

September 22, 2009

Ana-Mita Betancourt
Coordinator, Independent Investigation Mechanism
Inter-American Development Bank
1300 New York Ave., N.W.
Washington, DC 20577

Re: **Comments on IDB's April 29, 2009 Draft Independent Consultation and Investigation Mechanism**

Dear Ms. Betancourt:

Thank you for this opportunity to comment on the Inter-American Development Bank's (IDBs) draft Independent Consultation and Investigation Mechanism (ICIM). We believe the current draft is a marked improvement over the IDB's existing accountability mechanism, but still insufficient in several ways that will cripple the effectiveness and independence of the ICIM. We offer some general comments below to address the most significant flaws in the proposed design and then offer some detailed changes corresponding to specific paragraphs in the draft ICIM proposal.

To ensure transparency of the process and to demonstrate that civil society concerns are adequately considered, we request that the IDB release another draft of the proposal after the public consultation period concludes and before the proposal is submitted to the Board for its approval.

In preparing our comments to the proposal, we have kept four basic principles or goals in mind, which we believe are the benchmarks against which any accountability mechanism should be measured:

(1) **Independence.** An independent mechanism is structured and designed to operate independently from the Bank's Management or from undue political influence from any one stakeholder.

(2) **Transparency.** A transparent mechanism is transparent in its operations, information disclosure, and decision-making. Affected communities and the public should know what the mechanism is doing and the results of its work in a timely fashion.

(3) **Effectiveness.** An effective mechanism provides fair and positive results for affected communities and for holding the institution accountable for its operations.

(4) **Empowerment.** A mechanism empowers affected communities, including particularly those who invoke the mechanism's assistance, and communities can access the mechanism easily and participate effectively.

Our comments are generally designed to strengthen the proposed mechanism in light of these principles, while ensuring that the mechanism fits within the scale and culture of the IDB. We hope that in reviewing our comments and in revising the proposed mechanism, the IDB will keep these principles in mind.

General Comments

Lack of Independence and Role of the Executive Secretary. The proposal is structurally flawed in that the most important position in the mechanism is the Executive Secretary, who is essentially selected by and reports to the President (i.e. Bank Management). The Executive Secretary oversees the day-to-day operations and makes the initial assessment of the complaint, but is not an independent official. The structure should be fixed in the following ways:

- (1) the Panel roster should be three people, not seven;
- (2) the Executive Secretary should be selected by the Panel chair in consultation with the other Panel members; and
- (3) the Executive Secretary should report to the Panel chair and serve at his or her discretion.

Strengthening the Compliance Review Panel. The Compliance Review Panel should not be housed within the Office of the Secretary. Rather, the Compliance Review Panel should maintain an independent office and should report directly to the Board of Directors. Furthermore, a roster of panel members has not worked effectively in any of the accountability mechanisms where it has been tried because it diminishes the responsibilities, accountability and role of each Panel member. A three-member panel ensures that each member of the roster will be engaged in the operations of the Panel and take full responsibility for its independence and effectiveness. Moreover, training and administrative costs will be reduced with three rather than seven members.

Re-conceiving the Consultation Phase. We applaud the decision to include a consultation phase in the ICIM, but the proposal has made it too formal and created unnecessary obstacles to its use. The consultation phase should be a welcome addition to Management's ability to deliver positive development results on the ground. We think the IDB should split the consultation phase away from the compliance panel; the consultation phase should be handled by an "Office for Consultation and Dispute Resolution" (OCDR) directed by a senior staff person who answers directly to the President. Appeal to the OCDR should not require affected people to cite violations of policies or to have previously reached out to Management—although regional offices could serve to direct concerns to the OCDR. The office should be an accessible and "user-friendly" office that can assess complaints from local communities and help to resolve problems. Viewed in this light, there need be little or any link between the compliance and the consultation phases, other than a requirement that complainants to the compliance panel have first at least raised their concerns to the OCDR.

