to exert pressure for free elections, and specifically in response to the financing provided by CABEI to the Nicaraguan government:

*In the case of Nicaragua, we must continue to put pressure so that the United States, with its political muscle, helps us to stop these types of decisions. But we Central Americans have to do more. Just as the message that we do not want the presidency of SICA to go to Nicaragua was received, it is time for the Central American Bank [CABEI] and the representatives of the governments to also receive the message that they cannot continue to open the valves to Nicaragua so that Daniel can simply continue to do whatever he wants with those resources.<sup>67</sup>*

However, on October 25, 2021, CABEI renewed to the Central Bank of Nicaragua (BCN), for the 12th time since 2009, a credit line agreement for up to US\$200 million to support liquidity management of the BCN, the institution responsible for the monetary policy of the country. The credit line will be valid for one year and may be used to meet liquidity contingencies and strengthen the BCN's liquidity position.<sup>68</sup>

## **1. Lack of transparency in the use of loans**

CABEI is not only criticized for its copious funding to Daniel Ortega's political regime in Nicaragua, despite the socio-political and human rights crisis that began in 2018, but also for its lack of transparency and accountability in the use of loans.

Additionally, a report prepared by Expediente Público on IDB and CABEI loans to Nicaragua, titled "No trace of US\$54.7 million loaned to combat Covid-19 in Nicaragua", points out that there is no public information available on the use of the funds provided by the IDB and CABEI to Nicaragua to control the COVID-19 Sanitary Emergency.<sup>69</sup>

The macro-fiscal analyst of the Central American Institute for Fiscal Studies (ICEFI, Spanish acronym), Abelardo Medina, shares the concern of external financial entities about the accountability in the region for the conditional loans to provide assistance in the pandemic, and mentions that surely many Nicaraguans wonder why Nicaragua gets so much debt for healthcare, but nothing improves. In his opinion, the reasons for this could be the following:

*"The financing from international entities was not used for what was intended, so these entities should be a little tougher in not giving credits, without evidence that the funds have been used in the right way".<sup>70</sup>*

But criticism of CABEI is not limited to the financing of Daniel Ortega's political regime and its lack of transparency in the use of funds, but also due to its opacity, because CABEI only publishes press releases on its website and does not publish more extensive accountability reports on the loans granted, and there is no access to this type of information in Nicaragua or on CABEI's website.

## **2. Allegations of corruption and clientelism at CABEI**

In addition, CABEI has been openly criticized by a former member for alleged corruption and clientelism in its internal structures. There is dissatisfaction with the high salaries of the directors,<sup>71</sup> the lack of probity in the expenses of CABEI's president<sup>72</sup> and the clientelistic alliances among the directors, all to the detriment of the population of the countries to which the funds are supposed to be directed.

Investigations by the newspaper *El País* in the year 2021 reveal the degree of abuse of CABEI's economic resources by its own officials. The newspaper described "*salaries of almost \$20,000 per month for directors, gifts of gold and three salary raises in the middle of the pandemic*"<sup>73</sup>, in addition to "*vacation bonuses*"<sup>74</sup> and "*luxury hotels, all kinds of travel allowances, discretionary use vehicles and unlimited flights within the region*".<sup>75</sup>

Similarly, the executive president of CABEI had used the bank's economic resources for personal healthcare purposes. With CABEI resources, he paid for transfers for his family and an air ambulance when he became ill with Covid-19 in the Dominican Republic at the end of 2020. The total costs were \$30,000.<sup>76</sup> These facts seem to indicate that both CABEI's president and officials are wrongfully benefiting from CABEI's economic resources.

This phenomenon is strongly influenced by the fact that directors are "*handpicked by each government*",<sup>77</sup> suggesting that governments can somehow "reward" loyal politicians by assigning them positions in CABEI, thus facilitating clientelistic structures.<sup>78</sup> However, a more detailed investigation of these supposedly clientelistic structures between governments and the directors appointed by them is required.

Meanwhile, CABEI authorities refuse to investigate accusations of corruption and internal clientelism, and instead hide behind the confidentiality of staff salaries. According to former CABEI director Ottón Solís:

*CABEI Executive President, Dante Mossi, did not deny or confirm the existence of these conditions... the Honduran national replied that*

*he was unaware of the salaries of the bank's directors, that the institution has objective mechanisms for establishing remunerations according to market conditions and that this information has been declared confidential by the Board of Governors, integrated by the Finance Ministers of the member countries. In summary, these revelations show that: "It is a series of exclusive benefits enjoyed and perpetuated by the upper layer of CABEI..."<sup>79</sup>*

Moreover, in 2021, CABEI's executive president rejected accusations of wrongful cooperation of CABEI with authoritarian regimes such as Ortega's, pointing out that ensuring a country's democracy was not the role of the Central American institution.<sup>80</sup> This seems to confirm once again that CABEI's programmatic approach is focused on promoting economic growth in the region, rather than on strengthening republican institutions and democratic political systems.

