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COMPLIANCE REVIEW REPORT

EL DORADO INTERNATIONAL AIRPORT PROJECT

(CO-L1029)
(2477A/OC-CO)

This document was prepared by Arantxa Villanueva, Compliance Review Phase Coordinator; and Julio Patiño and Ana María Mondragón, Case Officers, with contributions by experts Sharon Flynn and Rodrigo Negrete, under the supervision of Victoria Márquez Mees, MICI Director.

ABOUT THE MICI COMPLIANCE REVIEW PROCESS

The purpose of a Compliance Review is to investigate allegations by Requesters who assert that their rights or interests have been and/or could be directly harmed by actions or omissions of the Inter-American Development Bank that potentially fail to comply with one or more of the Bank's Relevant Operational Policies in relation to a Bank financed operation. Accordingly, a Compliance Review investigation is aimed at determining whether a Bank action or omission with respect to a Bank financed operation has resulted in noncompliance with the Bank's Relevant Operational Policies and caused substantial and direct harm to the Requesters.

A Compliance Review is a fact-finding exercise designed to assist the Board of Executive Directors in promoting compliance with the Bank's Operational Policies, support the positive development outcomes of Bank financed operations, and foster institutional learning. Compliance Reviews only address compliance with Relevant Operational Policies on the part of the Bank, without drawing any conclusion regarding the actions of any other party with respect to the Bank financed operation in question.

ACKNOWLEDGMENTS

The Independent Consultation and Investigation Mechanism (MICI) is grateful for the support of the Requesters, Sociedad Concesionaria Operadora Aeroportuaria Internacional S. A. (OPAIN), IDB and IIC Management, Golder Associates, and the IDB Board of Executive Directors during this investigative process. This work would not have been possible without the collaboration of all parties.

We are grateful to the Requesters, their representative Gloria Molina, and the staff of Accountability Counsel (a civil society organization that has supported the Requesters in this process) for their trust, availability, and collaboration during the process. We would like to highlight the assistance we received from the Requesters and members of the Fontibón community during the Compliance Review Panel's investigation mission. We are also grateful to the representatives of the Engativá and Funza neighborhood groups with whom the Panel could meet to obtain different perspectives on the Project.

We wish to thank the project team as well as IDB and IIC Management for being available during the review process to address requests for information and hold the meetings requested by the Compliance Review Phase team.

We would also like to thank the Autoridad Nacional de Licencias Ambientales de Colombia [Colombia's National Environmental Licensing Authority] and the Secretaría Distrital del Ambiente de la Alcaldía Mayor de Bogotá [District Environmental Secretariat of the Bogota Mayor's Office] for their openness in speaking with us and allowing us to learn their views of the Project.

We are grateful to the Secretaría Distrital de Salud de la Alcaldía Mayor de Bogota [District Health Secretariat of the Bogota Mayor's Office] for having collaborated in providing information during this investigative process.

Lastly, we are grateful to the chair for Colombia at the IDB for his support and availability throughout this process initiated in 2011.

In short, the MICI acknowledges that the Bank's collaborative, supportive, and institutionally mature environment has made it possible to carry out this fact-finding work, and it hopes that its results will add to the Bank's abundant contributions to the Latin America and Caribbean region.

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ELECTRONIC LINKS	
1.	Case record in the MICI Public Registry http://www.iadb.org/es/mici/complaint-detail-2014,1804.html?id=CO-MICI002-2011
2.	Original Request http://www.iadb.org/document.cfm?id=38811571
3.	Supplemental Request http://www.iadb.org/document.cfm?id=39034045
4.	Project Summary http://www.iadb.org/Document.cfm?id=1346145
5.	Environmental and Social Management Report http://www.iadb.org/Document.cfm?id=35435925
6.	Environmental and Social Strategy http://www.iadb.org/Document.cfm?id=1346148
7.	List of Meetings and Interviews Held during the Investigation http://idbdocs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=40664340
8.	Bibliography Consulted http://idbdocs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=40664342
9.	Video of the 20 February 2009 Public Hearing https://vimeo.com/205467738/898ffb7b2e

ABBREVIATIONS

Aerocivil	Unidad Administrativa Especial de la Aeronáutica Civil [Special Administrative Unit for Civil Aviation] (UAEC); third party for purposes of Directive B.4 of OP-703 under the Project
Airport	El Dorado International Airport
ANLA	Autoridad Nacional de Licencias Ambientales [National Environmental Licensing Authority]
Borrower	Sociedad Concesionaria Operadora Aeroportuaria Internacional S.A./OPAIN S.A.
CATAM	Comando Aéreo de Transporte Militar [Military Transport Air Command]
CEA	Centro de Estudios Aeronáuticos [Center for Aviation Studies]
CESI	IDB Committee on Environmental and Social Impact
Client	OPAIN
CNA	Centro Nacional Aeronáutico [National Aviation Center]
CODAD	Compañía de Desarrollo Aeropuerto El Dorado [El Dorado Airport Development Company]
Concession Agreement	Concession Agreement 6000169-OK-2006 granted by Aerocivil to OPAIN on 12 September 2006 for the management, operation, commercial use, maintenance, modernization, and expansion of the El Dorado International Airport
Concessionaire	Sociedad Concesionaria Operadora Aeroportuaria Internacional S.A./OPAIN S.A.
ConCol	Consultoría Colombiana S.A.
CTA	Common Terms Agreement
dB	Decibels
EIA	Environmental Impact Assessment
ESG	IDB's Environmental Safeguards Unit
ESMP	Environmental and social management plan
ESMR	Environmental and social management report for the "El Dorado International Airport" project (CO-L1029)
ESR	Environmental and social review
ESS	Environmental and social strategy for the "El Dorado International Airport" project (CO-L1029)
First Runway	North runway, bordering on the locality of Engativá
Golder	Golder Associates, environmental and social consulting firm responsible for supervising the project
HIA	Health impact assessment
HSEQ	OPAIN's health, safety, and quality management system
ICA	Environmental compliance report
ICAO	International Civil Aviation Organization
Ldn	Day-night average sound level

License or Environmental License	Standard environmental license issued by the Ministry of Environment via Resolution 1330 of 7 November 1995
MAVDT	Ministry of the Environment, Housing, and Territorial Development
MICI	Independent Consultation and Investigation Mechanism
MICI Policy	Policy of the Independent Consultation and Investigation Mechanism (document MI-47-6)
OPAIN	Sociedad Concesionaria Operadora Aeroportuaria Internacional S. A.
Operation	“El Dorado International Airport” project (CO-L1029)
Original Request	Request sent by the Requesters on 12 August 2011
Panel	Compliance Review Panel
Project	“El Dorado International Airport” (CO-L1029)
Project Team	Bank staff that participated in the design, preparation, and execution of the “El Dorado International Airport” project (CO-L1029)
Public Hearing	Public hearing called by the Contraloría General de la República [Office of the Comptroller General] in the context of the airport expansion and modernization project and held on 20 February 2009
PPP	Public-private partnership
Second Runway	South runway, bordering on the locality of Fontibón
Supplemental Request	Supplemental request sent by the Requesters on 3 September 2014

EXECUTIVE SUMMARY

A. The Project

On 3 December 2010, the IDB Board of Executive Directors approved a Category "A" loan operation for the El Dorado International Airport Project (CO-L1029) (the "Project") in the amount of US$165 million to be financed under the Bank's private sector window. Development of the Project was entrusted to the private consortium Sociedad Concesionaria Operadora Aeroportuaria Internacional S.A. (OPAIN) under a concession agreement entered into with Aerocivil in 2006 for a term of 20 years. The concession agreement provided for the modernization and expansion of the Airport, including the construction of: (i) a new terminal to provide domestic and international air transportation services; (ii) new cargo facilities, including additional parking positions for aircraft; (iii) a new office building for Aerocivil; (iv) a new maintenance area; (v) an additional firefighter station; and (vi) a new control tower.[1] In addition to the modernization and expansion works, the concession agreement provided for the management, operation, maintenance, and commercial use of the concession area during the effective term of the concession.

The Airport operates under an Environmental License which was granted by the Ministry of the Environment via Resolution 1330 of 7 November 1995. Following the signing of the OPAIN concession agreement, the Environmental License was modified to reflect the transfer of responsibilities from Aerocivil to OPAIN. The Environmental License, among other provisions, established limitations on the type of aircraft that would be allowed to operate in the Airport based on the noise they generated and regulated the use of the runways at certain hours as a noise mitigation measure.

The Project was aimed at creating a regional passenger, cargo, and maintenance hub capable of competing with the region's infrastructure in terms of cost and service quality. With a new integrated domestic and international terminal, service levels would improve and the Airport would be capable of handling higher passenger traffic (approximately 23.5 million passengers) by the end of the concession in 2027. The new terminal would have the flexibility to allow for additional expansion as eventually required to address growing demand. In addition, modernization of the Airport was expected to create the following positive impacts: (i) fewer passenger and aircraft delays, resulting in higher productivity (business opportunities, fuel savings, and lower maintenance costs); (ii) expanded service and capacity for airlines and Airport users; (iii) macroeconomic impacts (job creation, additional cargo and passenger activity, exports, higher tourism revenue); (iv) improvements in passenger comfort and in Aerocivil personnel efficiency; and (v) greater safety throughout the Airport.

The Project was classified as a Category "B" operation based on the Environment and Safeguards Compliance Policy (Operational Policy OP-703). According to the environmental and social management report (ESMR), the OP-703 directives applicable to the Project were B.2, B.5, B.6, B.7, B.10, B.11, and B.12. Other Project documents considered that the Disclosure of Information Policy (Operational Policy OP-102), the Involuntary Resettlement (Operational Policy OP-710), and Directive B.4 of Operational Policy OP-703 were also applicable to the Project.

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[1] According to Management, construction of a new control tower was removed from the scope of the Project subsequent to its approval by the Board of Executive Directors.

IDB involvement in the Project began in 2006 and continued until 15 May 2015, when OPAIN prepaid the full amount of the loan. This action brought the contractual relationship between OPAIN and the Bank to an end.

B. The Request

The Request deals primarily with the effects of incremental noise generated by air traffic at the expanded Airport. The Requesters assert that the noise level prior to the IDB project increased as a result of the Project and the Bank failed to take the appropriate steps to ensure that the Project included an adequate mitigation plan. In addition, they claim that they were not consulted about the Project or informed of the relevant environmental studies or social mitigation measures for the benefit of the community. They assert that they are not familiar with the environmental and social management plan (ESMP) and have been unable to find it on the Bank's website. They further allege that the Bank has violated its Relevant Operational Policies by failing to "take the necessary steps to ensure that the project had an adequate noise mitigation plan." Specifically, they argue that Operational Policy OP-703 was not observed by the Bank insofar as the Bank:

- failed to recognize Aerocivil as a third party and manage the risks associated with this entity;
- failed to develop an ESMP in consultation with the affected parties prior to the Project's approval;
- failed to abide by the environmental laws and regulations of Colombia; and
- failed to comply with the due diligence plan described in its own document containing the strategy for assessing the environmental and social impacts.

In their Request, the Requesters described documented effects on the residents' health and well-being, including insomnia, anxiety, irritability, and hearing loss, particularly affecting children, owing to the increased noise levels attributable to the Project.

C. Processing by the MICI

On 3 December 2015, the Recommendation for a Compliance Review was approved by the Board of Executive Directors by short procedure. The terms of reference of the Recommendation were focused on determining whether the Bank failed to comply with Operational Policies OP-703 and OP-102 in the context of the operation and on the connection between such potential noncompliance and the harm alleged by the Requesters.

The investigation was conducted in accordance with the MICI Policy. It was initiated on 22 February 2016 and was carried out by a panel consisting of the Compliance Review Phase Coordinator, Arantxa Villanueva, acting as Chairperson, and independent experts Sharon Flynn and Rodrigo Negrete. Case Officers Ana María Mondragón and Julio Patiño provided support during the review process.

A preliminary version of this report was circulated to Management and the Requesters for comment. Upon receipt of their input, the MICI adjusted the final document as it deemed appropriate before distributing it to the Board of Executive Directors for consideration under standard procedure.

D. Findings of the investigation

The findings of the investigation are shown in detail in Section II of this report. Regarding the El Dorado International Airport project, the investigation found a series of instances of noncompliance and omissions relating to obligations included under Operational Policies OP-703 and OP-102, which are summarized in the following table.

Table 1.
Findings of the investigation regarding compliance with Operational Policies OP 703 and OP 102

Policy directive	Conclusion
OP-703 B.2	The Bank **complied** with Directive B.2, since it assessed OPAIN compliance with Colombian legislation. However, it failed to comply with this directive by neglecting to review or establish mechanisms for determining whether the Airport was complying with noise regulations or for learning of potential noncompliance with these regulations, particularly those set forth in the Environmental License.
OP-703 B.3	The Bank **failed to comply** with Directive B.3 by considering that the environmental and social impacts from the incremental noise that would be generated by the Project were local and short-term impacts for which effective mitigation measures were readily available.
OP-703 B.4	The Bank **failed to comply** with Directive B.4 by not identifying the risks involved in third-party management of the noise impact and consequently not putting specific measures in place to manage those risks.
OP-703 B.5	The Bank **failed to comply** with Directive B.5 by validating noise mitigation measures without corroborating their effectiveness and suitability for the impacts that the Project would generate and without a specific assessment of the potential impact of the increased noise that would be generated by the Airport when operating at maximum capacity.
OP-703 B.6	The Bank **failed to comply** with Directive B.6 by not verifying that the public hearing and the roundtables were forums in which meaningful consultations were conducted. Similarly, the Bank failed to ensure that, during the Project execution stage, the affected parties were kept duly informed of any noise mitigation measures.
OP-703 B.7	The Bank **complied** with Directive B.7 by establishing a monitoring system that was used during Project operation to ensure that OPAIN complied with the safeguard requirements set out in the loan contract.
OP-703 B.12	The Bank **complied** with Directive B.12 since the action plan was submitted to the Bank within the time frame provided by the Bank.
OP-102	The Bank **failed to comply** with Operational Policy OP-102, since it did not disclose all documents required to be disclosed under the positive list in Operational Policy OP-102 of 2006 and 2010.
OP-703 B.1	The Bank **failed to comply** with Directive B.1 by financing an operation that was noncompliant with Directives B.2, B.3, B.4, B.5, and B.6 of Operational Policy OP-703, and its compliance was inconsistent with various provisions of Operational Policy OP-102 (versions 2006 and 2010).

Certain points from the investigation are worth highlighting. The MICI considers that the Bank erred in classifying the Project as Category “B” rather than a Category “A” operation, since the incremental noise impact from the Airport’s expanded flight operations over populated areas containing more than one million people directly flanking both Airport runways did not strictly comply with the description of a *local and short-term* impact, as

required under Operational Policy OP-703 for Category "B" projects. In addition, the investigation did not find which *effective* mitigation measures were readily available during the screening stage to justify classifying the Project as a Category "B" operation as required under Operational Policy OP-703. It is worth noting that a project's classification has a direct impact on the environmental and social risk assessment process to be carried out in accordance with Bank policies. Consequently, an incorrect classification weakens the environmental and social sustainability of the operation involved.

Notwithstanding the foregoing, about the **environmental assessment**, the Bank failed to specifically identify and assess what the real impact of Airport noise would be once the Project was implemented. The Bank merely acknowledged the increase in noise due to the expansion of operations but did not, in the assessment stage, delve more deeply into the real implications that this impact could have for the neighboring communities or the possible mitigation measures it would require. Furthermore, the Bank failed to assess the impact of OPAIN's construction works in the First Runway area, requiring the closure of that runway and use of the Second Runway, which at that time had been operating on a limited schedule.

The MICI believes that the Bank also erred in considering the environmental license in effect since 1995 and the "restricted nighttime operation" provision contained therein as the main mitigation measure for incremental noise impact, without assessing the effectiveness of the Environmental License's provisions to mitigate the impact that the Project would create in the future. In addition, considering that management of the main noise mitigation measure was not in the hands of the executing agency but rather in those of a third party (Aerocivil), the Bank failed in the risk and impact assessment stage to analyze Aerocivil's institutional capacity or verify past compliance with the Environmental License. On the contrary, while the Bank envisaged that noncompliance with the Environmental License would be reported and managed on a timely basis, the MICI found that the Bank failed to establish any mechanism, whether directly with Aerocivil or through OPAIN or the consulting firm responsible for supervising the Project, that would allow the Bank to learn of and react to any noncompliance. Consequently, the Bank was not in a position to verify whether the mitigation measures were effectively being observed. This was in violation of the requirements of Operational Policy OP-703.

Regarding the Bank's obligation to verify that the Project was being implemented in accordance with **Colombian legislation**, the MICI found that the Bank failed to comply with that requirement. The Bank only adopted measures to ensure that the Borrower would abide by Colombian legislation within its relevant scope, and failed to establish mechanisms to supervise compliance and/or report potential noncompliance of the Airport with the Environmental License throughout the life of the Project.

Regarding the requirement to conduct **public consultations**, the MICI found that the parties adversely affected by the Project did not have access to accurate, relevant, significant, and timely information regarding the impacts that the Project would create on neighboring communities, particularly in terms of noise. This prevented the affected parties from forming an opinion on the Project and making comments on the proposed course of action as required under Operational Policy OP-703. The MICI also found that the affected parties did not receive information about noise mitigation measures during the Project execution stage.

Regarding the Bank's **supervision** obligation, however, the MICI found that the Bank complied with the provisions of Operational Policy OP-703 by establishing a system to

supervise compliance with the safeguard requirements of the loan contract during Project operation. In addition, in cases in which the Bank identified a failure to comply with these safeguard requirements, the MICI found that the Bank called for designing and implementing an action plan as required under Operational Policy OP-703.

Regarding compliance with the **Disclosure of Information Policy** (Operational Policy OP-102 of 2006), this policy contained a positive list of documents to be disclosed by the Bank and generally indicated the time frames for disclosure. In this respect, the MICI found that: (i) of the four documents subject to mandatory disclosure under this policy, one had not been disclosed; and (ii) the nondisclosed document, which referred to the environmental analysis of the Project, was not only subject to mandatory disclosure but to a time frame obligation in the context of the Relevant Operational Policies, requiring its disclosure prior to the due diligence mission.

In addition, the MICI found that the Bank failed to disclose the ESMP, which while not included in the positive list in Operational Policy OP-102 of 2006, is an essential part of a project's environmental and social assessment framework. In this regard, Management confirmed that the Project's environmental analysis consisted of a preliminary diagnostic report and the ESMP;[2] thus, the ESMP should also have been disclosed as part of the environmental analysis. In turn, the ESMP consisted of three documents that were updated after January 2011, making them subject to the Access to Information Policy currently in effect. As this policy also requires disclosure of the environmental analysis, the MICI considers that the updates should also have been disclosed in accordance with Operational Policy OP-102, but were not.

Therefore, the MICI considers that the Bank **failed to fulfill its obligation to publish all documents subject to mandatory disclosure under the positive list in the 2006 and 2010 versions of Operational Policy OP-102**. Accordingly, in view of these omissions, the Bank failed to comply with the provisions of Operational Policy OP-102 (versions 2006 and 2010) in terms of mandatory disclosure requirements. Specifically, the Bank failed to disclose the ESMPs as well as their updates.

E. Link between noncompliance with the Relevant Operational Policies and the harm alleged

Regarding a **connection between the harm** alleged by the Requesters and the conclusions of noncompliance, the MICI noted official local documents establishing that high noise levels may be associated with adverse health effects, both auditory and otherwise. In addition, the MICI found studies conducted by local health authorities affirming the existence of a relationship between the noise generated by the El Dorado International Airport and the harmful health effects on residents of the communities of Fontibón and Engativá.

Based on the studies available during the investigation, the MICI found that exposure to **high levels of noise** and an increase in these levels could impact the health, well-being, and quality of life of the communities adjacent to the Airport. Accordingly, the MICI considers that the harmful health effect alleged by the Requesters is linked to the Project and that the Bank's failure to identify and mitigate the risk of incremental noise is also linked to the alleged harm.

[2] [redacted]

In addition, the MICI considers that the **absence of a meaningful consultation process** and of mechanisms to communicate with those affected by the Project created uncertainty in the communities as to the magnitude and characteristics of the impacts they are currently suffering and those that will be felt in the future, thus intensifying the communities' vulnerability. This situation has led to, among other things, a general mistrust by the communities toward the institutions involved in the Project and a sense of displeasure by some in the communities, particularly by the Requesters, who have felt abandoned and ignored by the actors involved in the Project. For this reason, the MICI considers that this harm is the result of shortcomings in the consultation and information disclosure processes with the affected parties and is therefore linked to the Project.

F. Recommendations

Considering the conclusions reached by the MICI in this report regarding noncompliance with the Relevant Operational Policies as well as the characteristics of this case, especially the fact that the Project is already closed and thus there is no longer any contractual relationship with the Client, the MICI submits the following recommendations to the Board of Executive Directors for consideration:

Case-specific recommendations

This report finds that not all documents subject to mandatory disclosure under Operational Policy OP-102 (2006 and 2010) have been published on the Bank's website. Accordingly, in line with the provisions of Operational Policy OP-102 and considering international best practices on access to environmental and social information in the context of development projects, the MICI recommends disclosing all mandatory disclosure documents indicated in the policy and described in this investigation report, including the ESMP, preferably in the Spanish language.

Recommendation 1.	Publish all mandatory disclosure documents on the Bank's website, including the ESMP for the El Dorado International Airport project, preferably in the Spanish language.

The MICI suggests disclosing this Compliance Review Report to Bank staff as part of the continuous strengthening of compliance with Bank policies, with a specific focus on the design, execution, and supervision of operations. The MICI considers that the contents of this report can contribute to the success of future airport financing projects and serve to illustrate specific aspects of policy implementation, such as risk identification and mitigation when an operation involves third parties; verification of compliance with national legislation; and systems for validating the robustness of public consultation and participation processes in accordance with Bank standards.

Recommendation 2.	Disclose this Compliance Review Report to Bank staff, with a specific focus on the design, execution, and supervision of operations.

The Bank's involvement with the Airport has ended. However, in view of the conclusions on the present case, particularly regarding the absence of effective citizen participation in the areas affected by the Airport and the absence of clear information disclosure processes, the MICI recommends that the Bank, in coordination with the relevant authorities, explore ways to support a strengthening of the environmental and social

sustainability of the Airport. In this effort, it would be useful, from the perspective of the MICI, for the Bank to support a reinforcement of the social management capacities of the entities responsible for operating the Airport, thereby fostering harmonious coexistence of the Airport with its neighboring communities.

Recommendation 3.	In coordination with the relevant authorities, explore ways to support a strengthening of the environmental and social sustainability of the Airport.

General recommendations for the Bank

The Relevant Operational Policies and guidelines currently lack criteria for assessing the risks of operations in which the actions of third parties can affect the operations' sustainability. Consequently, the MICI recommends clarifying the existing guidelines and/or creating new ones to help the Bank in applying the Relevant Operational Policies in the case of operations in which the actions of third parties are a determining factor for the operations' sustainability.

Recommendation 4.	Clarify and/or create guidelines to help the Bank teams in cases in which third-party actions are a factor to be considered in the context of risk and impact management.

Regarding community consultation and participation, the MICI, as in previous investigations, recommends building the capacity of Bank and executing agency staff with a view to ensuring robust and transparent outcomes. Aware that Management is already working on this, the MICI wishes to underscore the importance of incorporating a continuous, experience-driven learning process and promoting broad disclosure of best practices.

Recommendation 5.	Promote continuous updating of the "Guidelines for Public Consultations and Participation by Interested Parties in IDB-financed Projects," incorporating the lessons learned by project teams during these years as well as relevant international best practices.
Recommendation 6.	Broadly disseminate these guidelines among executing agencies, clients, and Bank staff and, in collaboration with the appropriate areas of the Bank, produce training courses in consultation and participation that include Bank case studies.

Regarding the availability of information and compliance with Operational Policy OP-102, the MICI recommends explicitly requiring the disclosure of all environmental and social information about Bank operations, not only to guarantee transparency but to ensure robust consultation and participation processes. The MICI understands that this issue is also being analyzed by Management and therefore underscores the following recommendations:

Recommendation 7.	Include the ESMP and its updates on the list of documents subject to mandatory disclosure under OP-102, providing for their routine disclosure in all projects, even those not requiring an environmental impact assessment.

Recommendation 8.	Introduce provisions that expand the accessibility of information to ensure that the environmental and social information disclosed by the Bank is available in the language of the country in which the operation is being implemented.

I. INTRODUCTION AND CONTEXT

A. Introduction

1.1 On 12 August 2011, the MICI received a Request relating to the project "El Dorado International Airport" (CO-L1029) (the "Project"), a non-sovereign guaranteed loan operation in the amount of US$165 million granted to the consortium OPAIN following approval by the IDB Board of Executive Directors on 3 December 2010. The Project consisted of the modernization and expansion of Bogota's El Dorado International Airport with a view to promoting an improvement of passenger and cargo transportation services, given the Airport's shortcomings due to highly congested terminals and the fact that it was already operating at full capacity.[1]

1.2 The Request[2] was submitted by Ms. Gloria Molina on behalf of the neighborhood organization Comunidades Unidas Macroproyecto Aeropuerto El Dorado, comprised of approximately 160 residents of the Rubén Vallejo Jaramillo housing development located in Localidad Novena de Fontibón, adjacent to the Airport. The Request expressed the Requesters' concern over the findings of the environmental and social management report (ESMR) issued by the IDB in 2010 in the context of the operation, alleging, among other things, that the problems from the noise generated by the Airport had intensified because of the Project, impacting the health and quality of life of the communities adjacent to the Airport, and that no steps had been taken to manage and mitigate these impacts. In addition, the Requesters stressed that they had not been consulted about the Project or informed of its impacts or of any mitigation measures provided by the Project.[3]

1.3 The Request was received when the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49) was in effect. In accordance with the sequential processing provided in the policy, the Request was transferred to the Consultation Phase and was deemed eligible for this phase on 3 November 2011. The Request was processed under this phase until March 2014, when the MICI made the decision to close the Consultation Phase process after deeming that conditions were not present to ensure that a continuation of the process would yield positive results.[4]

1.4 On 21 July 2014, following the close of the Consultation Phase and at the request of the Requesters, the Request was transferred to the Compliance Review Phase. On 3 September 2014, the Requesters submitted a Supplemental Request, focusing on the impacts they claimed to be suffering due to the noise and alleging that, while this had been a serious problem for them for years, the Project had increased and would further increase the noise levels and the Bank had failed to implement measures to mitigate this impact. Through the eligibility determination memorandum of 21 November 2014, the Panel Chairperson at the time, Ms. Mary Rose Brusewitz,[5]

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1 Project summary, page 1.

2 The Original Request and its supplement are available in the MICI Public Registry and in the electronic links section of this report.

3 Supplemental Request, page 10.

4 Consultation Phase Report, paragraph 4.25. The background to the case and the public documents relating to its processing by the MICI may be consulted in the case file, which is available in the Public Registry.

5 Ms. Brusewitz acted as Panel Chairperson from October 2013 to September 2015.

determined that the Request was eligible for Compliance Review since it fulfilled the criteria established in Section 56 of the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49).

1.5 On 17 December 2014, the Board of Executive Directors approved the Policy of the Independent Consultation and Investigation Mechanism (document MI-47-6), with instructions that it take effect immediately. In addition, the Transition Plan (document MI-48-1) was approved on 4 February 2015, determining that this case would as of that date be processed in accordance with the recently approved MICI Policy.[6] Accordingly, on 24 November 2015, the MICI Director sent the Board of Executive Directors a Recommendation for Compliance Review of the Operation (document MI-23-4).

1.6 On 3 December 2015, the Board of Executive Directors approved conducting the review. In accordance with the new MICI Policy, the MICI Director, Ms. Victoria Márquez-Mees, in consultation with the Compliance Review Coordinator, Ms. Arantxa Villanueva, identified two independent experts, Ms. Sharon Flynn and Mr. Rodrigo Negrete, and the Compliance Review Panel was assembled on 22 February 2016, thereby commencing the investigation.

1.7 This Compliance Review Report contains the results of the investigation led by the Compliance Review Phase Coordinator, in her capacity as Chairperson of the Compliance Review Panel, which was conducted in accordance with the Terms of Reference approved by the Board of Executive Directors on 3 December 2015. The investigation conducted by the Panel in close collaboration with the MICI compliance review team is aimed at determining, based on findings of fact, whether the Bank complied with the Relevant Operational Policies in designing, approving, and implementing the Operation in view of the allegations raised in the Request. When reaching a determination of noncompliance, the Panel presents its considerations as to whether such noncompliance has or could have caused the harm alleged by the Requesters.

1.8 Lastly, this report provides a series of recommendations aimed at strengthening compliance with the Relevant Operational Policies in the design, preparation, implementation, and supervision of Bank-financed projects.

1.9 The report is structured as follows: Section I (Introduction and Context) describes the Project, its background, and summarizes the allegations of the Requesters. Section II sets forth the Bank's involvement in the Project, the findings of the investigation, and the determination regarding compliance with the reviewed Relevant Operational Policies. Section III presents conclusions as to the existence of a link between the identified noncompliance and the alleged harm; and Section IV presents the MICI's recommendations based on its findings. The annexes section includes comments by Management and the Requesters on the preliminary draft of this report, which was circulated to the Parties on 30 September 2016 to allow them

[6] Transition Plan (document MI-48-1), paragraph 2.4.3.

the opportunity to submit written comments within a maximum term of 21 business days in accordance with the MICI Policy.[7]

B. The Project

1.10 On 3 December 2010, the IDB Board of Executive Directors approved a Category "A" loan operation[8] for the project "El Dorado International Airport" (CO-L1029) in the amount of US$165 million to be financed under the Bank's private sector window.[9] Development of the Project was entrusted to the private consortium OPAIN under a concession agreement entered into with the Colombian aviation authority, Aerocivil,[10] in 2006 for a term of 20 years. The concession agreement provided for the modernization and expansion of the Airport, including the construction of: (i) a new terminal to provide domestic and international air transportation services; (ii) new cargo facilities, including addition parking positions for aircraft; (iii) a new office building for Aerocivil; (iv) a new maintenance area; (v) a new firefighter station; and (vi) a new control tower.[11] In addition to the modernization and expansion works, the concession agreement provided for the management, operation, maintenance, and commercial use of the concession area during the effective term of the concession.

1.11 The Project formed part of the project "Modernization, Expansion, Operation, Commercial Use, Maintenance, and Management of the El Dorado International Airport" structured by Aerocivil between 2004 and 2005 with a view to transforming the Airport into a hub for passenger and cargo connections and aircraft maintenance.[12]

1.12 The objective of the Project was to create a regional passenger, cargo, and maintenance hub capable of competing with the region's infrastructure in terms of cost and service quality. With a new integrated domestic and international terminal, service levels would improve and the Airport would be capable of handling greater passenger traffic (approximately 23.5 million passengers) by the end of the concession in 2027. The new terminal would have the flexibility to allow for additional expansion as eventually required to address growing demand.[13] In addition, modernization of the Airport was expected to create the following positive impacts: (i) fewer passenger and aircraft delays, resulting in higher productivity (business opportunities, fuel savings, and lower maintenance costs); (ii) expanded service and capacity for airlines and Airport users; (iii) macroeconomic impacts (job creation,

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7 Under the MICI Policy, the Parties have 21 business days to deliver their comments. However, Management requested an extension of 10 additional business days. The Requesters indicated that they had no objection and the Board of Executive Directors, after having considered the request by short procedure, approved the extension to the comment period on 21 October 2016.

8 For A loans, the IDB group grants loans from its own resources and acts as lead arranger and administrative agent for the total loan package.

9 The China Development Bank and the Andean Development Corporation joined the IDB as co-lenders in this transaction.

10 Aerocivil is the government agency responsible for civil aviation control and regulation in Colombia.

11 According to Management, construction of a new control tower was removed from the scope of the Project following its approval by the Board of Executive Directors.

12 Aeropuerto El Dorado, una oportunidad para el desarrollo regional [El Dorado Airport, a Regional Development Opportunity], Bogota Chamber of Commerce, July 2008, page 18.

13 Project summary, page 1.

additional cargo and passenger activity, exports, increased tourism revenue); (iv) improvements in passenger comfort and in Aerocivil personnel efficiency; and (v) greater safety throughout the Airport (anti-seismic improvements, fire prevention systems, and relocation of the existing firefighting station and construction of a new station).[14]

1.13 The Project was classified as a Category "B" operation[15] based on the Environment and Safeguards Compliance Policy (Operational Policy OP-703). According to the ESMR, the OP-703 directives applicable to the Project were B.2, B.5, B.6, B.7, B.10, B.11, and B.12.[16] Other Project documents[17] considered that the Disclosure of Information Policy (Operational Policy OP-102), the Operational Policy on Involuntary Resettlement (Operational Policy OP-710), and Directive B.4 of Operational Policy OP-703 were also applicable to the Project.

1.14 IDB involvement in the Project began in 2006 and continued until 15 May 2015, when OPAIN prepaid the full amount of the loan. This action brought the contractual relationship between OPAIN and the Bank to an end.

C. The Request and the Requesters' allegations

1.15 On 12 August 2011, Ms. Gloria Molina submitted a Request[18] to the MICI on behalf of the neighborhood organization Comunidades Unidas Macroproyecto Aeropuerto El Dorado, comprised of residents of the Rubén Vallejo Jaramillo housing development located in Localidad Novena of Fontibón, adjacent to the Airport. The Request expressed the Requesters' concern over the findings of the ESMR[19] issued by the Bank in the context of the operation "El Dorado International Airport" (CO-L1029).

1.16 In their Original Request, the Requesters allege: "During the process of expansion and upgrading of the El Dorado Airport, there have been continuous environmental violations regarding the issues stated in the environmental and social impact assessment carried out [in] the second half of 2010 by the IDB."[20] Specifically, the Requesters point to the risks identified in the ESMR with regard to the treatment and discharging of wastewater into the Bogota River; the handling of toxic waste; the impacts of noise and air pollution; the impact on nearby wetlands; and social management. Moreover, they assert that the public consultations were not

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14 Management's comments on the preliminary Compliance Review report, page 1.

15 Under Operational Policy OP-703, projects are classified into one of three categories ("A", "B", or "C") according to their potential environmental/social impacts, with Category "A" denoting the most significant impacts. For more information, see Operational Policy OP-703, Directive B3.

16 ESMR, paragraphs 3.20 to 3.27.

17 [redacted]

18 The Original Request is available in MICI's Public Registry and in the electronic links section of this document.

19 ESMR, September 2010.

20 Original Request, page 1.

sufficiently inclusive, as they included only the Fontibón and Engativá roundtable sessions and excluded other roundtables, including Comunidades Unidas.[21]

1.17 On 3 September 2014, during the Compliance Review phase, the Requesters supplemented[22] the Original Request with a report focused on the harm arising from incremental noise and the connection between this harm and both the Operation and the Bank's omissions in relation to the Relevant Operational Policies.[23]

1.18 The supplement submitted by the Requesters focused on the harm stemming from the noise, this being "one of the most important and far-reaching issues for the organization Comunidades Unidas […] and the members of the Fontibón community." In their Supplemental Request, the Requesters asserted that the noise, which already existed prior to the IDB Project, increased as a result of the Project and that the Bank failed to take the necessary measures to ensure that it had an adequate mitigation plan. Specifically, the Requesters argued that, after the construction of the new Airport Terminal, the community experienced an uptick in the number of complaints due to growing noise levels. In their Request, the Requesters described the documented effects on the residents' health and well-being. These effects, which were felt particularly by children, included insomnia, anxiety, irritability, and hearing loss.

1.19 The Requesters asserted that as part of the Bank-financed operation, the schedule for the Second Runway (south) had been extended[24] to complete the modernization of the First Runway (north), as well as to address the increase in flight operations. They alleged that this extended operating schedule directly affected the community of Fontibón. They were also concerned that the need to handle the growing flight demand meant that the Second Runway's extended schedule would become permanent, with the resulting longer-term adverse impact on the communities adjacent to the Airport. Furthermore, the Requesters underscored that the Bank had identified elevated noise levels as one of the environmental and social risks of the Project.[25]

1.20 Lastly, the Requesters alleged that they had not been consulted about the Project or informed of the relevant environmental assessments or social mitigation measures on behalf of the community. Specifically, the Requesters claimed that they

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21 The MICI investigation focused on noise and community participation issues because all other issues had been addressed in the Consultation Phase. See: Terms of Reference of the investigation.