Removing Obstacles for Filing Requests. The trend across accountability mechanisms at multilateral development banks (MDBs) is to eliminate obstacles that make it difficult for affected communities to access consultation and compliance phases. As mentioned above, there should be no requirement that the requester reference the Operational Policy that it believes has been violated in the Bank-Financed Operation. Instead, the requester should be required only to state that it has been or believes it will be harmed. All of the accountability mechanisms share the challenge of ensuring that project-affected communities are aware of the existence of the mechanism and know how to file a request. Although the Civil Society Advisory Councils should have been used to raise awareness about the IDB’s safeguard policies and the Independent Investigation Mechanism (IIM), few non-governmental organizations (NGOs) and fewer local communities are familiar with them. The IDB could create a precedent by requiring in the loan agreements that the borrower must distribute information about the ICIM as part of its consultation with communities. Lastly, the window of time in which community members have the opportunity to file a request is far too narrow. Communities may not even know the Bank financed the project before the Project Completion Report is submitted. Further, many impacts do not appear until years after the implementation phase of the project. Instead, requests should be accepted as long as the loan is in repayment—consistent with the availability of remedies in the loan agreement.

Specific Comments

Para. 2. Bank-financed Operation. We believe the ICIM should apply immediately to the Inter-American Investment Corporation (IIC), and thus the definition of Bank-financed operation should be expanded to include operations of the IIC. Further, the ICIM should apply to emergency loans. The small number of complaints regarding policy loans to other mechanisms could as easily be attributable to the lack of knowledge about those loans rather than the difficulty in showing harm. Further, the ICIM should apply to emergency loans, policy-based loans, and non-sovereign guaranteed loans, which combined amount to 40% of IDB’s lending on average from 2004 to 2008. The small number of complaints regarding policy loans to other accountability mechanisms could as easily be attributable to the lack of knowledge about those loans rather than the difficulty in showing harm, which is the explanation given for excluding them in the current proposal.

Para. 16. Mechanism. The sentence should read “Independent Consultation and Investigation Mechanism”.

Para. 19. Operational Policies. This definition is too restrictive. The mechanism should, in the context of a complaint, be able to review IDB violations of any IDB policy, strategy or guideline, not just those “board-approved environmental and associated safeguards...” Although the so-called safeguard policies are perhaps the most important for affected communities, other policies can be important for protecting affected communities and have formed the basis for claims with other accountability mechanisms. The project supervision policy at the World Bank, for example, is one of the most-cited

policies for claims to the Inspection Panel. All General Operational Policies—including lending, multisectoral and sectoral policies—should be considered by the mechanism.

The mechanism should also be allowed to consider international human rights law. This is consistent with the ability of the Compliance Advisor Ombudsman to consider the international legal obligations of the host country in its compliance audit, and consistent with current practice at the World Bank’s Inspection Panel, which considers human rights in the context of Bank policy.

The IDB should also affirm, as the World Bank did in 2004, that the ICIM could accept complaints regarding projects approved under the country systems strategy.

Para. 20. Panel: As noted above, we would reduce the roster-size from seven to three people to improve accountability and efficiency.

B. Institutional and Administrative Aspects; Exclusions

As noted above, we recommend splitting the compliance review function and the consultation phase into two separate offices—the compliance review function would report to the Board and the consultation phase would report to the President. The Compliance Review Panel would be staffed by an Executive Secretary that is selected by and reports to the Panel Chair. The “Office for Consultation and Dispute Resolution” (OCDR) would, like the Office in the proposal, be placed in the Office of the Secretary and report to the President.

Para. 27. The Office. As noted above, the office as contemplated here would be split into an “Executive Secretary” that serves the Compliance Review Panel and an “Office for Consultation and Dispute Resolution,” which conducts the consultation phase. Thus, the Panel’s Executive Secretary, should be selected by, and report to, the Panel or the Panel chair. In turn, the Panel chair reports to the Board, which gives the entire operation greater independence, or at least greater perception of independence. Neither the Executive Secretary nor the Panel to which he or she reports would be housed in the Office of the Secretary; instead, the Panel and its staff should have an independent office and report directly to the Board of Directors.

Para. 29. Functions. Given that we recommend splitting the compliance and consultation phases, we would divide the functions listed in paragraph 29 into two: those of the Panel’s Executive Secretary and those of the Office for Consultation and Dispute Resolution.