In summary, clientelism and corruption were once again some of the most outstanding problems in which CABEI was involved during the years 2020 and 2021. It is also worth noting the apparent abuse of CABEI's economic resources by the executive president himself to take care of his personal health and, above all, the unwillingness to investigate in order to explain the allegations of clientelism and corruption that surround CABEI's internal structures.

### **3. Will CABEI reconsider its course in 2022?**

Civil society sectors expect that CABEI will change its course after the 2018-2022 Country Strategy expires, when a new financing program for Nicaragua 2023-2027 is designed,<sup>81</sup> especially now that 25 countries of the Organization of American States (OAS) have declared illegitimate the elections for President and Vice President, and Members of the National Assembly and the Central American Parliament (Parlacen), held in Nicaragua on November 7, 2021.<sup>82</sup>

However, the executive president has built a CABEI office building in Managua, in Plaza Cobirsa, at a cost of US\$16.5 million, which many interpreted as an expression of an alliance with Daniel Ortega.<sup>83</sup>

Meanwhile, the civil society, opposition, diaspora and Nicaraguan exile sent a communication to the CABEI foreign ministers and governors, who were to meet on November 26 and 27 in Punta Cana, Dominican Republic, expressing their disagreement with CABEI's copious economic assistance to the Ortega regime, and asking them not to attend the inauguration of the building in Managua, which took place on November 15, 2021. The core of the communication states:

*a. Condition any disbursement to the regime to the respect for human rights, the release of all political prisoners, the immediate cease of all repression against the media and the citizens, and compliance with OAS resolutions that establish the minimum conditions to hold free and democratic elections, and the reestablishment of the democratic rule of law.*

*b. Reevaluate the reputational and financial risk involved in continuing to provide financing to an illegitimate government, given that, as of January 10, 2022, any loan approved by equally illegitimately elected parliament members or by the Nicaraguan executive branch would be invalid, and therefore, these contracts could be questioned by the legitimate authorities that succeed them.*<sup>84</sup>

The positions of CABEI and the Nicaraguan civil society members, expressed above, contrast not only with CABEI's current role as the main financier of the Nicaraguan government, but also with the lack of sufficient transparency and accountability in the use of the loans granted to Nicaragua and the allegations of clientelism and corruption in CABEI's internal structures. All of this makes CABEI a highly questionable institution not only for the design of the new financing program for Nicaragua 2023-2027, but also for fully complying with international standards applicable to its role as the accredited entity in charge of the Bio-CLIMA Project, whose Accreditation Master Agreement must be renewed by the end of 2021.<sup>85</sup>

#### **4. Lack of access to CABEI information**

While the GCF requires the highest standards of access to information, transparency and accountability from entities seeking accreditation, CABEI, as the accredited entity in charge of the Bio-CLIMA Project, has not demonstrated compliance with such standards.<sup>86</sup>

Civil society members have tried, without success, to access information from CABEI to learn about the regulations for the implementation of the conditions and about the steps established to ensure that the process has included mechanisms to avoid potential damage to the indigenous communities that it intends to benefit.

Therefore, on January 5, 2021, a letter requesting the following was sent to CABEI:

a) The list of actions to be implemented by CABEI, timelines and/or schedules for the selection process of the independent third-party entity/entities, which will oversee the facilitation, negotiation and signing of the agreements for the peaceful coexistence regime (ECPR), the application of all Free, Prior and



Informed Consent (FPIC) procedures and the legitimate and independent participation of indigenous and Afro-descendant peoples.

b) The schedule or dates to submit the detailed plan to the Green Climate Fund to ensure that all FPIC procedures are rigorously documented and disclosed to the public through the CABEI website.

On January 18, 2021, a response was received from Miguel Méndez Castellanos, Head of the Department of Strategic Alliances and International Cooperation, explaining *"the request must be made later, in accordance with CABEI's Access to Information Policy, which will become effective on March 1, 2021, whose operation mechanism through the website will be available in March of this year"*.

However, CABEI acknowledged in this letter that it does not have an Access to Information Policy in place, which contravenes the requirements of the Green Climate Fund policies for both accreditation and project management. We believe it is necessary that the Independent Redress Mechanism (IRM) of the GCF opens an investigation regarding this clearly anomalous situation, especially before requesting the re-accreditation of CABEI, given that its Master Accreditation Agreement was signed in September 2017.

