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DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-BO-2014-079

DETERMINATION OF ELIGIBILITY FOR THE CONSULTATION PHASE

LA PAZ STORM DRAINAGE PROGRAM

(BO-0223)

This document was prepared by the Eligibility Committee for the Consultation Phase in accordance with the Transition Plan approved by the Board of Executive Directors on 10 July 2013.

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Ref.: MICI-BO-2014-079

**ELIGIBILITY DETERMINATION MEMORANDUM
CONSULTATION PHASE**

To: Requester, Board of Executive Directors, Senior Management, Project Team, and Executing Agency
From: Consultation Phase Eligibility Committee
Via: Victoria Márquez-Mees, Executive Secretary
Cc: Independent Consultation and Investigation Mechanism
Project: La Paz Storm Drainage Program (BO-0223)
Date: 15 July 2014

I. EXECUTIVE SUMMARY

- 1.1 On 26 March 2014, the Independent Consultation and Investigation Mechanism (“ICIM” or “Mechanism”) received a Request in relation to the La Paz Storm Drainage Program (BO-0223) (“Program”).
- 1.2 The Requester is a resident of La Paz, Bolivia, who owns a business in the project area and has asked that his Request be handled confidentially for fear of reprisals. The Requester has expressed an interest in fact finding.
- 1.3 The Request refers to the economic damage that the Requester alleges to have suffered when access to the street on which his business is located was closed in order for construction work to be carried out under the Program. The Requester argues that the closure of that street for a substantially longer time than originally indicated by the Executing Agency to the area’s residents and business owners, as well as a lack of information and consultation, led him to incur significant economic damages. In addition, he alleges additional damages stemming from land use and the absence of night-time security services.
- 1.4 The Program is a sovereign guaranteed loan to the Government of Bolivia in the amount of US\$22,000,000, to be executed by the Municipal Government of La Paz (“Municipal Government” or “Executing Agency”). It was approved by the Board of Executive Directors of the Inter-American Development Bank (“IDB” or “Bank”) on 28 November 2007. The Program was classified under environmental and social category “B” pursuant to the Environment and Safeguards Compliance Policy (OP-703) and is currently in its implementation stage.

- 1.5 The Operational Policy relevant to this Request is the Environment and Safeguards Compliance Policy (OP-703).
- 1.6 The Consultation Phase Eligibility Committee (“Eligibility Committee” or “Committee”), which is responsible for determining eligibility for purposes of this Phase under the ICIM Policy (document GN-1830-49) and the transition plan approved by the Board of Executive Directors of the Bank (“Board of Executive Directors”),¹ has concluded that **that this Request is not eligible for the Consultation Phase as it does not comply with the requirement of Section 40(g) of the ICIM Policy.**
- 1.7 The Request will be forwarded to the Panel Chairperson not later than five business days from the date this Memorandum is issued for a determination of eligibility under the Compliance Review Phase.

II. TRANSITION PLAN FOR THE CONSULTATION PHASE AND ITS IMPLICATIONS FOR THE DETERMINATION OF ELIGIBILITY PROCESS

- 2.1 The process for determining eligibility for the Consultation Phase is conducted pursuant to Sections 37 and 40 of the current ICIM Policy.
- 2.2 In January 2013, in view of the findings and recommendations stemming from the ICIM evaluation report prepared by the Office of Evaluation and Oversight (“OVE”), the Board of Executive Directors decided to launch a process to adjust the ICIM Policy and operating structure, in order to strengthen the Mechanism and ensure that it is managed more effectively and efficiently.
- 2.3 In particular, changes in human resources led the Board to mandate the introduction of transitional operating arrangements starting on 1 September 2013 and remaining in force until the revised ICIM Policy is introduced. Under these arrangements, the eligibility of Requests for the Consultation Phase is determined by an Eligibility Committee comprised of the Executive Secretary and the two Case Officers from the Consultation Phase team. This determination of eligibility is conducted as mandated under the Transition Plan and pursuant to the provisions of the current ICIM Policy relating to this stage.

III. THE REQUEST

- 3.1 On 26 March 2014, the ICIM received a Request raising a series of concerns in relation to the economic damage suffered by the Requester as a result of one of the works under the

¹ Minutes of the 24 June 2013 meeting of the Organization, Human Resources, and Board Matters Committee, approved at the 10 July 2013 meeting of the Board of Executive Directors.

La Paz Storm Drainage Program (BO-0223). On 16 May 2014, the Request was supplemented by additional information and recorded.

