1.0 INTRODUCTION

1.1 In accordance with the Inter-American Development Bank (IDB) Independent Investigation Mechanism (IIM), a request was made for an independent investigation of the Cana Brava Hydroelectric Power Project that was partially financed by the IDB (see Sections 2 and 3 for summary of request and project, respectively). A Panel was convened under the IIM to perform an investigation and issued its report on July 14, 2005 (see Section 4 for summary of the Panel’s Report). The Panel was composed of Dr. Donald Ratigan, chairman (United States), Professor Julio Rodas Monsalve (Colombia) and Professor Leopoldo Bartolomé (Argentina). As provided under the IIM, on August 15, 2005, IDB Management issued a response to the Panel’s Report (see Section 5 for summary of IDB Management’s Response). The IDB Board of Executive Directors subsequently reviewed the results of the investigation and issued the Chairman’s Report on the Cana Brava IIM (available at idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=670622).

1.2 The IIM is not a legal proceeding. The IIM is an internal fact finding proceeding by the Bank to review whether or not the Bank’s policies and norms have been followed. The Mechanism does not establish legal obligations (including but not limited to claims for compensation or damages), nor can any of its finding or documents be used as evidence in legal proceedings in any country.

1.3 The Bank’s Disclosure of Information Policy (OP-102) is based on the premise that information concerning the Bank and its activities will be made available to the public, in the absence of a compelling reason for confidentiality. OP-102 recognizes that some restrictions on availability to the public of information are necessary to ensure the effective functioning of the Bank. The Bank is restricted under Section III-D.2(a) from disclosing information that is identified 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.

1.4 In compliance with OP-102, the IDB Management reviewed the Panel Report and the Bank Management Response for confidential and sensitive information. This review identified a number of statements containing information considered confidential and sensitive that would require redaction under OP-102 III-D.2(c). The Cana Brava Project borrower - Companhia Energética Meridional – was consulted on the issue of sensitive and confidential information. The IDB Management concluded that the information considered confidential or
sensitive, or potentially adverse to relations with the Bank, was sufficiently extensive, that disclosure of a redacted version of the Panel Report and Bank Management Response was not practicable. In compliance with the OP-102 principle favoring disclosure, the IDB Management decided to publish this Abstract summarizing the conclusions and recommendations set forth in the Panel Report and Management Response. While it is acknowledged that this may raise concerns about the transparency of the investigation process, the contents of the Abstract were drafted utilizing to the full extent possible verbatim text from the Panel’s Report and the Bank Management Report. Both the Panel and CEM reviewed drafts of this Abstract, as per OP-102.

2.0 REQUEST FOR INDEPENDENT INVESTIGATION AND IIM PANEL

2.1 The request to the IDB for an investigation of the Cana Brava Project was presented by a group of individuals alleging to have been affected by the Cana Brava Project, represented by the Movement of People Affected by Dams (Movimento dos Atingidos por Barragens)(MAB) in two letters dated May 10, 2002 and July 9, 2002. In summary, the Request claims that in relation to the IDB financing of the Cana Brava Hydroelectric Power Project (BR-304), the Bank failed to: (1) comply with the IDB’s Electric Energy Policy (OP-733-1) statement that electric energy projects must include a program of compensation for persons affected by the electric generation and transmission works; (2) comply with the IDB’s Involuntary Resettlement Policy (OP-710); and (3) adequately supervise the project and respond to the Claimant’s concerns. In addition, the Request also claims the the IDB approved the North-South Electric Power Interconnection project without requiring any assessment of the multiple impacts of the North-South Transmission Line or the cumulative impacts of the series of dams on the Tocantins River.

2.2 In response to the Request, the IDB Board of Executive Directors directed a panel investigation of the Cana Brava Project on June 16, 2004. Per the IIM and the Panel Terms of Reference, the major focus of the Panel’s work was to investigate the Request and whether direct and material adverse effects alleged by the requesting parties in the Request are the result of the Bank’s failure to follow its own Operational Policies in the course of the design, analysis or implementation of the Cana Brava Project. The Panel Terms of Reference directed the Panel to conduct its review pursuant to the general guidelines established by the IIM. In preparing its report, the Panel was to consider that the Mechanism is not a judicial process designed to establish guilt or innocence or to adjudicate fault or apportion blame among the various parties involved. The Panel Report and its finding and recommendations is designed to provide the factual and technical basis for the Bank’s Board of Executive Directors to decide whether the Bank complied with Bank Operational Policies and whether preventive or corrective action, if any, is required in connection with the matters under investigation.