22 Paragraph 57 of the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49) approved in February 2010, provided that "[p]rior to making a determination of ineligibility, the Panel Chairperson shall provide a Requester reasonable opportunity to complete or correct a Request."

23 The Supplemental Request is available in the MICI's Public Registry and in the electronic links section of this document.

24 As a measure for mitigating noise pollution, the Environmental License restricts nighttime use of the Second Runway with a view to reducing noise levels in the neighboring communities.

25 In their comments on the preliminary Compliance Review report, the Requesters stated that the main concern in the communities has always been and continues to be that the schedule and operating rate of the Second Runway have been permanently expanded as a result of the Airport's modernization and expansion (including, but not limited to, the First Runway) in view of the intent of OPAIN and the Bank to optimize economic use of the expanded Airport.

were unfamiliar with the ESMP, which could furnish this information, and were unable to find it on the Bank's website.

1.21 In short, the Requesters alleged that the Bank violated its Relevant Operational Policies by failing to "take the necessary steps to ensure that the Project had an adequate noise mitigation plan."[26] Specifically, they argued that the Environment and Safeguards Compliance Policy (Operational Policy OP-703) was not observed by the Bank insofar as the Bank:[27]

- failed to recognize Aerocivil as a third party and manage the risks associated with Aerocivil as required by Operational Policy OP-703;
- failed to develop a social and environmental management plan in consultation with the affected parties prior to the Project's approval;
- failed to observe the environmental laws and regulations of Colombia; and
- failed to comply with the due diligence plan described in its own document on the strategy for assessing environmental and social impacts.

1.22 During the investigation mission, the Panel had the opportunity to hear firsthand from the Requesters about the alleged harm (see images below). This harm notably includes: (i) health effects, primarily on children and older adults, resulting from the increase in noise and from exposure to noise levels that presumably exceed the allowable limits under the Environmental License; (ii) loss in property value due to a change in land use from residential to industrial in the Project's area of influence; (iii) deficient home soundproofing systems and inconsistencies in determining which homes have been soundproofed; (iv) worry of potentially more serious harm when, according to the Requesters, the Airport expands its operations to 90 flights per hour, as has been reported in the news media, from the current rate of 52 flights per hour.

[26] Supplemental Request, page 8.

[27] Information extracted from the Supplemental Request.

Photographic Record of the Compliance Review Panel's Mission to Bogota
29 March to 2 April 2016


Left: Meeting between the Panel and the Requesters at a home close to the Second Runway threshold; right: Requester reporting hearing loss


Left: Example of soundproofing measures at the home of a Requester; right: Image of one of the windows installed during the soundproofing process

1.23 Moreover, the Requesters stated during the mission that it was not clear to them which entity bore responsibility on the issue of noise generated by the Airport. While some Requesters consider that OPAIN is responsible, others mentioned Aerocivil, in its capacity as the authority in charge of the Airport. Some Requesters held that OPAIN is "jointly" responsible for the noise along with Aerocivil, arguing that it was the Airport's expansion that has made it possible to increase the number of flights. They expressed their distrust of both Aerocivil and OPAIN and their fear that the

aviation authority's outreach to the communities may be misinterpreted as signaling community support for the Airport's operations.

1.24 Also during the mission, the Requesters confirmed their allegations regarding the absence of information-sharing about the Project with the communities since the signing of the Aerocivil-OPAIN Concession Agreement and remarked on the absence of a fluid communication mechanism for discussing noise-related issues. They said that in many meetings, the information that was provided was too technical and the scope or effects of the proposals that have been presented are not clear to the residents. They argued that as a result, the community representatives who are then required to disseminate the information given at the meeting may be unable to pass it on accurately to the community.

D. Geographic, territorial, and social context of the Project

1.25 The history of the Project begins several years before OPAIN's involvement with the Bank. Therefore, knowledge of the context and the actions carried out during that early stage is essential in order to understand the subsequent evolution of the Project.

1.26 The Airport currently serves as Colombia's main airport for domestic and international flights and is the country's largest in terms of number of passengers and cargo volume.[28] At the time of the Bank's initial involvement, the Airport was the fourth busiest in terms of passenger traffic and had the highest level of cargo movement in all Latin America.[29] The Airport has had a positive macroeconomic impact on exports, employment, and tourism revenue.[30]

1.27 Bogota's El Dorado International Airport was built in 1959 and is located 15 km from downtown, in western Bogota, between the localities of Fontibón and Engativá and the municipios of Funza and Mosquera. The locality of Fontibón covers an approximate area of 3,326 hectares and has a population estimated at 312,629 residents. It is one of the most important industrial centers of the Colombian capital.[31] The locality of Engativá covers approximately 3,642 hectares and has a population estimated at 781,138 residents.[32] The Airport covers a total area of 966.14 hectares.[33]

1.28 Aerocivil, the civil authority in charge of the Airport, is the result of a merger between the Departamento Administrativo de Aeronáutica Civil [Civil Aviation Administrative Department] and the Fondo Aeronáutico Nacional [National Aviation Fund], ordered by Decree 2171, Article 67, of 1992. Aerocivil is attached to the Ministry of Transportation as the governing body for air transportation policy and the entity responsible for carrying out air transportation-related duties in the specific framework of air travel and airport service.[34]

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28 Project summary, page 1.

29 ESMR, paragraph 2.3.

30 Project summary, page 1.

31 ESMR, paragraph 4.8.

32 Ibid, paragraph 4.9.

33 Ibid, paragraph 2.1.

34 Ibid, paragraph 3.3.

1.29 The Airport's physical space has been structured into two large areas: The airside encompasses zones for moving aircraft such as runways, aprons, taxiways, adjacent land, gate parking positions for cargo and passengers, and buildings associated with these operations. The landside consists of areas related to all ground activities associated with the Airport's operations, such as passenger and cargo terminals, service facilities for aircraft and passengers, and commercial premises.[35]

1.30 While the Airport's principal activity is civil aviation, it also has areas related to military, police, and government activity. Military operations are associated with the Military Transport Air Command [CATAM], but there are also Airport areas assigned to the Infantry, the Army, the National Police, and the National Navy.[36]

1.31 At present, the Airport has two runways. It initially had only one, but in 1982 the Colombian government approved the El Dorado Airport Master Plan, which envisaged a second runway (the Second Runway). In 1994, Aerocivil initiated a bidding process for construction of the Second Runway, and construction of the runway was completed on 16 July 1998.[37] For construction and operation of the Second Runway, the former Ministry of the Environment issued the relevant Environmental License on 7 November 1995 via Resolution 1330. This license remains in effect, having undergone various modifications.

1.32 The Environmental License establishes limitations on the type of aircraft that may operate at the Airport based on the noise they generate, and it regulates the use of the runways during certain hours as a way of mitigating noise. Table 2 shows more detailed information on the evolution of the Environmental License's requirements prior to the Bank's involvement in the Project.

Table 2.
Chronology of events associated with the
Environmental License for the El Dorado International Airport and the effects of noise
1994 – 2005

1994	
	Aerocivil initiates a bidding process for construction of the Second Runway.
1995	
17 July	A public hearing is held in relation to the issuance of the Environmental License for construction and operation of the Second Runway. At this hearing, the communities voice their concern at the noise- and air emissions-related impacts that will be produced by the additional runway, among other concerns.
7 November	The Ministry of the Environment issues the Environmental License for operation of the Second Runway. Noise mitigation measures include a prohibition on operating first- and second-generation aircraft between 9 p.m. and 6 a.m. on the Second Runway.
	Aerocivil implements a soundproofing program for homes close to the Airport pursuant to the Environmental Authority resolution.

35 Ibid, paragraph 2.18.

36 Update to the El Dorado Airport Master Plan, 2012, pages 2-38.

37 Ibid, pages 2-6.

1998	
4 June	A public hearing is held in relation to the request for modification of the Environmental License. At this hearing, the neighboring communities voice their concern over the ineffectiveness and insufficiency of the soundproofing measures. In addition, they reiterate their concern about the issue of noise.
16 July	Construction of the Second Runway is completed.
5 August	Nighttime operating conditions are modified for both Airport runways pursuant to Resolution 745, which establishes the following operating conditions: *First Runway:* Only a specific type of aircraft may operate from 11:01 p.m. to 6 am. *Second Runway:* **No operations of any type are allowed from 10 p.m. to 6 a.m.**
1999	
28 May	The authorities declare the immediate suspension of engine tests during night hours and order the start of a disciplinary investigation against Aerocivil for the following: - Operating the Second Runway in the absence of a final authorization to begin operations; - Allowing engine tests outside the authorized schedule and sites; - Failing to submit an updated property census of areas subject to noise levels of 65 to 75 dB (day-night average sound level "Ldn"); - Failing to submit a schedule for soundproofing of properties; - Failing to conduct noise monitoring in the localities of Fontibón and Engativá and the municipio of Funza to determine whether further areas are subject to noise levels exceeding 65 dB (Ldn) due to the operation of the Second Runway; and - Failing to timely submit measures to mitigate collateral effects of implementing the mitigation measures.
2001	
	Update of the Airport Master Plan, recommending expansion and modernization of the Airport.
2004	
17 August	Aerocivil Resolution 3185 adopting the Noise Abatement Manual.
2004-2005	
	Aerocivil structures the Airport's expansion and modernization through the project "Modernization and Expansion, Operation, Commercial Use, Maintenance, and Management of the El Dorado International Airport."
2005	
31 October	The Ministry of the Environment, Housing, and Territorial Development (MAVDT) establishes that no new environmental license or modification of the existing license is required for purposes of implementing the Airport expansion works, provided that no modifications are made to the runways' operational configuration, that nighttime operations are not conducted on the Second Runway, and that the frequency of takeoffs and landings on that runway is not expanded.

Source: Prepared by the authors based on various documents obtained during the investigation.

1.33 The Airport's First Runway adjoins the locality of Engativá, while the Second Runway adjoins the locality of Fontibón.[38] The El Dorado Airport development company [CODAD] was granted a concession in effect until 2014 to manage,

[38] ESMR, Figure 3.

maintain, and operate both runways,[39] pursuant to concession agreement OP-0110-95.[40]

Source: Google Earth
*Satellite photograph of the Airport. The Second Runway and the locality of Fontibón are visible in the lower portion. The First Runway, bordering on the locality of Engativá, is visible in the upper portion.

1.34 The problem of noise produced by flight operations has been raised by the communities adjacent to the Airport since 1995,[41] when it was decided to build a second runway (see Table 2 above). Upon acknowledgment of the problem by Aerocivil and pursuant to its obligation to address the resulting harm under Ministry of the Environment Resolution 1330 of 1995, in the following years Aerocivil conducted soundproofing work on 10,200 homes in the surroundings of the Airport[42] as a mitigation measure.

1.35 However, the Airport's neighbors continued to voice their concern about the noise and alleged that the soundproofing measures implemented by Aerocivil had been neither effective nor sufficient.[43]

1.36 Subsequently, a new master plan prepared in 2001 recommended expanding and modernizing the Airport.[44] Aerocivil was from 2004 to 2005 responsible for designing

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39 Update to the El Dorado Airport Master Plan, 2012, pages 2-24.

40 ESMR, paragraph 2.18.

41 Resolution 1330 of 1995, page 3, states that during the public hearing conducted on 17 July 1995 as part of the process of issuance of the Environmental License, there were 11 presentations in favor and 24 presentations in opposition. The vast majority of the opposing presentations revolved around the community's concern about the noise impacts that would be created by the Second Runway's operations.

42 ESMR, paragraph 5.23, page 20.

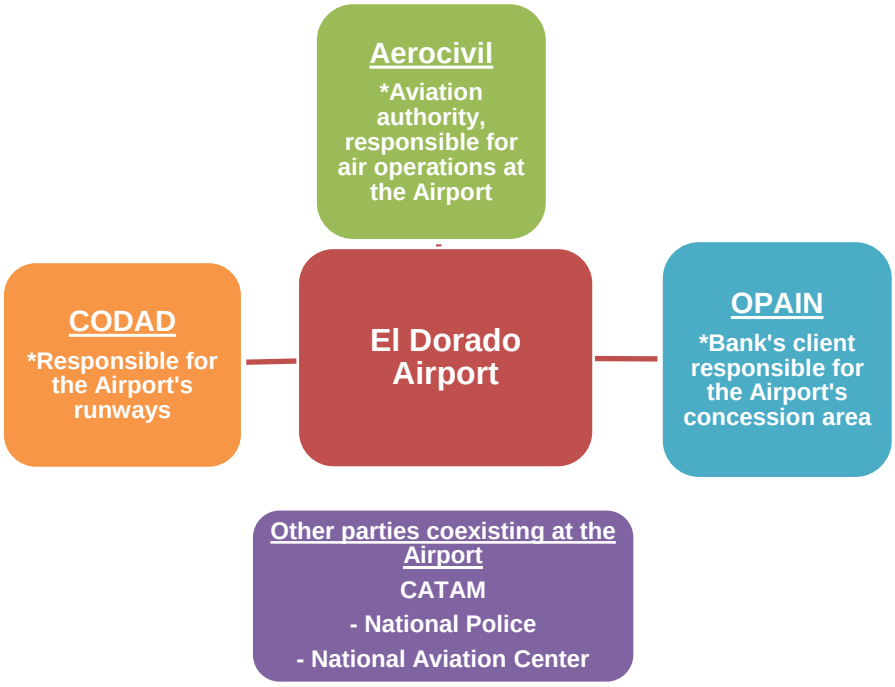
43 Resolution 534 of 1998, recitals section.

44 Update to the El Dorado Airport Master Plan, 2012, pages 2-6.

and preparing this expansion and modernization through the project "Modernization and Expansion, Operation, Commercial Use, Maintenance, and Management of the El Dorado International Airport." This project was conceived in the form of a concession agreement for a term of 20 years. Following a bidding process, the concession was granted to OPAIN through Aerocivil Resolution 3500 of 28 August 2006. Concession agreement 6000169-OK-2006 was signed for this purpose on 12 September 2006.[45] The concession area was delivered to OPAIN on 19 January 2007.[46]

1.37 Under the concession agreement, the main entities involved in operating the Airport, as shown in Figure 1, are the following: Aerocivil, as the entity responsible for all airside Airport operations; OPAIN, as the entity responsible for carrying out the expansion and modernization of the Airport with respect to the concession area and managing and operating the Airport, i.e., the landside; and CODAD, as the entity responsible for maintaining the Airport's runways.[47]

Figure 1.
Parties involved in operating the El Dorado International Airport



Source: Prepared by the authors based on various documents obtained during the investigation.

1.38 The concession area covers approximately 397.09 hectares and encompasses the following facilities: passenger terminals, domestic and international cargo areas,

[45] Ibid, pages 2-20; [redacted]

[46] ESMR, paragraph 1.1.

[47] Ibid, paragraph. 2.17.

Aerocivil administrative tower, Aerocivil warehouse, building housing Aerocivil's Operational Systems Secretariat, and control tower.[48] The area not under concession covers approximately 569.04 hectares and includes: the Compañía de Desarrollo Aeropuerto El Dorado (CODAD) concession; the Military Transport Air Command (CATAM); the National Police; the National Aviation Center (CNA); the Center for Aviation Studies (CEA); the area assigned to the Ministry of National Defense under land-for-use (*comodato*) arrangements; and the Aerocivil hangar.[49]

1.39 The expansion and modernization works that were to be performed by OPAIN involved a series of undertakings, which were divided into six milestones to be achieved under an initially envisaged seven-year schedule. In 2008, OPAIN proposed a new design for the Airport that modified the initial proposal under the Concession Agreement and was approved by Aerocivil in September 2009. This design involved demolishing Terminal 1 and building a single passenger terminal.[50]

1.40 As part of the concession process, the MAVDT authorized a partial transfer of the Environmental License to OPAIN by means of Resolution 1001 of June 2009,[51] which provided for a transfer of the obligations related to the operation and commercial use of the concession area and set forth in the Environmental License, in accordance with Appendix I of the Concession Agreement.[52]

1.41 Aerocivil continued to be responsible for the obligations related to noise and air quality monitoring under the Environmental License, as well as for the implementation of noise control and mitigation measures (census of homes and soundproofing of homes, construction of noise barriers, control of nighttime operation of the Second Runway, control of first- and second-generation aircraft operations, landing and takeoff controls, etc.).[53] Aerocivil also continued to be responsible for social management; however, OPAIN was required, among other things, to recognize the community organizational structure, hire unskilled labor from the adjacent communities, and cooperate with Aerocivil on the Airport's social and community plans.[54]

1.42 Until 2011, the MAVDT (formerly the Ministry of the Environment) was the entity responsible for ensuring compliance with the environmental obligations set forth in the Environmental License[55] and subsequently transferred to the National Environmental Licensing Authority (ANLA).[56]

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48 Ibid, paragraph 2.4.

49 Ibid, paragraph 2.5.

50 Ibid, paragraph 1.2. Also in: [redacted]

51 Resolution 1001 of 1 June 2009.

52 ESMR, paragraph 3.17.

53 Resolution 1001 of 1 June 2009, Table 3. Obligations under the Environmental License and its modifications.

54 Concession Agreement, Appendix F, Section 6.13.7.1

55 ESMR, paragraph 3.4.

56 ANLA was created through Decree 3573 of 27 September 2011, taking over responsibility for environmental licenses from the Ministry of the Environment.

II. THE INVESTIGATION

2.1 By short procedure, the Board of Executive Directors approved the Recommendation for Compliance Review, the terms of reference of which were focused on determining Bank compliance or noncompliance with Operational Policies OP-703 and OP-102 in the framework of the Operation and any potential connection between the identified noncompliance and the harm alleged by the Requesters.

2.2 In accordance with the provisions of the MICI Policy, the investigation was initiated on 22 February 2016 by a panel consisting of the Compliance Review Phase Coordinator, Arantxa Villanueva, acting as Chairperson, and independent experts Sharon Flynn of the United States and Rodrigo Negrete of Colombia, assisted by Julio Patiño and Ana María Mondragón, MICI case officers.

2.3 Table 3 describes the various milestones within the investigation process preceding the issuance of the final version of this Compliance Review Report, which includes the comments by Management and the Requesters in Annexes I and II.

Table 3.
Chronology of the MICI investigation process

2015	
3 December	Uninterrupted approval of the Recommendation for Compliance Review and Terms of Reference for loan 2477A/OC for the El Dorado International Airport project
2016	
22 February	Creation of the Panel and start of the compliance review investigation
29 February to 2 March	Mission of experts to Washington, D.C.
29 March to 2 April	Panel mission to Bogota
1 and 8 July	Receipt of information requested during the investigation
29 July	MICI Director requests extension of 20 business days to complete the investigation
5 August	Board of Executive Directors approves extension of the investigation period
30 September	MICI sends the Preliminary Report to the Requesters and Management
12 October	Management asks the MICI for an extension of the period for submitting comments
12 October	MICI contacts Requesters to advise them of the request and find out their opinion
14 October	MICI Director requests extension of 10 business days to receive comments from the Parties
21 October	Board of Executive Directors approves extension of the comments period
15 November	End of the period for receiving comments from the Parties on the Preliminary Report

Source: MICI.

2.4 The investigation involved a detailed examination of the Bank's records related to the Project, interviews with Bank staff in Washington, D.C. and in Bogota, and a review of pertinent documents on the case, both internal and external.[57] In addition, the Panel, accompanied by Case Officer Julio Patiño, conducted a mission to Bogota from 29 March to 2 April 2016. This mission included visits to the localities adjacent to the Airport, meetings with Requesters, other members of the Fontibón, Engativá, and Funza communities, and local civil society organizations, and meetings with the Client and officials of the District Environmental Secretariat, ANLA, and the consulting firm Golder.[58] The MICI deemed it important to meet with Aerocivil officials during the mission; however, no Aerocivil officials were available to meet with the Panel.

A. Bank involvement

2.5 The Bank's involvement with the Project began in 2006 with a first approach to the Client and the bidding process and the ensuing preparation of the Project Concept Document. Table 4 sets out a chronology of the Bank's main actions (in black) from that date until the Clients' prepayment of its debt in 2015. In addition, it includes other events that took place during that period about Airport operations and/or the actions of Aerocivil or OPAIN (in blue) or the MICI process.

Table 4.
Chronology of events 2006 – 2015
El Dorado International Airport

2006	
3-7 April	[redacted]
28 August	The concession for expansion and modernization of the El Dorado Airport is awarded to OPAIN
October	The Project Concept Document is issued
17 October	Project Eligibility Review meeting
2007	
19 January	The concession area is delivered to OPAIN
20 February	Environmental investigation of Aerocivil for allowing nighttime operation of the Second Runway during the period from 30 January to 8 February
26 March	The mandate letter is signed
19 April	OPAIN issues its environmental plan
11 May	Meeting of the Committee on Environmental and Social Impact for the Operation
11 July	IDB-SH&E agreement to review future air traffic projections
2008	
28 February	Disclosure of the Project Profile and the Environmental and Social Strategy on the Bank's website
3-7 March	Due diligence analysis mission
June	Report on environmental and social due diligence review
22 July	Aerocivil requests a decision from MAVDT as to whether a new environmental license for the Airport is needed

[57] The bibliography provides a complete list of the documents consulted during this investigation.

[58] The electronic links section includes a list of the meetings conducted by the Panel during the investigation.

2009	
11 February	MVADT informs Aerocivil that obtaining a new license for the new terminal works is unnecessary, provided that there is no increase in operations, operating hours are not expanded, and no changes are made to the existing restrictions
20 February	Public hearing called by the Office of the Comptroller General in the context of the El Dorado Airport Expansion and Modernization Project and held in Aerocivil's Center for Aviation Studies
1 May	OPAIN delivers the social management plan version 01
18-22 May	Due diligence mission
1 May	OPAIN's social management subprogram
1 June	MAVDT authorizes partial transfer of the Environmental License to OPAIN
1 July	Request from Aerocivil to the MAVDT to issue terms of reference for an EIA to modify the Environmental License for purposes of expanding nighttime operation of the Second Runway
6 July	Start of environmental investigation of Aerocivil for allowing the Second Runway to operate from 22 December 2008 to 18 May 2009 in disregard of the schedule restrictions and routing of operations set forth in the Environmental License
2010	
1 March	Report on environmental and social due diligence update
2 March	Aerocivil is found guilty of all charges lodged against it on 6 July 2009 for disregarding schedule restrictions on the Second Runway and is issued a fine
April	OPAIN's action plan on environmental, social, and occupational health management
9 April	ARUP (independent Project engineer) issues its technical due diligence report
October	OPAIN issues the second version of the social management plan
16 November	Distribution of the loan proposal for consideration by the Board of Executive Directors
3 December	The Bank's Board of Executive Directors approves the Operation
2011	
21 October	OPAIN updates the environmental plan
1 December	OPAIN updates the social management subprogram
2012	
29 February	OPAIN updates the social management subprogram
10 May	Aerocivil begins the administrative procedure to modify the Environmental License for purposes of expanding the nighttime operation schedule for the Second Runway
June	Review and update of the environmental, social, and health and safety action plan
12 June	IDB-OPAIN credit services agreement
12 August	**MICI receives the Request**
19 October	Financial closing of the Project
1 December	First semiannual monitoring, review of progress on the environmental, social, and health and safety action plan
2013	
31 May	The first disbursement is completed
9 May	Start of environmental investigation of Aerocivil for failure to deliver a consolidated list of soundproofing, deterioration of the noise barriers in the localities of Fontibón and Engativá due to lack of maintenance, and failure to perform its obligation to timely submit the environmental compliance reports
21 June	The second disbursement is completed
1 September	Second semiannual monitoring, review of progress on the environmental, social, and health and safety action plan
28 October to 1 November	Special mission for environmental and social supervision of the Project
1 December	Third semiannual monitoring, review of progress on the environmental, social, and health and safety action plan
2014	
14 March	Environmental public hearing on the request for modification of the Environmental License
1 October	Fourth semiannual monitoring, review of progress on the environmental, social, and health and safety action plan

3 September	**MICI receives the Supplemental Request**
1 December	Fifth semiannual monitoring, review of progress on the environmental, social, and health and safety action plan
8–10 December	Mission for environmental and social supervision
2015	
1 May	The final disbursement is completed
15 May	OPAIN prepays the loan
24 August	Modification of the Environmental License and authorization to expand nighttime operations

Source: Prepared by the authors based on various documents obtained during the investigation.

B. Findings of the investigation

2.6 This section presents the findings of the investigation conducted by the MICI on each of the allegations raised in the Request and an analysis of the determination of compliance or noncompliance with Operational Policies OP-703 and OP-102, based on the terms of reference approved by the Board of Executive Directors.[59] Below are the detailed allegations of the Requesters, the requirements of each of the aforementioned Operational Policies, the actions carried out by the Bank, and the relevant determination of compliance.

1. What does the Environment and Safeguards Compliance Policy (Operational Policy OP-703) provide?

2.7 Operational Policy OP-703 provides that the safeguards govern the entire project cycle, with a view to ensuring the environmental viability of Bank-financed operations. The Bank's approach to avoiding negative environmental impacts is precautionary. When these impacts are inevitable, Bank-financed operations will require mitigation measures. Impacts that cannot fully be mitigated will require compensation or replacement arrangements. The Bank works with the borrowers to effectively support the management of environmental risks and help build capacities, as may be agreed. If the Bank considers that the risks are too great, it will only support the proposed investment when a risk mitigation plan has been agreed upon.

2.8 It is worth noting that Operational Policy OP-703 defines the term "environment" in its broadest sense and includes physical/chemical (geophysical) and biological (biotic) factors, as well as social (human) factors associated with the foregoing. In this regard, the policy encompasses social, cultural, and economic factors to the extent that these are derived from geophysical and/or biotic changes associated with a specific operation.

2.9 Subsection B (paragraphs 2.10 to 2.221) presents the findings of the investigation and the determination of compliance with respect to the OP-703 directives that are relevant to the allegations raised in the Request, in the order in which they are analyzed:[60] Directive B.3, Directive B.5, Directive B.4, Directive B.2, Directive B.6, Directive B.7, and Directive B.12. Each subsection presents the MICI's considerations regarding compliance with these directives.

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[59] Recommendation for a Compliance Review and Terms of Reference for Loan 2477A/OC-CO for the El Dorado International Airport Project (document MI-23-4).

[60] The directives are not analyzed in numerical order, but rather following a logic based on the issues being analyzed.

2. On the provisions of Directive B.3 of the Environment and Safeguards Compliance Policy (OP-703) regarding screening and classification

a. The Requesters' allegations[61]

2.10 The Requesters generally describe IDB mismanagement in evaluating impacts and determining mitigation measures, as reproduced in detail below in the paragraphs relating to Directive B.5. However, they indicate that, while the noise problem existed prior to the Project, it has been aggravated as a result of it.[62] They point out that, in the initial stages of the Project, the Environmental and Social Strategy (ESS) noted that the Project would create an impact due to an increase in noise levels.[63] They assert that the Bank failed to take the necessary steps to ensure that the Project had an adequate noise mitigation plan[64] and that, while certain mitigation measures were already in place, they had not been effective.[65]

b. What are the provisions of Directive B.3?

2.11 Directive B.3 provides that:

> All Bank-financed operations will be screened and classified according to their potential environmental impacts. Screening will be carried out early in the preparation process. The screening process will consider potential negative environmental impacts whether direct, indirect, regional or cumulative in nature, including environmentally related social and cultural impacts, of the operation and of its associated facilities if relevant. Bank operations will be classified according to their potential impacts so that the appropriate environmental assessment or due diligence requirements are selected for the operation. The operation's environmental impact classification will be disclosed according to the Bank's Disclosure of Information Policy[66] (Operational Policy OP-102).

2.12 The policy specifies the following aspects regarding the classification of operations:

a. Any operation that is likely to cause significant negative environmental and associated social impacts, or have profound implications affecting natural resources, will be classified as Category "A". These operations will require […] an Environmental Impact Assessment (EIA) for investment operations. […]. Category "A" operations are considered high safeguard risk.

b. Operations that are likely to cause mostly local and short-term negative environmental and associated social impacts and for which effective mitigation measures are readily available will be classified as Category "B". These operations will normally require an environmental and/or social analysis, according to and focusing on, the specific issues identified in the

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61 Note: There are no specific allegations of noncompliance with Directive B.3; this section reproduces those allegations that are related to the provisions of this directive.

62 Supplemental Request, page 1.

63 Ibid, page 6.

64 Ibid, page 8.

65 Ibid, page 6.

66 Operational Policy OP-703 cites the Disclosure of Information Policy (document GN-1831-18) since this is the Relevant Operational Policy that was in effect at the time of approval of OP-703.

screening process, and an environmental and social management plan (ESMP).

c. MICI findings regarding compliance with Directive B.3

2.13 Below are the relevant findings on the Project's screening and classification stage referred to in Directive B.3.

2.14 [redacted]

The EES specified that the Operation would primarily generate local, short-term environmental and social impacts.[68] The aforementioned documents also established that the Project's main environmental and social impacts would be associated with: (i) mid-scale construction activities; and (ii) the incremental effects of an uptick in Airport activities and services as a result of the investment program.[69]

2.15 With specific regard to the potential construction impacts, the documents indicated that these were associated with mid-scale construction works and included debris, noise, air quality deterioration, and nuisances inherent in the execution of works in the vicinity of the Airport. Regarding the potential impacts that would be created by the Operation, the documents identified, among others, the fact that the expanded Airport would result in higher noise and emissions levels due to additional takeoffs and landings.[70]

2.16 In this stage, it was specified that, as part of its environmental and social due diligence, the Bank would prepare an ESMR for consideration by its Committee on Environmental and Social Impact (CESI). This report would contain a summary of the Project's significant environmental and social aspects and set forth the Bank's recommendations in terms of environmental and social requirements specific to the Project.[71] The report was prepared in September 2010.[72] The CESI meeting took place in May 2007.

2.17 [redacted]

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67 Project Concept Document, paragraph 9.1.

68 ESS, paragraph 1.6.

69 [redacted] ESS, paragraph 1.4.

70 Ibid.

71 ESS, paragraph 1.7.

72 ESMR.

73 Compilation of comments for discussion by CESI 18-07 of 11 May 2007, pages 1 and 2.

74 Ibid, pages 2 and 3.

2.18 [redacted]

2.19 Project eligibility took place in October 2006 and the mandate letter was signed on 26 March 2007.[76] The safeguard screening form was completed in November 2010.

2.20 In addition, in its preliminary analysis of the Airport situation, the Bank noted that under the Concession Agreement, Aerocivil was responsible for controlling and mitigating the impacts of aircraft noise[77] and that the Airport's Environmental License, which is valid throughout the Airport's lifetime, provides noise mitigation measures for neighboring communities, such as modification of takeoff and landing routes, restrictions on aircraft type, acoustic barriers, and restrictions on nighttime operations.[78] The Bank's preliminary analysis also points out that the Ministry of the Environment required the neighboring municipios to consider restricting the creation of new residential areas in the vicinity of the Airport.[79]

2.21 [redacted]

75 Minutes of CESI meeting CESI 18-07 of 11 May 2007, page 1.

76 Eligibility minutes of the Private Sector Committee meeting of 17 March 2006.

77 ESS, paragraph 1.5.

78 Ibid, paragraph 1.2.

79 Ibid.

80 Project Concept Document, paragraph 1.2.

81 Ibid, paragraph 4.2.

82 Ibid, paragraph 1.2.

83 Eligibility minutes of the Private Sector Committee meeting of 17 March 2006, paragraph 2.2.

84 Project Concept Document, paragraph 10.1. Along similar lines, Eligibility minutes of the Private Sector Committee meeting of 17 March 2006, paragraph 2.2.

[redacted]

d. Determination of compliance with Directive B.3

2.22 Next, the MICI will perform an analysis to determine whether the screening and classification of the Operation were carried out in accordance with the standards of Directive B.3. Specifically, the MICI will examine the potential impacts identified by the Bank early in the preparation process and whether they are the type of impacts associated with a Category "B" operation, as determined by the Bank.

2.23 Management stated that it identified noise as one of the aspects requiring review as part of the environmental due diligence, this being customary and common practice in all infrastructure projects, particularly airport projects.[86] It indicated that the ESS is prepared in the early stages of the project cycle based solely on a preliminary review, and that its purpose is to: (i) present the main potential impacts and social and environmental risks and identify information flaws based on a preliminary review; and (ii) describe the strategy for validating information in the analysis/due diligence phase to ensure compliance with the Relevant Operational Policies. The ESS not only mentions what is known about the Project, its conditions, and its potential impacts based on limited information, but also identifies what is not yet known and needs to be determined and assessed during the due diligence or analysis process.[87]

2.24 The MICI found that, in line with Bank practice and the provisions of Directive B.3, classification of the Project was performed at a very early stage following a preliminary review of the Project,[88] in this case without having carried out a complete review of environmental reports or other relevant Project documents and without having discussed the findings of any environmental information with the Client or other stakeholders involved.[89] The Project was classified as a Category "B" operation in the view that it would create local, short-term environmental impacts.[90] [redacted]

2.25 With respect to the first type of potential impacts, i.e. those resulting from construction, the MICI agrees with the Bank that: (i) these were local impacts, consisting of noise, pollution, debris, air quality deterioration, and nuisance for neighboring residents arising from the expansion and modernization work to be performed on the construction sites; (ii) they would be considered short-term impacts since they would extend over a maximum period of five years, in which the

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85 Project Concept Document, paragraph 5.3.

86 Management's comments on the Supplemental Request, page 1.

87 Management's comments on the Supplemental Request, page 8.

88 [redacted]

89 ESS, footnote 1.

90 ESS, paragraph 1.6.

91 Project Concept Document, paragraph 9.2.

construction work was to be divided into various stages; and (iii) there were effective mitigation measures for these impacts, namely, the standard mitigation measures for this type of infrastructure works as well as good practices,[92] to be implemented by the Client.

2.26 With respect to the potential impacts that would result from Airport operation, the Bank concluded that these would be local, short-term social and environmental impacts, among which it identified an increase in noise levels and air emissions. However, the Bank did not specify what type of effective mitigation measures were available for this purpose, beyond indicating that Aerocivil is responsible for noise control and mitigation.[93] While this type of impact from airport operations is common in any airport financing project, this Project has certain peculiarities that the Bank was aware of, including the following: (i) management, prevention, and mitigation of all noise-related issues arising from flight operations are exclusively in the hands of a third party; however, the increase in noise levels is an effect created by the Project and at the same time a condition for the financial success of the operation; (ii) multiple actors are involved (Aerocivil, OPAIN, CODAD, municipal authorities responsible for matters such as land-use regulation); and (iii) the Airport, considered one of the largest in Latin America, is located in a population center (localities of Fontibón and Engativá and municipio of Funza) encompassing important facilities such as hospitals and schools and comprising more than one million residents.[94]

2.27 The MICI recognizes that the procedure provided in Directive B.3 of Operational Policy OP-703 requires that the project Category be determined at a very early stage in the project cycle, when—as in this case—the information available to the project team is very limited. In the opinion of MICI, this has important repercussions in complex operations such as the Project. At the time of the Project's screening/classification, there was not substantive technical information available on factors that could portend the seriousness or consequences of the impacts a significant increase in flight operations would entail. Moreover, this highlights the need to provide for more exhaustive safeguard and environmental and social review requirements.

2.28 Notwithstanding the foregoing, the MICI considers that the impact of increased noise levels from flight operations at one of the largest airports in Latin America, with Client involvement over a period of 20 years, with densely populated areas directly adjacent to both runways, with noise-related impact management and social management in the hands of a third party, and with other entities involved in such key aspects as resettlement, **does not strictly match the description of a local, short-term impact as required by Operational Policy OP-703 for Category "B" projects**. In addition, beyond indicating that the noise issue was the responsibility of a third party, **the documents failed to specify what effective mitigation measures were already available for the Project as required under Directive B.3 for Category "B" projects**. Moreover, the fact that a third party was responsible

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92 [redacted]

93 ESS, paragraph 1.5. [redacted]

94 In this regard, in the project documents for that stage, the MICI did not find any mention of the area of influence or the location and context of the population affected by the Project.

for a very significant and long-term environmental and social impact should have been viewed as an additional risk for the Project when proceeding to classify it, [redacted]. The Bank should have considered that the potential environmental and social impacts from a substantial increase in flight operations could be significant, since they would affect a densely populated geographic area on a permanent basis throughout the life of the Airport (or at least during the Client's 20-year involvement in the Project), and since noise-related impacts are among those most heavily affecting communities located near an airport, particularly if no steps are taken to ensure effective mitigation measures, which in this case were the responsibility of a third party. **Consequently, the MICI considers that the Bank should have classified the Project as a Category "A" operation**. The sections on Directives B.5 and B.4 will include a more detailed analysis of the effectiveness of the existing mitigation measures and the implications of a third party's involvement in the Project.