Executive Secretary to the Panel. As the current proposal stands, the Executive Secretary is by far the most important and powerful position in the ICIM, and that person is not independent from Bank Management. The Executive Secretary has too much power vis-à-vis the Panel. Such a position weakens the perception of independence and the credibility of the mechanism to affected communities. In general, the Executive Secretary should be designed to serve the Panel, not to serve as its gatekeeper. All of the

Executive Secretary's functions relating to compliance review should be prefaced by the condition that the Secretary is "assisting the Panel". Thus, the Executive Secretary shall assist the panel in:

- (a) receiving and processing Requests to the compliance mechanism, at least with respect to applications for compliance review;
- (b) maintaining the Registry, with respect to Compliance Reviews;
- (c) coordinating with peer institutions;
- (d) public outreach concerning the Compliance Review;
- (e) adopting administrative procedures;
- (f) providing administrative support or undertaking any other tasks that may be requested by the Panel chair.

In each of these respects the Executive Secretary should serve as an assistant to the Panel to facilitate or assist them in carrying out these tasks. In that way, ultimate responsibility lies with an entity that is completely independent of Bank Management. This is consistent with the World Bank Inspection Panel.

Office of Consultation and Dispute Resolution. As noted above, we recommend that the Consultation Phase be run separately from the Compliance Review, with an office that reports to the President. The OCDR should be led by a person experienced in dispute resolution and should carry out the following functions (which generally correspond to the functions identified in paragraph 29 of the proposed draft):

- (a) assessing eligibility for the Consultation Phase;
- (b) facilitating, conducting and/or coordinating the Consultation Phase and any subsequent dispute resolution processes;
- (c) maintaining the Registry for the OCDR;
- (d) coordinating with peer institutions;
- (e) undertaking public outreach for the OCDR;
- (f) adopting administrative procedures for the OCDR;
- (g) undertaking any other tasks necessary for the effective operation of the OCDR.

Para. 31. Composition and Selection of the Panel. As noted above, a seven-member Panel is too large and we recommend a three-member Panel as is the case at the World Bank, Asian Development Bank and African Development Bank. All of those institutions have recognized that a larger panel or roster of experts weakens the accountability of individual members of the Panel, makes them less engaged in the success of the institution, and is more expensive to maintain or manage.

The Board should not select the Panel chair or should do so only on the recommendation of the existing Panel members. The authority to select a chair should be vested in the three-member Panel, as those members are in the best position to identify who among the three of them will provide the type of leadership they need at any given moment. This will improve the perception of independence for the Panel and its operations. Further, the selection process for Panel members should be defined and should include a role for civil society. Criteria for selecting Panel members should include knowledge of human rights and sustainable development in addition to economic and social development.

Para. 32. Term. We think the IDB should limit Panel members to one term because this will increase their independence as Panel members. Most of the other accountability mechanism only allow for one term for their Panel members. The IDB's proposal is to allow for up to two five-year terms, which would allow for the accumulation of experience and institutional knowledge. In particular, if the IDB reduces the size of the Panel to three members as suggested by these comments, then it should have no difficulty in regularly recruiting new Panel members. The advantage of holding members to only one five-year term is that their decision-making will not be influenced (or perceived to be influenced) by a desire to be retained for a second term.

Para. 33. Eligibility for Panel Service. We believe that Panel members, particularly with a three-member panel, should not be allowed to work for the IDB in any capacity again. This is the standard at the World Bank and the Asian Development Bank and is a central principle for ensuring the independence of the accountability mechanism.

Para. 36. Training of the Panel Members. We applaud the IDB for recognizing the need to conduct training of the Panel members, which will make them more effective in their jobs and more sensitive to the culture and policies of the IDB. We do not believe these trainings should be organized by the Executive Secretary, however, but should be designed and organized by the Panel chair with the *assistance* of the Executive Secretary.

Para. 37. Resignation or Removal from Office. Panel members should only be removed by the Board *for cause*.

Paras. 38-40. Consultants, Administrative Procedures, Registry. We support and applaud the IDB's explicit recognition that the Panel should have the authority to hire consultants, adopt its own administrative procedures, and maintain a public registry. To that end, the Policy should explicitly guarantee that the Mechanism will have an independent budget that is adequate to accomplish its functions.