In March 2021, when the policy should have been in effect, a form available online was filled out to request information. On April 22, the following message was received, which was signed by the *"Information Access Unit, Secretariat, Central American Bank for Economic Integration (CABEI)"*,<sup>87</sup> communicating that the requested information is not in CABEI's possession, since the agreements that will initiate the implementation of the Bio-CLIMA Project have not yet been formalized.

While CABEI and the GCF had not yet signed the FAA, it is concerning that there is no information on how CABEI intends to implement the conditions associated with this project. This is even more concerning given that on May 26, the CABEI website published a news item announcing that the Bank had approved an extension to finance the Bio-CLIMA Project, and the Nicaraguan National Assembly had approved the contract signed on November 4, 2021 between CABEI and Nicaragua.<sup>88</sup>

It is clear that CABEI, the accredited entity in charge of the Bio-CLIMA Project, did not provide any information to the communities affected by the project or to the civil society that monitors the GCF. This unwillingness to provide public information raises fears that there is an imminent risk that the terms and conditions, especially the process for the election of independent monitors, will be decided behind closed doors, without the participation of the individuals, communities and peoples who are in the territory and who need external and independent third party oversight and the involvement of international human

rights mechanisms, which provide confidence as part of the implementation monitoring arrangements mandated by the GCF Board of Directors to try to ensure that the project will not become counterproductive.

We believe it is imperative that the GCF and CABEI ensure a participatory and inclusive process to determine and implement in the most appropriate manner the conditions that will ensure adequate supervision of the Bio-CLIMA Project.

### III. CONCLUSIONS

The GCF has designated CABEI as an accredited entity for the Bio-CLIMA Project that will be implemented in legally protected areas — the Bosawás and Rio San Juan Biosphere Reserves — and ancestral, historical territories titled to indigenous and Afro-descendant communities in the Caribbean Coast Autonomous Regions of Nicaragua.

The rights of the indigenous and Afro-descendant peoples, to whom these communities belong, are recognized by the Constitution of the Republic of Nicaragua, and under Law No. 445, it is foreseen that the indigenous and Afro-descendant communities receive legitimate territorial control through a process of several phases, culminating with the clearance process of these territories, determining what are the rights of third parties within the titled territories; however, the State of Nicaragua has not initiated such a process.

This has meant that since 2015, the communities, mainly in the Bosawás Biosphere Reserve, have been continuously attacked and displaced from their territories by armed settlers; therefore, under these circumstances of violence, dispossession and deterioration of the environment and natural resources of the territories of these peoples, they will probably not be able to benefit from the Bio-CLIMA Project approved by the GCF.

In addition to the precarious situation of the indigenous peoples in the project area, due to lack of state protection, CABEI has been accused of: providing copious financing to Daniel Ortega's political regime, without considering the international accusations of crimes against humanity and the illegitimacy of the elections held on November 7, 2021; a lack of transparency in the use of the funds lent to the Nicaraguan State; and a lack of access to public information on CABEI's internal processes, as well as allegations of corruption and political clientelism within its structures and procedures. All of this makes CABEI, which is the accredited entity for the Bio-CLIMA Project, a very high-risk enterprise, in the sense that the purpose for which the project was created will not be achieved, and instead the funds will further aggravate the already precarious situation of indigenous and Afro-descendant peoples and their territories, which were supposed to be protected.

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<sup>87</sup> Message in the body of an email and not as an attached letter, reproduced below: “Dear Petitioner, In accordance with Article 5.8 of the Manual for Implementation of the Access to Information Policy, I hereby notify you that your request for information has been rejected, since the requested information is not in the Bank's possession. In particular, it is important to point out that: a) This information is not yet in CABEI's possession since the agreements that will initiate the implementation of this project have not yet been formalized. These agreements are the following: - Agreement between the GCF and CABEI (FAA). - Agreement between CABEI and the Republic of

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Nicaragua. b) As mentioned above, the requested schedule is not yet in the Bank's possession. This schedule will be prepared by the Project Executing Unit, which will be appointed once the agreements that will initiate the execution of the project have been formalized. It is important to mention that CABI, as a common practice, and in accordance with its internal policies and procedures, requests borrowers to disclose FPIC and the participatory processes carried out in the implementation of projects/programs, as part of good practices and international standards. Sincerely, Access to Information Unit. Secretary, Central American Bank for Economic Integration (CABI)".

<sup>88</sup> See *supra* note 29.





For climate finance to be a tool for justice, financing must be based on respect for human rights. However, the gap between discourse and reality is increasingly evident.

In Central America, the Green Climate Fund has become the largest provider of climate funding. Two of the five largest projects in Latin America are being administered by the Bank for Central American Economic Integration (CABEI) and are being executed by the government of Nicaragua. A government that has hundreds of reports of human rights violations.