3.0 PROJECT DESCRIPTION
3.1 The Cana Brava Hydroelectric Power Project entails the construction and operation of a 450-MW hydroelectric power plant and the construction of a 50 km 230-kV transmission line. The Project is located on the Tocantins River, between the municipalities of Minaçu and Calvacante in the State of Goiás, approximately 250 km north of Brasília, in the center-west region of Brazil. The Project was among the first private projects to be developed under the Brazil’s institutional and regulatory framework established in 1995 and 1996, and was also one of the first Independent Power Producers (IPP) or self-generators to be financed under the project finance modality in Brazil. The Project involves a private producer and a private off-taker.

3.2 The Cana Brava Project was implemented by Companhia Energética Meridional (CEM), a subsidiary of Tractebel Energia S.A. which was awarded the project concession contract, as a result of an international competitive tender, in March 1998 by the Agencia Nacional de Energia Elétrica (ANEEL), the Brazilian regulatory agency for the electric sector. The Cana Brava Project received and complied with all the applicable environmental permits and requirements under Brazilian law, including the issuance by FEMAGO of the Installation License (Licença de Instalação) in September 1998 and the Operation License (Licença de Operação) in January 2002. The construction works were finalized in December 2001. The reservoir began to fill in January 2002 and operations started shortly thereafter. The total Project cost was approximately US$426 million. BNDES (Banco Nacional de Desenvolvimento) provided a US$138 million loan. The IDB approved a US$75 million loan for the Project.

4.0 IIM PANEL REPORT

4.1 The Panel initiated its work on March 7, 2005 and delivered its Final Report on July 14, 2005. The Panel’s work program included review of project documentation provided by various sources; consultation with the requesting parties, Bank staff; project consultants; CEM staff; Minaçu religious and civilian leaders and project affected families; a field mission to Brasilia Minaçu, Goiania, and the immediately affected project area during 18-27 April 2005; and the hiring of an external consultant in the area of resettlement plans design, implementation and monitoring.

4.2 The Panel conclusions with respect to compliance with IDB Operational Policies are presented below. Wherever possible, the following text has been reproduced verbatim from the original Panel Report of July 14, 2005. **As such the statements set forth below represent the views of the Panel and not necessarily the views of the Bank.**

4.3 Set forth below are the Panel’s findings and conclusions with respect to the IDB Involuntary Resettlement Policy (OP-710):

(a) Incomplete original census: The original CEM census of directly affected was contracted and essentially completed prior to the Bank’s environmental and social due-diligence. As a census of the affected area’s directly affected residents, it was
reasonably accurate, albeit reportedly with some methodological deficiencies. Unfortunately, neither it, nor its accompanying socio-economic diagnostic, addressed identification of the project indirectly affected. The Bank-executed Social Audit proved to be an effective census of both directly and indirectly affected. Due to initiation of Bank’s environmental and social due-diligence after the census was already underway, the Environmental and Social Unit of the IDB Private Sector Department (PRI) was not in a position to exercise any influence over the Terms of Reference or execution, nor to critically review the original CEM census and socio-economic diagnostic. PRI did, unfortunately, exercise poor judgment in being slow to respond to the need for the Social Audit. This was, however, a judgment error, not a deliberate violation of Bank policy. The Panel therefore concludes that there was no policy non-compliance.

(b) Inadequate coverage of eligible individuals or families, including small-scale gold miners (garimpeiros) and inhabitants of Vila Vermelho: See (a) above. Bank ability to intervene effectively was constrained due to judgment lapses in anticipating situations involving the indirectly affected. The Panel concludes, however, that there was no policy non-compliance.