Para. 41. Exclusions. We believe that the exclusions for the Compliance Phase and the Consultation Phase do not need to be the same. The Consultation Phase should be less formal and more easily accessible. Accessing the Consultation Phase should not, for example, require violations of operational policies nor should grievances that relate to national law be excluded from the OCDR. The following are additional comments regarding these exclusions.

b. Laws and Regulations. Although we agree that the ICIM is not intended to review violations of domestic laws, regulations or policies, we believe that the violations of domestic law may be itself a violation of IDB policies and thus could form the central basis for a claim. For example, the Environment and Safeguards Compliance Policy requires compliance with “environmental laws and regulations of the country where the operation is being implemented, including national obligations established under ratified Multilateral Environmental Agreements (MEAs).” In any event, this exclusion should not be applied to efforts to seek help from the OCDR.

c. Operational Policies. As noted above, we believe the definitions of Bank-Financed Operations and Operational Policies are too narrow, and should be expanded to include the IIC and all Bank policies, respectively. If the definitions are expanded, we have no objection to this exclusion.

d. Adequacy of Bank Policies. This exclusion is ambiguous and potentially overly broad. This exclusion is not necessary because the Compliance Review phase is only authorized to look at violations of policies and cannot take a claim that does not include allegations of violations. Claims that question how the IDB is applying its policies may also implicate questions of the adequacy or suitability of policies.

In any event, the exclusion should not be applied at all to efforts to seek help from the OCDR. If people are harmed by a project, it should not matter to the IDB whether they were harmed because of an inadequate policy or because of poor implementation. The IDB’s priority should be to address the affected communities’ concerns in either case.

f. Reopening a Request. Requests for matters already reviewed pursuant to the Mechanism should only be required to show new evidence, not “clear and compelling new evidence,” which is an unnecessarily high standard.

g. Filing Deadline. As mentioned above, requests should be accepted as long as the loan is in repayment. If the proposed deadline, “filing of the Project Completion Report,” is retained, this exclusion should be reviewed and rewritten to be consistent with the Disclosure of Information Policy. According to the Policy, Project Completion Reports are not publicly available until “after they have been approved by the respective Regional Operations Department.” While a Report is written within three months of the completion of project implementation, its public disclosure is subject to approvals that may come later. A deadline for filing a claim before the Project Completion Report is made public is arbitrary and unduly burdensome to potential Requesters.

i. Requests “without substance.” This determination should not be left up to the Executive Secretary, but should be a determination of the Panel. Further, a standard for determining that a request is “without substance” or “frivolous, malicious or trivial,” should be provided. An explanation of the determination should be provided to the Requester. Further, a request that is excluded due to this determination should not be precluded from resubmitting a request that brings to light additional supporting evidence or information not available at the time of the first Request.

j. Requests under Judicial Review. This exclusion is overly broad; it should only be invoked where the IDB itself is the subject of the arbitral or judicial review proceeding. Given that the Compliance Review function looks only at the IDB’s compliance with its own policies, it would neither be prejudiced nor prejudice any domestic judicial or arbitral action. The IDB should not force claimants to forego their rights to access to justice in order to seek accountability of the IDB; this is particularly true given the IDB’s sovereign immunity to lawsuits.

C. The Consultation Phase.

Para. 42. Purpose of Consultation Phase. The purpose as written is not clear and does not relate to consultation and dispute resolution. The purpose should be to provide a forum for improving consultation with, and resolving disputes raised by, affected people in the context of Bank Financed Operations. Violations of Operational Policies are secondary for the Consultation Phase.

Para 43. Who Can File a Request. We generally support the restriction that the Requester reside in the national territory of the relevant borrower, recipient or technical cooperation beneficiary, but would strongly urge that an exception be made for projects that have transboundary impacts. Furthermore, we see no reason why a “qualified representative” of a requester needs to come from the same country. The affected people should be allowed to choose their own representatives, regardless of where those representatives reside. As long as the representative provides “evidence of its authority to represent” the Requester, no other conditions should be placed on affected communities ability to select their own representatives. The IDB could set an important precedent in this regard over the other accountability mechanisms.

Para. 44. Prerequisites for Consultation Phase. This paragraph puts an unnecessarily burdensome condition on the use of the accountability mechanism and particularly the consultation phase. The 45-day waiting period is particularly unnecessary and is not supported by the practice at other accountability mechanisms. Although other mechanisms require that a claimant have raised their concerns in good faith with Management previously, there is no formal time requirement for that process. If claimants fear that raising a concern with Management would be met with retaliation, they should be allowed to proceed directly to the Compliance Review phase.