2.29 Consequently, **the MICI concludes that the Bank failed to comply with Directive B.3**, inasmuch as the Project's environmental and social impacts from increased noise levels, for which no specific mitigation measures were identified, cannot be classified as local, short-term impacts for which effective mitigation measures are already available. Below is a table illustrating the analysis.

Table 5.
Analysis of Directive B.3 requirements

Impact identified by the Bank	Is the impact local?			Is the impact short-term?			Were effective mitigation measures in place?		
		Yes	No		Yes	No		Yes	No
Works: noise pollution debris air quality deterioration	Concession areas in which the works will be carried out	X		Five years divided in stages	X		Good practices for construction works	X	
							Standard measures for construction works	X	
Operation: noise emissions	Airport area of influence: Fontibón, Engativá, and Funza		X	+20 years		X	Responsible third party		X*

Source: Project documents.
*At the time, the Bank only indicated that Aerocivil assumed responsibility for noise control and mitigation.

3. On the provisions of Directive B.5 of the Environment and Safeguards Compliance Policy (OP-703) regarding environmental assessment requirements

a. The Requesters' allegations

2.30 The Requesters argue that the Bank should have developed an ESMP or similar document prior to the approval of the Project, indicating that are unaware of whether such a document existed since it was never publicly disclosed. The believe that the

only public documents on environmental and social impact are the ESS and the ESMR, which cannot replace the ESMP as they do not include specific noise mitigation measures. For the Requesters, even if Aerocivil is responsible for noise mitigation, this is a Project impact and an ESMP should have included specific information on: (i) the design of measures to prevent, minimize, compensate for, and/or abate the noise; (ii) the institutional responsibilities for implementing these measures; (iii) the schedule and budget for these measures; (iv) the noise consultation plan; and (v) the framework for noise supervision. The Requesters assert that they are unaware of whether a document exists containing this type of information on noise-related Project impacts, the effects of expanded Airport operations in terms of noise, air pollution, and vibration, and aspects related to the soundproofing of homes.[95]

2.31 In addition, the Requesters assert that the ESS recognized that the issue of increased noise would be part of the Project, and they therefore believe that this issue is related to OPAIN's responsibilities, even if Aerocivil was directly responsible for ensuring noise mitigation. They point out that the ESS indicated that OPAIN should produce an environmental plan describing all measures needed to comply with social and environmental requirements, including all requirements under the Environmental License, which include specific noise mitigation measures such as acoustic barriers and route, aircraft, and operating schedule restrictions. Accordingly, the Requesters assert that even if Aerocivil was responsible for implementing noise mitigation measures, OPAIN was responsible for producing a plan for such purpose.[96]

2.32 The Requesters further allege that the Bank's due diligence process should have included assessments of: (i) provisions to control, mitigate, and correct existing impacts, including noise; (ii) the adequacy of the assessment of the effects of noise caused by increased flight operations; and (iii) Aerocivil's capacity and commitment to implement noise mitigation and control measures. The Requesters believe that the Bank failed to perform these assessments as well as to ensure that Aerocivil would comply with its responsibilities to mitigate the existing noise and the increase in noise levels due to the Project and the expanded operations. They consider that neither the ESMR nor any other public document includes details on an assessment of these factors,[97] and the ESMR merely acknowledged the noise problem but "sidestepped the responsibility of Aerocivil to ensure Aerocivil's capacity and commitment [sic]."[98]

2.33 The Requesters assert that the harm they are suffering because of the noise is a consequence of two Project-related aspects: (i) modernizing the First Runway required extending the hours of use of the Second Runway; and (ii) the modernization and subsequent operation of the Airport gave rise to an increased number of flights and an extended operating schedule. Thus, even though the Environmental License restricted operations on the Second Runway during

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95 Supplemental Request, page 10.

96 Ibid, page 13.

97 Ibid.

98 Ibid, page 14.

nighttime hours, Aerocivil asked ANLA to modify the license so as to be able to operate on an extended schedule.[99]

b. What are the provisions of Directive B.5?

2.34 Directive B.5 of Operational Policy OP-703 provides that:

> Preparation of Environmental Assessments (EA) and associated management plans and their implementation are the responsibility of the borrower. The Bank will require compliance with specified standards for Environmental Impact Assessments (EIAs), […], Environmental and Social Management Plan (ESMP), and environmental analyses, as defined in this Policy and detailed in the Guidelines. The operation's executing agency […] is required to submit all EA products to the Bank for review. The operation's approval by the Bank will consider the quality of the EA process and documentation, among other factors.
>
> […]
>
> For [Category "B" operations], an environmental analysis should be performed including an evaluation of the potential environmental, social, health and safety impacts and risks associated with the operation, and an indication of the measures foreseen to control these risks and impacts. The financing of existing facilities will typically require an environmental assessment (EA) to assess the potential environmental and associated social impacts and risks due to the construction and operation of the projects or sub-projects.
>
> The ESMP must include: a presentation of the key direct and indirect impacts and risks of the proposed operation; the design of the proposed social/environmental measures to avoid, minimize, compensate and/or mitigate the key direct and indirect impacts and risks; the institutional responsibilities to implement these measures, including, where necessary, institutional development, capacity building and training; the schedule and budget allocated for the implementation and management of such measures; the consultation or participation program agreed for the operation; and the framework for the monitoring of social and environmental impacts and risks throughout the execution of the operation, including clearly defined indicators, monitoring schedules, responsibilities and costs. The ESMP should be ready for, and reviewed during, the analysis/due diligence mission.

c. MICI findings regarding compliance with Directive B.5

2.35 Below is a summary of the findings on the Project regarding the application of Directive B.5.

Findings on Project documents preceding the Bank's involvement

2.36 In the present case, the MICI has found that, since the Project was designed prior to the Bank's involvement and concerned an existing airport, Management carried out its assessment process largely based on existing documents, studies, and plans

[99] Ibid, pages 7 and 8.

which served to prepare subsequent studies, analyses, and plans. The MICI has had access to the ones described below.

2.37 **Aerocivil social policy.** This policy provides that Aerocivil will perform its activities and services taking the communities adjacent to the airports into account through programs and projects designed to facilitate communications, and will comply and ensure compliance with the social standards and standards of coexistence applicable to its operations and services. Among its functions, it includes social and community activities aimed at fostering development, taking into account the human rights criteria and principles of the United Nations Declaration.[100] Aerocivil concessionaires are required to comply with this policy.

2.38 **2004 noise abatement manual.** This manual provides noise abatement measures such as: (i) prohibiting category-2 aircraft, with certain exceptions; (ii) prohibiting the use of thrust reversers on taxiways or tarmacs; (iii) engine testing conditions; (iv) engine taxiing and startup conditions; (v) various noise abatement procedures; (vi) prohibiting the use of engines while parking; and (vii) establishing the operating configuration of the runways. This manual provides a maximum period of five days for reporting any violation of rules or procedures regarding aircraft noise or its abatement to the MAVDT.[101]

2.39 **Aerocivil environmental policy.** This policy is designed to operate as the framework for defining Aerocivil's environmental objectives and targets. It states that Aerocivil's policy is to "perform its activities and services minimizing health, safety, and environmental risks in line with national government policies, plans, and programs and national and international standards." It establishes environmental criteria for Aerocivil's projects, works, activities, and services based on the principles of sustainable development, pollution prevention, and continuous improvement, and ensures the identification and control of health, environmental, and security risks.[102] Under the Concession Agreement, OPAIN is responsible for complying with Aerocivil's environmental policy.

2.40 **Environmental impact assessment.** This assessment was performed in February 1995 for construction of the Second Runway. According to the Project documents, [redacted]

2.41 **Aerocivil-OPAIN Concession Agreement**. This agreement sets forth the obligations of OPAIN and Aerocivil with respect to the Airport. It provides that the concessionaire will not be responsible for noise mitigation and social management activities, which will remain Aerocivil's responsibility.[104] In addition, it specifies OPAIN's overall environmental obligations as well as its obligations to design and implement an environmental plan limited to the following activities: (i) waste management; (ii) management of hazardous materials; (iii) water management;

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[100] Resolution 5007 of 19 October 2007 adopting Aerocivil's social policy, Articles 1 and 2.

[101] Resolution 3185 of 13 August 2004 adopting the El Dorado International Airport Noise Abatement Manual, Articles 1-15.

[102] Resolution 04730 of 7 December 2000, Article 1.

[103] Preliminary summary of main findings. Due diligence review of 19 March 2008, page 2.

[104] Concession Agreement, Appendix I, page 3.

(iv) aircraft fuel supply operations.[105] **Appendix I** requires OPAIN to submit an environmental plan containing a set of arrangements, procedures, and measures to be implemented in the Airport in compliance with the requirements of the Concession Agreement and with a view to preventing, correcting, compensating, and mitigating the impacts associated with the concession.[106] **Appendix F** contains technical specifications of the operating responsibilities assumed by OPAIN,[107] which include: (i) providing access to the services required for airside operations and providing all services needed for the safe and efficient movement of aircraft and vehicles; (ii) cooperating with Air Traffic Control to ensure safe and efficient performance of airside services, such as communicating the assignment of remote gate parking positions; (iii) assignment of aircraft gates and positions; (iv) airside signaling; (v) creating and maintaining a website with relevant Airport information; (vi) managing the Airport's designated areas for filing claims and receiving complaints;[108] and (vii) with regard to social management, taking the community into account, recognizing its organizational structure, hiring unskilled labor, creating employment alternatives through social projects, cooperating with Aerocivil in the Airport's social and community plans, maintaining regular contact with the local authorities and residents, and setting up and maintaining a community relations office.[109]

Findings relating to the status of the Environmental License at the time of Project evaluation

2.42 In 2005, Aerocivil consulted with the MAVDT as to the need for a new environmental license or a modification of the existing license for the Airport expansion works.[110] In response, the Ministry indicated[111] that, under Decree 1220 of 2005, the works as described did not require a new environmental license. In addition, they did not require a modification of the existing license, provided the operating configuration of the runways would not be modified and provided the Second Runway would not operate during nighttime hours and the frequency of takeoffs and landings on this runway would not be increased.[112]

2.43 In 2008, Aerocivil asked the MAVDT for an opinion on the need to obtain a new license or modify the existing license due to the planned demolition of Terminal 1 and the construction of a new passenger terminal. Aerocivil indicated that these works amounted to a normal adjustment within the ordinary scope of the Environmental License and did not involve any impacts other than those initially identified and assessed in the Environmental Impact Assessment.[113] In response to this request, the Ministry indicated that, based on the information provided, this

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[105] Ibid, page 4.

[106] Ibid, page 3. Also, [redacted] and ESS, paragraph 1.3.

[107] Concession Agreement, Appendix F, page 17.

[108] Ibid, page 44.

[109] Ibid, page 45.

[110] Letter filed as No. 1010.0090.05.

[111] Communication filed as No. 1000-2-100949 and dated 31 October 2005.

[112] These restrictions were imposed by the Environmental License granted through Resolution 1330 of 1995 and by Resolutions 534 and 745 of 1998, through which the license was modified.

[113] Letter filed as No. 4120-E1-81512 and dated 22 July 2008, paragraph 2, page 4.

project did not require an environmental license or a modification of the existing license. However, the Ministry warned that, "if Aerocivil intends to increase the number of flights, extend schedules, or make changes to the existing restrictions, […] it will be required to commence procedures aimed at modifying the Environmental License […] or obtaining a new license, as the case may be." The Ministry also indicated that Aerocivil would need to report the planned changes duly in advance, any impacts associated with the demolition of the current passenger terminal building, and its potential effect on the configuration of the runways, stressing that "any change related to the issues described in Resolution 1330 of 1995, including noise, must be reported to this Ministry to initiate the relevant modification process."[114]

2.44 In June 2009, a partial transfer of the Environmental License to OPAIN was authorized for the remaining term of the concession with respect to the following items: (i) building an engine testing area; (ii) complying with the solid waste management plan; (iii) continuing with the surface water and groundwater monitoring plan, excluding noise and air quality monitoring, which would remain Aerocivil's responsibility; (iv) reporting in writing on the obligations, control measures, and prohibitions provided by the MAVDT and the environmental management plan to all personnel involved in the Project; and (v) performing aircraft weighing.[115]

2.45 In July 2009, Aerocivil asked the MAVDT to issue terms of reference for preparing a supplementary Environmental Impact Assessment for purposes of requesting a modification of the Environmental License. This proposed modification involved, among other aspects, lifting the operating schedule restrictions on the Second Runway, "considering that the conditions that gave rise to the Environmental License issued by the Ministry for construction of the Second Runway and operation of the El Dorado Airport […] have radically changed."[116] The Ministry responded by providing the relevant terms of reference[117] and, in November 2011, Aerocivil requested a modification of the Environmental License.[118]

Findings on documents prepared by the Client

2.46 In April 2007, OPAIN prepared an environmental plan based on the environmental diagnostic assessment conducted by the firm Consultoría Colombiana S.A. (ConCol).[119] The plan indicated that it was "applicable to activities in the targeted concession areas during Airport operation, maintenance, and management activities," and that "it is a result of the requirements set forth in the Concession Agreement," therefore "including only […] the following aspects: (i) solid waste management; (ii) management of hazardous materials; (iii) water management; and (iv) aircraft fueling operations."[120] OPAIN's environmental plan makes no reference

[114] Letter filed as No. 2000-2-31512 and dated 11 February 2009, paragraphs 1-4, page 1.

[115] Resolution 1001 of 1 June 2009, authorizing partial transfer of the Environmental License, page 45.

[116] Official letter filed as No. 4120-E1-74677 and dated 2 July 2009.

[117] Official letter No. 2400-2-74677 dated 1 October 2009.

[118] Filed at the ANLA as No. 41120-E1-144730 (ANLA Resolution 1034 of 2015, pages 1 and 2).

[119] Environmental plan of April 2007, OPAIN, pages 9 and 10.

[120] Ibid, pages 13 and 16.

to any issues related to the noise generated by flight operations or to social management.

2.47 As noted, the environmental plan was prepared in view of the prior environmental diagnostic assessment performed in 2006 by ConCol[121] for the purpose of analyzing the Airport's environmental situation at the time and enable OPAIN to evaluate the conditions in which it would receive the facilities.[122] This document acknowledged that, while air quality monitoring and social management would not be transferred to the concessionaire, they are vitally important aspects of environmental control and management. With respect to the noise component, the report states that, in terms of measurement, most of the 11 stations monitored fail to comply with the noise levels provided in national regulations. With respect to social management, the document confirms that this issue will remain within Aerocivil's scope of responsibilities. "[H]owever, […] [it] sees fit to recommend implementing a social structure that can also serve as a link between the tasks performed by Aerocivil and the tasks entrusted to OPAIN as the Airport operator," and stresses that the Airport should have an adequate mechanism for managing interinstitutional relations.[123]

2.48 In 2009 OPAIN also issued a social management plan, which notes that as part of its social responsibility policy, OPAIN helps to improve the living conditions of the community through job creation, direct contact through roundtables, skills training, integration activities, and the celebration of special occasions. In addition, this document lists a series of activities of a general nature to illustrate compliance with the company's social management policy.[124] OPAIN also produced a social management subprogram in 2009,[125] aimed at addressing contractual requirements associated with social management issues. Thus, the subprogram includes the activities to be performed in accordance with these requirements, the entity or individual responsible for each of these activities, the expected time frame for completion, evidence and monitoring steps, and progress status for each activity.

2.49 Lastly, the MICI found that the contractor in charge of performing works at the Airport prepared an environmental management plan for works.[126]

Findings on the Bank's evaluation process

2.50 During the Project preparation and screening process, the Bank determined the need to evaluate certain aspects as part of the due diligence process, including: (i) suitability of the assessment of noise and air quality impacts arising from expanded operations; (ii) dissemination of information and consultation with potentially affected parties, such as the communities adjacent to the Airport; and (iii) OPAIN's experience, capacity, and resources for managing, controlling, and monitoring all environmental, social, health, and safety aspects both in the construction and the operation of the Airport.[127] It was indicated that the Bank would

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121 Ibid, pages 10 and 22.

122 Environmental diagnostic assessment, ConCol, 14 January 2007, pages 1 and 2.

123 Environmental diagnostic assessment prior to taking delivery of the El Dorado Airport facilities. Final report. ConCol, 14 January 2007, pages 5, 25, and 96.

124 Social management plan of May 2009, OPAIN, page 6

125 Social management subprogram, OPAIN, May 2009.

126 Environmental management plan of February 2009, Constructora COLPATRIA.

127 [redacted] ESS paragraph 1.7.

prepare an ESMR that would contain a summary of the significant environmental and social aspects of the Project and the Bank's recommendations in terms of specific environmental and social requirements for the Project.[128]

2.51 [redacted]

2.52 Based on information provided by the Project team, the Bank initiated its due diligence process in 2008 with the first analysis/due diligence mission. From 2008 to early 2009, the Project underwent a series of modifications and adjustments arising from, among other reasons, OPAIN's proposal to create a single terminal as opposed to the initial idea of building a Terminal II and modernizing Terminal I. This extended the due diligence process into 2010.[131] Table 6 lists the activities carried out by the Bank during the evaluation stage.

Table 6.
IDB due diligence process

Date (month/year)	Activity	Document
3/2008	First analysis/due diligence mission	Document containing main due diligence findings. Environmental and social review
5/2009	Second analysis/due diligence mission	
3/2010		Update of the environmental and social due diligence review for the project "Modernization and Expansion of the El Dorado International Airport"
4/2010		Technical due diligence carried out by firm ARUP.
4/2010		Environmental, social, and occupational health action plan (jointly with OPAIN).
9/2010		ESMR.

[128] EAS, paragraph 1.7.

[129] Compilation of documents for discussion by CESI 18-07 of 11 May 2007, pages 1 and 2.

[130] Minutes of CESI meeting 18-07 of 11 May 2007, page 1.

[131] Interviews with the Project team.

Date (month/year)	Activity	Document
11/2010	**PROJECT APPROVAL**	
12/2011		Update of environmental, social, and occupational health action plan (jointly with OPAIN).
06/2012		Review and update of the environmental, social, and health and safety action plan (jointly with OPAIN).

Source: Project documents.

Findings on relevant issues related to due diligence

2.53 Below is a summary of certain matters arising from the due diligence performed by the Bank and relating to the issues analyzed in this Compliance Review.

2.54 [redacted]

2.55 [redacted]

2.56 [redacted] it describes a series of projects under the Airport Master Plan [redacted], including modifying the holding bays of the First Runway[136] and installing a protective surface to guard against turbine engine exhaust blasts at the thresholds of the First Runway. [redacted]

[132] Preliminary summary of main findings. Due diligence review of 19 March 2008, page 8. Along similar lines, environmental and social due diligence review of June 2008, page 36.

[133] Environmental and social due diligence review of June 2008, page 63.

[134] A noise curve or map is a cartographic representation of the sound pressure (noise) levels existing in a specific area and period. Decibels (dB) are the measure used to express the power and intensity of the noise.

[135] Preliminary summary of main findings. Due diligence review of 19 March 2008, page 13. Also, March 2010 update of the environmental and social due diligence review, page 76; and environmental and social due diligence review of June 2008, page 63.

[136] [redacted]

[redacted]

2.57 [redacted]

2.58 [redacted]

2.59 [redacted]

2.60 [redacted]

2.61 [redacted]

[137] [redacted] ESMR Table 1, Groups of Projects from the Master Plan

[138] Ibid, pages 13 and 16.

[139] Environmental and social due diligence review of June 2008, page 47. Along similar lines, Golder Associates. March 2010 update of the environmental and social due diligence review, pages 52 and 53.

[140] Environmental and social due diligence review of June 2008, pages 41 and 42.

[141] Ibid, page 57. Along similar lines, March 2010 update of the environmental and social due diligence review, page 70.

[142] March 2010 update of the environmental and social due diligence review, page 42.

[143] Environmental and social due diligence review of June 2008, page 67. March 2010 due diligence update, pages 81, 82.

[redacted]

2.62 [redacted]

2.63 [redacted]

2.64 [redacted]

144 Ibid, pages 60, 64, and 86. Along similar lines, March 2010 update of the environmental and social due diligence review, pages 72 and 78.

145 Ibid, pages 62-67. March 2010 update of the environmental and social due diligence review, pages 72-78.

146 March 2010 update of the environmental and social due diligence review, page 40.

147 Environmental and social due diligence review of June 2008, page 90. March 2010 update of the environmental and social due diligence review, page 101.

148 Preliminary summary of main findings. Due diligence review of 19 March 2008, pages 18, 19, 20, and 66. March 2010 update of the environmental and social due diligence review, page 81.

149 March 2010 update of the environmental and social due diligence review, pages 79-81.

[redacted]

2.65 [redacted]

2.66 [redacted]

2.67 The findings of the due diligence review served as a basis for identifying the various issues that would require attention, and an environmental, social, and occupational health action plan was prepared in April 2010, providing specific actions and a timetable. The plan addressed the following general issues: (i) legal aspects of environmental management and environmental compliance management; (ii) social and environmental context; and (iii) construction and operation impacts and management systems. The actions to be performed include: (i) updating the procedure for identifying legal, contractual, and regulatory requirements (code HSEQ-PR-0017); (ii) with respect to noise monitoring that has recorded levels exceeding the legal limits, the plan establishes that Aerocivil is responsible for noise control, prevention, and monitoring; therefore, the plan does not assign any specific activities to OPAIN beyond those associated with construction of the engine testing area; (iii) with respect to impacts and mitigation measures associated with the social aspects of the construction phase and of the Project's current and future operations, it indicates that OPAIN has not identified any; (iv) including the issue of hiring unskilled labor in the Airport's environmental management reports; (v) the need to develop an updated risk matrix to identify the impacts arising from the construction phase and the current and future operating phase as well as to determine the appropriate management and monitoring measures; (vi) regarding disclosure of information about the Project in the neighboring communities, it indicates that the

[150] Update of the March 2010 environmental and social due diligence review for the project "Modernization and Expansion of the El Dorado International Airport," pages 81 and 82.

[151] Ibid, page 53.

[152] Ibid, page 98.

social management plan and the ESMP's social management subprogram specify the concessionaire's mechanisms and forms of participation with the community and that ongoing actions will continue.[153]

Environmental and social management report (ESMR) prepared by the Bank

2.68 Having completed its due diligence process, the Bank prepared an ESMR, which includes the following:

2.69 Regarding Bogota's land use framework, it indicates that "this rezoning will allow the Airport's Second Runway, currently under operating limitations associated with noise production, to operate at projected capacity."[154]

2.70 It considers Directive B.5 to have been fulfilled, since OPAIN has prepared the 2007 environmental plan and the social management subprogram and social management plan GHU-PN-0001 of 2009, which have been structured in line with the requirements set forth in Appendices I and F of the Concession Agreement.[155]

2.71 It contains an assessment of impacts, dividing them into impacts produced by the modernization and expansion works and impacts produced by operation, maintenance, and management of the Airport. With respect to the former, it indicates that no major environmental or social impacts of significant size, duration, or territorial extent are anticipated, and that the expected impacts are those common to large-scale industrial construction works. With respect to the latter, it describes the impacts associated with current and future flight operations. Regarding Airport operations at the time of IDB involvement, it establishes that Aerocivil is responsible for monitoring and implementing mitigation measures for noise- and air quality-related impacts. Regarding impacts arising from future Airport operations, it cites the 2009 analysis of various scenarios for use of the Second Runway, stating that, in any event, Aerocivil is responsible for continuing to assess comparative scenarios of runway use and adopt measures to minimize the impacts on neighboring communities. These measures could range from greater soundproofing of homes to newer and quieter airplanes and development of a zoning plan, of which the ESMR indicates that "this initiative is not expected to be launched in the coming years and the extent of population resettlement has yet to be determined."[156]

2.72 With respect to noise produced by Airport operations, the ESMR indicates that OPAIN should become actively involved in properly managing the rezoning initiative, particularly in view of the reputational risk associated with a potential resettlement process. In addition, regarding the impact of future operations, the ESMR indicates that OPAIN has designed and is implementing a social responsibility policy, and that OPAIN's participation in roundtable sessions with the Fontibón, Engativá, and Funza communities fosters open communications, including the disclosure of information to the communities on the concessionaire's responsibilities under the Concession Agreement.[157]

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153 Environmental, social, and occupational health action plan of April 2010, OPAIN, pages 1-8.

154 ESMR, paragraph 4.14.

155 Ibid, paragraph 3.22.

156 Ibid, paragraphs 5.2 and 5.26.

157 Ibid, paragraphs 5.26 and 5.28.

2.73 The ESMR briefly mentions the direct impacts associated with the development of service, road, and transportation infrastructure in the vicinity of the Airport under the responsibility of other entities, requiring OPAIN's active participation to help identify impacts and proactively promote mitigation measures.[158]

2.74 It indicates that under the loan contract, OPAIN was required to consult with the Bank prior to approving or implementing any material change to the Project, its environmental documents, and/or the schedule capable of giving rise to social or environmental effects, and notify the Bank in writing within 10 days of any contractual breach, accident, impact, event, or material complaint regarding environmental or social issues. In addition, OPAIN was required to implement routine activities aimed at making Project-related environmental and social information available to the public and maintaining a consultation system for the public.[159] Furthermore, OPAIN was required to deliver an action plan, subject to Bank approval, prior to the financial closing date.[160]

Additional documents

2.75 In the first half of 2011, following Bank approval of the Project, OPAIN prepared a new, 2011 OPAIN environmental plan, updating and reassessing the environmental issues and impacts produced by its operations. As in the initial version, the plan only identifies impacts arising from OPAIN's activities under the Concession Agreement; however, it honors the IDB due diligence recommendation to include aspects covered in Appendices F and I. In addition, OPAIN updated its social management subprogram in 2011 and 2012 and its action plan in December 2011[161] and June 2012.[162]

2.76 [redacted]

2.77 [redacted] The ESMR indicates that OPAIN has kept all airlines serving the Airport since the signing of the Concession Agreement and has succeeded in adding five new ones.[165] In terms of the projected

[158] Ibid, paragraph 5.28 (should be 5.29, but there is an error in the document).

[159] Ibid, paragraph 8.1.

[160] Ibid, paragraph 8.2.

[161] December 2012 update of the environmental and social due diligence action plan.

[162] June 2012 review and update of the environmental, social, and health and safety action plan.

[163] Status report on the environmental, social, and health and safety action plan, January-March 2013, page 16.

[164] March 2010 update of the environmental and social due diligence review, page 14.

[165] ESMR, page 4.

increase in Airport operations, [redacted]

Table 7.
Documents associated with the Project evaluation stage

OPAIN		
Date	**Document**	**Description**
January 2007	**2006 environmental analysis** (environmental diagnostic assessment performed by ConCol prior to receipt of the El Dorado Airport facilities by OPAIN).	Assesses the conditions in which OPAIN will receive the facilities and identifies potential environmental liabilities resulting from noncompliance with requirements under the Environmental License.
April 2007	**Environmental plan** (revised Oct 2011) (ESMR).	Prepared in accordance with the requirements of Appendix I of the Concession Agreement and based on the preliminary environmental diagnostic report by ConCol. It only addresses continuity in operating the concession area and protection of the natural resources affected by OPAIN's activities.
May 2009	**Social management plan** GHU-PN-0001 (ESMP).	Prepared for purposes of addressing the social management requirements of the Concession Agreement.
May 2009	**Social management subprogram** (ESMP).	Prepared for purposes of addressing the requirements of the Concession Agreement regarding social management.
April 2010	Environmental and social due diligence **action plan** (OPAIN-Golder), CTA exhibit 5.	Describes the actions to be performed to address the requirements and findings arising from the due diligence process, indicates the individuals/entities responsible for performing them, and provides a schedule for these actions.
October 2011	Update of the El Dorado Airport environmental plan (ESMP).	Second update of the environmental plan for operation and expansion of the concession areas, prepared in compliance with Appendices I and F of the Concession Agreement and with obligations partially transferred by Resolution 1001 of June 2009. The objective is to implement the environmental plan in terms of Airport management, modernization and expansion, operation, commercial development, and maintenance activities.
December 2011	Matrix for update of the environmental and social due diligence action plan.	
December 2011	Social management subprogram (update) (ESMP).	Second update of the environmental plan. Prepared to address the social management requirements of the Concession Agreement.
February 2012	Social management subprogram (ESMP) (update).	Third update of the plan. Prepared to address the social management requirements of the Concession Agreement.

[166] Lenders' technical due diligence, ARUP Canada. El Dorado International Airport, April 2010, page 29.

Date	Document	Description
June 2012	**Review and update of the** environmental, social, and health and safety **action plan**.	Aimed at describing the advances and results of the review and update of the environmental, social, and health and safety action plan, pursuant to the Authorization to Proceed issued by OPAIN on 3 April 2012. The authorization is carried out on a temporary basis until the long-term monitoring agreement, currently under review, is formalized.
Aerocivil		
1998	El Dorado International Airport Noise Abatement Manual.	Establishes airport and aviation procedures and monitoring and control measures to mitigate noise pollution created by the Airport's operations and following construction of the Second Runway.
December 2000	Aerocivil environmental policy.	Reference framework for defining the entity's environmental objectives and targets.
December 2001	Environmental management plan (sections 5, 10, 11, and 12 of the document "Supplementary Review and Mainstreaming of the Environmental Management Plan for Operation and Functioning of the El Dorado International Airport").	Mentioned in Appendix I of the Concession Agreement. * The MICI did not have access to this document.
August 2004	Noise Abatement Manual.	Includes an update of airport and aviation procedures and monitoring and control measures to mitigate noise pollution.
October 2007	Aerocivil social policy.	Policy providing that Aerocivil's activities and services must take the communities adjacent to the airports into account through programs and projects that facilitate communications and foster social development.
May 2009	Modeling of the noise produced by air operations at the El Dorado International Airport under various scenarios in response to the Second Runway repairs.	* The MICI did not have access to this document.

Source: Prepared by the authors based on various documents obtained during the investigation.

d. Determination of compliance with Directive B.5

2.78 Below, the MICI will determine whether the environmental assessments, management plans, and implementation arrangements required by Operational Policy OP-703 were carried out and whether the Bank verified that they followed the policy's standards. The MICI will focus on an analysis of the two components of the Requesters' allegations that form the framework for this investigation, namely, incremental noise and social management. In addition, verification of compliance with this directive will focus on the requirements for Category "B" operations. However, the MICI wishes to underscore that, in view of the conclusion regarding compliance with Directive B.3 (paragraphs 2.28 and 2.29 above), the Project should have been classified as a Category "A" operation due to the potential risks and impacts it entailed.

The Bank failed to verify that the Project evaluation and management plans fully complied with the requirements of Directive B.5.

2.79 For category "B" operations, Directive B.5 and its guidelines[167] require an environmental assessment focused on the specific issues identified in the screening stage. In addition, they point out that, in the case of financing for existing facilities, the Bank generally requires an environmental assessment with a view to weighing the potential environmental and social risks and impacts resulting from project construction and operation. As indicated above, the screening stage served to identify the following issues to be reviewed during the evaluation process: (i) the impacts produced by incremental noise from flight operations; (ii) the commitment and capacity of Aerocivil to comply with environmental and social mitigation measures; and (iii) information disclosure and consultation with the potentially affected parties, including the communities adjacent to the Airport.[168]

2.80 [redacted] Management indicated to the MICI that this environmental analysis would consist of the preliminary environmental diagnostic report prepared by ConCol and the ESMP, explaining that, as provided in the project documents, the ESMP for the Project is comprised of the environmental plan, social management plan, and social management subprogram prepared by OPAIN.

2.81 In the view of Management, the Bank's involvement concerns an Airport that was already in operation and the Bank consequently focused on reviewing and improving the various existing environmental and social management plans. The environmental management plan is a requirement under the Concession Agreement (Appendices I and F). At the request of ANLA, OPAIN proceeded to update its environmental management plan based on Aerocivil's plan, adding environmental, social, health, and safety management measures associated with the construction and operation of certain facilities. The Bank's action plan includes recommendations to improve the system used by OPAIN to manage the environmental and social aspects of the Project.[170]

2.82 Management also asserts that the Airport, through OPAIN, implemented best practices for mitigating ground noise, and that noise from air operations is being managed consistent with ICAO principles, which are the standard established in the ESMR.[171] Management stresses that neither the Bank nor the Client is responsible for or has any influence on air activities and that IDB financing is limited to construction and maintenance of the cargo and passenger terminals, as well as construction of a firefighting station, the Aerocivil building, and a fuel tank area. The

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[167] While the MICI Policy provides that the directives, rules, and procedures approved by Management are not within the scope of action of the MICI, Directive B.5 provides that compliance with the standards for performing environmental assessments and their management plans must be reviewed in accordance with both the Policy and its implementation guidelines. Accordingly, the MICI also used these guidelines as a reference in conducting its analysis.

[168] ESS, paragraph 1.7. [redacted]

[169] CESI minutes of 11 May 2007, paragraph 3.

[170] Management's comments on the Supplemental Request, page 5.

[171] Management's comments on the Original Request, page1.

Bank asserts that it is not involved in any activities on the Aerocivil side. Regarding issues related to ground noise, OPAIN has implemented all mitigation measures that were required, such as building an acoustic barrier.[172]

2.83 The MICI finds that the Borrower commissioned an environmental diagnostic assessment prior to taking delivery of the Airport facilities in order to identify the conditions in which it would receive them. In this respect, **the MICI considers that the aforementioned diagnostic document fails to comply with the Bank's requirements regarding the content of an environmental analysis of the Project, since it only analyzes the Airport's environmental, social, and regulatory status prior to OPAIN's receipt of the facilities and does not provide an assessment of the potential environmental, social, and health and safety impacts and risks associated with the Project (construction and operation) or indicate the measures foreseen to control these risks and impacts in accordance with Directive B.5.**

2.84 Notwithstanding the foregoing, the MICI points out that the guidelines for Directive B.5 also indicate that environmental audits are to be performed to determine past or current environmental and social impacts and risks associated with existing or past economic activities and to prescribe means of mitigating them, as necessary. The MICI considers that while the preliminary diagnostic document cannot be considered an environmental assessment in accordance with Operational Policy OP-703, it does conform to what the guidelines deem an environmental audit since it analyzed the various issues associated with the Airport, such as compliance with national legislation, the environmental status of the water, noise, solid waste, and biotic components, and social management. In addition, this document contained information that would enable the concessionaire and the Bank to assess the conditions and identify the environmental liabilities of the Airport upon receipt of the facilities under concession.

2.85 In addition, the MICI notes that the Bank indicated that the environmental plan, social management subprogram, and social management plan prepared by OPAIN in 2007 and 2009, along with the preliminary environmental diagnostic document, comprise the Project's environmental analysis as well as the ESMP. In this regard, the MICI considers that the ESMP cannot at the same time be an environmental analysis; the two are documents of a different nature and content, and the guidelines for Directive B.5 provide that the borrower prepares the ESMP as an integral part of an environmental impact assessment or as an independent document setting forth the requirements resulting from the environmental analysis. In the following section, the MICI will verify whether these documents analyzed the potential impacts of incremental noise and their social effects, identified the respective mitigation measures, and provided plans for managing these impacts.

2.86 The MICI found that the aforementioned documents were prepared on the basis of the preliminary environmental diagnostic report and Aerocivil's environmental plan (conceived for Airport operations prior to the concession) and only dealt with issues for which OPAIN was responsible under Appendix I of the Concession Agreement. Thus, these documents initially made no reference to the impacts and risks resulting from the activities described in Appendix F or to Project-related impacts and risks

[172] Ibid, page2.

managed by third parties. The MICI also notes that these documents were of a preliminary nature and subsequently modified on several occasions following approval of the Project, and that the due diligence review found flaws in their content. As the MICI points out, the Bank financed the Airport's expansion and modernization, which included not only landside construction works (in some cases involving the likelihood of having to use the Second Runway during restricted hours), but also management and administration of an airport with a considerably greater number of flights, yet the Client's documents fail to reflect these circumstances. In addition, Management asserts that an action plan was prepared and agreed-upon prior to the Bank's approval of financing. This action plan was the result of analyzing the Airport's compliance with licenses and permits and the implementation of environmental plans, programs, and systems while also taking the due diligence findings into account.[173]

2.87 In this regard, the plan, initially prepared in April 2010 and modified in 2011 and 2012, indicates that noise control, prevention, and monitoring issues are the responsibility of Aerocivil and that OPAIN has not identified any social impacts or mitigation measures. As in the case of OPAIN's environmental and social plans, this document does not deal with impacts and risks arising from increased noise levels beyond indicating that they are Aerocivil's responsibility.

