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**DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM**

**CO-MICI002-2011  
COLOMBIA: “EL DORADO INTERNATIONAL AIRPORT” PROJECT**

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**CONSULTATION PHASE  
DETERMINATION OF ELIGIBILITY**

**TO:** Victoria Márquez-Mees, Executive Secretary  
**FROM:** Isabel Lavadenz Paccieri, Project Ombudsperson  
**CC:** Independent Consultation and Investigation Mechanism  
**REFERENCE:** Modernization, Expansion, Operation, Commercial Use, Maintenance, and Management of the El Dorado International Airport (loan 2477A/OC-CO)  
**COUNTRY:** Colombia  
**DATE:** 3 November 2011  
**DETERMINATION OF ELIGIBILITY:** The Request **is eligible** for the Consultation Phase.

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**I. Request Summary**

- 1.1 On 12 August 2011, the Independent Consultation and Investigation Mechanism (ICIM)<sup>1</sup> received a Request from the organization COMUNIDAD (Comunidades Unidas Macroproyecto Aeropuerto El Dorado) (the Requesters), on behalf of residents of Localidad Novena de Fontibón. The Requesters are represented by Ms. Gloria Cecilia Molina Villamarín (Representative).<sup>2</sup> The Request describes the environmental and social damages that could be caused by the implementation of the Project for the Modernization, Expansion, Operation, Commercial Use, Maintenance, and Management of the El Dorado International Airport (the “project”), in Bogota, Colombia.

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<sup>1</sup> The terms Mechanism, Management, Executive Secretary, Project Ombudsperson, Panel, Mechanism Policies, Eligibility, Consultation Phase, Assessment, and any other relevant term in this memorandum shall have the meaning assigned to them in the Policy Establishing the Independent Consultation and Investigation Mechanism (ICIM) approved on 17 February 2010 and available at: [www.iadb.org/mici](http://www.iadb.org/mici).

<sup>2</sup> Ms. Gloria Molina submitted evidence that she represents the Comunidad organization. See “*Constitución de Veeduría Ciudadana*,” Comunidades Unidas Macroproyecto Aeropuerto El Dorado, 25 June 2011.

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- 1.2 The Requesters allege that the participation and information campaigns carried out in connection with the project have not been effective or appropriate for this type of project, and that there would be no real social and environmental management to address the concerns of the persons affected by it and the operation's impact on the community. In addition, they express their concern with: (i) the pollution produced by alleged shortcomings in the system to collect domestic and industrial wastewater, rainwater, and water-runoff at the air terminal; (ii) the alleged lack of operation of a solid waste incinerator; (iii) the lack of a plan to manage hazardous materials and to prevent and reduce pollution; (iv) alleged air pollution; (v) noise levels that exceed the limits set forth in domestic environmental legislation, primarily at night; (vi) the potential impacts on the flora and fauna of flooded areas adjacent to the airport; and (vii) the biological risk that, inter alia, workers, handlers, and neighboring communities may be exposed to. The Requesters partially based their description of these impacts on the Environmental and Social Management Report (ESMR) prepared by the Bank's project team.
- 1.3 A preliminary analysis revealed that the damages alleged in the Request referred to the Access to Information Policy (Operational Policy OP-102) of 2006 and 2010<sup>3</sup> and to the Environment and Safeguards Compliance Policy (Operational Policy OP-703) of the Inter-American Development Bank (IDB).

## II. Project Background

- 2.1 The El Dorado Airport is located to the west of Bogota, between the localities of Fontibón and Engativá and between the municipios of Funza and Mosquera. It is Colombia's main airport for domestic and international flights and has two runways.

### A. Concession Agreement

- 2.2 Between 2004 and 2005, the Special Administrative Unit for Civil Aviation (Aerocivil) structured the works and activities to be carried out under the project, incorporating them into a Concession Agreement with a term of 20 years. In 2006, Aerocivil granted this concession to Sociedad Concesionaria Operadora Aeroportuaria Internacional S.A. (OPAIN).<sup>4</sup> Under the Concession Agreement,

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<sup>3</sup> The Access to Information Policy (Operational Policy OP-102) approved in 2006 refers to data or documents prepared from 1 January 2004 through 31 December 2010. In turn, the Access to Information Policy (Operational Policy OP-102) approved in 2010 applies to data and documents produced starting on the policy's effective date, 1 January 2011.