By splitting the consultation and dispute resolution phase from the compliance review function, the OCDR could become a centralized place for all project-related concerns to

be raised by Management. Seen in this light, accessing the OCDR is equivalent to raising a concern with Management, and claimants should not be required to take any additional prerequisite step. Moreover, the IDB's President through the OCDR would be ensured that all project-related complaints are addressed in a centralized, professional and objective manner. This would give the IDB President and Management a better opportunity to track problem projects and address the institution's reputational risk earlier in the process, perhaps before an adversarial relationship has developed between the affected community, the project sponsor and the IDB.

Para. 45. Form and Content of Request. This paragraph places several unnecessary conditions on the filing of requests that will only serve as obstacles to affected communities being able to access the mechanism. Moreover, the hurdles for accessing the consultation phase should be lower than the compliance phase. In particular, claimants should not have to allege violations of any Operational Policies to invoke the good offices of the IDB's OCDR for assistance. The point is for the IDB to proactively seek ways to avoid or reduce unintended harm to affected communities. Whether an Operational Policy is violated or not may be irrelevant to the successful dispute resolution process and should be irrelevant to accessing the consultation/dispute resolution phase.

Even for the compliance review phase, we believe that the initial request should not be required to identify specific IDB policies that may have been violated. This can be a significant hurdle for affected communities with little information about the IDB, let alone its Operational Policies. The Panel should be able to receive a complaint that alleges harm generally from violations of IDB policies and should be empowered to evaluate the complaint to see if any specific policies are implicated. This can be done as part of the eligibility phase.

Both the OCDR and the Compliance Review Panel should accept complaints in the native language of the complainants, including indigenous languages. Furthermore, special accommodation should be made to accept non-written complaints.

Para. 46. Request for Consultation Phase and Compliance Review. As we recommend two separate offices to handle each of these functions, then claimants will have the option of sending their complaints to consultation, compliance or both. As suggested by the above, we believe the consultation phase (i.e. the OCDR) could replace the requirement to address concerns to Management first. If that is the case, then claimants could be required to go to the OCDR before accessing the compliance review (see discussion below). However, if claimants are required to raise their concerns to Management first, then they should be able to go directly to the compliance phase if they wish.

Para. 47. Confidentiality. We applaud the IDB's recognition that requests may need to be made anonymously, but we are perplexed by the statement that the "Bank will protect the confidentiality...". From the requester's perspective, they may want anonymity from Bank project staff who are seen as very close to project sponsors. Given the proposed

structure of an Executive Secretary, who answers to the President, it is hard to see how confidentiality will be maintained, or at the very least more clarity needs to be given here. If, as we propose, the Panel chairperson is given more authority, then the *Panel* (as opposed to the Bank) can be charged with protecting the confidentiality. This is the case with the other accountability mechanisms.

Para. 49. Impact of filing a Request. We believe that the Panel and the ODRC should have the authority to recommend to the Board and/or to Bank Management that they stop disbursements and suspend the negotiation of subsequent phases of the operation and related technical assistance cooperation for any project where continued operations may threaten fundamental rights of the requesters.

Para. 50. Registration. Although we do not want to delay any part of the process, we believe five *calendar* days for acknowledging receipt of the request and fifteen *calendar* days for a preliminary review may be too short and should be lengthened to reflect *business* days. The Executive Secretary should register the request in the Registry at the same time he or she acknowledges receipt of the request. Otherwise, there would be no public record if the Registry only included those requests that are deemed eligible. Further, requesters should be given the opportunity to remedy any eligibility failures.

We also do not believe the Executive Secretary should have the authority to determine that a request is ineligible, at least with respect to requests for compliance review; this should be left to the Compliance Panel. The Panel should have final authority in determining exclusions and eligibility of requests.

Para. 51-52. Assessment. We believe the assessment process is an important one for the consultation phase and would have it be included in the authority of the Office of Consultation and Dispute Resolution (OCDR). We do not believe the Executive Secretary should be doing the assessment nor that the assessment should be the same when the requesters have asked for a compliance review. In that case, the ‘assessment’ is replaced by the eligibility review and should be carried out by the Panel.