- 3.2 The Requester requests that his identity be treated confidentially for fear of reprisals. Therefore, as set forth in the ICIM Policy,² the identity of the Requester will not be disclosed by the ICIM.³
- 3.3 The Requester is a resident of the city of La Paz, Bolivia and the owner of a business located on one of the streets that were closed for drainage and sewage rehabilitation works under the Program.⁴ In his Request, the Requester argues that the execution of these works was not in compliance with the submitted and agreed-upon construction schedule and this adversely affected his financial situation.
- 3.4 During the execution period, the work required closing off the street where the Requester's business is located, which made it difficult for customers to reach it. The Requester states that, by not complying with the construction schedule promised by the Executing Agency, lack of access persisted for a longer period than that to which the Municipal Government had originally committed. Consequently, the Requester argues, he was rendered unable to carry out his business activities normally. This resulted in significant adverse impacts on his business, which until that time had operated under optimal conditions.
- 3.5 The Requester states that he became aware of the time frame set forth in the construction contract during the Consultation Phase eligibility process. He further states that, had he known beforehand that the work would be executed in that time frame rather than in a time frame half as long, as the Executing Agency had informed him, he would have taken the necessary precautions to prevent or minimize economic damage to his business.
- 3.6 Specifically, the prolonged closure of access to the Requester's business resulted in an 80% reduction in his monthly revenues and forced him to dismiss several trained employees due to his inability to cover operating costs. The Requester describes the following effects of the street closure: (a) loss of customers; (b) shrinkage of business infrastructure and reduction in warehoused products for sale; (c) loss of trust by creditors due to noncompliance with payment terms; and (d) erosion of business image due to loss of market positioning. The Requester states that his financial situation became very unstable, affecting even his family circumstances.

² Paragraph 33 of the ICIM Policy provides that "[t]he Office will protect the confidentiality of a Requester if so requested in the Request and will consult with the Requester about the process for handling a confidential Request."

³ In order to protect the identity of the Requester, this document omits certain details regarding the Requester, his Request, and the project.

⁴ While the Requester indicated on several occasions that other people may have also been affected by the works, he stated that this Request was being submitted on his own behalf.

- 3.7 The supporting documents sent by the Requester include a series of communications, dating from the April to November 2013 period, between neighborhood business owners and the Deputy Mayor's Office as well as other entities. According to these communications, in April 2013 the District Deputy Mayor had met with them to announce that the construction work, which had been approved by the neighborhood representatives in February 2012, would be carried out. However, during the meeting, the business owners stated that they were unfamiliar with the project and that: (a) the group of representatives that had approved execution of this construction work approximately 14 months earlier was not empowered to do so; and (b) the public information workshop mentioned had not taken place. Accordingly, the group of neighborhood business owners requested information on the project and asked that the construction schedule be modified. This led to a series of communications and meetings to discuss and approve the construction schedule, which provided for construction time frames by section, closure for a specific period, and completion of construction by year-end 2013.
- 3.8 According to the Requester, the construction work was not executed the way it was supposed to have been and, consequently, the construction schedule was not complied with. This gave rise to complaints from the group of neighbors regarding the delays and failure to comply with the agreed-upon schedule, since the delays were resulting in "serious economic damage to the neighbors, who, this being a commercial area, [had been rendered unable] to carry out [their] work activities under the minimum conditions required in order to provide a livelihood for [their] families."⁵
- 3.9 With regard to the informational and consultation activities of the Executing Agency, the Requester argues that these were "practically an imposition." In addition, he emphasizes that no transparent information or simple documents were provided regarding the project, nor were they informed that the work was being financed by the IDB. According to the Requester, this information would have been important because it would have allowed him to inform the Bank of the problem in timely fashion.
- 3.10 Furthermore, the Request also makes reference to potential impacts resulting from street paving and land use where the Requester's business is located, which could have additional implications for his financial situation, and the lack of night-time security during the execution period despite the fact that the Municipal Government had proposed to provide such security.
- 3.11 The Requester states that the aim of his Request to the ICIM is to ensure that this experience is not repeated and other people are not impacted, so that the direct beneficiaries

⁵ The ICIM received from the Requester copies of communications sent by the group of neighbors to various authorities describing the situation.

of projects such as this are not adversely affected, and also to ensure that the Operational Policies of the IDB—as a development bank—are strictly observed. Moreover, the Requester expresses his interest in having the ICIM investigate the facts and speak with the area’s business owners.