2.88 It is worth noting that both the analysis stage and the due diligence stage established the need to assess the indirect impacts of the incremental noise that the Airport would produce when operating at projected capacity (see paragraphs 2.50, 2.51, and 2.60 above), even though a third party was responsible for this issue. **Nevertheless, the Bank incurred in an omission by failing to require that the Client perform an environmental analysis that fully complied with the requirements of Directive B.5 and by accepting an "environmental analysis" for the Project comprised of documents that made no assessment of the indirect impacts that would be generated by the Project and were under the responsibility of a third party.** The MICI considers that Management's argument that neither the Bank nor the Client is responsible for or has any influence on air activities and that the Bank is not involved in any activities on the Aerocivil side is an attempt to be relieved of responsibility and contradicts not only what the Project initially established but also the essence underlying any Bank financing, as reflected in the standards set in Bank policies, particularly Operational Policy OP-703. This policy is a tool that should be used to achieve social and environmental success in any IDB project. There is an express requirement to identify, assess, and manage both direct and indirect impacts and risks, and it is the Bank's obligation to determine how to manage them, whether they are produced by the Bank's client or by a third party. It is also surprising that Management should attempt to disassociate itself from any aspect related to the Airport's air operations, which are the source of the Project's future financial success.

2.89 In view of the above, **the MICI considers that the aforementioned documents fail to comply with Bank environmental assessment and management standards. They fail to substantively identify potential impacts and concomitant mitigation measures and fail to cover issues such as an execution budget, details on management of mitigation measures, or a**

[173] Management's comments on the Supplemental Request, page 3.

consultation or participation program. Consequently, the Bank has failed to comply with Directive B.5 by not requiring the Client to prepare an environmental analysis to include an identification of noise-related impacts arising from construction works associated with the First Runway area or from the increase in operations, or the corresponding mitigation measures and management plan, in line with the Bank's standards.

2.90 In addition to the Borrower's responsibilities regarding environmental assessments, the MICI points out that the Bank too has a responsibility in this respect, both in performing a due diligence review and presenting its results. In this regard, as part of the environmental and social assessment process, the Bank prepared an Environmental and Social Management Report (ESMR) for the Project, which shows the results of the assessment process and, especially, of the due diligence process. Under the guidelines for Directive B.5, this report is required for Category "B" operations when so requested by the CESI, as occurred in this case, and must include a summary of the environmental assessment and other relevant environmental and social documents drafted as part of the preparation and preliminary due diligence for the operation, focusing on the environmental and social management issues that will be applicable during the project's execution. The ESMR should confirm that the Bank's relevant standards will be met. Together with the project report, it clearly sets forth the actions that have been taken to address the relevant significant environmental risk factors capable of affecting the environmental sustainability of the operation.

2.91 In the view of Management, any infrastructure or transportation project is expected to involve associated environmental and social risks, and Management considers that these risks were identified and included in the ESMR.[174]

2.92 Having reviewed the Bank's ESMR and the documents prepared during the due diligence process, the MICI considers that Management failed in the following aspects of the environmental assessment:

a. The environmental assessment failed to identify the noise-related impacts that would be produced by expanded Airport operations

2.93 The Bank failed to specifically identify or assess what the Airport's real noise-related impact would be once the Bank-financed Project was implemented. This failure openly affected the comprehensiveness of the assessment of the Project's environmental and social impacts. In this regard, there are several documents that include traffic, passenger, and cargo volume projections for different years. However, the detailed analysis of these factors is primarily focused on financial aspects of the Project. Thus, the MICI has not found any analysis of the expected increase in the number of flights using the Airport in the future, the type of aircraft (size, frequency, etc.), or other factors that would allow a more accurate picture to be drawn of the expected impacts from the increase in operations in the years following Project approval. Moreover, the MICI did not find any analysis of the actual needs that this future number of flights would create in terms of runway use, particularly during restricted hours.

[174] Ibid.

2.94 In this regard, Management insists that the Bank identified the problem of noise as one of the issues to be reviewed during the due diligence process, since this is expected and is common practice for all infrastructure projects, especially airport projects.[175] Management adds that the ESMR emphasized the noise issue and summarized the noise modeling assessment and the Ministry of the Environment's decision to limit nighttime operations at the Airport, which is a common industry practice for mitigating noise-related impact. Management indicates that these conditions were provided in the Airport's Environmental License, which remains in effect, and that the Bank identified this license as a risk mitigation factor, which is common practice based on the roles and responsibilities of the various parties under the Concession Agreement.[176] With respect to the alleged noncompliance with the due diligence plan provided in the ESS, Management also insists that the due diligence process included all assessments envisaged in that strategy.[177]

2.95 In the view of the MICI, the Bank confined itself to acknowledging the increase in noise due to expanded operations as a normal impact for this type of project, without delving (in the evaluation stage) into the potential magnitude of this impact on the communities adjacent to the Airport and thus on potential mitigation measures. Similarly, the MICI has not found any analysis of the Project's area of influence, such as a socioeconomic study of the population directly and indirectly affected[178] by the Project, that could help to specifically identify the affected parties and the real potential impacts on these parties and design appropriate mitigation measures.

b. The environmental assessment failed to identify the noise-related impacts that would be produced by the First Runway upgrade works

2.96 In addition to the impacts of Airport operations, the MICI found that OPAIN was responsible for making certain upgrades to the First Runway and that performing this work could necessitate using the Second Runway during restricted hours, these schedule restrictions being in place under the Environmental License to reduce noise-related impacts on the locality of Fontibón. The Project documents fail to show any detailed analysis of this issue or any identification of specific measures to manage the expected impact of these works and communicate with the affected community, beyond indicating that Aerocivil is responsible for modeling the potential scenarios for use of the runways. Thus, there was no mechanism available to assess the future impact of this OPAIN activity or any mechanism allowing OPAIN to become involved in identifying measures to mitigate the future impact of its activities on the First Runway.

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[175] Management's comments on the Supplemental Request, page 1.

[176] Ibid, page 2.

[177] Ibid, pages 7-9.

[178] The Project documents show that, starting in 2013, OPAIN performed a socioeconomic study of the area to determine impacts on, and mitigation measures for, the population affected by its activities.

c. No effective measures were established to mitigate incremental noise

(i) The Environmental License is not an effective mitigation measure for incremental noise

2.97 The MICI considers that the Bank erred in treating the Environmental License—which had been issued for an earlier operation and had not been updated to contemplate the new direct and indirect impacts of an expanded and modernized airport—as a mitigation measure for the impacts of incremental noise. The Bank determined that one outcome of the Project is an increase in air operations, which in turn is of critical importance for the financial success of the Project. The Bank also indicates that operating the Airport at full capacity would require the use of the Second Runway during restricted hours. Despite having explicitly acknowledged this and having developed operations forecasts that projected roughly a doubling of passenger and cargo traffic within a period of five years, the Bank failed to consider that the Environmental License was valid only for the operating capacity and type of operations envisaged at the time the license was issued, in 1995, and not for any subsequent modifications and/or increase in Airport operations. Furthermore, the MICI did not find any evidence in any Project document that the Bank evaluated or considered Aerocivil's 2009 request to the MAVDT for terms of reference for the new EIA that would be required to modify the Environmental License for such purposes as relaxing the existing restrictions on the use of the Second Runway. Thus, in the opinion of the MICI, the Bank failed, before validating the Environmental License as the appropriate mitigation measure for the Project, to examine whether this license considered the specific direct and indirect impacts to be produced by the Airport's expanded operations as a result of the Project,[179] and whether it was an appropriate measure to mitigate these impacts.

2.98 In addition, the Project documents reveal that, despite the existence of the Environmental License, the noise levels at the time of the Bank's original involvement exceeded those permitted by law. This shows that that the Bank also failed to carefully examine whether the Environmental License was not only effective but sufficient in practice as a mitigation measure and whether it complied with the IDB's environmental and social protection standards. Management asserts that these noise levels were not solely limited to airport noise and could be the result of exceptions in the use of runways during restricted hours, as permitted under the Environmental License. However, the MICI has not found any evidence in the Project documents that the Bank examined whether the noise monitoring systems were adequate under domestic and international regulations[180] or verified the circumstances in which noise was being produced in excess of the admissible levels.

2.99 Along these lines, the MICI notes that, while the Bank identified the existence of certain noise mitigation measures required by the Environmental License that were being or had been complied with by Aerocivil (soundproofing of homes, acoustic

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[179] [redacted]

[180] This is also evident from the meeting with the consulting firm responsible for the due diligence on the Project.

barriers, type of aircraft), there is no evidence that the Bank verified their effectiveness in terms of the actual impacts that the expanded and modernized Airport would produce. In this regard, **there are no studies that would have made it possible to assess the impacts that the Airport could produce when operating at full capacity following its expansion**. During its visit to the Project area, the Compliance Review Panel visited several homes in the portion of Fontibón closest to the Second Runway. There it was able to experience firsthand not only the impact of the noise on the daily life of residents (such as the need to interrupt a conversation or classroom activities when airplanes take off and land because it was impossible for the other person or the teacher to be heard, or the vibrations caused by some aircraft), but also the discomfort produced in some homes by the soundproofing, which in the Panel's experience is in poor condition, does not really reduce noise, and prevents, among other things, ventilation in the homes.[181] However, as pointed out above, there is nothing in the Project documents to indicate that any analysis was performed to examine these circumstances in the adjacent communities or determine whether the existing mitigation measures complied with the requirements of Operational Policy OP-703 to eliminate or reduce them as much as possible.

(ii) The alleged involvement of OPAIN in implementing the land-use plans does not constitute a noise mitigation measure

2.100 The Bank refers to the reputational risk that could result from the noise and the implementation of the land-use plan, which provides for the resettlement of communities adjacent to the Airport, recognizing that this issue falls outside of OPAIN's responsibility. Consequently, the only measure envisaged in the Project documents for mitigating or managing it is the Client's active involvement in issues associated with the land-use plan. Nevertheless, the documents indicate that the change in land use is unlikely to be implemented in the coming years. Considering this, the MICI considers that involving OPAIN in the land regulation processes would only be effective if the process were to be carried out. Therefore, such involvement is not a measure to remedy the noise problem and its associated risks, but is rather a measure to mitigate the indirect impact of relocating the adjacent communities due to the increase in noise.

2.101 In addition, the Project documents assert that the risk is reduced through OPAIN's participation in the roundtables arranged with the communities of Fontibón, Engativá, and Funza.[182] In this regard, the MICI finds that, while the Bank states that OPAIN participates in roundtables with the communities, there is no description or analysis of such participation in any of the documents prepared between 2006 and the date of the ESMR that could help confirm its effectiveness as a mitigation

[181] The Panel did not perform a technical verification of the soundproofing measures, since this was not included in the scope of its investigation pursuant to the terms of reference approved by the Board of Executive Directors. Instead, these comments are meant to reflect the experience of the Panel members during their visit to the Airport's area of influence. As indicated above and as asserted by the Requesters, this is a problem that residents have been suffering from for the past several years, even prior to the Bank's involvement. It is mentioned here to allude to a situation that the Project documents show no evidence of having been examined to determine whether these impacts would increase as a result of the Project.

[182] ESMR, paragraph 5.28.

measure for the aforementioned risk. The section examining compliance with Directive B.6 provides a detailed analysis of these airport roundtables.

2.102 In short, the MICI considers that the Bank also failed to verify the suitability and effectiveness of this mitigation measure.

d. Management of the impacts and risks arising from the Project are the responsibility of a third party

2.103 Management asserts that the project team recognized that the noise control measures exceeded the scope of the Borrower and were the responsibility of Aerocivil, extensively documenting this observation in the ESMR. However, the strategy of the project team was to ensure that the Airport continued to operate at all times in compliance with the Environmental License, which restricted nighttime operations. Management asserts that any deviation from or noncompliance with the Environmental License had to be reported to the Bank and handled appropriately to ensure compliance.[183]

2.104 In addition, Management considers that the Bank worked closely with Aerocivil in identifying associated risks and contributed multiple recommendations on implementing mitigation measures. In addition, the Bank states that it maintained a proactive strategy to foster communications between OPAIN and Aerocivil and advise the latter of the risks of failing to properly assess the noise impacts that would result from nighttime operation of the Second Runway, at a time when Aerocivil was considering requesting an exception to these restrictions. Management points out that the Bank could not contractually compel the governmental authority to act, but worked proactively to keep in contact with OPAIN and Aerocivil during the due diligence process and thereafter. This included keeping the communities informed on maintenance activities that required lifting the restriction on nighttime use of the runway.[184] Management argues that the Bank's contract does not contain an obligation requiring Aerocivil to comply with its responsibility to mitigate existing noise, and that Aerocivil is a national government authority that reports to the Ministry of the Environment.[185]

2.105 The MICI found that the Bank had identified the potential increase in noise levels when assessing the impacts and risks that would result from an expansion of air operations at the Airport. However, in its Project documents, the Bank underscored that Aerocivil was the entity responsible for monitoring air noise as well as for implementing control and mitigation measures. For this reason, there is no evidence in the Project documents that any specific plan was developed to manage impacts of this type, which despite being produced by the Project are the responsibility of an entity other than the Client.

2.106 The Project documents and information gleaned from interviews conducted in the compliance review process show that there was no mechanism set up to report noncompliance with the Environmental License to the Bank, nor were any measures adopted to handle or manage such noncompliance and its consequences for the Project.

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[183] Management's comments on the Supplemental Request, page 3.

[184] Ibid, page 4.

[185] Ibid, page 9.

2.107 In the section dealing with Directive B.4 of Operational Policy OP-703, the MICI will examine the issues associated with determining noise impacts and social management, for which Aerocivil was responsible.

2.108 In accordance with the preceding considerations, the MICI concludes that **the Bank failed to comply with Directive B.5 by not verifying that the Project's assessment and management plans—which did not include an environmental analysis and its corresponding ESMP prepared by the Client in accordance with Directive B.5—were fully in compliance with the requirements of the policy; by not performing a comprehensive environmental and social impact assessment covering the incremental noise arising from the Project; and by validating noise mitigation measures without confirming their effectiveness and suitability for the specific impacts that would be produced by the Project,** all of the above in violation of Directive B.5 of Operational Policy OP-703.

4. On the provisions of Directive B.4 of the Environment and Safeguards Compliance Policy (OP-703) regarding other risk factors

a. The Requesters' allegations

2.109 The Requesters consider that the Bank failed to comply with Operational Policy OP-703 by not explicitly identifying Aerocivil as a third party responsible for mitigating the noise-related impacts, which they consider "is the root of all other noise-related violations."[186] They specifically indicate that there was a significant risk that the noise problem would affect the environmental sustainability of the Project, due to "the serious harm associated with the airport's noise and Aerocivil's history of failing to mitigate it, as well as the fact that the Project would increase noise levels." Consequently, the Requesters assert that the Bank should have designed a plan with OPAIN and Aerocivil to manage the associated risks.[187]

2.110 In addition, the Requesters assert that both the ESMR and the ESMP should have included other risks associated with Aerocivil as a third party, such as Aerocivil's history of noncompliance with nationally mandated limits on noise and its continuous failure to comply with mitigation measures provided in the Environmental License. They insist that the Bank should have identified and handled the risks arising from Aerocivil's failure to fulfill its commitment to manage the noise problem.[188]

b. What are the provisions of Directive B.4?

2.111 Directive B.4 provides that, in addition to risks posed by environmental impacts, the Bank will identify and manage other risk factors that may affect the environmental sustainability of its operations. These risk factors may include elements such as the governance capacity of third parties, sector-related risks, and risks associated with highly sensitive environmental and social concerns. Depending on the nature and the severity of the risks, the Bank will engage with the executing agency or relevant third parties to develop appropriate measures for managing such risks.

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[186] Supplemental Request, page 9.

[187] Ibid.

[188] Ibid.

c. MICI findings regarding compliance with Directive B.4

2.112 The Project identified Aerocivil as an involved third party in its capacity as the airport and air travel authority in charge of the Airport, as the entity that granted OPAIN the concession for the expansion and modernization project, and as the entity responsible for management of the Airport's airside operations, including noise mitigation matters, and for social management (see paragraphs1.28, 2.20, and 2.41 above).[189] Accordingly, the Project divides operational interaction at the Airport into airside and landside, identifying the various roles and connections of the entities involved and indicating that the existence of these roles [redacted] Despite Aerocivil's identification as an entity involved in the Project and in managing some of the Project's impacts, of all the documents examined by the MICI only the [redacted] and the [redacted] identify the applicability of Directive B.4 to this case.[191]

2.113 The MICI verified that the environmental audit performed by ConCol indicated unawareness as to whether Aerocivil had complied with certain license and regulatory requirements in Colombia.[192] There is no evidence that subsequent analyses were performed to determine Aerocivil's compliance or noncompliance with domestic provisions, only to determine OPAIN's fulfillment of its obligations arising from the transfer of the Environmental License and the Concession Agreement.

2.114 The documents show that, while the separate roles and responsibilities of Aerocivil and OPAIN are clear, the two institutions shared certain obligations. [redacted]

2.115 It was also found that from the outset, despite this specific separation of roles and the confirmation that OPAIN had no responsibility over the issue of noise produced by air operations, the Bank viewed the Airport as a whole, subject to a single license and with two entities involved. Accordingly, the Bank identified the need to assess all Airport risks and determine measures to mitigate them.[194] [redacted]

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189 Among other documents, see [redacted] ESMR, page 4.

190 [redacted]

191 The other Project documents, such as the ESMR, page 9, make no reference to Directive B.4.

192 ConCol, legal evaluation matrix.

193 Environmental impact assessment for modification of the Environmental License, Chapter 2. Environmental legal assistance, August 2011, pages 37-39. [redacted]

194 MICI meeting with the project team.

[redacted]

2.116 For its part, the ESMR refers to reputational risks beyond the control of OPAIN, including the risks associated with a potential decision by Aerocivil to conduct nighttime operations on the runway, which is subject to use restrictions under the Environmental License. As indicated above, about these scenarios, the ESMR indicates that while Aerocivil is responsible for air traffic and runway operation, the Airport operates under a single license and "deviations or failures to comply should be reported to the Bank and properly managed so as to comply with the permits and authorizations in effect."[196]

2.117 The documents provided by Management show that OPAIN developed a risk management plan based on the findings of the Bank's due diligence; accordingly, the plan established actions to comply with and/or monitor each of the Bank's findings. These included the following: (i) there is no plan or procedure to monitor legislative changes and provide for compliance with such future changes, such as good management practices; (ii) noise monitoring results show values that exceed the limits provided in environmental legislation and international standards. [redacted]

2.118 [redacted] As indicated above, OPAIN's action plans were focused on compliance with issues within OPAIN's scope of responsibility under the Concession Agreement and do not deal with activities associated with third parties.

2.119 The MICI has had access to various resolutions ordering the start of investigations and the lodging of charges against Aerocivil in relation to noncompliance with its obligations under the Environmental License granted through Resolution 1330 of 1995.[199] The issues covered by these investigations include: (i) failure to implement works and mitigation measures to protect against noise and health risks prior to the start of operations of the Second Runway; (ii) failure to submit an updated property census, which would have included all housing units and social and community service buildings affected by noise levels of 65dB to 75dB Ldn; (iii) lack of noise monitors during times established by the authority; (iv) failure to present mitigation

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195 CESI minutes.

196 ESMR, paragraph 5.29. [redacted]

197 Monitoring of IDB Requirements, OPAIN, undated, page 1.

198 Environmental and social due diligence action plan, 2011 update, page 2.

199 Such as Decision 327 of 1997; Resolution 534 of 1998; Resolution 745 of 1998; Resolution 412 of 1999; Resolution 731 of 2006; Resolution 304 of 2007; Resolution 1304 of 2009; and Decision 1325 of 2013.

measures for the collateral effects created by the implementation of soundproofing measures, such as high temperatures and lack of ventilation and oxygenation, based on the characteristics of each structure; (v) allowing the runway to operate while ignoring the schedule restrictions and routing of operations provided in the license; (vi) failure to deliver a consolidated list of the soundproofing installed due to lack of maintenance; and (vii) failure to present environmental compliance reports in timely fashion.

2.120 In addition, the MICI found that between 1998 and 2010, the relevant authorities had applied preventive measures and sanctions on Aerocivil due to noncompliance with the Environmental License. These include various penalties for noncompliance with obligations under the License.[200] The MICI also had access to environmental compliance reports (ICA), monitoring reports, and other documents submitted by Aerocivil to the ANLA.[201] An examination of these documents shows that Aerocivil's monitoring reports on noise produced by the Airport indicated that noise levels exceeded admissible levels from 2009 to 2015.[202]

2.121 In the Project documents, the MICI did not find any references to any of the investigative or sanctions proceedings or any analysis of the Aerocivil reports reflecting the existence of noncompliance.[203] In this regard, a Panel interview with the Project team confirmed that Aerocivil's noncompliance or potential noncompliance was not considered in the Project and that the Bank's analysis was limited to OPAIN's obligations under the Concession Agreement. Management explained that, in this Project, the schedule restrictions on runway operation served as the noise mitigation measure and, with some exceptions, were being observed. Regarding the ability of the Bank to monitor noncompliance by Aerocivil, the project team indicated that the Bank's obligation was limited to monitoring noncompliance by OPAIN[204] rather than by Aerocivil. The project team pointed out that the Bank has no mechanism for receiving information from Aerocivil regarding Aerocivil's noncompliance and that the project team's approach was to attempt to work proactively with Aerocivil to the extent possible.[205]

d. Determination of compliance with Directive B.4

(i) Identification of Aerocivil as an involved third party for mitigation of potential Project impacts and risks

2.122 The Bank asserts that it recognized Aerocivil as a third party but that, contrary to what the Requesters allege, the Bank's policy does not require that such recognition be expressly stated, an implicit recognition being sufficient. In view of this, the Bank

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[200] Not having had access to most of the reports containing the conclusions of the Aerocivil investigations, the MICI is unable to provide a more exhaustive list of the instances of Aerocivil noncompliance.

[201] ANLA sent these documents to the Compliance Review Panel in July 2016.

[202] Including those filed as 4120 E1-130144 8 August 2010 ICA- 1b 6.5.2; those filed as 4120 E1-21903 24 February 2012 ICA- 1b 6.5.3; those filed as 4120 E1-13016 22 March 2013 ICA- 1b 6.3.3; those filed as 4120-E1-290 7 January 2014 ICA-1a 6.3; those filed as 4120-E1- 16688 02 April 2014 ICA-1b 6.3.3; those filed as 2016012350-1-000 10 March 2015 ICA - 1B; and those filed as 215047625-1-000 10 September 2015 ICA- 1b. The MICI has not had access to the ANLA reports analyzing Aerocivil's environmental compliance reports.

[203] Regarding this point, it only found what is set forth in the ESMR and indicated above.

[204] This is also evident from [redacted] and the ESMR.

[205] Interview by the Compliance Review Panel with the project team in Washington, D.C.

argues that the ESMR includes a description of Aerocivil's role, particularly in relation to the management of noise levels. In addition, the Bank points out that it has continued to address the issue of noise management with Aerocivil, holding technical meetings and providing comments on Aerocivil's efforts to update the noise analysis models.[206]

2.123 In the first place, having examined the Project documents, the MICI has found that Aerocivil was identified as an involved third party and that its roles and responsibilities in the Project were clearly delineated, including social management, noise management, and implementation of mitigation measures.[207]

2.124 Next, the MICI will examine whether the Bank included Aerocivil's ability to manage noise-related issues as an additional Project risk and whether, if risks did exist, the Bank designed appropriate measures to manage them.

2.125 The references to Aerocivil's noise-related activities in the Project documents emphasize that all matters related to the management of noise levels and mitigation of their impacts are within Aerocivil's scope of responsibility and authority;[208] thus, the documents define the separate areas of responsibility of the Client and Aerocivil. However, there is no evidence in the Project documents that the Bank examined Aerocivil's institutional capacity to comply with the Environmental License or the status of such compliance on the part of Aerocivil.

2.126 Regarding Aerocivil's institutional capacity to comply with the Environmental License and the associated risks, the MICI has had access to documents that describe various investigative proceedings, including penalties, by the authorities due to Aerocivil's failure to comply with the license.[209] Despite the existence of these proceedings, there is no analysis of them in the Project documents. Only ConCol performed a review of the Airport's regulatory compliance at the time of OPAIN's involvement, but even this report shows a lack of information on Aerocivil compliance with respect to a considerable number of its responsibilities.[210] After this, the Project documents focus on the Client's responsibilities and, with respect to Aerocivil, they merely reiterate the existence of the Environmental License as a mitigation measure. Moreover, even though the Project documents show the existence of noise levels exceeding the allowable limits, the MICI has not found any identification of impacts and/or risks that could result from an increase in operations managed by a third party over which the Bank had no direct influence. **In view of this, the MICI considers that the Bank failed to examine the institutional capacity of Aerocivil as the**

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206 IDB response to the Supplemental Request, section 3(a).

207 [redacted] It is unclear from the documents examined by the MICI whether these associated facilities refer to issues related to Aerocivil's role in the framework of the Project.

208 ESMR, pages 19 and 20; [redacted]

209 See, for example, Resolution 304 of 2007; Resolution 1111 of 2007; Resolution 1304 of 2009; Resolution 419 of 2010; and Decision 1325 of 2013.

210 There was no knowledge as to Aerocivil's compliance with numerous noise-related obligations, such as the requirements to conduct specific noise monitoring for the Second Runway, submit a list of the airlines that had been warned in the past two years for failing to comply with noise abatement procedures, and optimize the monitoring network. See ConCol, Legal evaluation matrix.

entity responsible for managing noise-related impacts and to determine the risks that such third-party management entailed for the Project.

(ii) Absence of measures to manage risks arising from the activities of Aerocivil

2.127 Management points out that the ESMR summarizes the noise modeling assessment and the decision by the Ministry of the Environment to limit nighttime Airport operations, which according to the Bank is a common industry practice aimed at mitigating noise-related impacts. In addition, Management points out that this operating restriction was included in the Environmental License and that the environmental agency continues to supervise compliance with it to the present date.[211] Management asserts that the Bank identified the license as a risk mitigating measure, which is common practice in accordance with the roles and responsibilities of the various parties under the Concession Agreement.[212]

2.128 **Non-existence of mechanisms to supervise compliance with the Environmental License**. While the Bank did not identify the risks of Aerocivil involvement as a third party responsible for noise issues, the MICI found that the existence of the Environmental License was identified by the Bank as a mitigating factor for noise-related risks. Accordingly, any failure to comply with the provisions of the license would be reported to the Bank and handled appropriately. The MICI has inquired into how this procedure for monitoring compliance with the Environmental License, reporting the results to the Bank, and establishing corrective and/or management measures was determined. In this regard, both the meetings conducted during the compliance review process[213] and the documents examined show that the Bank did not set up any mechanism, either directly with Aerocivil or through the Bank's Client or the consulting firm responsible for Project supervision, or through other authorities involved, that would enable the Bank to monitor Aerocivil's compliance with the Environmental License and thereby verify fulfillment of the mitigation measure that the Bank considered appropriate for this Project. It is evident to the MICI that OPAIN developed an internal structure and plans to monitor regulatory compliance; however, this was strictly limited to the components for which it was responsible under the Concession Agreement. Considering this, the MICI concludes that there was no compliance monitoring mechanism for the Project covering the entirety of the obligations governing Airport operations under the Environmental License. By the same token, there were no measures for handling noncompliance, even though the Project documents indicate that such noncompliance would be reported and handled.

2.129 **Absence of a joint management plan and technical collaboration strategy for noise management**. The Bank stated that it supported the design of a management plan for associated risks to be implemented by Aerocivil.[214] Management confirmed to the MICI that this plan consisted of the document "Monitoring of IDB Requirements" prepared by OPAIN. The MICI found that this document [redacted]

[redacted]

[211] IDB response to the Supplemental Request, section 3(b).

[212] Management's comments on the Supplemental Request, page 2.

[213] Meetings with OPAIN, Management, and Golder.

[214] IDB response to the Supplemental Request, section 3(c).

[redacted] The MICI considers that the existence of a noise abatement manual and the various conditions provided in the Environmental License, while important for operating an airport, are not in themselves sufficient in this case to mitigate the risks that could arise from Aerocivil's potential inability to properly manage and/or handle noise-related impacts. The MICI finds that the Bank failed to examine this problem.

2.130 On the other hand, the Bank argues that it has followed and applied a proactive strategy to foster communications between OPAIN and Aerocivil, advising Aerocivil of the risks of failing to properly assess the noise-related impacts of operating the Second Runway during nighttime hours while Aerocivil was considering requesting an exception to the restrictions of the Environmental License. The Bank indicates that, while it was contractually unable to ensure compliance with responsibilities that are incumbent upon Aerocivil, it proactively worked to keep in continuous contact with OPAIN and Aerocivil throughout the due diligence process and beyond it. This included keeping the communities informed on the maintenance activities that required lifting the restriction on nighttime use of the runway, improvements in operational aviation practices, and modeling of noise-related impacts.[215]

2.131 In this regard, the MICI has found no mention in any Project document of this process of developing contacts between the two entities or any mention of advice provided to Aerocivil by the Bank. At the same time, the MICI has not had an opportunity to meet with representatives of Aerocivil to confirm this type of information.[216] However, in meetings with the MICI, the executing agency indicated that its relationship with Aerocivil was limited to the matters provided in the Concession Agreement and that any noise-related matter was outside its scope of relations with Aerocivil, which are confined to the normal communication channels designed to ensure that OPAIN makes timely provision of ground services for aircraft arriving at or departing the Airport.

2.132 In view of the above, the MICI believes that **the Bank did not develop a joint management plan between the Client and the involved third party to manage the risks associated with incremental noise from the Airport, and that the Project documents do not establish the existence of any technical collaboration between the Bank and Aerocivil in this regard**.

2.133 Lastly, the MICI believes it is important to refer to the risks associated with the delicate social and environmental concerns described in Directive B.4, even though

[215] Management's comments on the Supplemental Request, section 3(c).

[216] The MICI requested meetings with Aerocivil during its mission to Bogota; however, Aerocivil was not available to have these meetings.

these concerns have not been raised by the Requesters. During the compliance review process, the MICI has had the opportunity to confirm that the concern of the communities adjacent to the Airport over the current and future impact of noise resulting from the Project is real and deep-seated and dates from the time of construction of the Second Runway. The concerns of the communities are many, including health effects, home soundproofing problems ranging from questionable effectiveness to associated harm, and the potential impact of aircraft vibrations on the structure of their homes. These are only some of the concerns that the MICI has heard both in meetings and in field visits to the areas adjacent to the Airport. In turn, these concerns are fed by frustration in view of the absence of clear communication and disclosure channels on the part of those involved, particularly Aerocivil (see section on Directive B.6). The MICI deems it appropriate to underscore that the Project documents do not reflect a thorough analysis of these social problems. These are problems which, while perhaps common for projects of this type, are associated with the management performance and institutional capacity of Aerocivil as a third party and therefore should have been identified and assessed for timely consideration and management of the risks that social discontent and concerns about the Project could pose for the Project's short- and long-term success.

2.134 The MICI concludes that the Bank did not comply with Directive B.4 by failing to identify the risks inherent in third-party management of noise-related impacts and consequently failing to institute specific measures to manage these risks.

5. On the provisions of Directive B.2 of the Environment and Safeguards Compliance Policy (OP-703) regarding compliance with national legislative and regulatory requirements

a. The Requesters' allegations

2.135 The Supplemental Request alleges that, in violation of Operational Policy OP-703, the Project fails to comply with Colombian environmental legislation and regulations. It asserts that the ESMR acknowledged that Aerocivil does not comply with the noise limits provided under national environmental legislation.[217]

2.136 In addition, the Supplemental Request argues that "given the acknowledgment that the Project would lead to an increase in noise levels, this failure to comply with national legislation should have been a priority issue for the IDB, and the IDB should at least have defined appropriate measures to ensure that OPAIN, as the borrower, and/or Aerocivil, as a third party, aligned the Project with national legislation."[218] The Supplemental Request also points out that "Aerocivil has a reputation for noncompliance with national environmental legislation and regulations" and that "many of these deviations and failures to comply on the part of Aerocivil led to the launch of an environmental investigation of Aerocivil."[219]

b. What are the provisions of Directive B.2?

2.137 Directive B.2 provides that:

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[217] Supplemental Request, page 12.

[218] Ibid.

[219] Ibid, page 11.

> The Bank will (…) require the borrower for that operation to ensure that it is designed and carried out in 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), [and] [i]n agreement with the borrower, the Bank will define appropriate measures to comply with Directives B.1 and B.2 (of Operational Policy OP-703).

c. MICI findings regarding compliance with Directive B.2

2.138 Due to the variety of issues involved, the Project is subject to multiple regulatory frameworks.[220] However, the MICI has limited the scope of this investigation to a review of compliance with noise regulations in view of the Request's focus on this issue.

2.139 In addition, it is worth noting that the Airport operates under the Environmental License granted to Aerocivil through Resolution 1330 of 7 November 1995 and subsequently modified and supplemented through Resolutions 1389 of 1995, 392 of 1996, 768 of 1996, 405 of 1997, 534 of 1998, and 745 of 1998, among others. In 2009, this license was partially transferred to OPAIN through Resolution 1001 of June 2009. Similarly, Appendix I of the Concession Agreement regulates environmental considerations in the context of contractual performance and spells out which obligations are to be assumed by OPAIN and which are to remain the responsibility of Aerocivil. In this regard, the MICI finds that the primary legal framework governing the Project on issues of noise is comprised of the national regulations on noise emissions and on environmental and health protection, the ICAO regulations, the Environmental License, the Concession Agreement, and the specific regulations applicable to the obligations transferred to OPAIN.

2.140 Colombian regulations relating to noise establish maximum permissible noise levels to prevent and control nuisances and hearing impairment and losses among residents due to noise emissions. Specifically, the regulations provide a maximum level of 65dB from 7:01 a.m. to 9:00 p.m. and 45 dB from 9:01 p.m. to 7:00 a.m. in residential areas.[221] Regarding the location, construction, and operation of airports, the regulations specify that nearby land may be used only for agricultural, industrial, or commercial purposes or as open fields, except for emergency medical and law enforcement facilities.[222]

2.141 Appendix I of the Concession Agreement specifies that OPAIN is responsible for complying with the environmental obligations under the Environmental License that have been transferred, which include (i) building an engine testing area; (ii) complying with the solid waste management plan; (iii) continuing with the surface water and groundwater monitoring plan; and (iv) performing aircraft weighing. This

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[220] For example, regulatory frameworks governing solid waste management, wastewater treatment, and storage of hazardous materials.

[221] Resolution 8321 of 1985, providing regulations on the protection and preservation of the hearing, health, and well-being of residents from noise production and emissions, Article 17. Along similar lines, MAVDT Resolution 0627 of 7 April 2006 establishing national regulations on noise emissions and ambient noise, Article 17.

[222] Resolution 8321 of 1985, providing regulations on the protection and preservation of the hearing, health, and well-being of residents from noise production and emissions, Article 17.

agreement expressly exempts OPAIN from noise mitigation and social management obligations, which would remain Aerocivil's responsibility.[223]

2.142 The due diligence review pointed out that [redacted]

2.143 With regard to compliance with Directive B.2, the Project documents indicated that Appendix I of the Concession Agreement and the health, safety, and quality management system (HSEQ) OPAIN was structuring were respectively aimed at compliance and monitoring of compliance with the national environmental legislation in effect.[227] [redacted]

2.144 Lastly, in terms of international standards, it was established that the Project needed to comply with the ICAO standards of environmental protection from noise pollution and that OPAIN agreed to implement the environmental standards of the World Bank in its engineering, procurement, and construction (EPC) contracts.[231]

2.145 The HSEQ system, also known as OPAIN Comprehensive Management System (SIGO), is comprised of various plans, programs, and manuals dealing with environmental, occupational health, industrial safety, contingency, emergency,

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[223] Appendix I to the Concession Agreement, pages 4 and 7.

