



May 6, 2009

## INVITATION TO COMMENT

### PUBLIC CONSULTATION PROCESS FOR THE PROPOSED INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM OF THE INTER-AMERICAN DEVELOPMENT BANK

#### **Background:**

The Board of Governors of the Inter-American Development Bank (the “IDB”) created the Independent Investigation Mechanism (“IIM”) in 1994 as a tool to “increase the transparency, accountability and effectiveness of the Bank’s performance.” The IIM establishes a process for the independent investigation of allegations of local populations claiming to be affected by Bank projects and assesses whether the Bank has correctly applied its own operational policies.

At the request of the IDB’s Board of Executive Directors, Management has developed enhancements to the IIM, in the form of a proposal for the establishment of a new Independent Consultation and Investigation Mechanism (“ICIM”). This effort is intended to complete a previously undertaken reform process of the IIM. The proposal captures the lessons learned from prior IIM cases, the insights from prior IIM reform discussions and the developments in the accountability mechanisms of peer institutions.

On April 29, 2009, the IDB Board of Executive Directors authorized Management to seek public comments with respect to the draft text of the ICIM that is set forth on this web page.

The attached text is a draft and remains subject to consideration by the IDB Board of Executive Directors. The public consultation process is not binding on the IDB, and is intended to provide the IDB with additional input for the Board’s consideration of enhancements to the Mechanism.

#### **Who may provide comments?**

The IDB welcomes comments on the draft ICIM from all interested parties. Anonymous comments can not be considered.

#### **How to send comments?**

Comments must be in writing and submitted in any of the following forms:

**1. On-line:** The form for submitting your comments will be available on this page on June 1, 2009.

## **2. Fax:**

Following June 1, 2009, you may also fax your comments to:

Fax number: (202) 312-4057  
Independent Investigation Mechanism  
Inter-American Development Bank  
1300 New York Ave., N.W.  
Washington, D.C. 20577  
USA

If you are sending a fax, please include the following information so that your comments may be duly registered: name of sender; company or organization you represent; address; country; phone number; and e-mail address.

### **Consultation period:**

The consultation period will start on June 1, 2009. Comments should be submitted no later than Monday, August 31, 2009.

### **Procedures:**

You will be asked to register when providing comments. We will not accept nor review comments without proper registration of the sender.

The IDB cannot respond to individual comments or communications. In the case that questions arise during the public consultation period, the IDB will endeavor to provide periodic updates on the Mechanism website ([www.iadb.org/mecanismo](http://www.iadb.org/mecanismo)), addressing common questions that may arise.

In due course, a summary of the comments received and Management responses will be made available to the IDB Board of Directors. Comments will be reported to the Board of Directors on a “not for attribution” basis.

Following consideration by the Board, and in the event that enhancements to the Mechanism are approved, a report on the public consultation process will be publicly released via the Bank website.

### **Public consultation meetings:**

In addition to receiving comments on-line and via fax, the IDB will hold public consultation meetings. During the consultation period, from June through August 2009, face-to-face meetings with members of civil society are being planned in Lima, Peru; Brasilia, Brazil; Santo Domingo, Dominican Republic; La Paz, Bolivia; and Washington, DC.

We are also planning to hold public consultations via video-conferences in the following cities: Buenos Aires, Argentina; Mexico City, Mexico; Bogota, Colombia; and informational video-conferences in Kingston, Jamaica; and Asuncion, Paraguay.

The final schedule for both the video-conferences and the face-to-face meetings will be released promptly.

If you are interested in attending, please contact [mecanismo@iadb.org](mailto:mecanismo@iadb.org) (attn. Ms. Giovanna Rivera).

### **Summary of the ICIM:**

The proposed ICIM has been designed to be consistent with the IDB's Governors' mandate when the Mechanism was established. It is also intended that the ICIM:

- Update and harmonize the IDB's accountability mechanism with the mechanism of other institutions.
- Deepen knowledge generation in priority safeguard areas and regarding the potential impact of investment operations through a targeted policy and operational focus.
- Promote consensual solutions via the addition of a consultation phase.
- Improve the information to the Board provided by the compliance review Panel by providing training for Panel members and clarifying its procedures.
- Promote transparency by clarifying the disclosure of documents about the Mechanism and its activities.
- Promote efficiency by incorporating deadlines and simplifying processes.