IV. THE PROGRAM

- 4.1 The Program is a sovereign guaranteed loan in the transportation sector for a total amount of US\$22,000,000. The Program was approved by the Board of Executive Directors on 28 November 2007. The Executing Agency is the Municipal Government of La Paz.⁶ The Program was classified under environmental and social category “B” pursuant to the Environment and Safeguards Compliance Policy (OP-703) and is currently in its implementation stage.
- 4.2 The goal of the Program is to help improve the quality of life of the inhabitants of the city of La Paz. The purpose of the Program is to reduce the incidence of human loss and property damage caused by extreme hydrometeorological events, through two components: (a) flood and erosion control; and (b) institutional development and environmental management.
- 4.3 The first component includes the following activities: (a) macrodrainage and microdrainage works, encompassing (i) improvement and rehabilitation of the vaults and sewers in the city’s main macrodrainage system identified in the La Paz storm drainage master plan (PMDP); (ii) changes in the layout of the conduits; and (iii) rehabilitation of existing drains; and (b) works and complementary actions to protect the drainage system, including, among others: (i) structural interventions for water erosion reduction and reforestation of the upper watersheds; and (ii) sediment retention works in the upper and middle sections of the watersheds.⁷
- 4.4 The referenced project includes macrodrainage and microdrainage works to improve and rehabilitate vaults and sewers in the city’s main macrodrainage system.
- 4.5 According to the comprehensive technical, economic, social, and environmental study (TESA)—the main document for this construction work—the work was to be divided into sections, each with a specific duration.
- 4.6 According to the information provided by the project team, the construction work was successfully completed within the time frames contemplated by the Bank.

⁶ Loan Proposal, La Paz Storm Drainage Program (BO-0223), page 1.

⁷ Idem, pages 6 - 8.

- 4.7 With regard to citizen participation, a meeting was held on 1 February 2012 to present the technical engineering and environmental scope of the work. According to the minutes of the meeting, the “neighborhood councils and the residents” approved the work. In addition, they proposed holding public information workshops and creating a committee to promote the project. According to the TESA, four workshops were conducted with social organizations in the project’s area of direct influence.

V. CONSULTATION PHASE ELIGIBILITY ASSESSMENT

- 5.1 During the eligibility phase conducted from 16 May to 15 July 2014,⁸ the Committee held a number of telephone conversations and exchanged written communications with the Requester and the project team to obtain information on the project, clarify the Requester’s concerns, and provide IDB Management with an opportunity to respond to the Requester’s concerns if it so wished.
- 5.2 Eligibility for the Consultation Phase is assessed on the basis of the exclusion and eligibility criteria set forth in Sections 37 and 40, respectively, of the ICIM Policy. This involves a *prima facie* examination of the facts alleged in the Request in terms of their eligibility to be addressed by the ICIM in accordance with the Mechanism’s mandate from the Board of Executive Directors. In no case does this analysis or the final determination represent a judgment as to the validity of the issues raised.
- 5.3 In view of the above, as can be confirmed in Annex 1 to the present Memorandum, the Request complies with the requirements set forth in Section 40(a), (c), (d), (e), (f), and (h) of the ICIM Policy. Section 40(b) does not apply to the present Request, since the Requester acted on his own behalf without a representative. However, the Committee considers that the present Request does not satisfy the criteria set forth in Section 40(g) of the ICIM Policy.
- 5.4 For purposes of clarification for the interested parties, the reasons why the Committee considers that the Request does not comply with the aforementioned paragraph of Section 40 are given below.
- 5.5 With regard to the aforementioned point, which requires that the parties agree to participate in a Consultation Phase process, the Requester has stated his objection to any communication with the Executing Agency. Thus, he would not be willing to initiate a

⁸ For workload reasons, the Eligibility Committee required an extension of six business days from the original date for determining eligibility. Subsequently, on 18 June 2014, the eligibility review process was suspended to allow Management to address the Requester’s concerns to the extent possible. The eligibility review process was resumed on 7 July 2014.

process under the aforementioned phase. Accordingly, this requirement under the Policy is not met.