[224] Draft report on the environmental and social due diligence review of June 2008, page 91.

[225] March 2010 update of the environmental and social due diligence review, page 54.

[226] Ibid.

[227] ESMR, paragraph 3.21. [redacted]

[228] The HSEQ system or OPAIN Comprehensive Management System (SIGO) mentioned by the Bank contains the various plans, programs, and manuals dealing with environmental, occupational health, industrial safety, contingency, emergency, maintenance, and security issues related to the activities that were to be carried out by OPAIN under the Project. See ESMR, paragraphs 6.1 and 6.2.

[229] March 2010 update of the environmental and social due diligence review, page 38.

[230] SPF, B.2.

[231] [redacted] Also, ESMR, paragraph 3.19. [redacted]

maintenance, and security issues related to the activities that were to be carried out by OPAIN under the Project.[232]

2.146 At the same time, the MICI found that the action plan prepared in the context of the due diligence process[233] included requirements for OPAIN regarding environmental legal management and compliance. [redacted]

2.147 In reviewing the action plan, the MICI found that the socioenvironmental context component specifically stated that "according to the noise monitoring results, airport operations have recorded values that exceed the limits provided in national environmental legislation (Resolution 627 of 2006)."[235] However, the plan includes an explanatory note indicating that "noise control and prevention measures as well as noise monitoring are the responsibility of Aerocivil in accordance with the Concession Agreement and the Environmental License."[236]

2.148 [redacted]

2.149 In an interview with the Panel, Golder explained that it did not assess or monitor the issue of incremental noise since it was not an OPAIN obligation. Golder confirmed that the components of the action plan were those strictly and solely related to OPAIN. For the same reason, the due diligence process did not include a review of Aerocivil's compliance.[239]

2.150 The MICI observes that the ESMR examined the various roles and responsibilities of Aerocivil (in charge of the airport's airside component) and OPAIN (in charge of the landside component) and recalls that "compliance with environmental authorizations is closely associated with the contractual conditions and environmental aspects transferred by Aeronáutica Civil." The ESMR established that as part of the loan contract, the Bank requires that OPAIN comply with all

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[232] ESMR, paragraphs 6.1 and 6.2, page 22.

[233] [redacted]

[234] Review and update of the environmental, social, and health and safety action plan, Golder Associates, June 2012, Annex B, page 17.

[235] April 2010 action plan, page 2; and December 2011 action plan, page 2.

[236] Ibid.

[237] Second semiannual monitoring, September 2013; Third semiannual monitoring, December 2013; Fourth semiannual monitoring, October 2014; and Fourth semiannual monitoring, corrective action plan, December 2014.

[238] Semiannual monitoring of the status review of the environmental, social, and health and safety action plan, second quarter 2013, page 6.

[239] Interview with OPAIN in Bogota.

environmental, social, health, and safety legal requirements in Colombia as well as permits, authorizations, or licenses applicable to the Project, including restrictions on the use of the First Runway.[240]

2.151 [redacted]

2.152 Regarding noise, the MICI confirmed that the ESMR recorded the results of the noise monitoring network installed by Aerocivil, acknowledging that the results exceed the limits established under Colombian legislation, and considered that this noncompliance could be related to the increase in west-bound nighttime operations.[243]

2.153 In addition, during its investigation, the MICI found a series of OPAIN plans for implementing its environmental obligations. In this regard, the environmental plan PLN-AMB-002 was aimed at ensuring compliance with the environmental legal requirements applicable to the Concession Agreement.[244]

2.154 Regarding the information available on Aerocivil's compliance with its noise-related obligations, the MICI found that the diagnostic assessment of the Airport's environmental status commissioned by OPAIN prior to receiving the facilities reviewed the status of Aerocivil's compliance with national legislation as of 2006. This document concluded that it was unclear whether Aerocivil was in compliance with noise-related legal requirements such as: (i) performing noise monitoring specifically for the Second Runway; (ii) presenting an air, noise, and water quality report and an analysis of the possible reasons why the Ldn parameter recorded in 2004 is higher in station R1 than in station R6; (iii) presenting a consolidated report of the activities performed in 2003 and 2004, including dates, types of aircraft employed, routes, and type of operation; (iv) submitting a list of the airlines that have been warned over the past two years for failing to comply with noise abatement procedures and for creating excessive noise levels over the city; (v) optimizing the monitoring network; (vi) submitting documents that comply with the procedures of Annex 16, Chapter III, of the Convention on International Civil Aviation with regard to noise levels; (vii) submitting an updated property census that includes all housing units and social and community service buildings subject to noise levels of 65 dB to 75 dB; (viii) ensuring a minimum noise abatement of 65 dB in the interior of each soundproofed building and home; (ix) implementing the mitigation measure proposed in the environmental impact assessment's social management plan; (x) 15 days prior to the property census, conducting information-sharing and disclosure workshops with the community currently affected and to be affected in the future by exposure to noise levels exceeding 65 dB; and (xi) conducting

240 ESMR, paragraphs 2.18, 3.14, and 8.1.

241 CTA, Annex 6, page 1.

242 CTA, page 59.

243 ESMR, paragraphs. 4.4. and 4.5.

244 Environmental plan, PLN-AMB-002, page 4.

information-sharing and training workshops with the affected communities on the major aspects of the mitigation measures and on community responsibility for these measures.[245] There is no evidence in the Project documents of any subsequent review to verify compliance with these regulatory issues.

2.155 Similarly, as indicated in the section on Directive B.4, the MICI confirmed that Aerocivil was subject to preventive measures, investigations, and sanctions due to its failure to comply with the Environmental License.[246] In addition, the MICI had access to environmental compliance reports (ICAs), monitoring reports, and other documents submitted by Aerocivil to the ANLA[247] reflecting events between 2009 and 2015 in which the permitted noise levels were exceeded.[248]

2.156 The MICI did not find any references to these instances of Aerocivil noncompliance in the Project documents.[249] In this regard, in a Panel interview with the project team it was confirmed that Aerocivil's noncompliance or potential noncompliance was not considered for purposes of the Project as the analysis was confined to OPAIN's obligations under the Concession Agreement. The Project team explained that the noise mitigation measure consisted of the runway operating schedules and these were being complied with, notwithstanding some exceptions. Regarding the Bank's ability to monitor noncompliance by Aerocivil, the project team indicated that OPAIN's obligation was to report only its own instances of noncompliance[250] and not Aerocivil's; that the Bank does not have a mechanism for receiving information from Aerocivil on its noncompliance; and that the project team's approach was to attempt to work proactively with Aerocivil to the extent possible.[251]

d. Determination of noncompliance with Directive B.2

2.157 Management indicated that, as part of the loan contract, the Bank requires that OPAIN and all Project participants comply at all times during the effective term of the contract with all environmental, social, health, and safety legal requirements in Colombia as well as with all permits, authorizations, or licenses applicable to the Project, including restrictions on the use of the First Runway (sic). The Bank indicated that on all projects, it is common practice for an independent consultant to review the Project's compliance with the provisions of the loan contract, and that, in this case, there has been no reported noncompliance with the requirements of the Environmental License.[252] The Bank added that it analyzed the status of Airport compliance with licenses, permits, and implementation of environmental plans,

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[245] Preliminary diagnostic assessment, 14 January 2007, Table 5.1., Legal evaluation matrix, pages 13-15.

[246] Not having had access to most of the reports containing the conclusions of the Aerocivil investigations, the MICI is unable to provide a more exhaustive list of the instances of Aerocivil noncompliance.

[247] These documents were sent by ANLA to the Compliance Review Panel in July 2016.

[248] Included those filed as 4120 E1-130144 8 August 2010 ICA- 1b 6.5.2; those filed as 4120 E1-21903 24 February 2012 ICA- 1b 6.5.3; those filed as 4120 E1-13016 22 March 2013 ICA- 1b 6.3.3; those filed as 4120-E1-290 07 January 2014 ICA-1a 6.3; those filed as 4120-E1- 16688 02 April 2014 ICA-1b 6.3.3; those filed as 2016012350-1-000 10 March 2015 ICA - 1B, and those filed as 215047625-1-000 10 September 2015 ICA- 1b. The MICI has not had access to the ANLA reports analyzing Aerocivil's environmental compliance reports.

[249] Regarding this point, it only found what is set forth in paragraph 4.5 of the ESMR.

[250] This is also evident from [redacted] and the ESMR.

[251] Interview with the project team in Washington, D.C.

[252] IDB response to the Supplemental Request, section 3(g).

programs, and systems, and that based on this analysis and the due diligence findings, an action plan was prepared and agreed upon prior to the Project's approval by the Board of Executive Directors.[253]

2.158 The MICI considers that the Bank evaluated OPAIN's fulfillment of its obligations under the partial transfer of the Environmental License. The MICI confirmed that the Bank operated based on the division of responsibilities between OPAIN and Aerocivil under the partial transfer of the Environmental License and under the Concession Agreement.[254] Consequently, the Bank's analysis of compliance with Directive B.2 focused solely on the Borrower's obligations under Appendix I of the Concession Agreement, which among other things, exclude noise-related issues. In this regard, the MICI believes it has been shown that the Bank performed a series of analyses on OPAIN's fulfillment of its obligations throughout the various stages of the Project and verified that they were being fulfilled[255] or, when applicable, established mechanisms for abiding by the regulations, which is consistent with the Bank's policy.

2.159 Nonetheless, the MICI highlights that Management's argument for deeming Directive B.2 to have been observed in the Project is insufficient. The Bank asserted that the directive was being complied with because both Appendix I of the Concession Agreement and OPAIN's HSEQ system "are aimed at fulfillment and monitoring of compliance with environmental legislation."[256] The MICI points out nonetheless that while these instruments respectively delineate the obligations of the concessionaire and establish a management system, they do not of themselves guarantee that the operational policy's objective, namely for the Bank to ensure that the Project is designed and executed in compliance with Colombian legislation, will be fulfilled. In this regard, the MICI wishes to make it clear that the determination of compliance with this policy is the result of findings on the Bank's performance in the due diligence process and the absence of evidence indicating that OPAIN at any time failed to fulfill its legal obligations as concessionaire.

2.160 **The Bank excluded from its analysis a review of the Airport's compliance with the Environmental License.** With regard to the Requesters' argument that the permissible noise levels were being exceeded, Management asserts that the following should be taken into account: (i) the values [noise measurements] are instantaneous and have not been averaged; and (ii) the ESMR indicates that these high measurements are quite probably linked to the increase in nighttime operations.[257] Accordingly, Management pointed out that the Environmental License allows for exceptions to nighttime use of the Second Runway for purposes of performing maintenance on the First Runway.[258]

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253 Ibid, section 3(c).

254 See Appendix I Concession Agreement; and Resolution 1330 of 7 November 1995.

255 See, *inter alia*, ESMR; [redacted]

256 ESMR, paragraph 3.2, page 9 and Management's response to the Supplemental Request, page 6.

257 IDB response to the Supplemental Request, section 3(h).

258 Ibid.

2.161 The Bank also indicated that the strategy of the Project team has always been to ensure that the Airport continues to operate in compliance with the Environmental License, which restricts nighttime operations to mitigate the impacts of noise. The Bank further indicates that any deviation from or failure to comply with the license must be reported to the Bank and properly handled to ensure compliance.[259] However, the MICI found no evidence of any mechanisms for reporting noncompliance to the Bank or of a strategy to monitor such noncompliance.

2.162 In fact, as shown in the findings section, Aerocivil was investigated at various times by the ANLA and penalized on several occasions for failing to fulfill its obligations regarding noise. However, there is no evidence that OPAIN ever reported such noncompliance to the Bank or that the Bank had any mechanism in place to evaluate or in any way influence Aerocivil's noncompliance affecting Airport operations.

2.163 In addition, the MICI found that, despite identifying a risk of incremental noise due to expanded operations as a result of the Project as well as noise levels exceeding the allowable limits,[260] and despite having recognized the possibility of noncompliance by Aerocivil,[261] the Bank failed to take any steps to include these circumstances in its analysis of compliance with Directive B.2. In this regard, the MICI refers to the section on Directive B.4, which contains a detailed analysis of the areas of connection between the Project and the responsibilities of Aerocivil as a third party, as well as to what has already been indicated with respect to Directive B.5.

2.164 In short, the considerations, coupled with the conclusions regarding Directives B.4 and B.5, lead to the determination that **the Bank failed to comply with Directive B.2**., since it had not examined the Airport's compliance with national noise control regulations within the Project framework.

6. On the provisions of Directive B.6 of the Environment and Safeguards Compliance Policy (OP-703) regarding consultations with the affected parties

a. The Requesters' allegations

2.165 The Requesters allege that they were not consulted about the Project or informed of the relevant environmental analyses or social mitigation measures. They point out that, in violation of Operational Policy OP-703, an ESMP was not prepared in consultation with the affected parties prior to the approval of the Project. They consider that "there should have been consultations with the affected parties during [Project] preparation or review to enable [them] (…) to form an opinion and make comments on [the Project]."[262]

2.166 In addition, they assert that "there were no consultations or information on the specific effects of an expansion of operations in terms of noise, environmental pollution, or vibrations," and that "the IDB did not have any contact with the

[259] Ibid, section 3(c).

[260] ESMR, paragraphs 4.4. and 4.5.

[261] Interview with the project team; Preliminary diagnostic assessment, 14 January 2007, Table 5.1., Legal evaluation matrix, ConCol, pages 13-15; [redacted]

[262] Supplemental Request, page 10.

communities regarding these effects, much less regarding soundproofing measures."[263]

2.167 The Requesters indicate that the parties affected by projects classified as Category "B" operations must be informed of the relevant environmental analyses and the social mitigation measures affecting them, yet OPAIN has failed to fulfill these obligations. They add that the information dissemination activities carried out by OPAIN and Aerocivil "had to do with issues such as extended schedules" and residents were told that there are no noise-related effects. Furthermore, the Requesters point out that these activities have been carried out "after the transfer of the concession and construction thereunder." [264]

2.168 Lastly, in the view of the Requesters, OPAIN insists that the creation of 121 temporary jobs over a period of seven years and the outreach to the community's children during the Christmas season satisfies the consortium's social responsibility to the community of Fontibón. However, the Requesters assert that the residents of Fontibón suffer daily due to their proximity to the Airport and believe that the communities should receive support from OPAIN in the form of access to economic and employment opportunities.[265]

b. What are the provisions of Directive B.6?

2.169 Directive B.6 provides that:

> As part of the environmental assessment process, Category "A" and "B" operations will require consultations with affected parties and consideration of their views. Consultations with other interested parties may also be undertaken in order to consider a broader range of expertise and perspectives. Category "A" operations will be consulted at least twice during project preparation, during the scoping phase of the environmental assessment or due diligence processes, and during the review of the assessment reports. For Category "B" operations, affected parties must be consulted at least once, preferably during the preparation or review of the ESMP, as agreed with the borrower. For consultation purposes, appropriate information will be provided in location(s), format(s) and language(s) to allow for affected parties to be meaningfully consulted, to form an opinion, and to comment on the proposed course of action. EIAs and/or other relevant environmental analyses will be made available to the public consistent with the Bank's Disclosure of Information Policy (OP-102). During execution, affected parties should be kept informed of those project-related environmental and associated social mitigation measures affecting them, as defined in the ESMP.

c. MICI findings regarding compliance with Directive B.6

2.170 The MICI found that, starting with the Project Concept Document and the ESS, the Bank established that the due diligence process should include an analysis of information disclosure to and consultation with the parties potentially affected by the

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[263] Ibid.

[264] Ibid, pages 10, 11, and 14.

[265] Ibid, page 14.

Project, including Airport employees and users and the neighboring communities.[266]

[redacted]

The ESMR confirms this information and considers the consultation requirement for this Project to have been fulfilled.[269]

(i) Public hearing

2.171 With regard to the aforementioned public hearing, the Project documents indicate that this event was used to present the positions of the Ministry of Transportation, Aerocivil, and the District Planning Department, as well as the "complaints and proposals of the affected communities, particularly those of Fontibón and Engativá," and that one of the commitments emerging from the public hearing was to create roundtables with the communities.[270]

2.172 After reviewing the video and minutes of the public hearing prepared by the Office of the Comptroller General, the MICI found that the issues addressed at the hearing "focused on public policy, the land-use plan, consolidation of the large-scale project, and performance under the [C]oncession [A]greement." In addition, the Minister of Transportation, the Governor of Cundinamarca, and the District Secretary of Industrial Planning gave presentations which, generally speaking, highlighted the strategic importance of the Airport and described the steps being taken to contribute to the success of the Project.[271] The information presented by OPAIN at the hearing was in reference to the final design of Terminal II and included an overview of the characteristics and benefits of the Project.[272] The information presented by Aerocivil

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266 Project Concept Document, October 2006, paragraph 9.5, and ESS, paragraph 1.7.

267 Draft report on the environmental and social due diligence review, June 2008, page 84. See also, Monitoring of IDB Requirements, OPAIN, page 2.

268 March 2010 update of the environmental and social due diligence review, page 40. June 2012 review and update of the environmental, social, and health and safety action plan, page 27.

269 ESMR, paragraph 3.23.

270 ESMR, paragraph 7.5 and 7.6; [redacted]

271 Minutes of informational public hearing, 20 February 2009, pages 3 and 5-16, and video of the public hearing.

272 The presentation included statistics on revenue and passenger traffic, management indicators, operation and maintenance information, and milestones in the expansion and modernization works and in social responsibility activities. See PowerPoint presentation by OPAIN on the Airport expansion at the public hearing, 2009; video of the public hearing; and minutes of informational public hearing, 20 February 2009, pages 12-14.

was primarily in reference to performance under the Concession Agreement and the schedule for the works.[273]

2.173 The minutes indicate that roughly 250 people attended on behalf of various sectors of society and other government agencies.[274] There were a total of 19 sets of remarks by Airport users, other government authorities, and members of the community, dealing with concerns on issues that ranged from the need to optimize the Airport's efficiency to flight delays, potential resettlement, loss in property values, impact on access roads, and urban renewal in the area due to the Airport's expansion. There were also allegations of lack of accurate information on these issues and of deficient community participation mechanisms.[275] Two of the 19 sets of remarks dealt to some extent with concerns regarding the increase in noise levels.[276]

(ii) Roundtables

2.174 The environmental licensing process carried out in 1995 for construction of the Second Runway included an agreement to conduct information disclosure and training workshops with the community. These workshops subsequently became known as airport roundtables.[277] According to Project-related information, the objective of these roundtables is to [redacted] and that this participation satisfies the consultation requirements for Category "B" projects.[279]

2.175 In addition, the Project-related information indicates that Aerocivil and OPAIN hold "meetings with the communities of Fontibón and Engativá (…) on a quarterly basis" and that "there is a social management subprogram, which is reviewed and updated monthly."[280] However, according to information provided by OPAIN in the course of this investigation, the airport roundtables are different from OPAIN's quarterly meetings with the community.[281] These quarterly meetings are held under OPAIN's social management plan[282] and are designed to maintain contact with specific community leaders other than those who participate in the airport roundtables and to address certain concerns, such as those related to the possibilities of employment

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[273] Minutes of informational public hearing, 20 February 2009, pages 12-14; and video of the public hearing.

[274] Minutes of informational public hearing, 20 February 2009, page 3. By email dated 31 August 2016, Management confirmed to the MICI that it does not have the attendance list for the hearing.

[275] Ibid, pages 17-25.

[276] Ibid, pages 19-21.

[277] Resolution 1330 of 1995.

[278] Update of the environmental and social due diligence review for the project "Modernization and Expansion of the El Dorado International Airport," Bogota, Colombia, March 2010, pages 40, 98, and 99.

[279] ESMR, paragraph 3.23, [redacted]

[280] December 2011 update of the environmental and social due diligence action plan, page 2.

[281] The MICI notes that some documents refer to these meetings as quarterly "roundtables."

[282] Social management plan, versions 01 and 02.

at the Airport.[283] The MICI found records of some of these meetings held in 2011 but did not have access to any of the minutes describing their content.[284]

2.176 With regard to the airport roundtables, the MICI found [redacted] However, the MICI has been unable to locate any documentary record showing when OPAIN actually participated in these roundtables or the content of such participation.[286] The Borrower stated that it attended these roundtable sessions on some occasions at Aerocivil's invitation but as a passive participant, since participating was not a contractual requirement.[287]

2.177 Finally, the MICI found that Aerocivil believed that the airport roundtables "show limited commitment and reliability" as well as "limited acceptance of Aerocivil's noise mitigation and dispute resolution procedures."[288]

(iii) Other channels for community relations and communications

2.178 The interviews conducted by the Panel in Bogota showed that the Borrower limited its activities in the area of community relations since they are not part of its responsibilities under the Concession Agreement.[289] In this regard, OPAIN has a social management plan that provides directives for interaction with the community, Aerocivil, employees, Airport users, and suppliers, as well as a social management subprogram that acts as a control and monitoring mechanism.[290] The different

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283 Panel interview with OPAIN, Bogota.

284 According to the social management subprogram reports, all meetings scheduled for 2011 took place. In 2009, there is no mention of any roundtables, and in 2012 only one meeting is shown as having been scheduled (in February). See social management subprogram, 2009; social management subprogram, 2011; and social management subprogram, 2012.

285 Monitoring of IDB requirements, OPAIN, page 2.

286 The MICI found no record of OPAIN participation in the roundtables in any of the following documents, among others: social management subprogram, 2009; social management subprogram, 2011; social management subprogram, 2012; social management plan, version 1.0, 2009, social management plan, version 2.0; [redacted] and environmental, social, and occupational health action plan of 2010. [redacted] References to other roundtables are not necessarily to airport roundtables. For example, OPAIN's social management policy indicates that OPAIN develops direct contact with the community "through roundtables, skills training, outreach activities, and celebration of special events." See social management policy, version 01, and social management plan, version 2.0., both by OPAIN. In other documents, the airport roundtables are mixed up with the quarterly roundtables. [redacted]

287 Panel interview with OPAIN representative and Panel interview with Golder representatives.

288 Additional information in response to decision 2910 of 13 September 2012 and decision 2911 of 2013 – ANLA. Environmental impact assessment for modification of the environmental license for Bogota's El Dorado International Airport, page 448.

289 [redacted]

290 Social management plan, OPAIN, version 2.0.

versions of the environmental, social, and occupational health action plan refer to these instruments on social matters.[291]

2.179 During its investigation mission in Bogota, the Panel also conducted interviews with representatives of the community and inquired about the style of communications between the communities and Aerocivil and OPAIN. The consistent responses of those interviews were: (i) they are not satisfied with the community relations process followed by Aerocivil and OPAIN; (ii) the community members feel that they have not participated in appropriate mechanisms for purposes of learning the impacts of the Project, they have not been properly informed of the impacts and mitigation measures, and their opinions have been disregarded in the decision-making process; (iii) Aerocivil and OPAIN have arranged private meetings with selected individuals on specific issues; and (iv) OPAIN and Aerocivil have erroneously considered that community participation in meetings under the Buen Vecino [Good Neighbor] program[292] and on other issues is evidence of direct community support for the Project. In addition, the interviews showed that the communities are not clear as to who is responsible for managing the Airport's noise and other impacts.[293]

2.180 Lastly, the MICI found that Aerocivil has identified serious difficulties in the community relations programs [redacted] and that Aerocivil considers that there is mistrust in the community toward the processes it initiated.[295]

d. Determination of compliance with Directive B.6

2.181 For purposes of this review, the MICI verifies whether the Bank complied with the requirements of Directive B.6 regarding Category "B" projects. However, in line with the conclusions of paragraphs 2.28 and 2.29 on noncompliance with Directive B.3, the Project should comply with the provisions applicable to Category "A" operations.

(i) The 2009 public hearing failed to satisfy the requirement of consulting with the parties affected by the Project

2.182 **The public hearing failed to provide adequate information**[296] **on the Project's potential impacts and mitigation measures or on the proposed course of action**. The MICI found that, while the stated objective of the public hearing was to "inform the community of the progress, problems, and outlook for the El Dorado

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[291] See environmental, social, and occupational health action plan, December 2011, page 10; environmental, social, and occupational health action plan, June 2012, page 11; both by OPAIN.

[292] Led by Aerocivil, the Buen Vecino [Good Neighbor] social management program is a citizen participation project aimed at supporting activities to improve airport safety and living conditions for the population adjacent to the airport. See Resolution 755 of 2010, page 8.

[293] Interviews conducted by the Panel in Bogota.

[294] PMA Aeropuerto El Dorado Aerocivil, UTE CRHEAR S.A.-Ambiental Consultores & Cía. Ltda, 2000, page 112.

[295] Additional information in response to decision 2910 of 13 September 2012 and decision 2911 of 2013 – ANLA. Environmental impact assessment for modification of the Environmental License for Bogota's El Dorado International Airport, page 447.

[296] By way of illustration, it is important to bear in mind the definition of information under the Implementation Guidelines for Operational Policy OP-703: "Information is the first and essential step in communication. The information presented must be appropriate, meaning relevant, understandable to the recipient, precise, and timely." See Implementation Guidelines for Operational Policy OP-703, May 2007.

International Airport modernization and expansion project,"[297] no information was provided on the existing risks, difficulties, and impacts associated with the various stages of the Project or on mechanisms considered adequate for preventing, mitigating, or remedying these risks.[298]

2.183 As shown by the findings of the investigation, the participating stakeholders, primarily OPAIN and Aerocivil, merely provided general information on certain aspects of the Project without specifically delving into the Project's potential environmental and social impacts, including higher noise levels due to increased air operations in the expanded Airport, environmental pollution, and vibrations, or the proposed mitigation measures. On this point, the MICI stresses that a meaningful consultation should provide specific, detailed, and complete information allowing the affected parties to form an educated opinion on the potential impacts and the borrower's proposals for addressing them.[299]

2.184 In this regard, the MICI notes that the Project documents considered the consultation requirement under Directive B.6 to have been fulfilled, arguing that OPAIN's participation in the hearing offered it "an opportunity to present and explain the project and its scope to the general public, as well as to identify impacts arising from its execution, affected parties, and potential management measures that can be included in the ESMP."[300] The MICI considers that this approach is contrary to Operational Policy OP-703 because, while it is important that consultations allow the executing agencies to identify significant issues that may have been previously overlooked, the objective of a consultation is to provide adequate information to the affected parties to enable them to understand and form an opinion on already identified impacts and mitigation measures, among other things.

2.185 In view of this, the MICI observes that **the affected parties did not have access to accurate, relevant, significant, and timely information about the Project and its impacts as required under Operational Policy OP-703,**[301] preventing them from forming a full opinion and presenting comments. The MICI considers that the public hearing called by the Office of the Comptroller General in February 2009 fails to satisfy the Bank's requirement of at least one consultation with affected parties in Category "B" operations, since no information was provided at the hearing that could enable the affected parties to form an opinion or make comments on OPAIN's course of action for the Project.

2.186 The public hearing was not used to consult the parties affected by the Project or foster a constructive dialogue between these parties and the Borrower. The Bank did not verify beforehand that the affected parties had been identified and invited to attend the hearing. On the contrary, as pointed out above, the Project documents indicate that the hearing offered OPAIN an opportunity to present the Project "to the general public [and] identify [the] affected parties." In this regard, the MICI

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[297] Minutes of informational public hearing, 20 February 2009, page 1. [redacted]

[298] Directive B.6, OP, 703. See Guidelines on Consultation and Stakeholder Engagement in IDB Projects, July 2013, page 27.

[299] See Guidelines on Consultation and Stakeholder Engagement in IDB Projects, pages 3 and 7.

[300] ESMR, paragraph 3.23; [redacted]

[301] Implementation Guidelines for Operational Policy OP-703, definition of information, May 2007.

emphasizes that a meaningful consultation requires: (i) prior identification of the affected parties; (ii) that the affected parties actually be invited; and (iii) that the information provided be relevant and aimed at the affected parties rather than at the general public.[302] Thus, the MICI considers that using a public hearing to identify the affected parties distorts the objective of a consultation under Operational Policy OP-703.

2.187 In addition, the MICI notes that the Bank does not have the list of the approximately 250 people who according to the Comptroller's Office attended the public hearing, nor does it have any other information to verify what percentage of attendees were in fact individuals affected by the Project and, specifically, by the increase in noise levels due to Airport operations. However, the findings of the investigation show that only 4 of the 19 sets of remarks by the public were made by residents of the Project's area of influence.[303] In this regard, it is worth noting that at the time of the Bank's involvement, the population of Fontibón and Engativá totaled more than one million.[304] Thus, **the MICI considers that even if residents of the Airport's area of influence did participate, there was a failure to ensure the effective participation of a representative sample of the population living in the area of influence that would be directly affected by the Project**.

2.188 Moreover, the MICI notes that the hearing failed to foster a dialogue between the affected parties and OPAIN. As indicated above, the hearing consisted of a series of presentations by institutions involved in the Project, followed by 19 sets of remarks by the general public on various Airport-related issues, each lasting two to three minutes.[305] In this regard, the MICI points out that the objective of a consultation is not limited to informing and listening; instead, a consultation should foster a constructive dialogue between the Borrower and the affected communities in which the parties are willing to let their opinions be influenced. Furthermore, the points of view of the affected parties could ideally contribute to developing suitable Project planning and management.[306] In this case, the MICI finds that, rather than a dialogue between the affected parties and the Project proponent,[307] the public hearing was merely an informational event featuring presentations.

(ii) OPAIN's alleged participation in the airport roundtables is not a substitute for the requirement to organize at least one consultation, nor did it serve as a mechanism to keep the affected parties informed on the environmental and social

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[302] In this regard, see Guidelines on Consultation and Stakeholder Engagement in IDB Projects, July 2012, page 27.

[303] Minutes of informational public hearing, 20 February 2009.

[304] ESMR, paragraphs 4.8 and 4.9; [redacted]

[305] The hearing was held from 8:00 a.m. to 4:30 p.m. According to the minutes, registered attendees numbered "about 20 residents, who will be given the floor in groups of five and be allowed to speak for three to five minutes. The Comptroller or the relevant authority will then make comments on the issues touched upon by the residents and users of the air terminal." See Office of the Comptroller General, Minutes of informational public hearing, 20 February 2009, page 7.

[306] See Implementation Guidelines for Operational Policy OP-703, May 2007.

[307] See Public consultation with civil society: Guidelines for public and private executing agencies, IDB, 2016, page 22; and Guidelines on Consultation and Stakeholder Engagement in IDB Projects, page 15.

mitigation measures that could affect them during Project execution.

2.189 Management points out that, in its efforts to inform the communities of the environmental and social issues and mitigation measures, the Bank performed an important role by reinstating the working groups that were created in 1998 to communicate with the communities affected by construction of the Airport's Second Runway.[308] In addition, Management indicates that OPAIN has participated and continues to participate actively in committees and working groups focused on minimizing the Airport's reputational risks and keeping open channels of communications with the communities.[309]

2.190 The MICI found that OPAIN did not actively participate in the airport roundtables or use this format to provide information on the Project's specific impacts or the proposed environmental and social mitigation measures either prior to the Project's approval or during its execution.[310] The MICI found no records showing when OPAIN attended these airport roundtables or describing the nature of its participation. On the contrary, a review of the reports of OPAIN's social management subprograms,[311] [redacted] interviews by the Panel, [redacted] indicate that OPAIN did not consistently participate in the airport roundtables. In fact, the Borrower explained that when it did attend the roundtables, it did so at Aerocivil's invitation as an observer. Furthermore, it stated that its participation was restricted to the issues that concerned it under the Concession Agreement, which excludes anything related to social management and increased noise levels,[314] additionally pointing out that the quarterly meetings and the airport roundtables are two entirely different kinds of meetings.

2.191 The MICI also observes that, while the objectives of the airport roundtables could in some cases be related to the implementation of the Project, these events were not conceived solely or even primarily to enable the affected parties to form an opinion on the Project and present comments on the proposed course of action.[315] Consequently, even if OPAIN did participate, the roundtables are not a suitable mechanism for accomplishing the objective described in Directive B.6.

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308 Management's response to the Supplemental Request, 3.l.

309 Ibid, 3.d.

310 See Operational Policy OP-703, Directive B.6. In addition, in accordance with the guidelines of Directive B.6.

311 See social management subprogram, 2009; Social management subprogram, 2011; and Social management subprogram, 2012; all of which were prepared by OPAIN.

312 [redacted]

313 [redacted]

314 Panel interview with OPAIN in Bogota.

315 See, for example, Engativá Airport Roundtable, brief overview of the airport roundtable, 2009, page 2. See also Aerocivil press release, "Aeronáutica Civil strengthens mechanisms for participation with communities adjacent to the El Dorado airport," February 2014.

2.192 Coupled with the above, the MICI finds that the Bank failed to consider the operational difficulties inherent in these airport roundtables identified by Aerocivil[316] and therefore their ineffectiveness in achieving the objectives of a consultation as set forth in Directive B.6.

2.193 Based on the above, the MICI concludes that the Bank did not comply with the provisions of Directive B.6.

7. On the provisions of Directive B.7 of the Environment and Safeguards Compliance Policy (OP-703) regarding monitoring and fulfillment of safeguard requirements

a. The Requesters' allegations

2.194 The Requesters assert that the Bank failed to supervise the Project and ensure that mitigation measures would be implemented.[317] They argue that not only does OPAIN have certain responsibilities regarding noise mitigation but the Bank is responsible for ensuring that Aerocivil fulfills its responsibilities to mitigate existing noise as well as any increase in noise levels arising from the Project and the expansion of flight operations.[318]

b. What are the provisions of Directive B.7?

2.195 Directive B.7 provides that:

> The Bank will monitor the executing agency/borrower's compliance with all safeguard requirements stipulated in the loan agreement and project operating or credit regulations.
>
> Safeguard requirements, such as those in an ESMP must be incorporated into the project contract documents, its operating or credit regulations, or the project bidding documents, as appropriate, setting out as necessary milestones, timeframes and corresponding budgetary allocations to implement and monitor the plan during the course of the project. Safeguard indicators, as appropriate, should be clearly defined in the logical/results framework, followed up in project monitoring reports and reviewed in midterm reviews and project completion reports. Compliance with safeguard commitments and identification of unexpected safeguard issues will be analyzed, reviewed, and reported as part of Bank's administration and portfolio review missions.

c. MICI findings regarding compliance with Directive B.7

2.196 The MICI found that, under the Project and over the life of the loan, OPAIN was required to prepare and deliver an environmental and social compliance report to the Bank's satisfaction as to form and content on a semiannual basis during the construction period and on an annual basis following construction.[319] In addition, the

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316 See additional information in response to decision 2910 of 13 September 2012 and decision 2911 of 2013 – ANLA. Environmental impact assessment for modification of the Environmental License for Bogota's El Dorado International Airport, Chapter 6: Environmental Assessment, Table 6-11: Matrix of environmental impact assessment with project, page 23 and page 448.

317 Supplemental Request, page 13.

318 Ibid.

319 ESMR, paragraph 8.4.

Bank was required to monitor the environmental, social, and health and safety components through supervision activities to be performed internally by the Bank with the support of independent external consultants at the same intervals as established for OPAIN's reports.[320] With regard to OPAIN's compliance reports, the Bank only provided the MICI the two reports prepared for the 2014 period.[321]

2.197 In addition, a document review by the MICI shows that the loan contract establishes [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

2.198 [redacted]

2.199 [redacted]

2.200 The first semiannual monitoring performed by Golder was completed in December 2012 [redacted]

[320] Ibid, paragraph 8.5.

[321] [redacted]

[322] According to information provided by the project team, 90% to 95% of the loan conditions were provided in the CTA, while the remainder were reflected in the Credit Facility Agreement.

[323] CTA, paragraphs 6.5.1.1, 6.5.1.3, 6.5.1.4, and 6.5.1.8.

[324] First semiannual monitoring, page 1.

[325] Ibid.

