

**CONSULTATION PHASE
DECISION OF ELIGIBILITY**

From: Isabel Lavadenz-Paccieri, Project Ombudsperson
To: Executive Secretary
cc: ICIM
Reference: Loan 1842/OC-AR, Neighborhood Improvement Program II (PROMEBA II)
Project: AR-L1019
Country: Argentina
Date: 10 March 2011

I. Summary of request and decision of the Ombudsperson

- 1.1 On 24 November 2010, Mr. José Rafael Gauna, representing the Fundación Hugo Gauna, presented a request to the Independent Consultation and Investigation Mechanism (ICIM) indicating that the City of Corrientes had issued Municipal Ordinance 5347/2010 as a result of a project with the Inter-American Development Bank (PROMEBA-IDB Project), the effect of which was to remove 7,000 m² of green space from the Botanical Garden for use as a public thoroughfare. The land in question is under the stewardship of the Fundación Hugo Gauna, which has been responsible for works there since 1989. The foundation was not consulted at any stage of the project, and therefore appealed to the ICIM.¹
- 1.2 Upon receipt of the request, the Executive Secretary contacted the Requester to clarify the submission, and facilitated contact with Management. After the request was received by the Project Ombudsperson, on 9 December 2010, the Ombudsperson issued the Memorandum of Extension of 5 January 2011, giving the Requester 45 days to complete certain requirements of the complaint, in particular clarification as to a possible judicial process under way. During that time period, Management and the Requester took steps to resolve the dispute.
- 1.3 Following steps taken by the project team leader and the ICIM, on 21 February 2011 the Fundación Gauna decided to withdraw the complaint submitted to the ICIM, recognizing that Management and the Provincial Executing Unit of Corrientes had found an alternative technical solution consistent with its request. It was decided to permanently suspend the execution of works planned under Ordinance 5347/10 in the unnamed east-west street between Gascón and Thames

¹ The terms Mechanism, Management, Executive Secretary, Project Ombudsperson, Panel, Mechanism Policies, Eligibility, Consultation Phase, Assessment and any other relevant term included in this memorandum will have the meaning assigned in the Policy establishing the Independent Consultation and Investigation Mechanism (ICIM) approved on 17 February 2010, and available at the following address: www/iadb.org/ICIM.



streets, thereby avoiding the impact on the botanical garden and a youth center that had been the subject of the complaint.

- 1.4 In light of the communications received, and as the Requester's complaint has been satisfied by the decisions made by the project team and the executing agency, this request is declared **ineligible for the Consultation Phase**, pursuant to section 40 (g and h) of the policy.²

II. Background

- 2.1 The project referred to in the request is the "Neighborhood Improvement Program II (PROMEBA II) CCLIP and First Individual Loan (AR-L1019)," loan contract 1842/OC-AR, the purpose of which is "to improve the quality of life and contribute to the urban and social inclusion for Argentine households in the poorest segments of the population living in informal neighborhoods." Annex A to the loan contract mentions, in addition, that the purpose of the CCLIP and the individual programs to be implemented is to make a sustainable improvement in the quality of life of these households, and that the CCLIP's target is to benefit 250,000 Argentine families.
- 2.2 In the request presented to ICIM, the Requester declared that the property to be affected by a project-financed public thoroughfare, is under the stewardship of the Fundación Hugo Gauna. Educational, religious, and tourism activities are carried out there and a social assistance center has been on that property since 2002, serving more than 70 at-risk children and young people from shanty towns surrounding the botanical garden. According to the Requester, the foundation was not consulted nor was it taken into account in the proposed development of the lot, an important green space for the city; it was for this reason that the foundation submitted a formal complaint to ICIM.
- 2.3 Once the request was received and processed in the ICIM, the Project Ombudsperson determined, on 5 January 2011 in the "Memorandum on the Decision to Extend the Period for Completion of the Request" (Section 41 ICIM³) that the Requester had not fulfilled all the eligibility requirements established in the ICIM policy, and decided to give the Requester the opportunity to complete the request, granting it a term of 45 days from the date of notification of that memorandum. This was also in compliance with the two sections of the ICIM policy referring to eligibility of cases for the Consultation Phase: (i) Section 40 (h) refers to situations where "the Requester has taken steps to bring the issue to the attention of Management" and (ii) section 37 (i), which establishes, among grounds