- 5.6 Now then, given that the Request raises various allegations, it is important to provide a detailed analysis of the process carried out by the Committee, particularly with regard to two issues: (a) the adverse, direct, and material effect on the Requester and its potential link to an action or omission on the part of the IDB in violation of a Relevant Operational Policy in a Bank-financed Operation (Section 40(f)); and (b) Management's involvement in the process (Section 40(h)).
- 5.7 With regard to Section 40(f), the Committee considers that the Requester has reasonably asserted that he suffered direct and material economic damage as a result of the closure of the street on which his business is located in order for one of the construction works envisaged in a Bank-financed operation to be executed.
- 5.8 The Environment and Safeguards Compliance Policy (OP-703) requires the Bank to perform, among other things: (a) an analysis of the key direct and indirect social impacts and risks; (b) an assessment of the set of measures designed to avoid, minimize, or compensate the specific social impacts; (c) the design of all recommended mitigation and compensation measures; and (d) a minimum of one consultation with the affected parties, providing, at a minimum, information to such affected parties and facilitating a dialogue on the scope of the project and the proposed mitigation measures. In addition, through the Strategic Environmental Assessment, the Bank must ensure that the risks and opportunities of programs have been properly identified.
- 5.9 Although, in the context of an analysis of alternatives, the Program's documents identify a potential impact on the area's formal socioeconomic activities⁹ as well as on the potential population group sharing the Requester's characteristics in the Program's direct area of influence,¹⁰ these findings do not appear to have led to a subsequent analysis as to the form and extent of the construction work's potential impact on such population groups or as to the appropriate mitigation, minimization, or compensation measures.
- 5.10 In this regard, it would appear that the economic impacts suffered by the Requester as a result of execution of the work were not properly anticipated and, consequently, no mitigation, minimization, or compensation measures were designed in order to respond to these impacts.

⁹ With regard to the analysis of alternatives, the program's Strategic Environmental Assessment anticipates the project's economic impact in the form of a "disruption of formal socioeconomic activities" during the implementation of construction work, classifying such impact as being of "little importance" and does not present any design of mitigation or compensation measures in response to this identified impact.

¹⁰ According to the TESA, the direct area of influence has a population of 43,380, of which 19.44% are engaged in commercial activities and 22.92% work as service providers and sales people.

- 5.11 In addition, with regard to consultation and information activities, the consultation processes apparently did not encompass all parties directly affected by the construction work, and the quality and accuracy of the information appears to be questionable.
- 5.12 On the other hand, the documents reviewed do not reveal any factors associated with the issues of street paving and land use or lack of night-time security; in the former case, because this is a matter of national regulations, and in the latter case, the construction work already having been completed, the alleged damage has not materialized. Consequently, these two issues would not have been considered in a Consultation Phase process had the Requester opted for such a process.
- 5.13 Paragraph 40(h) requires that (a) the Requester take steps to bring the issue to the attention of Management; and (b) if IDB Management is involved in addressing the concerns raised, a period of forty-five (45) calendar days will be allowed to pass.
- 5.14 The Requester contacted the IDB project team in December 2013. As a result of this contact, the two parties held a meeting to discuss the issues raised by the Requester. From the outset, the project team expressed its willingness to address any of the Requester's questions or concerns; furthermore, throughout the ICIM process, the project team has shown itself willing to address the Requester's concerns to the extent possible. Accordingly, in the context of the eligibility analysis and having addressed questions about the confidential treatment of the Requester, the Committee suspended the eligibility process on 18 June 2014 in order to give Management an opportunity to address the Requester's concerns.
- 5.15 The Requester and Management met on 26 June 2014. According to information provided to the Committee by both parties, Management answered various questions raised by the Requester and proposed to seek alternatives for resolving the issues through the Executing Agency. In view of the Requester's request for confidentiality, this would require the Requester's consent. In this regard, the Requester reiterated his request for confidentiality and refused contact with the Municipal Government. Accordingly, the project team indicated to the Committee that because the Requester did not wish to enter into dialogue with the Executing Agency, any action that Management might propose with a view to resolving the Requester's concerns was limited. As a result, the Committee lifted the suspension on 7 July 2014 to continue with the eligibility process. Despite the fact that the expected outcomes were not achieved, the Committee acknowledges Management's readiness and willingness to address the Requester's concerns and underscores the value of communication in the search for solutions.

VI. CONCLUSION

- 6.1 On the basis of the foregoing, and without making any judgment as to the merits of the case, the Committee concluded that Request MICI-BO-2014-079 is not eligible for the Consultation Phase as it does not comply with the requirements of Section 40(g) of the Policy.
- 6.2 Since the Requester has asked that an investigation be conducted, the Request will be forwarded, no later than five business days following the date on which this Memorandum is issued, for a determination of eligibility for the Compliance Review Phase.