[redacted]

2.201 The second semiannual monitoring was completed in September 2013. Regarding the Project's social management issue, the monitoring report indicated that the socioeconomic profiles of the communities were being updated. [redacted]

2.202 The third semiannual monitoring was completed in December 2013. [redacted] In addition to the social management issue, the report included an analysis of the legal environmental management and referred to the implementation of a corrective action plan designed to remedy [redacted]

2.203 The fourth semiannual monitoring was completed in October 2014. With regard to the social management issue, it indicated that, based on the review and update of the action plan, [redacted]

2.204 The fifth semiannual monitoring was completed in December 2014 and focused solely on following up on the corrective action plan and the issues included therein.[332] This final monitoring report did not address the Project's social aspects. Thus, the MICI found no records to verify whether OPAIN followed Golder's social management recommendations included in the third and fourth monitoring reports or Golder's conclusions regarding such compliance on the part of the Borrower.

d. Determination of compliance with Directive B.7

2.205 Directive B.7 focuses on the Bank's obligation to monitor its client's compliance with the safeguard requirements set forth primarily in the loan contract. In practical terms, this directive establishes two obligations for the Bank: the first is to create some form

326 Ibid, pages 16 and 30.

327 Second semiannual monitoring, page 18.

328 Ibid, page 26.

329 Third semiannual monitoring, page 2.

330 Fourth semiannual monitoring, page 20.

331 Ibid, page 7.

332 Fifth semiannual monitoring, page 7.

of monitoring system, while the second is to ensure that this system monitors compliance with the Project's safeguard requirements.

2.206 In its response to the Supplemental Request, the Bank asserts that Golder has been monitoring the Project on a semiannual basis since the financial closing; that Golder typically issues recommendations to address issues that have not been properly managed by the Client; and that OPAIN has satisfactorily implemented these recommendations. In addition, the Bank alleges that Golder is required to monitor the implementation of any corrective action in subsequent visits to ensure that the Project is following the Bank's environmental and social requirements.[333]

2.207 In this case, the MICI finds that, strictly speaking, the Bank's obligation was to establish a system to monitor OPAIN's compliance with the safeguards provided in the loan contract, which was signed only by the Bank and the Client. With regard to the Project monitoring processes, the MICI finds that the Bank indeed ensured the implementation of a semiannual monitoring system, which was focused on the action plans created by OPAIN and Golder for the Project[334] and included reviewing and monitoring corrective plans in cases of identified failures to fulfill safeguard requirements. This was in keeping with Directive B.7. However, the MICI notes that it does not have enough information to verify whether those systems were effective. While each of the Golder reports indicates corrective processes, there is no evidence that these attempts actually resulted in compliance with the Bank's safeguards, particularly regarding social management for which OPAIN was responsible.

2.208 Nevertheless, the MICI believes it is important to highlight the considerations of Directive B.5, in the sense that the Project did not provide an adequate environmental and social analysis and failed to correctly assess the impacts that the Airport would produce due to increased noise levels; consequently, it also failed to establish mitigation measures for these impacts in a management plan that would be included in the Project documents as a social and environmental safeguards requirement. Instead, the Project merely established that noise mitigation was Aerocivil's responsibility, thus limiting the scope of monitoring to matters falling within the purview of OPAIN under the specific terms of the Concession Agreement, which, as discussed in other sections, excluded management of the Airport's airside component.

2.209 In view of the foregoing, the MICI considers that the Bank complied with Directive B.7 by establishing a monitoring system to ensure that, during the Project's operating stage, OPAIN would fulfill the safeguard requirements provided in the loan contract. The MICI has been unable to confirm whether this monitoring system was effective in ensuring compliance with all commitments made by the Client, and considers that the Bank's instances of noncompliance with the provisions of Directive B.5 affect the other Project stages, including the monitoring stage.

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[333] IDB response to the Supplemental Request, section 3(c).

[334] [redacted]

8. On the provisions of Directive B.12 of the Environment and Safeguards Compliance Policy (OP-703) regarding projects under construction

a. The Requesters' allegations

2.210 The Supplemental Request mentions that the action plan failed to abide by the time frames required under Operational Policy OP-703,[335] specifically by not being ready prior to the Project's approval by the Board of Executive Directors.

b. Requirements under Directive B.12

Directive B.12 provides that:

> The Bank will finance operations already under construction, only if the borrower can demonstrate that the operation complies with all relevant provisions of [Operational Policy OP-703]. If, as part of the Bank's analysis/due-diligence of a proposed operation that is already under construction, noncompliances with relevant safeguard Directives of [Operational Policy OP-703] are identified, then an action plan must be submitted to the Bank prior to Board approval of the operation. The action plan shall define the actions and associated schedule for the timely resolution of such noncompliances […].

2.211 Implicit in Directive B.12 is the definition of project under construction provided in Section VI of Operational Policy OP-703, which states that "a project is under construction if, prior to entering the Bank's pipeline, the borrower has initiated major works for the projects, where initiating major works imply on site physical construction of the project."

c. MICI findings regarding compliance with Directive B.12

2.212 In the document review, the MICI found that, according to the [redacted], Directive B.12 was applicable to the Project since the operation was already under construction by the Borrower.[336]

2.213 Along the same lines, in the section dealing with the directives applicable to the Project, the ESMR established that Directive B.12 was directly applicable and that, as part of its environmental and social due diligence, the Bank had analyzed the Airport's compliance with the environmental licenses and permits and implementation of environmental plans, programs, and systems. The Bank indicated in the ESMR that a plan of action would be prepared based on this analysis and would be agreed upon prior to the operation's approval by the Board of Executive Directors.[337]

2.214 The documentary review also showed that the Project entered the Bank's pipeline[338] on 27 March 2007;[339] OPAIN had begun operating the Airport in January 2007; the

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[335] Supplemental Request, page 11.

[336] [redacted]

[337] ESMR, paragraph 3.27.

[338] For non-sovereign guaranteed operations, a project is considered to be in the Bank's pipeline once a mandate letter has been signed by the Bank and the executing agency.

[339] Timeline facilitated by the Project team.

works to be financed by the Bank were commenced in March 2008;[340] and the Project was approved by the Board of Executive Directors on 3 December 2010.[341]

2.215 In addition, the MICI's document review showed that a due diligence update was performed in March 2010 and a matrix labeled "Environmental and Social Due Diligence Action Plan, April 2010" was created jointly with OPAIN. This matrix contained actions related to the management of requirements and due diligence findings and established the responsible parties and the timetable for carrying out the relevant actions.[342] This plan was followed by an update in 2011[343] and a review and update in 2012.[344] The purpose of these updates was to evaluate and confirm progress in implementing the action plan and confirm whether the plan was adequate.[345]

d. Determination on compliance with Directive B.12

2.216 In its response to the Supplemental Request, the Bank recognized that, in cases of identified noncompliance with the safeguard directives, Directive B.12 requires that an action plan be submitted to the Bank before the operation is approved by the Board of Executive Directors.[346] The Bank indicated that, while the ESMR of September 2010 established that the action plan was to be submitted by the Borrower prior to the financial closing, this action plan had substantially been completed by the time the Bank concluded its due diligence, implying that the actions had already been identified and agreed upon with the Borrower before the Board of Executive Directors approved the Project. The Bank pointed out that paragraph 8.2 of the ESMR contains the key elements[347] of the action plan.[348]

2.217 The MICI found that the action plan was established jointly with OPAIN in April 2010, while Executive Board approval of the Project took place on 3 December 2010. Accordingly, the MICI estimates that Directive B.12 was followed regarding the time frame for submitting an action plan to the Bank.

2.218 The MICI notes that, after the approval of the Project, the Bank and the Borrower agreed on certain updates and revisions to the action plan. These were designed to assess and confirm progress on the plan's implementation; assess and confirm any update or modification of the environmental, social, health, and safety plans and

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340 Update to the El Dorado International Airport Master Plan, pages 2-7.

341 Timeline facilitated by the project team.

342 June 2012 review and update of the environmental, social, and health and safety action plan, page 1.

343 December 2011 update of the environmental and social due diligence action plan.

344 June 2012 review and update of the environmental, social, and health and safety action plan.

345 Ibid, page 1.

346 IDB response to the Supplemental Request, section 3(e).

347 The key elements of the action plan contained in the ESMR are references to the fact that the plan included a cost estimate, schedule of activities, and assignment of responsibilities for carrying out actions aimed at correcting the deficiencies and shortcomings of certain plans and procedures identified in the Bank's due diligence review, such as "renewing the dumping permit, resuming incinerator operation, reviewing the characteristics of the flood zones located within the Airport and how they are being managed in view of national wetlands legislation, separating the domestic wastewater, industrial wastewater, and stormwater systems, performing an environmental assessment of sites for hangars, repair shops, aircraft parking platforms, and storage areas for chemicals and hazardous materials, and generally supplementing the various plans and programs."

348 IDB response to the Supplemental Request, section 3(e).

management systems; and determine whether the plans for the Project construction stage were appropriate.

2.219 While the policy does not discuss the possibility of adjusting these plans, the MICI considers that having the option of adjusting or updating them is logical for projects of this type if the objective is to improve them.

2.220 In view of the above, the MICI concludes that the Bank complied with Directive B.12, since the action plan was delivered to the Bank within the time frame provided in the directive.

2.221 This section does not include an in-depth analysis of whether the Bank made certain that the Borrower had shown that the operation followed all provisions of Operational Policy OP-703,[349] as this question has been addressed in the various sections dealing with the other directives of this policy.[350]

9. Regarding the Disclosure of Information Policy (Operational Policy OP-102)

a. The Requesters' allegations

2.222 The Requesters allege that they had no information regarding the environmental analysis, identification of risks, and proposed mitigation measures. Specifically, they indicate that an environmental and social management plan (ESMP) should have been prepared for the Project, yet this ESMP never was, and is not now, available on the IDB website and the communities did not have access to, nor were they consulted on, such a plan. Furthermore, the Requesters allege that the IDB website does not provide enough information on environmental and social impacts and specific measures to mitigate them.[351]

b. Applicable version of Operational Policy OP-102

2.223 The IDB Group has a long track record of transparency and has had a policy in place regulating public disclosure of information since 1994. This policy has been revised and updated multiple times over the years. The current Access to Information Policy (document GN-1831-28) was approved by the Board of Executive Directors on 12 May 2010 and is applicable to information produced and received by the Bank on or after 1 January 2011. Previously, the Bank had a Disclosure of Information Policy (document GN-1831-18), updated in 2006 and applicable to information produced and received on or after 1 January 2004.[352]

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[349] Operational Policy OP-703, Directive B.12.

[350] See analysis of compliance with Directives B.2, B.3, B.4, B.5, and B.6, among others.

[351] Supplemental Request, 3 September 2014, page 10.

[352] In accordance with the glossary of the MICI Policy, the Relevant Operational Policy "is the version in effect at the time of Board approval of the Bank-financed Operation that is the subject of the Request, unless the relevant policy or legal documentation provides otherwise." At the time of approval of this operation (2 December 2010), the Disclosure of Information Policy of 2006 was in effect and is therefore the Relevant Operational Policy as defined in the MICI Policy. However, according to the Access to Information Policy of 2010, currently in effect, "[t]he provisions of this policy will take effect on January 1, 2011 with respect to information produced on or after that date." In view of these definitions, two versions of Operational Policy OP-102 could be applicable, depending on the date of receipt or production of the information.

2.224 In this regard, harmonizing the provisions of the MICI Policy and the Access to Information Policy, the determination as to which version of OP-102 is applicable will be based on the date of production or receipt of the information by the Bank.

2.225 In the case now under review, the Requesters' allegations relate to documents produced before 1 January 1011 and after 1 January 2004. Accordingly, their disclosure should be examined based on the Disclosure of Information Policy of 2006, apart from certain updates introduced after January 2011.

c. What are the provisions of the Disclosure of Information Policy (Operational Policy OP-102) of 2006?

2.226 The Bank's information policies are aimed at improving accountability and development effectiveness. By applying these policies, the Bank wishes to show its transparent use of public funds, strengthen its relations with interested parties, and improve the quality of its operations and its knowledge and capacity-building activities as well as enable the public to exercise other rights.

2.227 In 2006, the Disclosure of Information Policy reaffirmed the Bank's commitment to transparency and accountability in all activities and was based on a set of principles, which included that information will be made available in a form and at a time that enhances the transparency and therefore the quality of Bank activities; and that information concerning the Bank and its activities will be made available to the public in the absence of a compelling reason for confidentiality.[353]

2.228 The Disclosure of Information Policy essentially consisted of a positive list of documents that must be disclosed by the Bank, generally indicating the time frames for their disclosure.

2.229 Section III, Part A, of the policy deals with the disclosure of operational information, establishing a distinction between sovereign-guaranteed operations[354] and non-sovereign guaranteed operations.[355] The case now under review refers to a non-sovereign guaranteed operation. For operations of this type, Operational Policy OP-102 of 2006 requires the disclosure of the following documents at the indicated times:[356]

(i) **Project abstract**: will be made available to the public after the mandate letter is signed;

(ii) **Environmental Impact Assessments, Strategic Environmental Assessments, or Environmental Analyses**: will be made available to the public in the borrowing country and Bank headquarters before the Bank conducts its due diligence mission;

(iii) **Environmental and Social Strategy**: will be made available to the public after the recommendations of the CESI and of the Bank's Loan

[353] Disclosure of Information Policy (document GN-1831-18), Section II, Basic Principles.

[354] In sovereign-guaranteed operations, the Bank offers financing to governments and government-controlled institutions to support development and social projects.

[355] Refers to Bank financing for private sector projects. These operations are carried out without any government guarantees or counterguarantees.

[356] Operational Policy OP-102 2006, Disclosure of Information Policy, Section III. Information Available from the Bank, Part A. Operational Information, paragraphs 5(b), 8, and 9.

Committee have been incorporated and the respective mandate letter has been signed; and

(iv) **Environmental and Social Management Report**: will be made available to the public once the respective loan or guarantee proposal has been cleared by the Executive Vice President for distribution to the Board of Executive Directors.

2.230 In addition, establishing the MICI's conclusions on compliance with Operational Policy OP-102 of 2006 requires taking into consideration compliance with the provisions of Operational Policy OP-703 regarding the time of disclosure and accessibility of environmental and social information, since these two policies are mutually complementary in these respects.

2.231 In this regard, consistent with Operational Policy OP-102 of 2006, Operational Policy OP-703 reaffirms the express obligation to disclose the Environmental Impact Assessments (EIAs) in operations that so require, and indicates that "[a]n EIA report must be prepared with its respective ESMP and disclosed to the public prior to the analysis mission, consistent with the Disclosure of Information Policy (Operational Policy OP-102)."[357]

2.232 In addition, Operational Policy OP-703 requires borrowers to conduct public consultations on projects and indicates that "[f]or [public] consultation purposes, appropriate information will be provided in location(s), format(s) and language(s) to allow for affected parties to be meaningfully consulted."

d. MICI findings regarding compliance with the Disclosure of Information Policy (OP-102) of 2006

2.233 In Table 8, the MICI shows its findings regarding the disclosure of Project documents in accordance with Operational Policy OP-102 of 2006, indicating the type of document, date of compliance with the disclosure milestone under the policy, name given to the document, document language, date of publication on the Bank's website, if disclosed, and whether the policy's provision was followed.

Table 8.
Disclosure of information related to non-sovereign guaranteed operations under the Disclosure of Information Policy (OP 102) of 2006

Type of public document	Date of disclosure milestone under the policy	Name of document for the El Dorado International Airport operation (CO-L1029)	Language	Date of publication on the Bank's website	Complies with the policy
Project abstract	Signing of mandate letter: 26 March 2007.	Project Abstract	English	28 February 2008	Yes
Environmental analysis	Due diligence mission, 3-7 March 2008.	Environmental diagnostic assessment prior to receipt of the El Dorado Airport facilities		Not disclosed	No

[357] Operational Policy OP-703, Directive B.5.

Type of public document	Date of disclosure milestone under the policy	Name of document for the El Dorado International Airport operation (CO-L1029)	Language	Date of publication on the Bank's website	Complies with the policy
		Environmental plan, social management plan, social management subprogram			
Environmental and social strategy	The CESI meeting took place on 11 May 2007 and the mandate letter was signed on 26 March 2007.	Environmental and Social Strategy	English	28 February 2008	Yes
Environmental and social management report	Once the loan proposal has been cleared by the Executive Vice President for distribution to the Board of Executive Directors: (date unknown).	ESMR	Spanish	8 November 2010	Could not be confirmed.

Source: IDB and Project documents.

e. Determination of compliance with the Disclosure of Information Policy (OP-102) of 2006

2.234 The information in Table 8 shows that: (i) one of the four documents subject to mandatory disclosure under the policy was not disclosed; (ii) the nondisclosed document is the environmental assessment (Environmental Analysis), which was subject not only to mandatory disclosure but to a time frame obligation pursuant to the Relevant Operational Policies requiring its disclosure prior to the due diligence mission.

2.235 Regarding publication of the ESMR, the MICI has been unable to confirm the date on which the loan proposal was cleared by the Executive Vice President for distribution to the Board of Executive Directors. Despite not having enough information to determine compliance, the MICI notes that this document was published one month before the loan proposal's approval by the Board of Executive Directors.

2.236 Regarding the Requesters' allegation that the Bank failed to disclose the ESMP, Management asserts that the Project had an ESMP at the time of the due diligence but there is no obligation to publish this plan under Operational Policy OP-102.[358]

2.237 In this respect, it is worth noting that while this document is not included in the positive list of Operational Policy OP-102 of 2006, it is an essential component of a project's environmental and social analysis framework. When consulted by the MICI, Management confirmed that a project's environmental analysis consists of a preliminary diagnostic assessment and an ESMP.[359] In the case under review, the

[358] IDB response to the Supplemental Request, section 3(f) and 3(d).

[359] [redacted]

ESMP was comprised of the following documents prepared by OPAIN: the environmental plan of 2007 and the social management subprogram and social management plan of 2009. None of these three documents is available on the IDB website either separately or as part of the environmental analysis. Since Management considered the ESMP as part of the environmental analysis, all of the above-cited documents should have been disclosed.

2.238 Furthermore, the environmental plan, the social management plan, and the social management subprogram were updated after January 2011, making them subject to the current Access to Information Policy. Since this policy also requires publication of the environmental analysis, these updates also should have been published under Operational Policy OP-102, and the MICI investigation found that they were not.

2.239 Therefore, the MICI considers that the Bank **failed to fulfill its obligation to publish all documents subject to mandatory disclosure under the positive list of Operational Policy OP-102 in its 2006 and 2010 versions**. Given this omission, the Bank failed to comply with the mandatory disclosure provisions of Operational Policy OP-102 (2006 and 2010). Specifically, the Bank failed to publish the environmental and social management plans as well as their updates.

2.240 Regarding the disclosure language, it should be noted that neither of these two versions of the policy provides a specific requirement for the Bank. However, **under Operational Policy OP-703 the Bank is required to ensure that the borrowers use languages and formats that allow for affected parties to be meaningfully consulted.** The MICI considers that this activity is reinforced when the Bank publishes the project documents in the local language, which in this case is Spanish. This honors the principles of transparency and availability of information, which have an impact on the quality of Bank activities, as provided in Operational Policy OP-102. Requiring the borrower to disclose project information in languages that are accessible to the population while allowing the Bank to publish information in a language foreign to the affected parties is to create a double standard in this regard. The borrowers are not necessarily the only source of information available to the population or other interested parties. People turn to the Bank's records in search of information on Bank-financed projects in their localities or countries for different reasons and purposes, such as to understand the order of magnitude of a project and its impacts, both positive and negative, and to learn how these impacts will be managed. Publishing information on a project in Colombia only in English impairs public access to the information and creates an unnecessary impediment for the parties in forming an opinion and ultimately helping to bring about an improvement in certain aspects of the project through the mechanisms provided by the Relevant Operational Policies.

III. CONCLUSIONS

A. Conclusions on compliance with Operational Policies OP-703 and OP-102

3.1 Section II presented a detailed analysis of the findings of the investigation, including that the Bank failed to perform various obligations under Operational Policies OP-703 and OP-102.

3.2 In addition to the directives analyzed in Section II, Directive B.1 of Operational Policy OP-703 establishes that the "Bank will only finance operations and activities that

comply with the directives of this policy, and are consistent with the relevant provisions of other Bank polices."

3.3 Therefore, based on the MICI's findings and conclusions regarding noncompliance, which are set forth in Table 9, Directive B.1 was not fulfilled, since the Bank failed to comply with Directives B.2, B.3, B.4, B.5, and B.6 of Operational Policy OP-703. Moreover, the Project was inconsistent with various provisions of Operational Policy OP-102 (versions 2006 and 2010).

3.4 Table 9 below presents a summary of the identified instances of noncompliance.

Table 9.
Table of conclusions

Policy and Directive	Conclusion on compliance
OP-703 B.2	The Bank **complied** with Directive B.2 since it assessed OPAIN's compliance with Colombian legislation. However, it **failed to fulfill** this directive by neglecting to review or establish mechanisms to determine whether the Airport was following noise regulations or identifying potential noncompliance with such regulations, particularly those provided in the Environmental License.
OP-703 B.3	The Bank **failed to comply** with Directive B.3 by considering that the environmental and social impacts from the incremental noise that would be generated by the Project were local and short-term impacts for which effective mitigation measures were readily available.
OP-703 B.4	The Bank **failed to comply** with Directive B.4 by not identifying the risks involved in third-party management of the noise impact and consequently not putting specific measures in place to manage those risks.
OP-703 B.5	The Bank **failed to comply** with Directive B.5 by validating noise mitigation measures without corroborating their effectiveness and suitability for the impacts that the Project would generate and without a specific assessment of the potential impact of the increased noise that would be generated by the Airport when operating at maximum capacity.
OP-703 B.6	The Bank **failed to comply** with Directive B.6 by not verifying that the public hearing and the roundtables were forums in which meaningful consultations were conducted. Similarly, the Bank failed to ensure that, during the Project execution stage, the affected parties were kept duly informed of any noise mitigation measures.
OP-703 B.7	The Bank **complied** with Directive B.7 by establishing a monitoring system that was used during Project operation to ensure that OPAIN complied with the safeguard requirements that had been provided in the loan contract.
OP-703 B.12	The Bank **complied** with Directive B.12 since the action plan was submitted to the Bank within the time frame provided by the Bank.
OP-102	The Bank **failed to comply** with Operational Policy OP-102 since it did not disclose all documents required to be disclosed under the positive list provided in Operational Policy OP-102 of 2006 and 2010.
OP-703 B.1	The Bank **failed to comply** with Directive B.1 by financing an operation that did not comply with Directives B.2, B.3, B.4, B.5, and B.6 of Operational Policy OP-703, and was also inconsistent with various provisions of Operational Policy OP-102 (versions 2006 and 2010).

B. Conclusions regarding a link between the alleged harm and the findings of noncompliance

3.5 The Requesters alleged that the harm to the residents of Fontibón from the elevated noise levels is "serious and well documented." Among other evidence, they alluded to studies by the University of Antioquia and the Fontibón Hospital which document hearing loss and health effects in residents due to the high noise levels. In addition, they mentioned the findings set forth in a report by the Bogota Secretariat of Health concluding that 37% of Fontibón residents suffer from chronic insomnia as a result of the noise and determining that hearing loss leads to developmental and educational achievement problems among area children. Furthermore, the Requesters referred to the conclusions of the 2014 noise management and mitigation report commissioned by the MICI, which confirms that the noise situation in the area is worrisome and that noise levels exceed the permissible limits. The Requesters argue that this harm is a direct consequence of the extended schedule of the Airport's Second Runway, which in turn is an immediate result of the Bank-financed Project.[360]

3.6 The MICI confirmed that the Bogota Secretariat of Health has determined that the elevated noise levels may be associated with two types of effects on human health: (i) an effect on the auditory system which leads to hearing loss (hypoacusia); and (ii) non-auditory effects, including neurological effects such as headaches and exhaustion; psychological effects such as difficulty in concentrating, irritability, and anxiety; decline in productivity at school and/or work; sleep-rest disruptions; and cardiovascular effects such as increased risk of heart attack or blood pressure disorders.[361] In this same vein, the ICAO included in its 2016 Environmental Report a study on the impacts of noise, reaffirming that "[a]ircraft noise is one, if not the most detrimental environmental effect of aviation. It can cause community annoyance, disrupt sleep, adversely affect academic performance of children, and could increase the risk of cardiovascular disease of people living in the vicinity of airports."[362]

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[360] Supplemental Request, pages 5 and 6.

[361] Information provided by the District Health Secretariat of the Bogota Mayor's Office, official letter 2016 EE25420 dated 20 April 2016.

[362] White Paper on Aircraft Noise. Aviation Noise Impacts: State of the Science, included in the OACI 2016 Environmental Report, page 30 *et seq.*

3.7 In addition, the MICI found studies by the Bogota Secretariat of Health, health care providers, and academic institutions[363] that point to a relationship between the noise produced by the El Dorado Airport and the health impairments of residents of the Fontibón and Engativá communities. These studies include some that examine the effects on the school-age and adult population of Fontibón and Engativá and conclude that there is indeed a relationship between reports of auditory symptoms and higher exposure to noise.[364]

3.8 As indicated in the section on the investigation's findings, the Bank neither included studies in its assessment on the potential impact of increased noise from expanded Airport operations, nor did it examine the consequences of this impact on the communities, and therefore did not provide adequate environmental or social measures to mitigate this impact. The MICI finds that exposure to high noise levels and an increase in noise can have an impact on the health, well-being, and quality of life of the communities adjoining the Airport. Consequently, while the noise problem and its effects on the communities predate the Bank's involvement, the MICI considers that the harmful health effects[365] alleged by the Requesters are linked to the Project.

3.9 In addition, the communities adjacent to the Airport have been actively voicing their concerns regarding the impacts of the noise on their health and well-being since 1995, when the Environmental License for the construction of the Second Runway was first issued.[366] As indicated in the section on Directive B.6, the MICI considers that there was a failure to conduct a meaningful consultation with the parties affected by the Project and there were difficulties in the flow of information between the concessionaire, Aerocivil, and the affected parties (paragraphs 2.185 and 2.190

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[363] See Secretariat of Health and Fontibón Hospital, Relación entre los niveles de ruido ambiental y la población con discapacidad auditiva de la localidad de Fontibón [Relationship between ambient noise levels and the population with hearing impairments in the locality of Fontibón], 2008; Efectos auditivos y psicológicos del ruido producido por el tráfico aéreo del aeropuerto El Dorado en las poblaciones de Engativá y Fontibón [Auditory and psychological effects of the noise produced by air traffic in the El Dorado Airport on the residents of Engativá and Fontibón], University of Antioquia, 2003; Efectos auditivos por exposición a ruido ambiental en una población escolar en la localidad de Engativá [Auditory effects due to exposure to ambient noise on a school-age population in the locality of Engativá], Fontibón Hospital – Bogota Secretariat of Health, July 2011; Efectos auditivos producidos por el tráfico aéreo del aeropuerto internacional El Dorado en las poblaciones de Engativá y Fontibón [Auditory effects of air traffic at the El Dorado International Airport on the residents of Engativá and Fontibón], J. Londoño, H. Restrepo, et al., Revista Facultad Nacional de Salud Pública. Vol. 22, No. 2, July-December 2004; Calidad del sueño en una población adulta expuesta al ruido del Aeropuerto El Dorado [Quality of sleep in an adult population exposed to noise from the El Dorado Airport], Bogota 2012; Lina María Callejas, Rodrigo Sarmiento, et al.; Fontibón Hospital, Bogota District Health Secretariat; Fontibón Hospital, University of Antioquia, among others.

[364] For example, a study conducted on the school-age and adult population of Fontibón and Engativá concludes that the risk of hearing loss is 2.58 times greater for students at schools with higher exposure to noise and 1.95 times greater for adults residing in areas with higher exposure to noise. See information provided by the District Health Secretariat of the Bogota Mayor's Office, official letter 2016 EE25420 dated 20 April 2016.

[365] The MICI believes it is important to bear in mind that the World Health Organization defines health as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity."

[366] The concerns were made clear at the public hearings conducted as part of the issuance and modification processes for the Airport's Environmental License, which was respectively issued and modified through Resolutions 1330 of 1995 and 534 of 1998.

above). The MICI considers that this prevented the communities from having access to accurate and relevant information on the impacts that would affect them, violating the Bank's policy and thwarting the rights of the communities to participate effectively in decisions that involve their life, health, and well-being.[367]

3.10 The MICI considers that the absence of a meaningful process of consultation and mechanisms for communication with the parties affected by the Project created uncertainty in the community as to the magnitude and characteristics of the impacts they are currently suffering and those that will be felt in the future, intensifying the community's vulnerability. This situation has led to, among other things, a general mistrust by the communities toward the institutions involved in the Project and a sense of displeasure by some in the communities, particularly by the Requesters, who have felt abandoned and ignored by the actors involved in the Project. For this reason, the MICI considers that this harm is the result of shortcomings in the consultation and information disclosure processes with the affected parties and is therefore linked to the Project.

IV. RECOMMENDATIONS

4.1 The MICI believes that a compliance review process such as this should not merely be confined to examining the Bank's actions in the context of a specific operation but should lead to findings that can potentially be used as learning tools to support the Bank's ongoing improvement process.

4.2 In this spirit, two sets of recommendations are presented for consideration by the Board of Executive Directors: Section A presents recommended actions in relation to the Project and the affected communities, and Section B presents general recommendations aimed at not only promoting learning that can be extrapolated to future operations but also facilitating compliance with the Relevant Operational Policies. A preliminary version of these recommendations has been shared with Management and the Requesters to learn their opinions. It should be noted, as will specifically be discussed below, that Management generally agrees with the recommendations. Indeed, since similar recommendations have been made in other reviews, some are already in the process of being adopted.

4.3 In addition, Section C presents a summary of specific recommendations related to the harm alleged by the Requesters, described in detail in Annex II. This summary is provided here to enable the Board of Executive Directors to be apprised of them and make any determinations it deems appropriate with regard to them.

A. Recommendations specific to this case

4.4 This report finds that not all documents that were subject to mandatory disclosure under Operational Policy OP-102 (2006 and 2010 versions) were published on the Bank's website. Accordingly, in line with the provisions of Operational Policy OP-102 and considering international best practices on access to environmental and social

[367] In this respect, it is worth mentioning Principle 10 of the Rio Declaration on Environment and Development regarding participation in environmental aspects, which states that "[e]nvironmental issues are best handled with participation of all concerned citizens, at the relevant level," and that "[…] each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes."

information in the context of executing development projects, the MICI recommends disclosing all mandatory disclosure documents indicated in the policy and described in this investigation report, including the ESMP, and preferably doing so in the Spanish language.

Recommendation 1	Publish all mandatory disclosure documents for the El Dorado International Airport operation, including the ESMP, on the Bank's website, and preferably do so in the Spanish language.

4.5 The MICI suggests disclosing this Compliance Review Report to Bank staff as part of the continuous strengthening of compliance with Bank policies, with a specific focus on the design, execution, and supervision of operations. The MICI considers that the contents of this report can contribute to the success of future airport financing projects and serve to illustrate specific aspects of policy implementation, such as risk identification and mitigation when an operation involves third parties; verification of compliance with national legislation; and systems for validating the robustness of public consultation and participation processes in accordance with Bank standards.

Recommendation 2	Disclose this compliance review report to Bank staff, with a specific focus on the design, execution, and supervision of operations.

4.6 The Bank's involvement with the Airport has ended. However, in view of the conclusions on the present case, particularly regarding the absence of effective citizen participation in the areas affected by the Airport and the absence of clear information disclosure processes, the MICI recommends that the Bank, in coordination with the relevant authorities, explore ways to support a strengthening of the environmental and social sustainability of the Airport. In this effort, it would be useful, from the perspective of the MICI, for the Bank to support a reinforcement of the social management capacities of the entities responsible for operating the Airport, thereby fostering harmonious coexistence of the Airport with its neighboring communities.

Recommendation 3	In coordination with the relevant authorities, explore ways to support a strengthening of the environmental and social sustainability of the Airport.

B. General recommendations for the Bank

4.7 The Relevant Operational Policies and guidelines currently lack criteria for assessing the risks of operations in which the actions of third parties can affect the operations' sustainability. Consequently, the MICI recommends clarifying the existing guidelines and/or creating new guidelines to help the Bank in applying the Relevant Operational Policies in the case of operations in which the actions of third parties are a determining factor for the operations' sustainability.

Recommendation 4	Clarify and/or create guidelines to help the Bank teams in cases in which third-party actions are a factor to be considered in the context of risk and impact management.

4.8 Regarding community consultation and participation, the MICI, as in previous investigations, recommends building the capacity of Bank and executing agency staff with a view to ensuring robust and transparent outcomes. Aware that Management is already working on this, the MICI wishes to underscore the importance of incorporating a continuous, experience-driven learning process and promoting broad disclosure of best practices.

Recommendation 5.	Promote continuous updating of the "Guidelines for Public Consultations and Participation by Interested Parties in IDB-financed Projects," incorporating the lessons learned by project teams during these years as well as relevant international best practices.
Recommendation 6.	Broadly disseminate these guidelines among executing agencies, clients, and Bank staff and, in collaboration with the appropriate areas of the Bank, produce training courses in consultation and participation that include Bank case studies.

4.9 Regarding the availability of information and compliance with the Access to Information Policy, the MICI recommends explicitly requiring the disclosure of all environmental and social information about Bank operations, not only for transparency but to ensure robust consultation and participation processes. The MICI understands that this issue is also being analyzed by Management and therefore underscores the following recommendations:

Recommendation 7.	Include the ESMP and its updates on the list of documents subject to mandatory disclosure under Operational Policy OP-102, providing for their routine disclosure in all projects, even those not requiring an EIA.
Recommendation 8.	Introduce provisions that expand the accessibility of information to ensure that the environmental and social information disclosed by the Bank is available in the language of the country in which the operation is being implemented.

4.10 Lastly, in the spirit of collaboration, the MICI is available to make contributions based on its experience for the upcoming review of the IIC's Disclosure of Information Policy. The MICI understands that private sector operations generally require higher degrees of confidentiality than public sector operations. However, in the MICI's view, experience has shown that there may be an excessively broad interpretation[368] of the confidentiality obligation regarding environmental and social information. The 2006 version of Operational Policy OP-102 indicates that information concerning the

[368] This report is a clear example of the restrictions faced by the communities affected by private-sector projects in terms of availability of information. Twenty percent of the content of this document will need to be redacted before the report is disclosed to the public. This is specifically the case for all information related to the Project's due diligence, which despite including key information on the identification of Project risks and impacts, cannot be made available to the affected parties.

Bank and its activities will be made available to the public in the absence of a compelling reason for confidentiality. However, the existence of a positive list of documents to be disclosed makes it more difficult to implement this rule, which in theory should provide for greater openness and allow interested parties to have extensive information on impacts and the measures to address them in projects financed by the IDB Group.

C. Recommendations for the Bank from the Requesters

4.11 As indicated in paragraph 4.3, on 2 August 2016 the Requesters sent the MICI a document with a series of proposals on recommendations that, in their opinion, should be made by the MICI to the Board of Executive Directors in the Compliance Review Report. In general terms, their proposals revolve around three issues: (i) for the Bank to finance an independent analysis of the health impact of Airport operations, including a survey of soundproofed homes to date in the affected area and the effectiveness of the soundproofing; (ii) for the Bank to encourage OPAIN to consider creating broader opportunities of community participation for the benefit of the Project; and (iii) for the Bank to encourage Aerocivil and OPAIN to resume a constructive dialogue with the community representatives.[369]

[369] Writing from Comunidades Unidas dated 2 August 2016, sent by email the same date.

ANNEX I[1]

IDB-IIC MANAGEMENTS' COMMENTS TO THE DRAFT COMPLIANCE REVIEW REPORT

Joint IDB-IIC Management response to the draft ICIM's Compliance Review report for the El Dorado International Airport Project (CO-L1029) in Colombia

The present document constitutes the response by IDB and IIC Management ("Management") to the ICIM's draft Compliance Review Report for the above-mentioned project. It complements the information provided in IDB Management's comments to the ICIM Panel for the determination of eligibility of El Dorado International Airport (CO-L1029) for a compliance review – original and new request.

1. Background

The preparation of the El Dorado Airport Project (the "Project") started in 2007, just after the approval of the IDB's Environment and Safeguards Compliance Policy (OP-703). The project consisted of: i) the construction of a new domestic and international passenger terminal, new domestic and international cargo facilities including parking positions for planes, new office building for Colombia´s civil aeronautic authority (*Aeronautica Civil* – "Aerocivil"), remodeling of the existing firefighter station and construction of a second station, a new maintenance area and improvements of shoulders of a taxiway; and ii) the operation and maintenance of certain passenger services inside of the terminal and the two cargo facilities. All this was carried out under a 20-year concession contract awarded to Opain, the special-purpose vehicle created by a group of private investors and Zurich Airport AG as the expert in airport operations.