(c) Inadequate quality of attention to vulnerable groups: The Bank approved a Resettlement Plan that was substantively incomplete in critical areas. Specifically, insufficient attention was given during Plan design to impoverishment analysis and post-resettlement economic and social viability of the affected vulnerable groups. It is true that an unsatisfactory resettlement outcome may be attributed in part to circumstances over which the Bank had insufficient control. Nevertheless, by approving an incomplete Plan prepared under Bank guidance that lacked many of the OP-710 specified substantive components for a compliant resettlement plan, the Bank forfeited much of the leverage to influence CEM’s implementation that it might normally be expected to have. The Panel concludes that Bank failure to supervise adequately the preparation of, and to approve an incomplete Final Resettlement Plan that resulted in an OP-710 non-compliant resettlement outcome of many, rather than none, less sustainable constitutes a failure to comply with Bank Operational Policy OP-710 Involuntary Resettlement.

4.4 Set forth below are the Panel’s finding and conclusions with respect to the other IDB Operational Policies:

(a) OP-733 Energy Policy: None of the IIM Request claims is relevant to this policy.

(b) OP-733-1 Electric Energy Policy: As noted previously, the resettlement complaints are not relevant to this policy.

(c) OP-703 Environment Policy: The two main objectives of OP-703 are to ensure that environmental aspects are considered in all projects financed by the Bank and to assist the member countries in solving environmental problems and in developing projects to improve the environment. None of the IIM Request claims is relevant to this policy.

(d) OP-102 Disclosure of Information Policy: Applicable to Bank disseminated information. The Panel concludes that there was no policy non-compliance.
(e) OP-302 Project Preparation, Evaluation and Approval: The IDB Committee on Environmental and Social Impact (CESI) met to consider the project Environmental and Social Impact Report (ESIR) approval on May 19, 2000, and made a series of specific recommendations to be incorporated in the final Resettlement Plan prior to approval. The Bank approved the Final Plan on June 23, 2000, only 35 days later. The Panel review of the minutes and the approved Plan confirm that the approved Plan did not incorporate CESI’s recommendations regarding resettlement issues in any substantive manner. Per PR-204, Environment and Social Impact Aspects of Operations Processing, CESI recommendations are binding. Failure to incorporate CESI recommendations constitutes non-compliance with PR-204.

(f) OP-304 Operations Administration: With regard to project supervision, the Panel’s conclusion is that whereas PRI Environmental and Social Unit tried their best to bring about successful plan implementation, it was ultimately constrained by project circumstances. The operations administration did not produce the desired outcome. The Panel concludes, however, that the failure to achieve the minimum project objective of no one worse off was attributable to OP-710 non-compliance. Project supervision was characterized by errors of judgment, but there was no OP-304 Operations Administration policy non-compliance.

4.5 Set forth below are the Panel’s five recommendations:

- Recommendation No.1: Additional PRI Environmental and Social Unit Staffing with resettlement planning or other social science expertise is indispensable if PRI will continue to do operations with resettlement components.
- Recommendation No. 2: Sufficiently Early Resettlement Component Screening. to evaluate whether it will be possible to do an OP-710 compliant resettlement with borrowers given concession regulations.
- Recommendation No. 3: Clarification of Lines of Communication and Authority between PRI and Country Offices for PRI Operations: More open and transparent lines of communication must exist between PRI and Country Offices. At some point, the latter must have decision input in PRI project supervision issues that could result in negative ramifications for Country Office personnel. If not already underway, Bank management must address these issues.
- Recommendation No. 4: Complimentary Regional Development for Enclave Projects. It is important that timely economic and social development actions be integrated with the PRI operation from the start, rather than as a belated response to citizen complaints.
- Recommendation No.5: Targeted Compensation and Resettlement Assistance for the Cana Brava Eligible Affected. The Bank will continue to have a moral obligation and reputational interest to ensure that all of the project affected included in the original census and the Social Audit will eventually be part of an OP-710 compliant outcome, i.e. “no one worse off after project implementation than before.”

5.0 IDB BANK MANAGEMENT RESPONSE
5.1 The IDB Bank Management conclusions with respect to Panel’s Report are presented below. Wherever possible, the following text has been reproduced verbatim from the original Bank Management Response of August 15, 2005.