Annex 1. Eligibility Analysis Table

	Eligibility criteria	Analysis
a.	Names and contact information for the Requester.	The Requester resides in La Paz, Bolivia, and requested that his identity be kept confidential for purposes of processing his Request. ¹¹ The ICIM has complete contact information.
b.	Names and contact information for the Representative.	Not applicable to the present Request (paragraph 5.3 above).
c.	Project or operation has been identified.	La Paz Storm Drainage Program (BO-0223).
d.	The Requester resides in the country in which the operation is being implemented.	According to the documentation provided, the Requester resides in Bolivia.
e.	None of the exclusions for the Consultation Phase set forth in Section 37 applies.	Fulfilled.
	37.a. Actions that are the responsibility of parties other than the Bank, such as a borrower/recipient, technical cooperation beneficiary, or executing agency, and that do not involve any action or omission on the part of the Bank.	Not applicable – While the Request refers to the activities of the Executing Agency related to execution of one of the construction works under the Program, it is the responsibility of the IDB to ensure that the Bank’s Operational Policies are observed; in the specific case of this Request, the provisions of OP-703 regarding the analysis of social impacts, the design of the relevant mitigation and compensation measures, and the public consultation requirements.
	37.b. Requests related exclusively to the laws, policies, or regulations of the host country(ies), borrower/recipient or the executing agency.	Not applicable – The Request does not refer exclusively to these aspects. It is worth noting, however, that the Request mentions potential damage in addition to the principal effect. This damage is related to street paving and land use where the Requester’s business is located. In this regard, while the Committee considers that this potential damage is primarily related to national regulations and policies, the Requester has subsequently stated that these issues are not his primary concern and that, given the circumstances, he considers them closed.

¹¹ As provided in Section 33 of the ICIM Policy.

Eligibility criteria	Analysis
37.c. Actions or activities that do not relate to a Bank-financed operation or that are not subject to the Bank's relevant Operational Policies.	Not applicable – The Request relates to economic damage suffered as a result of the closure of streets for construction work under the Bank-financed Program.
37.d. Procurement decisions or processes (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank).	Not applicable – The Request does not refer to procurement procedures.
37.e. A particular matter or matters that have already been reviewed pursuant to the Mechanism, or its predecessor, unless justified by new evidence or circumstances not available at the time of the initial Request.	Not applicable – The Request does not refer to any matters that have been verified by the ICIM or its predecessor.
37.f. Requests dealing with a Bank-financed operation that are filed after 24 months of the last disbursement.	Not applicable – The Request was submitted on 26 March 2014 and formalized on 16 May 2014. The final disbursement under this Program was made in April 2014.
37.g. Ethics or fraud questions, specific actions of Bank employees, nonoperational matters such as internal finance or administration, allegations of corrupt practices, or other matters subject to review by other bodies established by the Bank (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank).	Not applicable – The Request does not refer to matters subject to scrutiny by other bodies within the Bank.
37.h. Any Request that on its face (i) is without substance, or (ii) has been submitted to gain a competitive business advantage.	Not applicable – The Committee considers the Request to be duly grounded and that there is no reason to consider its purpose to be to obtain a competitive business advantage.
37.i. Requests that raise issues under arbitral or judicial review by national, supranational, or similar bodies.	Not applicable – The Requester has stated that there are no arbitral or judicial proceedings under way in relation to the Request, and the information to which the Committee has had access does not suggest otherwise.

	Eligibility criteria	Analysis
f.	The Requester has reasonably asserted that he has been or could be expected to be directly, materially adversely affected by an action or omission on the part of the IDB in violation of a relevant Operational Policy.	<p>Fulfilled – The Requester has reasonably asserted that he has been directly, materially adversely affected by a possible omission on the part of the IDB in violation of its Operational Policies (paragraphs 5.7 to 5.12 above).</p> <p>With regard to the lack of night-time security during construction, the Committee considers that the alleged damage associated with the construction work is not present, given that the work has been completed.</p>
g.	The parties are amenable to a consultation or mediation exercise.	<p>Not fulfilled – The Requester stated that, for fear of reprisals, he has no wish to participate in a Consultation Phase process involving the Municipal Government of La Paz.</p>
h.	The Requester has taken steps to bring the issue to the attention of Management.	<p>Fulfilled – The Requester contacted Management in December 2013. As a result of this contact, an informational meeting was held between the Requester and members of the IDB project team on this matter.</p> <p>After being consulted by the ICIM, Management expressed an interest in trying to resolve the Requester’s concerns to the extent possible. Accordingly, the eligibility process was temporarily suspended with the Requester’s consent. During the suspension period, Management met with the Requester and offered to find paths for resolution with the La Paz Municipal Government.</p> <p>Doing so would require lifting the confidentiality of the Request, to which the Requester did not agree. Therefore, Management informed the Committee that the Requester’s decision prevented the Committee from seeking ways to resolve the matter.</p>