All of the airside operation (such as take-offs, landings, runways operation and maintenance, air traffic control, private airline services, safety, fuel management operations etc.) and most of the operations inside the passenger terminal (such as airline services, security, immigration, sanitary control, antinarcotics, etc.) are the responsibility of Aerocivil and other governmental authorities and are not part of the concession awarded to Opain. Other activities within the terminal are the responsibility of private parties which provide service to the airport users under separate commercial contracts with Opain (retail stores, restaurants, car rental, cleaning, etc.).

The project's due diligence took place in 2008-2009 and the loan to Opain was approved in 2010. The project was financed, in part, with a US$165 million IDB loan to OPAIN. Two other agencies, *Corporacion Andina de Fomento* (CAF) and the China Development Bank (CDB) joined the IDB as co-lenders in this transaction.

[1] The comments presented in this Annex were made to the Draft Compliance Review Report; therefore, references may not match this final version of the Report.

The modernization of El Dorado, an essential component of the country's infrastructure, was expected to have the following positive impacts: i) decrease in passenger and aircraft delays resulting in productivity improvements (business opportunities, fuel savings, maintenance costs); ii) expansion of services and capacity offered to airlines and users of the Airport; iii) macroeconomic impacts (job creation, additional passenger and cargo activity, exports, tourism earnings); iv) improvement of passenger comfort and Aerocivil's personnel efficiency, and v) improved safety and security through the airport (anti-seismic improvements, fire-prevention systems, relocation and construction of an existing and new fire stations)[2].

In terms of negative impacts, noise caused by airport operations, an existing condition at the airport for decades, was considered early on, during the process of determining eligibility of the project for financing.

The concession agreement clearly defined the responsibilities of the concessionaire (Opain) and the granting authority (Aerocivil). Among those, noise caused by airport operations was defined as the sole responsibility of the granting authority, recognizing that such condition was already present and that any potential mitigation measure would require government action at several levels.

Construction of the facilities was successfully finalized and the bottleneck created by the terminal was eliminated. Currently, the Airport operates more efficiently, the level of service has improved, and passenger transit has increased. A number of measures were adopted by Aerocivil, including those recommendations presented by the independent noise expert contracted during the Consultation Phase of the ICIM, to monitor and address more effectively operational noise issues. For example Aerocivil decided to shift the approximations and landing more towards the second (south) runway where density of population is less in an effort to reduce the affected population exposed to noise.

The IDB loan was prepaid to the Bank in May 2015.

2. Management's view on the main findings of the ICIM

Management takes note of the ICIM's findings of non-compliances on Directives B.2, B.3, B.4, and B.5, and of the IDB's Environment and Safeguards Compliance Policy (OP-703), and remarks that they appear to be based on a similar premise, which is that the Bank failed to consider the impacts of the larger airport modernization program, even if the client, Opain, was not directly responsible for all aspects of this program. Specifically, it questions whether the Bank explicitly recognized and assessed a third party risk, represented by Aerocivil and its responsibility over the operational noise issue.

[2] Initially the Project considered the construction of a new control tower, however Aerocivil decided to eliminate that component from the concession contract.

In fact, the impacts of the larger modernization program beyond the specific works financed by the IDB and carried out by the Bank's client were recognized and highlighted in the Environmental and Social Strategy (ESS) and the Environmental and Social Management Report (ESMR). Specifically, the IDB recognized Aerocivil as a third party throughout the project, including Aerocivil's role related to noise management. The IDB further engaged on a regular basis with Aerocivil on the operational noise issue during both project preparation and implementation, including during ICIM's Consultation Phase from March 2012 to March 2014, and the commissioning of an independent expert on noise management and mitigation to support Aerocivil to examine relevant opportunity areas for the specific case of the El Dorado Airport. However, Management agrees that the potential risks and impacts of increased noise due to a potential expansion of airport operations could have been more fully assessed and considered during project preparation.

There are natural limitations for a Multilateral Development Bank to control the actions of third parties, especially government agencies in the case of private sector operations. Specific actions and coordination with the parties are always taken into consideration in order to mitigate third party risks; however enforceability of some of those actions when government agencies are involved is always a challenge and our effectiveness depends on many factors outside of the control of the Bank.

OP-703 requires the Bank to engage with relevant third parties to develop appropriate measures for the management of significant risks (Directive B.4). The Bank's responsibility and accountability include the assessment and reporting of third party risks and the engagement with third-parties as relevant to attempt to mitigate those risks. But accountability in terms of effective management of those actors or risks is by necessity limited to a best efforts basis when the mitigation measures go beyond the direct responsibility of the Bank's borrower.

Management also takes note of the ICIM's findings of non-compliances on Directive B.6 (Consultations). Management understands that those findings are partly related to the issue discussed above in terms of the Bank's responsibility and accountability vis-à-vis third party risks. In addition, as has been highlighted in previous ICIM cases, Management recognizes that in the past, public consultation processes have generally not been very well documented and reported on in the ESMR. The Bank is working on a systemic solution to improve these practices.

Nonetheless, Management finds that some of the comments presented in the ICIM's Compliance Review Report appear to result more from the ICIM's own view of what constitutes an adequate consultation rather than what is required by the Bank's policies and guidelines[3]. It is also worth noting that work tables ("*mesas de trabajo*") are a well-recognized mechanism to keep affected people informed and involved, particularly during project implementation, and Management disagrees with ICIM's view[4] that work tables are not an adequate mechanism to comply with the objective of Directive

[3] . For example, the Report implies that there should be a quorum of effective participation of a representative sample of affected people for a public consultation to be considered valid (paragraph 2.185). This does not correspond to any requirement in IDB's policies and guidelines, nor to internationally-recognized good practices.

[4] Paragraph 2.189: "*por lo que aun cuando OPAIN hubiera participado, tampoco son un mecanismo idóneo para cumplir con el objetivo establecido en la B.6*."

B.6 of OP-703. In the specific case of El Dorado Airport, the existing work tables were in fact extensively used by the ICIM's Consultation Phase from March 2012 to March 2014[5].

3. Management's view on the recommendations proposed by the ICIM

Regarding the project specific recommendations, the ICIM recommends that all relevant, outstanding documentation be published on the IDB website. Management agrees with the recommendation to publish the Environmental Analysis (Environmental audit and Environmental and Social Management Plan - ESMP).

Regarding the general recommendations, the ICIM recommends the publication of ESMPs for Category B projects that do not require EIAs. We agree with this recommendation and in effect have been implementing this since the revised Access to Information Policy came into effect on January 1st, 2011, as ESMPs are normally included in a project's Environmental Analysis.

Regarding Third Party Risk Assessment and Management, Management recognizes the value of developing case studies and lessons learned in order to better systematize third party risk assessment and management. Ongoing efforts of coordination between the IDB and IIC are also strengthening how the Group deals with governmental obligations and mitigation measures involving private sector transactions.

Regarding the consultations, the ICIM recommends updating the existing IDB guidelines for consultation and stakeholder participation in projects financed by the IDB. Management agrees with this recommendation and is engaged in some ongoing work in this regard in the context of the Mareña wind project work plan.

[5] See CO-MICI002-2011 CONSULTATION PHASE REPORT - EL DORADO INTERNATIONAL AIRPORT: http://www.iadb.org/document.cfm?id=38976388

REQUESTERS' COMMENTS TO THE DRAFT COMPLIANCE REVIEW REPORT[1]

15 November 2016

Victoria Márquez Mees
Director
Independent Consultation and Investigation Mechanism (MICI)
1300 New York Ave., N.W.
Washington, DC 20577
United States

Re: Request concerning the El Dorado International Airport (CO-MICI002-2011) – Comments on the preliminary draft of the Compliance Review Report

Dear Ms. Márquez Mees,

We would like to thank your team for preparing a draft compliance review report with respect to the El Dorado International Airport (the Report).[2]

We are happy that the MICI has validated many of the Requesters' concerns regarding the participation of the Inter-American Development Bank (the Bank) in this project. We agree with the conclusions that the Bank failed to comply with multiple obligations under its Environment and Safeguards Compliance Policy (Operational Policy OP-703) and Disclosure of Information Policy (Operational Policy OP-102). We are pleased by the MICI's conclusion that the health impairments alleged by the Requesters and documented by others "are linked to the Bank-financed Operation."[3]

However, as we will explain below in greater detail, we have identified certain areas in which the Report needs to be made clearer and/or expanded. Among other things, the MICI's analysis should make it clear that the borrower cannot avoid or disavow its obligations under the operational policies through the terms of an agreement with a third party. In addition, the MICI should begin and expand a discussion of the project's social impacts and obligations and provide more extensive guidelines on best practices and due diligence for airport projects. Furthermore, the analysis of Directives B.7 and B.12 is incomplete and the MICI failed to identify significant instances of noncompliance. Lastly, the noncompliance identified by the MICI should be remedied through additional, case specific recommendations notwithstanding that the Bank's loan has been repaid. *At the very least*, the MICI should recommend that the Bank encourage Aerocivil and OPAIN to

1 **The comments presented in this annex were made in response to the Draft Compliance Review Report; therefore, the references may not match the final version of the report.**

2 We have prepared this document with support from the Accountability Counsel.

3 Paragraph 3.4.

restart a constructive dialogue with the community representatives to attempt to resolve the problems.

We have structured our comments as follows:

I. General comments relevant to the Report as a whole

A. The obligations under Operational Policy OP-703 should not be weakened by reference to contractual constraints set forth in the concession agreement

We believe that the MICI was correct in concluding without any doubt that the Bank-financed project can be linked to the increased noise levels produced by the Airport operating at capacity once expanded and modernized. As the MICI acknowledged, the financial success of the project was inextricably tied to a considerable increase in flight operations.[4] This projected increase was the reason for extending the operating schedule of the second runway to the early morning hours,[5] giving rise to serious impacts for the community of Fontibón. Specifically, the increased frequency of both daytime and

[4] Paragraphs 2.26, 2.77, and 2.97. This was clear to the Requesters from the project abstract and the Environmental and Social Strategy (ESS).

[5] Paragraph 2.97.

nighttime flight operations creates noise-related impacts for the residents of the communities adjoining the Airport.

Moreover, we understand that the basic source of tension in this case is that the project has adverse environmental and social noise-related impacts and the primary contractual responsibility for mitigating them rests with an entity (Aerocivil) other than the Bank's client (OPAIN) pursuant to a concession agreement (public-private partnership (PPP)).[6] The Bank and OPAIN have used this separation of the contractual responsibilities of each party to the PPP to deny their responsibility to evaluate, avoid, manage, and monitor the negative noise-related impacts, even under the Environment and Safeguards Compliance Policy (Operational Policy OP-703). This argument is dangerous and severely erodes the Bank's environmental and social standards.

1. *It is important to distinguish between the contractual obligations of the borrower under the PPP and the obligations of the borrower and the Bank under the operational policies.*

For this reason, it is important that the MICI focus its analysis on the obligations of OPAIN and the Bank under the operational policies and not downplay these obligations by reference to OPAIN's contractual obligations under the PPP. Borrowers should not have the ability to avoid or disavow their obligations under the operational policies through the terms of a PPP agreement.

As a hypothetical example, one may imagine a PPP agreement on an existing agricultural business in which one of the parties to the PPP (Party A) is solely responsible for hiring and managing the agricultural employees, while the other party (Party B) is responsible for building and operating the expanded business facilities. Once the facilities are expanded, operating the business will require hiring more agricultural workers. Unfortunately, this business has a history of using child labor in its agricultural operations. In this example, it is inconceivable that, if the Bank is considering financing Party B, the Bank and Party B would be able to ignore and distance themselves from the potential risks associated with the use of child labor by the agricultural business and claim that these risks are beyond the scope of OP-703. The Bank-financed expansion supports the entire agricultural business, and the risk that child labor will be used increases as a result of such expansion. Thus, the use of child labor is a risk of the Bank-financed operation which must be prevented, mitigated, and managed by the Bank and its client under Operational Policy OP-703.

In addition, the MICI should in our case ensure that its analysis of compliance with Operational Policy OP-703 generally extends to the Airport expansion and modernization project as a whole. This analysis should not be limited by any distinction between the contractual responsibilities of the respective partners in the PPP, unless so expressly required by the specific terms of Operational Policy OP-703. Such an approach is more consistent with the terms and the objectives of Operational Policy OP-703.

All the primary obligations under Operational Policy OP-703 require that the operation (the project in general), and not only the activities of the borrower, prevent or mitigate adverse environmental and social impacts. For example:

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[6] Similarly expressed by the MICI in paragraph 2.105.

- Directive B.2 provides that "[t]he Bank will also require the borrower for **that operation** to ensure that it is designed and carried out in compliance with environmental laws and regulations of the country;"
- Along similar lines, Directive B.3 provides that "[t]he screening process [of the financed operations] will consider potential negative environmental impacts **whether direct, indirect**, regional, or cumulative in nature, including environmentally related social and cultural impacts, **of the operation and of its associated facilities** if relevant;"
- Directive B.4 provides that "the Bank will identify and manage other risk factors that may affect the environmental sustainability **of its operations**," including risks associated with third parties;
- Directive B.5 provides that "[f]or operations requiring an environmental assessment […], an environmental analysis should be performed including an evaluation of the potential environmental, social, health and safety impacts and risks **associated with the operation**, and an indication of the measures foreseen to control these risks and impacts;" and
- Directive B.12 provides that "[t]he Bank will finance **operations** already under construction, only if the borrower can demonstrate that **the operation complies** with all relevant provisions of this Policy."

In some aspects of its analysis, the MICI appropriately recognized that despite the specific contractual separation of areas of responsibility, the Bank needed to assess all risks associated with the construction and operation of an expanded Airport as well as the measures for managing these risks.[7] "The operation" subject to Operational Policy OP-703 is the construction and management of a modernized and expanded airport with significantly more flight operations, including during restricted hours. As the MICI explained, "the Bank financed the Airport's expansion and modernization, which included not only landside construction works (in some cases involving the likelihood of having to use the south runway during restricted hours), but also the management and administration of an airport with a considerably greater number of flights."[8] "[T]he success of the Project was necessarily linked to the increase in operations"[9] and "operating the Airport at full capacity would require the use of the south runway during restricted hours."[10] For this reason, the MICI concludes that the "health impairments alleged by the Requesters 'are linked to the Bank-financed Operation.'"[11]

However, in other respects, the MICI's logic appears to have been inappropriately influenced and limited by the contractual distinction between the responsibilities of OPAIN and those of Aerocivil. For example, the Report currently states that the Bank partially complied with Directive B.2 because there is "an absence of evidence to indicate that OPAIN at any time failed to fulfill **its legal obligations as concessionaire**."[12] This

7 See, for example, paragraphs 2.89, 2.90, 2.93, 2.105-107, 2.124, and 2.132.

8 Paragraph 2.86.

9 Paragraph 2.77. See also paragraphs 2.26 and 2.97.

10 Paragraph 2.97.

11 Paragraph 3.4.

12 Paragraph 2.157.

question is incorrect. The right question is: did the operation as a whole comply with national legislation, and the answer is no.[13]

Naturally, the Bank had less influence on Aerocivil and would have found it more difficult to prevent or remedy noncompliance associated with noise impacts. But this fact should have increased rather than diminished the responsibility of the Bank and its client to assess, mitigate, and manage the risks under Operational Policy OP-703. The objectives of Operational Policy OP-703 are to minimize a project's adverse environmental and social impacts and strengthen its sustainability and outputs. A project in which the achievement of these objectives is substantially dependent on the activities of a third party, such as a PPP, is inherently riskier. The Bank should have carefully assessed the risks associated with the Airport operations as a whole and used its influence to raise standards. This is the added value of the Bank's participation and the role of Operational Policy OP-703 in PPP projects.

For this reason, we ask that the MICI review its analysis to ensure that the obligations under Operational Policy OP-703 extend to the entire project. We will make specific recommendations in Section III.

In addition, we ask that the MICI elaborate more specifically on the particular risks and opportunities of Bank participation in PPP projects, including the importance and the benefit of elevating the standards of the project as a whole. MICI comments on this issue would be of great benefit to the Bank in its future investments in PPPs.[14]

Key points:

- *The MICI should ensure that its analysis of compliance with Operational Policy OP-703 generally extends to the Airport expansion and modernization project as a whole. This analysis should not be limited by any distinction between the contractual responsibilities of the respective partners in the PPP, unless so expressly required by the specific terms of Operational Policy OP-703. Such an approach is more consistent with that policy's terms and the objectives.*
- *In addition, we ask that the MICI elaborate on the particular risks and opportunities of Bank participation in PPP projects, namely the importance and the benefit of raising the standards of the project as a whole*.

2. Primary responsibility versus sole responsibility

In addition, where there is a need to explain the contractual distinction between the responsibilities of OPAIN and those of Aerocivil by way of context, the MICI should be careful to clearly state that Aerocivil has **primary but not sole responsibility** for noise mitigation and social management.

We understand that while Appendix I of the concession agreement denies that OPAIN is responsible for noise mitigation and social management issues, other passages

[13] As we explained in greater detail in Section III. below, pages 20-22.

[14] The Bank is committed to using PPPs as a major instrument in sustainable development financing. See, for example, From Billions to Trillions: Transforming Development Finance Post 2015 Financing for Development: Multilateral Development Finance (Development Committee Discussion Note DC2015-0002, 2 April 2015).

in the agreement state that OPAIN has certain responsibilities associated with these issues. For example:

- In paragraph 2.41, the MICI describes the Aerocivil-OPAIN concession agreement. Regarding the issue of social management, the MICI states in the first part of the paragraph that OPAIN "will not be responsible for […] social management activities." However, the MICI later acknowledges that Appendix F identifies the following as OPAIN responsibilities: "with regard to social management, taking the community into account, recognizing its organizational structure, hiring unskilled labor, creating employment alternatives through social projects, cooperating with Aerocivil in the Airport's social and community plans, maintaining regular contact with the authorities and residents of the area, and setting up and maintaining a community relations office." These are substantive obligations.
- About noise mitigation, OPAIN has direct obligations associated with the construction of an acoustic barrier and an engine testing area.[15]

It seems to us that, in paragraphs 2.86 and 2.113, among others, the MICI acknowledges the existence of shared responsibilities between Aerocivil and OPAIN (even though our understanding of the latter paragraph is limited due to the concealment of information). Yet at other points in the Report, the MICI implies that Aerocivil has sole responsibility over these matters.[16] We request that the MICI avoid such an intimation and make it clear that Aerocivil has primary but not sole responsibility for noise mitigation and social management.

Key point:

- *Where there is a need to explain the contractual distinction between the responsibilities of OPAIN and those of Aerocivil by way of context, the MICI should be careful to clearly state that Aerocivil has primary but not sole responsibility for noise mitigation and social management.*

B. The perspective of the communities should be set out more fully in the body of the Report to provide greater context for the issues.

We appreciate the acknowledgement of the communities' concerns, particularly in paragraph 2.131 and in the Report's conclusions. However, we request that the MICI provide a detailed description of these concerns in the body of the Report to give more context to its analysis.

For example, it is difficult to fully appreciate the MICI's logic regarding the inappropriate classification of the project (Directive B.3) without first possessing an understanding of the seriousness of the noise and its potential impacts on the health and well-being of residents adjacent to the Airport. The noise, due to its variable nature, can be problematic to a greater or lesser degree depending on the specific circumstances.

[15] Paragraphs 2.44, 2.67, 2.82, and 2.139.

[16] For example, in paragraphs 2.41, 2.111, 2.114, and 2.139.

For this reason, we propose that the first sections of the Report highlight and explain the following:

- The elevated noise levels, which have exceeded national regulatory standards and are well documented by Aerocivil and the Colombian authorities;
- The impaired hearing, health, and well-being of residents adjacent to the Airport, well documented in the studies cited in the Report's conclusions; and
- The other noise-related problems, including soundproofing problems and the absence of community consultation and participation in the project.

In addition, we propose that, in the first sections of the Report and elsewhere as appropriate, the MICI include the investigation panel's observations during its mission to Bogota. The panel had a first-hand look at the problems with the soundproofing of homes and experienced the high noise levels (which make it difficult to hold a conversation or carry out routine activities) in the locality of Fontibón.

Early references to this evidence and the panel's observations will help readers, including the Board of Executive Directors, to understand the MICI's logic underlying the subsequent analysis of compliance with Operational Policy OP-703.

Lastly and by way of clarification of paragraph 1.18, the primary concern of the communities always has been and continues to be that the schedule and operating rate of the south runway have been permanently expanded as a result of the Airport's modernization and expansion (including, but not limited to, the north runway) in view of the intent of OPAIN and the Bank to optimize economic use of the expanded Airport.

Key points:

- *We appreciate the acknowledgement of the communities' concerns, particularly in paragraph 2.131 and in the Report's conclusions. Nonetheless, we request that the MICI highlight and explain the following in the first sections of the Report: (i) the elevated noise levels, which have exceeded national regulatory standards; (ii) the impaired hearing, health, and well-being of the residents adjacent to the Airport; and (iii) the other noise-related problems, including soundproofing problems and the absence of community consultation and participation in the project.*
- *We request that the MICI include the investigation panel's observations during its mission to Bogota in the first sections of the Report and elsewhere as appropriate.*
- *Early references to this evidence and the panel's observations will help readers, including the Board of Executive Directors, to understand the MICI's logic underlying the subsequent analysis of compliance with Operational Policy OP-703.*

C. The analysis of the requesters' allegations on the project's social impacts and obligations is incomplete.

As the MICI acknowledged, the Bank-financed project has had social impacts beyond those directly associated with noise.[17] The increase in air operations during both daytime and nighttime hours, the associated increase in noise, and the absence of community consultation and participation have together created the sense that the communities adjacent to the Airport have been and are being sacrificed for the benefit of others. We are currently suffering the negative impacts of the project and have few opportunities to share in its benefits. This situation runs counter to the Bank's sustainable development mission and the Bank's obligation to assess and manage social impacts.

Unfortunately, the Report fails to examine these allegations in detail. As we have indicated, this absence of an analysis cannot be justified by citing the lack of social requirements for OPAIN under the concession agreement.[18] The concession agreement cannot eliminate the requirements provided in Operational Policy OP-703. Furthermore, in any event, Appendix F identifies numerous social responsibilities assumed by OPAIN. We have always claimed that OPAIN failed to fulfill its social responsibilities.[19]

Despite the treatment of this issue in the Report, the relevance of these concerns is not limited to Directive B.6.[20] The Bank and its client were required to identify, assess, mitigate, and monitor the social impacts (in their broadest sense, considering the socioeconomic circumstances of the adjacent communities) under all relevant directives (B.3, B.4, B.5, B.6, B.7, and B.12). The mitigation of these impacts should have included means to ensure that these communities had and would continue to have opportunities to share in the project's benefits (e.g. priority in obtaining jobs).

Consequently, we request that the MICI extend its analysis of compliance with Operational Policy OP-703 to cover the broader issues and problems of social obligations.

Key points:

- *As the MICI acknowledged, the Bank-financed project has had social impacts beyond those directly associated with noise.*
- *Despite the treatment of this issue in the Report, the relevance of these concerns is not limited to Directive B.6. Moreover, the Bank and its client were required to identify, assess, mitigate, and monitor social impacts under Directives B.3, B.4, B.5, B.6, B.7, and B.12.*
- *We request that the MICI extend its analysis of compliance with Operational Policy OP-703 to cover the broader issues and problems of social obligations.*

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17 Paragraphs 2.131, 3.5, and 3.6.

18 See section I(A) above.

19 See, for example, the supplemental request, page 14. We expressly describe these allegations as being "in addition to the issue of noise."

20 Paragraph 2.166.

D. The concealment of information has severely weakened our ability to understand the Report and offer comments.

The large amount of redacted information, affecting multiple areas of the Report, denies us the opportunity to understand the Report and comment effectively. We appreciate the MICI's explanation, which had identified certain information that, in its view, could be disclosed and requested Management's authorization to publish it. However, Management confirmed that a large portion of this information is confidential and it has therefore been redacted from the document.

As a result of the Bank's refusal to disclose this information, we have not had a real opportunity to appropriately comment on the Report. In addition to eliminating the possibility of understanding the specific information redacted in each instance, it also limits our ability to understand the logic of the analysis as a whole. The classification of information in the Report as confidential is exacerbating the absence of community consultation already experienced by the affected communities, which was highlighted and criticized in the Report.

The Bank's decision is difficult to understand. We could understand a decision to conceal financially sensitive information. However, it is clear from the discussion preceding and following this redacted information that much, if not all, of it relates only to the Bank's due diligence process **on environmental and social matters**. We have been allowed to see little more than the information we had before activating the mechanism. What is the value of the process if the requesters are not given a more detailed explanation of the Bank's due diligence process touching on the social and environmental issues that affect them?

This treatment is inconsistent with international best practices on international development financing (presumption of information disclosure subject to limited and specific exceptions), even in the context of projects associated with the private sector. For example, the access to information policy of the International Finance Corporation (IFC)—which only invests in private sector projects—states that there is a presumption in favor of disclosure with regard to project-level information regarding investments and advisory services supported by the IFC, absent a compelling reason to not disclose it (similar to the Bank's Operational Policy OP-102 (2010) regarding sovereign-guaranteed operations).[21] Thus, the IFC policy includes a list of specific disclosure exceptions and additional guidelines regarding environmental and social information in subsequent sections.

This treatment appropriately recognizes that transparency of information is essential for enhancing good governance, accountability, and development effectiveness.[22] Additionally, this treatment prevents a situation, such as ours, in which the documents prepared are not easily classifiable within the positive list of documents that may or must be published because, for example, they were prepared by the client and have different titles from those listed in the Access to Information Policy.

In view of this, we ask the MICI to recommend that:

- The Bank disclose all documents described in the Report unless the Bank determines that the potential harm caused by their disclosure would outweigh

[21] IFC, International Finance Corporation Access to Information Policy (2012).

[22] Ibid, paragraph 3.

the benefit by reference to exceptions (a) through (i) in paragraph 4.1 of Operational Policy OP-102 (2010);

- In the future, the Bank and the Inter-American Investment Corporation (IIC) should voluntarily disclose information on the environmental and social risks and impacts of a non-sovereign guaranteed project, absent a compelling reason to not disclose it; and
- The MICI recommend that the IIC use the next review of its access to information policy as an opportunity to include a presumption in favor of disclosure.

If the Board of Executive Directors will have access to the Report (without any redacted information), we request that the MICI highlight the passages that were redacted from the version sent to the Requesters so that the Board of Executive Directors can clearly see the information that we were provided.

Furthermore, we believe that too much information has been redacted from some passages of the Report because all information regarding the relevant document has been concealed, including the document's author, date, title, and purpose. This treatment does not allow us to know the reason for confidentiality. Are these Bank, OPAIN, or third-party documents? Are the documents financially sensitive or are they related to environmental and social issues? We believe that this treatment is more restrictive than is required by Operational Policy OP-102. While these documents may not be published under the policy, there is nothing in the policy that bars the disclosure of these limited details.

On the contrary, section 9 of Operational Policy OP-102 (2010) provides a mechanism for addressing review requests from parties outside the Bank and confirming or invalidating prior decisions to deny access. Such a mechanism can be effective only with the disclosure of some basic details on the withheld document to enable the requester to decide whether and for what reason to initiate a review process.

In view of this, we request that the MICI disclose the authors, dates, titles, and a brief explanation of the type or purpose of the documents referred to in the redacted paragraphs or sentences of the Report with regard to each set of concealed information.

Key points

- *The considerable amount of redacted information denies us the opportunity to understand the Report and comment effectively. We appreciate the fact that the MICI requested Management's authorization to publish it. The Bank's decision to keep this information confidential is difficult to understand and runs counter to international best practices based on the principle that transparency of information is essential for enhancing good governance, accountability, and development effectiveness.*
- *We ask the MICI to recommend that: the Bank disclose all documents described in the Report unless it determines that the potential harm caused by their disclosure would outweigh the benefit by reference to exceptions (a) through (i) in paragraph 4.1 of Operational Policy OP-102 (2010); in the future, the Bank and the IIC be required to disclose information on the environmental and social risks and impacts of a non-sovereign guaranteed project, absent a compelling reason to not disclose it; and the IIC use the review of its access to information policy as an opportunity to include a presumption in favor of disclosure.*

- *If the Board of Executive Directors will have access to the Report (without any redacted information), we request that the MICI highlight the passages that were redacted from the version sent to the Requesters to allow the Board of Executive Directors clearly to see the information that we were provided.*
- *Lastly, we request that the MICI disclose the authors, dates, titles, and a brief explanation of the type or purpose of the documents referred to in the redacted paragraphs or sentences of the Report with regard to each set of concealed information.*

II. We request additional, case-specific recommendations

We support the recommendation that the Bank disclose in the Spanish language all documents indicated in Operational Policy OP-102 and referred to in the Report, including the documents comprising the ESMP.

Even though the MICI did not adopt our proposals for case-specific recommendations, we appreciate the fact that they were acknowledged. As we explain below, we believe that the Report's findings and conclusions should reinforce those proposals.

In addition, we do not agree with the suggestion that repayment of the loan is a decisive impediment to the implementation of our proposals. These recommendations are designed to accommodate the Bank's position of lesser influence. The recommendation to finance an independent study would contribute to the purpose of obtaining more and better information for future decisions on this project (without any inappropriate participation by the Bank in these decisions) and provide guidance for other airport projects in which the Bank currently takes part. The recommendations to encourage OPAIN to consider creating broader opportunities for the community to share in the project's benefits and to encourage the parties to restart a constructive dialogue both recognize the absence of contractual power between these parties and the Bank. These acts of encouragement would place a minimal burden on the Bank, given that the Bank has incurred in serious violations of its environmental and social obligations.

A. The Bank should finance an independent health impact assessment of the Airport's operations.

As we explained in our letter of 2 August, we request that the Bank finance an independent health impact assessment (HIA)[23] of the Airport's operations to identify actual impacts in advance and suggest modifications or mitigation strategies when necessary. Such a study is justified for the following reasons:

(i) **The increase in airport noise was a project risk**: As the MICI acknowledged, "the success of the Project is necessarily linked to the increase in operations."[24] Aerocivil's 2014 environmental impact assessment pointed out that the volume of flight operations increased approximately 22% from 2008 to 2014, while the number of people exposed to noise increased by 16% during that period.[25] The

[23] See Pan American Health Organization and World Health Organization, Health Impact Assessment: Concepts and Guidelines for the Americas (Washington, D.C., 2013).

[24] Paragraph 2.77. *See* also paragraphs 2.26 and 2.97.

[25] Aerocivil Environmental Impact Assessment with a view to modifying the environmental license for the El Dorado International Airport in Bogota (November 2014), page 245 ["Aerocivil 2014 EIA"].

increase in frequency of air operations during both daytime and nighttime hours creates noise-related impacts for the residents of communities adjacent to the Airport.

(ii) **The Airport's noise levels and their potential health impacts are a source of great concern:** As the MICI acknowledged, there are studies by the Bogota Secretariat of Health, health care providers, and academic institutions that point to a relationship between the noise produced by the Airport and health impairments of residents of the Fontibón and Engativá communities.[26] These studies include some that examine the effects on the school-age and adult population of Fontibón and Engativá and conclude that there is indeed a relationship between reports of auditory symptoms and higher exposure to noise.[27] The MICI also acknowledges that there is "uncertainty in the communities as to the magnitude and characteristics of the impacts they are currently suffering and those that will be felt in the future, intensifying the communities' vulnerability."[28]

(iii) **The Bank should have performed this assessment during its due diligence process, but failed to do so**: As the MICI concluded, the Bank failed to comply with Operational Policy OP-703 because it failed to assess the potential impact of the noise increase arising from the rise in Airport operations.[29] In view of the aforementioned studies on the health impacts of noise, the MICI concludes that "the harmful health effects alleged by the Requesters are linked to the Bank-financed Operation."[30]

(iv) **This lack of an HIA persists, to the detriment of the affected communities.** In response to a request by Aerocivil to extend the hours of operation of the south runway, the Autoridad Nacional de Licencias Ambientales [National Environmental Licensing Authority] acknowledged the existence of negative impacts produced by the noise but was unwilling to deny the request because

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[26] Paragraph 3.3, citing: Secretariat of Health and Fontibón Hospital, Relación entre los niveles de ruido ambiental y la población con discapacidad auditiva de la localidad de Fontibón [Relationship between ambient noise levels and the population with hearing impairments in the locality of Fontibón], 2008; Efectos auditivos y psicológicos del ruido producido por el tráfico aéreo del Aeropuerto El Dorado en las poblaciones de Engativá y Fontibón [Auditory and psychological effects of the noise produced by air traffic in the El Dorado Airport on the residents of Engativá and Fontibón], University of Antioquia, 2003; Efectos Auditivos por exposición a ruido ambiental en una población escolar en la localidad de Engativá [Auditory effects due to exposure to ambient noise on a school-age population in the locality of Engativá], Fontibón Hospital—Bogota Secretariat of Health, July 2011; Efectos auditivos producidos por el tráfico aéreo del aeropuerto internacional El Dorado en las poblaciones de Engativá y Fontibón [Auditory effects of air traffic in the El Dorado international airport on the Residents of Engativá and Fontibón], J. Londoño, H. Restrepo, et al., Revista Facultad Nacional de Salud Pública. Vol. 22, No. 2, July-December 2004; Calidad del sueño en una población adulta expuesta al ruido del Aeropuerto El Dorado [Quality of sleep in an adult population exposed to noise from the El Dorado Airport], Bogota 2012; Lina María Callejas, Rodrigo Sarmiento, et al.; Fontibón Hospital, Bogotá District Health Secretariat; Fontibón Hospital, University of Antioquia, among others.

[27] For example, a study conducted on the school-age and adult population of Fontibón and Engativá concludes that the risk of hearing loss is 2.58 greater for students at schools with higher exposure to noise and 1.95 greater for adults residing in areas with higher exposure to noise. Paragraph 3.3, citing information provided by the District Health Secretariat of the Bogota Mayor's Office, official letter 2016 EE25420 dated 20 April 2016.

[28] Paragraph 3.6.

[29] For example, paragraphs 2.83, 2.89, 2.93, 2.96, 3.4, and others.

[30] Paragraph 3.4.

"we have not seen epidemiology studies or clear technical information estimating the actual harm to the health of the communities bordering on the project."[31] The Bank can and should remedy this lack of technical information.

(v) **Despite the repayment of the loan, the Bank has a justified and significant interest in ensuring that an HIA is performed**. Firstly, the Bank can remedy its lack of due diligence and restore the project's reputation. Secondly, an HIA will directly support the project's achievement of positive outcomes now and in the future by: informing public and private decisions on the management of airport noise and helping to reduce the social conflict surrounding this project.[32] Thirdly, an HIA could inform and support the positive outcomes of:

a. Other airport projects in Colombia, including those being carried out as part of the Bank's country strategy with Colombia.[33] A recent news article revealed that Colombia has 51 airport projects underway and that 31 airport expansions are expected;[34]

b. Other Bank-financed airport projects. The Bank is currently involved in or is considering numerous airport projects in Latin America, including improvements (and construction of a new runway) in the Toussaint Louverture Airport in Haiti,[35] expansion and modernization of Bolivia's airports,[36] and improvements to the airports of The Bahamas (under consideration).[37]

An HIA on El Dorado could be a model for these projects. Its results could identify the types of health risks and impacts that these projects are required to manage and the most effective means of mitigating them.

B. The Bank should encourage OPAIN to consider providing more opportunities to share and participate in the benefits of the project.

In addition, the MICI should recommend that the Bank encourage OPAIN to consider providing broader opportunities for community participation in the project's benefits. For example, OPAIN could:

- Make a strategically visible space within the international terminal available to the neighboring communities to enable them to promote local goods and services. The members of our communities would be willing to assist customers at this space without remuneration, but would request support from OPAIN in the form of training programs in customer service skills and related matters; and

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31 ANLA Resolution 1034 of 24 August 2015, "Modifying the Environmental License Granted by Resolution 1330 of 7 November 1995 and Adopting Other Determinations," page 101. See also Aerocivil 2014 EIA, page 446.

32 By improving the availability of information on the impacts of the airport. *See* paragraphs 3.5-3.6; Aerocivil 2014 EIA, pages 409, 463, and 464.