Para. 53. Result of Assessment. As we recommend that the consultation and compliance phases would be separate, this process would be modified. In any event, we believe that it is up to the claimants to decide whether their case should be forwarded on to the Compliance Review; we do not believe it should be automatically forwarded by the Executive Secretary.

Para. 54. Timeframe. We believe 120 days is too long, particularly when paragraph 44 is considered (whereby an additional 45 days may be given for reviewing Management’s response to the requesters). This is more than five months between the time when a complaint comes in and the first chance that it can go to the compliance review panel. This is too long and inconsistent with the Bank’s commitment to its borrowers to reduce unnecessary delays. We would recommend 75 days. The complainants should be able to take their complaint to the Panel at any time after they determine the consultation phase

will not be satisfactory. The complainants should not have to wait for the Executive Secretary's full assessment, if it is going to take that long.

Paras. 55-56. Consultation Phase. We believe this is a solid description of how the consultation/dispute resolution process should work. We note the importance of ensuring the ongoing consent of the Requester who originally initiated the complaint.

Para. 57. Impact of Consultation Phase. As noted above, we believe the OCDR should have the authority to recommend suspension of Bank support where it is necessary to protect the rights or interests of affected communities pending the longer term resolution of their concern.

Para. 58. Site Visits. Site visits are absolutely necessary and, although we recognize member countries' sovereign rights to control who enters their territory and on what conditions, we also believe the Bank must clarify that obstruction of the mechanisms functions will not be tolerated. Members and staff of the accountability mechanism should be given the same access to the site as any Bank project staff, and the Bank should make clear that failure to provide reasonable access to the site will be grounds for cancellation or suspension of Bank financed operations in the country. More specifically, loan agreements should require that the borrower cooperate with the ICIM and provide any and all information requested.

Para. 60. Consultation Phase Report. Disclosure of any settlement to the public should be the default position unless *all of* the parties request confidentiality. As written in the Draft Proposal, the Bank's ability to request confidentiality provides disproportionate negotiating leverage to the Bank.

Para. 61. Monitoring. We commend the IDB for including a monitoring role, which would be conducted by the OCDR under our proposal. The complainants should be allowed the opportunity to comment on the OCDR's monitoring reports to the President and the Board. It should specify that the OCDR is required to report to the President, Board, and public twice yearly on the results of its monitoring exercises.

D. Compliance Review Phase.

Para. 63. Prerequisites. We recommend that claimants be given the option of sending their request to consultation, compliance or both. As suggested by the above, we believe the consultation phase (i.e. the OCDR) could replace the requirement to address concerns to Management first. If that is the case, then claimants could be required to go to the OCDR before accessing the compliance review. However, if claimants are required to raise their concerns to Management first before going to the consultation phase, then they should be able to go directly to the compliance phase if they wish. In addition, at any time that the Requester believes that the consultation/dispute resolution phase is not working, the Requester should be able to direct his claim to the compliance review panel.

Para. 64. Filing Requirements. See comments above on Para. 45.

Para. 65. Initial Review. The initial review process is fine, except that if the Panel is reduced from seven to three members, there will be no need for the Panel chair to select which members from the roster should serve as the specific panel for that project.

Para. 67. Scope of Investigation. Having an explicit step where a Terms of Reference is developed may be a valuable addition to the practice of accountability mechanisms, but we see no reason why the Panel should only consult with Management on the ToR. The Requester should also be given an opportunity to participate and have input at this stage, including the preparation of comments on any draft TOR. Thus, both Management and the Requesters should be given “20 days to provide comments on the TOR....”

Para. 68. Panel Recommendation. The Panel should notify the Board of the TOR for its Compliance Review, but no action by the Board should be required before the Panel commences the review.

Para. 70. Input for Panel. We appreciate the broad range of inputs identified in this paragraph, but believe that the procedure should also explicitly identify other affected community members in addition to the Requesters as potential stakeholders who may be consulted. The Panel should also be able to consider, at its discretion, submissions made by NGOs.

Para. 71. Timing. We agree that Panel investigations cannot be strictly time bound, but we note that paragraph 67 states that the TOR should present a “schedule” for the investigation. We believe the Panel should try to keep that schedule and should report publicly on its reasons for substantially deviating from the anticipated schedule.