5.2 IDB Management contends that the Bank complied with all relevant policies related to the Cana Brava Hydroelectric Power Project in Brazil, including in particular related to the compliance of the Cana Brava Project’s Resettlement and Compensation Plan with IDB Policy OP-710 and the Bank’s supervision of the project and responses to concerns raised. Thus, Bank Management does not agree with the one specific conclusion identified by the Panel’s Report in terms of potential non-compliance with Bank Policies pertaining to IDB Policy OP-710 Involuntary Resettlement, nor the Panel’s Report in terms of compliance with IDB Operations Processing procedure PR-204 (Environmental and Social Impact Aspects of Operations Processing).1

5.3 The Cana Brava Project Resettlement and Compensation Plan, consistent with the IDB Policy on Involuntary Resettlement (OP-710), was prepared in order to establish compensation and/or resettlement programs for the Project affected families. As required under OP-710, the objective of the plan was to minimize the impact of the Project on the rural and urban populations that were affected, and to ensure that they could improve, or at least recover, their standard of living and levels of income. An impoverishment analysis was performed, based principally on the extensive information generated by the project census of affected population, and was used to define resettlement and compensation programs in the plan. In addition, as required by OP-710, the plan included the necessary elements related to Time Schedule and Budget, Dispute Resolution, Monitoring and Supervision, Institutional Arrangements, and Consultation. The recommendations of CESI regarding resettlement issues were adequately addressed. The Resettlement and Compensation Plan did establish conditions such that affected persons under the plan would be provided options that would achieve, as required by OP-710, a minimum standard of living and access to natural resources and services, at least equal to pre-resettlement levels, and in most cases even better as evident by the monitoring and evaluation programs performed and referred to in the Panel Report.

5.4 The Bank as part of its environmental and social due-diligence, confirmed the adequacy of the proposed plan, including the approach and methodology for the census. The Project, including the proposed Resettlement and Compensation Plan, was reviewed and approved by the Bank’s Committee on Environmental and Social Impact (CESI) in May 2000. The Bank formally accepted the Resettlement and Compensation Plan at the time of signing of Loan Agreement between CEM and IDB in December 2000. The adequacy of the Cana Brava Project Resettlement and Compensation Plan, including compliance with IDB OP-710 (Involuntary Resettlement), was independently assessed and confirmed on separate occasions: (a) an independent review in 2002 by a resettlement consultant

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1 Compliance with a procedure that is Bank Management approved, as distinct from an operational policy that is approved by the IDB Board of Executive Directors, is not specifically covered under the IDB’s IIM Policy.
selected by the Requesters and representatives of MAB (Movimento dos Atingidos por Barragens); (b) the Social Audit, performed in 2003 by a group of independent resettlement/social specialists; and (c) an evaluation performed by the Bank’s independent Social Consultant in 2003.

5.5 Bank Management believes that the Bank executed sufficient supervision of the Cana Brava Project, both during the Bank’s due-diligence and the subsequent monitoring/supervision of the Project. The Bank took numerous actions to: (a) review, approve and supervise the social and environmental aspects of the Project, including the Project Resettlement and Compensation Plan and implementation thereof; (b) develop solutions to identify relevant and valid issues and concerns, in particular those raised by the Requesters; and (c) help resolve local community issues, regardless of whether these issues were due to the Cana Brava Project (e.g., lack of economic opportunities).

5.6 Bank Management supports the concepts in the first four of the Panel’s recommendations and believes the Bank has, or is in the process of, implementing various actions or initiatives related to these recommendations and thus no specific additional action is needed. In terms of the fifth Panel recommendation, Bank Management has taken significant actions associated with the Cana Brava Project to help ensure that negative impacts on persons affected by the project have been adequately mitigated. The IDB continues to work with the relevant stakeholders (e.g., CEM, government of Brazil, local population, etc) to help identify potential solutions and programs to help address the broad local economic and social concerns of the area due to a depressed local economy and not the result of a specific project; albeit these actions are beyond the sole control of the IDB. The IDB maintains a public commitment to support the implementation of the Social Audit recommendations with regard to the eligible families identified even though the IDB may not be able to enforce any obligations to implement against CEM under the financing documents since in May 2005 CEM exercised its right to prepay the IDB loan in its entirety in accordance with the financing documents.