² Section 40. "Eligibility Criteria for the Consultation Phase: Requests shall be deemed eligible for the Consultation Phase if the Project Ombudsperson determines the following, either via the request or via IDB records: ... (g) the parties are amenable to a Consultation Phase exercise and, with respect to an issue raised in the Request, a Consultation Phase exercise may assist in addressing a concern or resolving a dispute or is likely to have a positive result; and (h) the Requester has taken steps to bring the issue to the attention of Management."

³ "Requests ineligible for the Consultation Phase. Prior to making a determination of ineligibility, the Project Ombudsperson shall provide the Requester reasonable opportunity to complete or correct a Request."



for exclusion “requests that raise issues under arbitral or judicial review by national, supranational or similar bodies.” The ICIM facilitated communication in this regard between the Requester and the project team leader in Argentina. The Requester also confirmed that the environmental relief process initiated as a precautionary measure had not continued its legal progress.

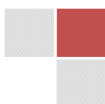
- 2.4 On 17 February 2011, Management informed the Ombudsperson that the Provincial Executing Unit (PEU) of Corrientes had advised that the project would be changed and that the works in the zone under dispute would be permanently suspended, with the consequent savings to the project. Those installations will be executed by the provincial counterpart in accordance with an alternative design. The Executing Unit and the Requester discussed these modifications, and Management determined that, with the new alignment of the works, the Requester would consider the claim settled.
- 2.5 On 21 February 2011 the Requester sent an e-mail to the Ombudsperson declaring its appreciation and satisfaction, and advising that the Fundación Gauna had decided to withdraw the complaint submitted to the ICIM, recognizing that Management and the PEU of Corrientes had established an alternative technical solution consistent with definitive stoppage of the works planned in the botanical garden.

III. Eligibility analysis

- 3.1 The consultation process headed by the Project Ombudsperson begins with this eligibility analysis, part of which involves compiling initial information on the request and the project and analyzing the grounds for exclusion and the requirements for eligibility.
- 3.2 The outcomes of this eligibility analysis are set out in the following table:



ELEGIBILITY CRITERIA	DETERMINATION OF THE OMBUDSPERSON	OBSERVATIONS
Names and contact information of the Requester	YES	
Project or operation properly identified	YES	AR-L1019
Requester resides in the country where the operation is being implemented	YES	Corrientes, Argentina
None of the exclusions of section 37 applies	NO	An apparent ground for exclusion, relating to a relief process, was clarified.
The Requester has reasonably asserted that it has been or could be directly, materially, and adversely affected by an action or omission of the IDB in violation of a relevant operational policy.	YES	The Requester indicated that it had not been consulted at any stage of the project; that the project would jeopardize the continued existence of the botanical garden as “lungs of the city” and the activities of the youth center operating in its facilities.
The parties are amenable to a consultation or mediation exercise.	NO	The Requester has decided to withdraw the complaint lodged with the Mechanism, as its complaint was duly addressed by Management (section 40 (g)) within the initial time period granted to complete the request.
The Requester has taken steps to bring the issue to the attention of Management.	YES	The Requester and the project team contacted each other during the period granted by the Ombudsperson, and the outcome was favorable to the Requester's demands (section 40 (h)).



IV. Conclusion

- 4.1 Section 40 (g) of the Policy provides that, in order for a request to be declared eligible, the parties must be amenable to a consultation phase exercise. As the parties have reached agreement, and there are no longer any grounds for a consultation process, this request is declared **ineligible**, pursuant to section 40 (g and h) of the Policy.
- 4.2 The Executive Secretary shall notify registration of this determination to the Requester, the Board of Executive Directors, the President of the Bank, Management, the Project Team, and the Executing Agency.

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Independent Consultation and Investigation Mechanism
ICIM**