Para. 72. Country Approval for Site Visits. See comments to Para. 58.

Para. 73. Report. If we understand this paragraph correctly, the Panel is allowed to publish its “views or observations” in regard to its findings and other “systemic” issues. This paragraph should be clarified to allow the Panel to make recommendations, both about specific policy violations it has observed in the project, but also, as importantly, about more systemic issues that it has learned from its investigations. In this way, the Panel can take advantage of its unique perspective to provide valuable advice to the IDB Board and Management.

Para. 74. Fact-Finding Nature. In order to determine whether Operational Policies have been complied with, it may be necessary for the Panel to review the actions of all parties involved with the project, including the borrower. For that reason, the restriction included here is unwarranted. A more narrowly tailored restriction—for example, that the Panel only makes *findings* regarding the actions of the Bank—would be more appropriate.

Para. 77. Management and Requester Input. We are pleased to see that the Management and Requester are treated equally with respect to the opportunity to

comment on the draft Panel report. (The same principle should be applied to the TOR—see the comment above to paragraph 67).

The Management should be required explicitly to prepare an Action Plan to address the findings in the Panel’s report. A draft of that report should be made available to the requestors for their comment. The final Panel report with comments and the Action Plan with comments should then be submitted to the Board.

Para. 80. Publication. We support a firm deadline for the release of the Panel’s report. Note, however, that any decision taken by the Board or President within the 20 days should be made public immediately as should the report—not just any “subsequent actions” taken. Further, the Report should not be subject to the Bank’s Disclosure Policy as this may unduly restrict public access to the Panel’s report (see comment below to paragraph 83).

Para. 81. Monitoring. We welcome the inclusion of an explicit provision allowing the Panel to monitor implementation of any action plan. However, the Panel should be allowed to monitor unless there is an objection by the Board. This is consistent with best practice from other accountability mechanisms and is an important advance over the World Bank Inspection Panel. The frequency with which the Panel reports to the Board on its monitoring should be twice yearly until all instances of non-compliance have been remedied.

Para. 83. Transparency. Subjecting the ICIM “to the restrictions on release of information set forth in the Bank’s Disclosure of Information Policy” raises profound concerns regarding the IDB’s commitment to the transparency and integrity of the ICIM process. Firstly, the section of the Disclosure Policy regarding the IIM (section C.5) provides for withholding the Management report and any annex to the Panel’s Report on confidentiality grounds with, in the case of the Management report, disclosure of only “an abstract.” Secondly, the Disclosure Policy provides excessively broad latitude for determining what is to be deemed confidential:

Section D.2: Information which is identified by the government of a member country, a private sector client, the donor of a trust fund or cofinancing resources administered by the Bank, or by the Bank itself as confidential or sensitive, or as information that may adversely affect relations between member countries and the Bank or between private sector clients and the Bank if disclosed, and that is included in any of the documents that are encompassed by this Policy, shall not be available to the public.

These provisions provide little public confidence that ICIM reports would not be unduly restricted. We recommend that the ICIM resolution and procedures make explicit commitments to full public disclosure of its reports and findings (except, in the case of the Consultation Phase, all parties agree to non-disclosure, as noted in paragraph 60 above).

Para. 85. Communication with Others. We recognize the need to ensure that the Panel and Executive Secretary are not fueling the fires of protest by holding press conferences

in project-affected areas, but we think this provision may be too restrictive. The Panel needs to be allowed explicitly to describe the process it is undertaking so that there is no misunderstanding. It is to the Bank's advantage to have the accountability mechanism actively controlling the message about its role and function; otherwise the Requester or Project sponsor may provide misinformation to the press.

Para. 86. IDB Group Entities. The mechanism should apply to IIC-supported projects immediately. If any changes need to be made to accommodate the specific nature of IIC projects, those changes should be identified now and adopted when the IDB Board adopts the revised mechanism.

Thank you for this opportunity to provide our comments. We look forward to working with the IDB to effectively implement a new and improved accountability mechanism, along the lines suggested by these comments. If you would like to discuss these comments further, please contact Kris Genovese, staff attorney at the Center for International Environmental Law, at (202) 742-5831 or kgenovese@ciel.org.

Sincerely,

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