A brief summary of the proposed ICIM follows:

- a) **Objective:** The ICIM amends the Bank's Independent Investigation Mechanism, which was established by the Bank's Governors in 1994 to "increase the transparency, accountability and effectiveness of the Bank's performance". The ICIM is an independent process that allows populations that claim to be adversely affected by Bank projects due to a potential lack of compliance with Bank policies to raise their concerns to the Bank. The process may trigger a consensual dispute resolution exercise and/or an investigation of the Bank's policy compliance by a Panel of experts.
- b) **Scope:** The ICIM has a targeted operational and policy focus. It applies to any Bank or MIF operation that involves the Bank's information disclosure, women in development and environmental and associated safeguards policies.<sup>1</sup> The ICIM applies only to investment operations; policy based loans and emergency loans are outside its scope. The ICIM applies from the design phase until project completion. The Mechanism can neither suspend, delay project preparation or execution, including disbursements, nor offer compensation. Specific exclusions include actions by parties other than the Bank, requests related to the host country laws, frivolous actions and procurement, fraud and corruption issues.

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<sup>1</sup>The specific policies covered by the ICIM are OP-102 (Disclosure of Information), OP-703 (Environmental and Safeguards Compliance Policy), OP-704 (Disaster Risk Management Policy), OP-761 (Women in Development), OP-765 (Indigenous People), OP-710 (Involuntary Resettlement), as well as those relating to the enforcement of compliance with a borrower's/recipient's obligations required by such policies. As new policies are adopted, the Board would determine whether they are to be included within the ICIM's scope.

- c) Process: Requests under the ICIM may be filed by one or more persons, groups, organizations or a representative in the host country that believes it is or could reasonably be directly, materially adversely affected by the failure of the Bank to follow its operational policies in a Bank-financed operation. The ICIM is an instrument of last resort, which is triggered only when it appears that other avenues for dialogue and problem-solving with Management have been exhausted. It has two phases.

Following receipt of an eligible request under the ICIM, if there is a determination that Management has been adequately consulted and has been unsuccessful in addressing the situation, an initial Consultation Phase can be activated. A Requester must allege a violation of a Bank policy to trigger this phase and must show harm or a reasonable likelihood of harm due to a Bank project. The Consultation Phase can involve mediation, facilitation or other types of dispute resolution techniques; participation is voluntary. The Executive Secretary would lead the Consultation Phase, hiring experts as appropriate, and would monitor any agreement reached.

Once the Consultation Phase ends (either because the parties opted out or an agreement was reached) a requester can request an investigation by a Board-appointed Panel (Compliance Review Phase). The Compliance Review phase will provide the Board with information regarding Management's adherence to the Bank's environmental and associated safeguards, women in development, and information disclosure policies. Panel recommendations to conduct investigations will be referred to the Board for approval on a no-objection basis. (If a request relates to a project not yet approved by the Board, the Panel would refer its recommendation to the IDB President).

The Panel meets with all stakeholders and conducts a fact finding investigation of whether or not the Bank violated its policies. Following a completed investigation, the Board will receive the Panel's findings of fact, along with any observations on systemic or other issues the Panel wishes to provide. The Panel will consult with Management in preparing its report, but the final report is the Panel's alone. The Board will take note of the Panel report and instruct Management as to any necessary corrective or preventive action. Panel findings are made public. At the Board's request, the Panel will monitor and report on implementation of any approved actions as a result of a compliance review.

The Executive Secretary would provide administrative support to the Panel and would not have a substantive role in the Compliance Review Phase.

- d) Organizational structure: An Office of the Mechanism, staffed by a full time Executive Secretary independent from operational units, administers the ICIM. The ICIM office will be placed in the Office of the Secretary. The Executive Secretary shall be appointed by the IDB President. A roster of seven experts shall be appointed by the Board and shall be available to constitute a three-member Panel as needed. The Panel reports directly to the Board. Panel members are appointed for a five-year term (subject to one renewal), receive training and compensation and are subject to a subject to a two-year pre and post employment ban.
- e) Effectiveness and evaluation: The ICIM would become effective 90 days after the Board has given its final approval, unless otherwise extended by the Board. During the transition period from the IIM to the ICIM, requests for the activation of the

Mechanism process would be accepted but would not be processed until the ICIM becomes effective. Any requests filed prior to the Board's final approval of ICIM would be processed under the current IIM rules.

The ICIM is intended as a three-year pilot program, subject to an independent evaluation at the end of its second year of operations.

To revise the full text of the proposed ICIM to elaborate your comments, [please click here](#). If you wish to review the IIM (the existing Mechanism), [please click here](#).

For more information visit [www.iadb.org/mecanismo](http://www.iadb.org/mecanismo).

Thank you very much for your interest in the Mechanism.