33 The IDB Country Strategy with Colombia includes investment in the transportation sector, including airports. See, for example, page 17, paragraph 4.24.

34 Colombia Thinks Big with $70 Billion Infrastructure Program (Worldfolio, March 2016).

35 IDB Haiti HA-L1089.

36 IDB Bolivia BO-L1076.

37 IDB Bahamas BH-L1041.

- Give priority, when hiring, to job candidates who live in the neighboring communities.

As we described above, our community suffers the negative impacts of the project and has few opportunities to share in its benefits. This situation runs counter to the Bank's sustainable development mission and its obligation to manage social impacts. Even though the Bank is no longer invested in the project, it could nevertheless *encourage* OPAIN, while recognizing the absence of contractual power, to take steps toward achieving these objectives. Such encouragement would place a minimal burden on the Bank.

C. The Bank should encourage the parties to engage in a constructive dialogue.

Lastly, *at the very least*, the MICI should recommend that the Bank encourage Aerocivil and OPAIN (again, recognizing the absence of bargaining power) to reinitiate a constructive dialogue with the community representatives. The MICI report and the decisions of the Bank's Board of Executive Directors cannot solve all the issues in dispute between the parties. However, the Report addresses numerous concerns—including the link between the expansion and modernization project and the problems of noise and lack of meaningful community consultation—and thus creates room for a new and constructive discussion. We look forward to participating in this discussion. Once again, encouraging this would place a minimal burden on the Bank.

Key points:

- *The identified instances of noncompliance should be remedied through additional, case-specific recommendations, despite the repayment of the Bank's loan.*
- *We request that the MICI make the following recommendations: (i) that the Bank finance an independent HIA of the Airport's operations; (ii) that the Bank encourage OPAIN to consider providing broader opportunities for community participation in the project's benefits; and (iii) at the very least, that the Bank encourage Aerocivil and OPAIN to reinitiate a constructive dialogue with the community representatives to attempt to solve the problems.*
- *We are not in agreement with the suggestion that repayment of the loan is a decisive impediment to the implementation of our proposals. These recommendations are designed to accommodate the Bank's position of lesser influence. They would place only a minimal burden on the Bank in circumstances in which the Bank has seriously violated its environmental and social obligations.*

III. Specific comments on the analysis of compliance with the Relevant Operational policies and directives.

A. Operational Policy OP-703, Directive B.3: The project was inappropriately classified.

We support the conclusion that the project was inappropriately classified as a Category B operation. The expansion of a major regional airport adjacent to a densely

populated area ultimately for the purpose of increasing flight operations should always be classified as Category A due to the environmental and social risks of noise pollution.

In addition to invoking the MICI's logic as described in paragraph 2.28, we believe that this conclusion should be supported in reference to:

- The legacy of noise pollution problems associated with this airport, including the fact that the noise monitoring results show levels that exceed the limits provided in environmental legislation and international standards. We understand, although we do not know for certain due to the redaction of information, that the environmental diagnostic assessment performed prior to receipt of the airport facilities mentioned this situation at least in part.[38] The MICI cited a number of relevant resolutions issued by Colombian authorities in relation to Aerocivil's noncompliance with its obligations under the environmental license. Many of these existed prior to the start of the Bank's due diligence process, including Decision 327 of 1997; Resolution 534 of 1998; Resolution 745 of 1998; Resolution 412 of 1999; Resolution 731 of 2006; and Resolution 304 of 2007.[39]

- The number of people affected by the noise both before and after implementation of the project works. The Aerocivil environmental impact assessment pointed out that, between 2008 and 2014, the number of people exposed to noise rose by 16%, from 127,102 to 147,472, while the volume of operations increased from 682 operations per day to 832 operations per day on average.[40] It is hard to believe that these projections were not available to the Bank and/or OPAIN at that early stage, since they were and continue to be essential to the financial success of the project. The fees paid by passengers using the airport are the key source of revenue for OPAIN under the concession agreement, which was signed in September 2006. Furthermore, the chronology of events (Table 2) indicates that the Bank signed an agreement to review future air traffic projections on 11 July 2007, at a very early stage in the Bank's due diligence process and before the publication of the Environmental and Social Strategy (ESS) (presumably in 2008).

- In addition, at the time the Bank began its due diligence process there were numerous studies on the potential adverse effects of airport noise on the health of neighboring communities. For example, a 2003 study by the University of Antioquia, based on a comprehensive investigation, gave a detailed explanation of the impacts on auditory health at communities adjacent to the Airport and recommended improvements in the mitigation measures.[41]

This combined information should have indicated that the potential impacts of the project, particularly those associated with the increased noise produced by air operations,

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38 See paragraph 2.152.

39 See paragraph 2.118, footnote 210.

40 Aerocivil 2014 EIA, page 245.

41 Londoño et al., Efectos Auditivos y Sicológicos del Ruido Producido por el Tráfico Aéreo del Aeropuerto El Dorado en las Poblaciones de Engativá y Fontibón [Auditory and psychological effects of the noise produced by air traffic in the El Dorado Airport on the residents of Engativá and Fontibón] (University of Antioquía, 2003). See also Efectos auditivos producidos por el tráfico aéreo del Aeropuerto Internacional El Dorado en las poblaciones de Engativá y Fontibón [Auditory effects of air traffic in the El Dorado International Airport on the Residents of Engativá and Fontibón], J. Londoño, H. Restrepo, et al., Revista Facultad Nacional de Salud Pública. Vol 22, No. 2, July-December 2004.

were doubtless significant and would not be local or short-term for purposes of the project's classification. This type of infrastructure project is precisely the type that justifies performing an environmental impact assessment (EIA), an essential requirement for Category A projects.

Thus, we do not agree with the suggestion in paragraph 2.27 that, for classification purposes, there was an absence of technical information on the project's potential impacts associated with the increase in flight operations. We request that the MICI modify this paragraph to make it clear that, while an absence of information might be the case in other projects, it was not the case here.

We also request that the MICI disclose the date the ESS was prepared: we do not see it in the Report.

In paragraph 2.26, the MICI describes the increased noise production as "an effect of the Project." We ask that the MICI use "impact" instead of "effect" for consistency with the terms of Directive B.3 and to avoid any indication that impact and effect are different. Since the rise in flight operations is "a condition for the financial success of the operation," it should also be understood as an integral part of the project. Thus, the increase in noise is a likely a project impact.

Lastly, we request that the MICI explain the consequences of the conclusion on the project's classification in terms of the requirements of Operational Policy OP-703. We understand that the MICI did not perform this analysis because it focuses on the requirements for Category B (the project's actual category).[42] But the Report would be improved if it also included an analysis—however brief—of the Category A requirements to show the significant and far-reaching implications of the project's inappropriate classification.

The MICI should explain that due to the project's inappropriate classification, the Bank failed to comply with the additional Category A requirements, such as preparing an EIA and additional community consultation obligations.

Lastly, we note that much of the substantive content of the MICI's findings in this section has been redacted: four of the nine paragraphs are fully or partially redacted. This has weakened our ability to offer comments on this section of the Report.

[42] Paragraphs 2.78, 2.179.

Key points:

- *We support the conclusion that the project was inappropriately classified as a Category B operation. In addition to invoking the MICI's logic as described in paragraph 2.28, we believe that this conclusion should be supported in reference to: the legacy of noise pollution problems associated with this airport; the number of people affected by the noise both before and after implementation of the project works; and the fact that, at the time the Bank began its due diligence process, there were numerous studies on the potential adverse effects of airport noise on the health of neighboring communities.*
- *Consequently, we do not agree with the suggestion in paragraph 2.27 that, for purposes of the classification process, there was an absence of technical information on the project's potential impacts associated with the increase in flight operations.*
- *The MICI should explain that due to the project's inappropriate classification, the Bank failed to comply with the additional Category A requirements, such as preparing an EIA and additional community consultation obligations.*

B. Operational Policy OP-703, Directive B.5: The impact assessment of the noise created by the project was incomplete.

We support the conclusions that the Bank failed to fulfill Directive B.5 by not verifying that the project's assessment and management plans were fully in compliance with the requirements of Operational Policy OP-703; by not having a comprehensive environmental and social impact assessment covering the incremental noise arising from the project; and by validating noise mitigation measures without confirming their effectiveness and suitability.[43]

Nonetheless, we request that MICI address certain issues in greater detail.

Firstly, we request that the MICI explain the problems with the soundproofing of homes in greater detail.[44] The MICI should base this analysis on the documented evidence from the Colombian authorities as well as the observations of the review panel during its mission to Bogota. The panel saw firsthand the problems with the soundproofing of homes in the locality of Fontibón. The photographs on page 14 and the discussion in paragraphs 2.97-2.99 should be supplemented with a more detailed description to enable the readers, including the Board of Executive Directors, to understand the nature and scope of the soundproofing concerns.

Secondly, in the same section, we request that the MICI explain that there are additional mitigation measures that could and should have been considered by the Bank.

Not only did the Bank fail to assess the identified mitigation measures, but it also failed to consider other appropriate mitigation measures. The noise management and mitigation report commissioned by the MICI during the consultation phase identified several ways in which the noise mitigation measures used by the Airport failed to comply with international best practices and recommended improvements.[45] Also during the MICI

[43] Paragraphs 2.89-2.107.

[44] See, among others, paragraph 2.99.

[45] Leonie Dobbie, Noise Management and Mitigation Report (WSP House, May 2014).

consultation phase, Aerocivil, OPAIN, and community representatives signed an agreement to design a pilot plan for interim operations (extension of the south runway's operating schedule due construction works on the north runway), including the identification and assessment of additional mitigation measures.[46] Unfortunately, Aerocivil and OPAIN did not fulfill the terms of this agreement and it was not implemented. We request that this fact be made clear in the Report.

Additional mitigation measures should have been used because this was the best practice and because, at the time when the Bank identified the environmental license (particularly the restricted schedule for the south runway) as the sole mitigation measure, Aerocivil was planning to request a modification of the environmental license.[47]

As an additional point, with respect to the summary of the ESMR contents provided in paragraphs 2.71 and 2.72, we request that the MICI expressly mention that it will next analyze the effectiveness and status of those mitigation measures (similar to the clarification in paragraph 2.101), so as to avoid any inference that the mitigation measures are actually being implemented.

Thirdly, we request that the MICI indicate that a more thorough due diligence process would have included an assessment of the potential noise-related health impacts on the adjacent communities.

The World Health Organization reports that chronic exposure to high levels of ambient noise can lead to hearing loss, cardiovascular disease, cognitive decline, and serious sleep disruption, among other harmful impacts.[48] Children are especially susceptible to the harm caused by noise. More than 20 studies have shown negative effects in reading ability and memory of children exposed to elevated noise levels.[49] Specific studies on airport noise have concluded that there is a connection between long-term exposure to aircraft noise and learning difficulties.[50] In addition, a recent study examines the relationship between aircraft noise at 89 U.S. airports and the rate of hospitalization for cardiovascular diseases, finding that areas with a 10 dB higher noise exposure have a 3.5% higher cardiovascular hospital admission rate, after controlling for other factors.[51] The MICI's findings on the studies by the Bogota Secretariat of Health, health care providers, and academic institutions pointing to a relationship between the noise produced by the Airport and the health impairments of residents of the Fontibón and Engativá communities[52] are consistent with these warnings.

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[46] Also, this fact should be mentioned in paragraph 2.96, where the MICI states "there was no mechanism available to assess the future impact of this OPAIN activity or any mechanisms allowing OPAIN to become involved in identifying measures to mitigate the future impact of their activities on the north runway." The pilot plan for interim operations was such a mechanism, and OPAIN was involved in developing it. A copy of the agreement is attached.

[47] Paragraphs 2.45, 2.97, and 2.154.

[48] See World Health Organization – Regional Office for Europe, Burden of Disease from Environmental Noise: Quantification of Healthy Life Years Lost in Europe, (2011).

[49] Ibid, pages 45-51.

[50] Ibid. See also Civil Aviation Authority, Aircraft Noise and Health Effects: Recent Findings (March 2016).

[51] Andrew W. Correia, Junenette L. Peters, Jonathan I. Levy, Steven Melly, and Francesca Dominici, "Residential Exposure to Aircraft Noise and Hospital Admissions for Cardiovascular Diseases: Multi-airport Retrospective Study," (BMJ online, 8 October 2013) 347:f5561.

[52] Paragraph 3.3.

Performing an HIA is a best practice in airport projects.[53] Unfortunately, the Bank did not at all mention, much less investigate, these potential health impacts. At the very least, the MICI should highlight this omission.

Lastly, we do not understand the statement in paragraph 2.52 that "the Bank initiated its due diligence process in 2008." When was the ESS prepared? Did the Committee on Environmental and Social Impact not consider the potential environmental and social risks in its meeting of 11 May 2007? We suspect that the reason we cannot understand this statement is the restrictions placed on access to information in relevant sections of the Report. We therefore request that the MICI explain why it concluded that the due diligence process was initiated in 2008 rather than in 2007 or 2006.

In addition, we would like to note that we met with the Bank's Country Office in Colombia in 2011 before, and as a prerequisite for, the activation of the mechanism. At the time, there was only one environmental assessment document, which was part of the documents predating OPAIN's receipt of the project. At this meeting with the Bank, we clearly asked if we could have access to more information and were told that there was no additional information beyond this document.

Once again, our understanding of this analysis is limited by the concealment of information. Thirteen consecutive paragraphs of the findings on the due diligence process have been redacted, in addition to other passages in this section.

Key points:

- *We support the conclusions that the Bank failed to fulfill Directive B.5 by not verifying that the project's assessment and management plans were fully compliant with the requirements of Operational Policy OP-703; by not having a comprehensive environmental and social impact assessment covering the incremental noise arising from the project; and by validating noise mitigation measures without confirming their effectiveness and suitability.*
- *We request, nevertheless, that the MICI elaborate on the following: (i) the problems with the soundproofing of homes; (ii) the existence of additional mitigation measures that could and should have been considered by the Bank; (iii) a more thorough due diligence process would have included an assessment of the potential noise-related health impacts on the neighboring communities. The Bank did not at all mention, much less investigate, these potential health impacts.*

C. Operational Policy OP-703, Directive B.4: The assessment of the risks associated with a third party (Aerocivil) was inadequate.

We support the conclusions that the Bank failed to comply with Directive B.4 by not examining Aerocivil's institutional capacity to manage noise-related impacts or determining the risks that such third-party management entailed for the project,[54] and by

[53] See, for example, Golder Associates, Health Impact Assessment: Proposed Expansion to Billy Bishop Toronto City Airport, (Nov. 2013); Massachusetts Department of Public Health, Logan Airport Health Study (May 2014).

[54] Paragraph 2.124.

consequently not having specific measures in place to manage and monitor those risks.[55] There was no compliance monitoring mechanism to cover all obligations provided in the environmental license and other noise-related national regulations governing Airport operations, nor were there measures in place to handle such noncompliance.[56]

Thus, we are disappointed at the marked difference between Management's statements, in its comments on our supplemental request (regarding its "proactive strategy to foster communications between OPAIN and Aerocivil and advise Aerocivil of the risks of failing to properly assess the noise impacts")[57] and the MICI's conclusion that it "has found no mention in any Project document of this process of developing contacts between the two entities or any mention of advice provided to Aerocivil by the Bank."[58]

We note that Aerocivil was not a third party disconnected from the project, but rather one more partner in a PPP that received Bank financing. The Bank showed very problematic treatment of a form of PPP project.

We are also disappointed that either OPAIN or the Bank has chosen to redact the relevant analysis of the environmental diagnostic assessment commissioned by OPAIN.[59] Given the lack of transparency of the borrower's analysis, we ask that the MICI provide greater detail—from the public documents received from the Colombian authorities—on the status of Aerocivil compliance with national regulations. This information should be included in the sections on context and on analysis of the relevant directives of Operational Policy OP-703.

This information is needed to inform the Report's readers of the seriousness and persistence of these issues, and thus the seriousness of the Bank's failure to address the risks associated with Aerocivil. We request that the MICI include details on:

- The sanctions and injunctive measures imposed on Aerocivil for failing to comply with the environmental license, in paragraph 2.119; and
- Aerocivil's noise monitoring reports showing that noise levels exceeded the permissible limits from 2009 to 2015, in paragraph 2.119.

We additionally ask the MICI to explain in paragraph 2.129 that it met with Aerocivil representatives during the consultation phase.

Once again, this section is rife with redactions. Six of the ten paragraphs on the MICI's findings have been redacted in whole or in part, in addition to other passages.

Key points:

- *We support the conclusions that the Bank failed to comply with Directive B.4 by not examining Aerocivil's institutional capacity to manage noise-related impacts or determining the risks that such third-party management entailed for the project, and, consequently, by not having specific measures in place to manage and monitor those risks.*

[55] Paragraphs 2.126-2.132.

[56] Ibid.

[57] Paragraph 2.128.

[58] Paragraph 2.129.

[59] See, among others, paragraph 2.152.

- *We are disappointed that either OPAIN or the Bank has chosen to redact the relevant analysis of the environmental diagnostic assessment commissioned by OPAIN (see, inter alia, paragraph 2.152).*
- *Given the lack of transparency of the borrower's analysis, we ask that the MICI provide greater detail—from the public documents received from the Colombian authorities—on the status of Aerocivil compliance with national regulations, including the sanctions and injunctive measures imposed on Aerocivil and Aerocivil's noise monitoring reports showing that noise levels exceeded the permissible limits from 2009 to 2015.*

D. Operational Policy OP-703, Directive B.2: The Bank failed to assess or manage compliance with national regulations.

We appreciate the conclusions that the Bank failed to assess the overall compliance of the Airport's operations with the environmental license and other legal obligations associated with the issue of noise,[60] and that no mechanisms were in place to report such noncompliance to the Bank or a strategy to monitor noncompliance.[61]

However, we ask that the last conclusions of this section be presented in clearer, more balanced terms. For example, the conclusion in paragraph 2.162 currently reads that "the Bank partially complied with Directive B.2." We request that this paragraph explicitly state that the Bank failed to comply with Directive B.2 for the above-described reasons. Noncompliance is more relevant to the requesters' allegations and concerns, which are primarily related to the issues of noise (rather than issues under the direct contractual responsibility of OPAIN, with regard to which the MICI found partial compliance).

In any event, we are not in agreement with the conclusion that there is "an absence of evidence to indicate that OPAIN at any time failed to fulfill its legal obligations as concessionaire."[62] We understand that OPAIN has been penalized for failing to comply with environmental regulations regarding construction and demolition debris.[63] More importantly, as explained in section I(A) above and acknowledged by the MICI, Directive B.2 requires that the operation—rather than merely the borrower's activities—comply with national regulations: "[t]he Bank will also require the borrower for **that operation** to ensure that it is designed and carried out in compliance with the environmental laws and regulations of the country."

The contractual distinction in Appendix I of the concession agreement between Aerocivil's and OPAIN's responsibilities cannot insulate or exempt OPAIN from the regulations and obligations provided under Colombian law, including the environmental license, Resolution 8321 of 1985, and MAVDT Resolution 0627 of 2006, or from Directive B.2 requiring OPAIN to comply with these regulations in its capacity as an airport operator

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60 Paragraphs 2.157, 2.160-2.161.

61 Paragraph 2.159.

62 Paragraph 2.157.

63 District Environmental Secretariat Resolution 654 of 2013 (confirmed by Resolution 01112 of 2013).

under a single shared environmental license. The concession agreement cannot supersede Colombian environmental regulations.

Consequently, OPAIN shared responsibility for Aerocivil's failure to comply with these environmental regulations. Under Directive B.2, the Bank should have assessed and monitored compliance with these regulations by the airport operations as a whole, including the noise associated with increased flight operations in the expanded airport.

We are disappointed that either OPAIN or the Bank has chosen to redact the relevant analysis of the environmental diagnostic assessment commissioned by OPAIN,[64] among other paragraphs in this section. We do not know if this decision is meant to protect the Bank and OPAIN or Aerocivil, or all three, from appropriate criticism. We are also disappointed that the MICI is contributing to this lack of transparency by failing to include more extensive details on Aerocivil's noncompliance and the sanctions and injunctive measures imposed by the Colombian authorities, this information being available to the MICI from the documents it received from these authorities. Even if the MICI does not have complete information on these investigations, it can more exhaustively describe Aerocivil's instances of noncompliance. This information is needed in order to inform the Report's readers of the seriousness and persistence of these issues, and thus the seriousness of the Bank's failure to monitor and manage the risks associated with noncompliance with environmental regulations by Aerocivil and by the Airport in general.

It is also worth noting that according to paragraph 2.154, the project team stated that "the noise mitigation measure consisted of the restrictions on the runway operating schedules." If this is true, then this statement highlighted the superficial treatment of noise-related risks. The environmental license contains other mitigation measures, including soundproofing of homes and restrictions on routes and aircraft. Moreover, there are noise standards that should have been assessed and monitored. Similarly, at the time when the Bank identified the restricted schedule for the south runway as the sole mitigation measure, Aerocivil was planning to request a modification of the environmental license.[65] In addition, this statement appears to be inconsistent with the ESMR.[66]

We would also like to call attention to the Bank's attempts in paragraph 2.158 to minimize the failures to comply with the permissible noise levels. These attempts contradict the information presented in the sections and various other ANLA case files mentioned by the MICI in paragraph 2.160.

We understand that in these paragraphs the MICI is only summarizing the Bank's statements, but it is imperative that the MICI balance these statements with the facts to the contrary. Furthermore, the facts to the contrary should be explained in detail to allow readers, including the Board of Executive Directors, to determine the degree of seriousness of the Bank's omissions.

Lastly, we believe that the reference to the north runway instead of the south runway in paragraph 2.155 could be a typographic error.

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64 See, among others, paragraph 2.152.

65 Paragraphs 2.45, 2.97, 2.154.

66 Paragraph 5.29 of the ESMR specifically provided that any failure to comply with the environmental license would immediately be reported to the Bank with a view to taking the appropriate steps. See also paragraph 8.1 of the ESMR.

Key points:

- *We appreciate the conclusions that the Bank failed to assess the overall compliance of the Airport's operations with the environmental license and other legal obligations associated with the issue of noise, and that no mechanisms were in place to report such noncompliance to the Bank or a strategy to monitor noncompliance.*
- *However, we ask that the last conclusions of this section be presented in clearer, more balanced terms. We request that paragraph 2.162 explicitly state that the Bank failed to comply with Directive B.2 for the above-described reasons.*
- *We are disappointed that either OPAIN or the Bank has chosen to redact the relevant analysis of the environmental diagnostic assessment commissioned by OPAIN (paragraph 2.152). Given the lack of transparency of the borrower's analysis, we ask that the MICI provide greater detail—from the public documents received from the Colombian authorities—on the status of Aerocivil compliance with national regulations, including the sanctions and injunctive measures imposed on Aerocivil and Aerocivil's noise monitoring reports showing that noise levels exceeded the permissible limits from 2009 to 2015.*
- *In addition, we are not in agreement with the conclusion that there is "an absence of evidence to indicate that OPAIN at any time failed to fulfill its legal obligations as concessionaire." As explained above in section I(A), Directive B.2 requires that the operation—rather than merely the borrower's activities—complies with national regulations. Moreover, under a single and shared environmental license, OPAIN had shared responsibility for Aerocivil's failure to comply with environmental regulations.*
- *It is imperative that, in its summary of Bank statements, the MICI balance these statements with the facts to the contrary. Furthermore, the facts to the contrary should be explained in detail to allow readers to determine the degree of seriousness of the Bank's omissions.*

E. Operational Policy OP-703, Directive B.6: There was no meaningful consultation with the affected communities.

We support the conclusions that the Bank failed to comply with the provisions of Directive B.6 because the public hearing of February 2009 does not satisfy the Bank's requirement to conduct at least one consultation with the affected parties[67] and because OPAIN did not take part in the airport roundtables at this stage or use this forum to report on the project's specific impacts or environmental and social mitigation measures either prior to the approval or during the execution of the Project.[68]

We are frustrated that the Bank denied us the opportunity to receive important information regarding its analysis of information disclosure to and consultation with the communities affected by the project, as stated in paragraph 2.168. This information is not commercially sensitive; we cannot imagine any legitimate reason why this information should not have been disclosed, particularly to us, who being a community directly

[67] Paragraphs 2.180-2.186.

[68] Paragraphs 2.187-2.191.

affected by the project, would be direct participants in any dissemination and/or sharing process. If the information concerns an alleged community meeting, why is it not public? We request that the MICI ask Management once again for permission to disclose this information. If this request is not approved, we ask that the MICI make comments on this lack of transparency and the obstacle it creates for the MICI and the relevant communities. Redacting the information from the Report is exacerbating the lack of trust and community consultation already experienced by the affected communities, which is highlighted and criticized in the Report.

We are pleased that the MICI obtained access to the minutes of the hearing conducted by the Office of the Comptroller General; we believe that these minutes can help the MICI to clearly identify any failure in the hearing and resolve any difference of opinion between the parties. We suggest that the MICI recommend memorializing (including through videotapes) future community meetings and consultations conducted by the Bank and its clients (subject to any legitimate security or confidentiality concern) as a best practice, to avoid having to depend on self-reported information.

In paragraph 2.171, we would like the MICI to acknowledge our feelings, as community representatives who attended the public hearing, at not having been informed of the scope of the project's effects either before or during the hearing. Even though the draft mentioned our concerns in general terms in paragraph 2.177, we ask that the MICI mention our specific concern about the hearing conducted by the Office of the Comptroller General in paragraph 2.171 by way of context.

Lastly, we are not in agreement with the reference to the difficulties of operating the airport roundtables only from the perspective of Aerocivil.[69] From the requesters' perspective, the behavior and attitude of Aerocivil and OPAIN in this forum have created divisions within the communities and shown disregard for our concerns. We ask that the MICI recognize the communities' perspective.

Key points:

- *We support the conclusions that the Bank failed to comply with the provisions of Directive B.6 because the public hearing of February 2009 does not satisfy the Bank's requirement to conduct at least one consultation with the affected parties and because OPAIN did not actively participate in the airport roundtables at this stage or use this forum to report on the project's specific impacts or environmental and social mitigation measures, either prior to the Project's approval or during its execution.*
- *We are frustrated that the Bank denied us the opportunity to receive important information regarding its analysis of information disclosure to and consultation with the communities affected by the project, as stated in paragraph 2.168. This information is not commercially sensitive. We request that the MICI ask Management once again for permission to disclose this information. However, if this is not possible, we request that the MICI make comments on this lack of transparency and the obstacle it creates for the MICI and the relevant communities.*

[69] Paragraphs 2.175 and 2.190 in particular.

- *We suggest that the MICI recommend memorializing (including through videotapes) community meetings conducted by the Bank and its clients (subject to any legitimate security or confidentiality concern) as a best practice,* to *avoid having to depend on self-reported information.*
- *In paragraph 2.171, we would like the MICI to acknowledge our feelings, as community representatives who attended the public hearing, at not having been informed of the scope of the project's effects either before or during the hearing.*
- *In paragraphs 2.175 and 2.190, we ask that the MICI recognize the communities' perspective on the difficulties of operating the airport roundtables, including the failure to address our concerns.*

F. Operational Policy OP-703, Directive B.7: The Bank failed to comply with the requirement of incorporating the appropriate safeguards into the project contract documents.

We understand that the MICI's conclusion in this section is limited due to the specific terms of Directive B.7, which particularly restrict the supervision and monitoring obligation to "the executing agency/borrower's compliance with all safeguard requirements stipulated in the loan agreement and project operating or credit regulations." Since the loan agreement did not include appropriate safeguards associated with the risks of increased noise or consultation with, or participation by, the communities,[70] the MICI did not find noncompliance with this directive.

The MICI should explain the limited scope of Directive B.7 and the problem this creates for project transparency and good governance. There is a fundamental problem if the scope of the Bank's monitoring and supervision system is determined by a nonpublic document. The system is essentially concealing information from the individuals affected by the project.

In addition, Directive B.7 will be weakened much more if the MICI does not evaluate the Bank's compliance with the following sentence in the directive, namely that "[s]afeguard requirements, such as those in an ESMP, **must be incorporated** into the project contract documents, […] as appropriate, setting out as necessary milestones, timeframes and corresponding budgetary allocations to implement and monitor the plan during the course of the project."

In this case, the Bank clearly failed to incorporate the appropriate safeguards into the contract documents, including those identified in its own ESMR (we have no access to the ESMP).

Paragraph 8.1 of the ESMR states that: "[a]s part of the loan contract, the Bank requires OPAIN, as well as all project components, to comply at all times and throughout the effective term of the loan contract with each of the following […] 1. **All environmental, social, health, and safety legal requirements in Colombia, as well as all permits, authorizations, and licenses applicable to the project**, including restrictions on the use of the north runway. […] 6. **Implement routine activities aimed at making project-related environmental and social information available to the public and maintaining a public consultation system**." In addition, paragraph 5.29 specifically

[70] Paragraphs 2.206-2.207.

provides that any failure to comply with the environmental license would be reported to the Bank with a view to taking the appropriate measures.

The MICI analysis of Bank noncompliance with Directives B.2, B.4, and B.5 indicates that the Bank did not provide any requirement to monitor the airport's failure to comply with the environmental license (as the MICI noted in paragraph 2.207) or, more specifically, the noise pollution situation.

Similarly, the MICI analysis of Bank noncompliance with Directive B.6 indicates that the Bank did not provide any monitoring requirement regarding OPAIN's participation in the airport roundtables (paragraph 2.188) or regarding the disclosure of information to, or consultation with, the general public (or, alternatively, the monitoring system was not effective in identifying these issues).

The failure to incorporate these safeguards into the project contract documents and thus into the monitoring system constitutes a serious instance of noncompliance with Directive B.7, and we ask the MICI to modify its analysis accordingly.

This failure is a consequence of the inappropriate limitation on the scope of the monitoring system, which hinged on the contractual separation of responsibilities under the concession agreement. The MICI should explain that the monitoring system required by Directive B.7 had to be designed to ensure compliance with the Bank's broadest safeguards, including the requirements of Operational Policy OP-703.

We are also disappointed that MICI has obtained access to only two of the compliance reports.[71] We ask that the MICI explain the reason for this: Does the Bank have these documents or not? If it does not, the MICI should identify this as a monitoring failure.

Lastly, we suggest that implicit in Directive B.7 is that any monitoring system should include supervision and tracking processes with respect to any identified instance of noncompliance, and that this information should be clearly recorded. Failure to do this—as appears to be indicated in paragraphs 2.202 and 2.203—should be considered noncompliance with Directive B.7. We request that the MICI assess whether the Bank supervised and tracked any properly identified noncompliance.

In general, we note that the concealment of information on the monitoring process severely weakened our ability to provide comments on this section of the Report. Seven of the ten paragraphs comprising the MICI's findings have been redacted.

Key points:

- *The MICI should explain the limited scope of Directive B.7 and the problem this creates for project transparency and good governance. There is a fundamental problem if the scope of the Bank's monitoring and supervision system is determined by a nonpublic document.*
- *In any event, the current analysis by the MICI is incomplete. Directive B.7 requires the Bank to incorporate the appropriate safeguards into the contract documents. In this case, the Bank failed to incorporate the appropriate safeguards on the noise increase produced by the project or on consultation with, and participation by, the affected communities into the contract documents,*

[71] Paragraph 2.194.

including the safeguards identified in the Bank's own ESMR. This omission constitutes a serious instance of noncompliance with Directive B.7, and we ask that the MICI modify its analysis accordingly.

- *We are disappointed that the MICI has only given us access to two of the compliance reports (paragraph 2.194). We ask that the MICI explain the reason for this.*
- *We request that the MICI assess whether the Bank supervised and tracked any noncompliance identified by the monitoring system.*

G. Operational Policy OP-703, Directive B.12: The borrower failed to demonstrate that the operation complied with all relevant provisions of OP-703 prior to its approval by the Board of Executive Directors.

We are not entirely in agreement with the MICI's conclusion with regard to this directive. The first sentence and key to the obligation provided in Directive B.12 is that: "[t]he Bank will finance operations already under construction, only if the borrower can demonstrate that the operation complies with all relevant provisions of this Policy." In this case, the borrower failed to demonstrate this, as explained by the MICI with regard to Directives B.4, B.5, and B.6, among others. Thus, when the Bank financed this project, the Bank was not in compliance with Directive B.12.

In addition, we ask the MICI the following question: Did the action plan refer to and attempt to resolve all the issues identified by the MICI in the Report, with a budget, deadline, identification of resources, etc.? If not, then the action plan does not constitute compliance with Directive B.12. Implicit in Directive B.12 is that the purpose of an action plan is to resolve any failures to comply with Operational Policy OP-703.

Accordingly, we ask that the MICI clarify its conclusion by explicitly stating that the Bank partially failed to comply with Directive B.12 because, while the action plan was delivered to the Bank within the Bank's deadline, the Bank nevertheless financed a project in which the borrower was unable to demonstrate that the operations complied with all relevant provisions of Operational Policy OP-703.

Key point:

- *We are not entirely in agreement with the MICI's conclusion with regard to this directive. The first sentence and key to the obligation provided in Directive B.12 is that: "[t]he Bank will finance operations already under construction, only if the borrower can demonstrate that the operation complies with all relevant provisions of this Policy." In this case, the borrower failed to demonstrate this, as explained by the MICI with regard to Directives B.4, B.5, and B.6, among others. Thus, when the Bank financed this project, the Bank was not in compliance with Directive B.12.*

H. Operational Policy OP-102: Access to Information.

We support the conclusion that the Bank failed to comply with Operational Policy OP-102 by not disclosing the environmental analysis (comprised of the environmental diagnostic assessment preceding receipt of the El Dorado Airport facilities, environmental

plan, social management plan, and social management subprogram).[72] We are also in agreement with the MICI's logic regarding the language of the disclosed documents.[73]

However, the MICI's analysis should be reinforced by the following factors:

- The delay between the CESI meeting (May 2007), the mandate letter (March 2007), and disclosure of the ESS (February 2008). In this period—the early stages of a project—timely participation by the affected communities in assessing the potential risks and designing the mitigation measures to be managed is vital for the project's effectiveness.
- The publication of the ESMR barely a month before the project's approval by the Board of Executive Directors provided only a minimal time frame for the affected communities to understand the impacts of the project and for the Bank to convey these impacts.[74] For this reason, a period of time this short runs counter to international best practices for Category A projects.[75]
- The action plan (prepared under Directive B.12) should be disclosed as part of the environmental assessment.

In addition, we ask that the MICI expand paragraph 2.42 by pointing out that the failure to disclose the documents in the Spanish language was also an instance of noncompliance with Operational Policy OP-703.

Key points:

- *We support the conclusion that the Bank failed to comply with Operational Policy OP-102 by not disclosing the environmental analysis (comprised of the environmental diagnostic assessment preceding receipt of the El Dorado Airport facilities, environmental plan, social management plan, and social management subprogram). We are also in agreement with the MICI's logic regarding the language of the disclosed documents.*
- *However, the MICI's analysis should be reinforced by the following factors: (i) the delay between the CESI meeting (May 2007), the mandate letter (March 2007), and disclosure of the ESS (February 2008); (ii) the publication of the ESMR barely a month before the project's approval; and (iii) the failure to disclose the action plan (prepared under Directive B.12) as part of the environmental assessment.*

IV. Conclusion

In short, we are in agreement with many of the MICI's logical interpretations and conclusions.

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72 Paragraphs 2.234 and 2.40-2.242.

73 Paragraph 2.237.

74 Paragraph 2.236.

75 See, for example, IFC, International Finance Corporation Access to Information Policy (2012), paragraphs 31 and 34, requiring disclosure of the environmental and social action plan and any relevant environmental and social impact assessment document prepared by the client "no later than 60 days in advance for Category "A" projects."

However, we have identified certain areas in which the Report could be made clearer and/or expanded. We request that the necessary changes be made to include the missing information and clarify the Report's underlying logic. These changes are needed to ensure that the Board of Executive Directors can make an informed and appropriate decision on the Report and its recommendations.

In addition, we request that the instances of noncompliance identified by the MICI be remedied through additional, case-specific recommendations even though the Bank's loan has been repaid. *At the very least*, the MICI should recommend that the Bank encourage Aerocivil and OPAIN to restart a constructive dialogue with the community representatives to try to resolve the outstanding issues.

Cordially,

GLORIA C. MOLINA V.
Comunidades Unidas
Spokesperson