<sup>4</sup> IDB, loan proposal, El Dorado International Airport (CO-L1029), October 2010, p. vi; and IDB, Environmental and Social Management Report (ESMR), September 2010, paragraph 1.1.



- OPAIN undertakes to “secure and/or contribute the total financing of the resources required to execute the project.”<sup>5</sup>
- 2.3 In accordance with the Concession Agreement between Aerocivil and OPAIN, the *Concession Area* is the entire airport with the exception of the “Nonconcession Area.”<sup>6</sup> The Concession Area includes the passenger terminals, the cargo areas, the general aviation area, Aerocivil’s administrative tower and warehouse, the Visitor Services Center, the building of the Secretariat of Aerocivil’s Operational Systems, and the control tower.<sup>7</sup> This agreement structures the Concession Area into two large groups:
- (i) **the airside**, which encompasses the areas related to moving aircraft such as ramps, taxiways, and adjacent land.
  - (ii) **the landside**, which comprises the parts of the Concession Area apart from the airside area and related to all ground activities linked to operation of the airport, such as passenger and cargo terminals, service facilities for aircraft and passengers, and commercial premises.<sup>8</sup>
- 2.4 Under the Concession Agreement, OPAIN will implement the project activities in two main stages. The first consists in **modernizing and expanding the airport**—in the airside and landside components of the Concession Area. These works originally included the construction of the cargo terminal, the international terminal, and their respective ramps; the construction of the new fire station and control tower; and the expansion of the turning bay of the north runway.<sup>9</sup>
- 2.5 Regarding the project’s second stage, OPAIN’s responsibilities consist of the **management, operation, maintenance, and commercial use of the Concession Area** and the performance of the functions required to safely and efficiently move

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<sup>5</sup> See Agreement 6000169 OK of 12 September 2006. Concession for the Management, Operation, Commercial Use, Maintenance, and Modernization, and Expansion of the El Dorado International Airport, Clause 10(d).

<sup>6</sup> Only the following areas fall within the Nonconcession Area: (a) the area in which the Consortium for the development of the El Dorado Airport was performing maintenance activities, under the Second Runway Agreement; (b) the area belonging to the Military Transport Air Command; (c) the National Aeronautical Center; (d) the Aeronautical Studies Center; (e) the National Police Area, to the west of the Military Transport Air Command; (f) the areas delivered under a loan for use to the National Defense Ministry; and (g) Aerocivil’s Hangar. *See* Agreement 6000169 OK, Clauses 1.13 and 1.17.

<sup>7</sup> See Agreement 6000169 OK, Clauses 1.13 and 1.17.

<sup>8</sup> See Agreement 6000169 OK, Clauses 1.75 and 1.76, and ESMR, paragraph 2.18.

<sup>9</sup> ESMR, Table 2, Modernization and Expansion Work Plan, p. 34. Some of these works may be modified as a result of changes to the project’s design.



aircraft, passengers, cargo, and mail at the airport.<sup>10</sup> Aerocivil continues to be responsible for air traffic control and operation of the airport's runways. However, OPAIN also carries out activities on the airside of the Concession Area, which include assigning gates and aircraft positions; moving vehicles and aircraft; signaling; inspecting the aircraft movement areas; and performing ramp services.<sup>11</sup>

- 2.6 Regarding environmental issues, Aerocivil delegated to OPAIN part of the rights and obligations set forth in the Environmental License issued by the then Ministry of the Environment in 1995.<sup>12</sup> However, OPAIN would not be responsible for noise management and mitigation obligations, for air quality monitoring, or for the social management of the projects, which would continue to be the responsibility of Aerocivil.<sup>13</sup>

## **B. Loan operation**

- 2.7 The loan operation was approved by the IDB's Board of Executive Directors on 3 December 2010, with a view to financing the airport's "modernization, expansion, management, and operation." With it, the project aims to contribute to the Colombian economy and modernize an essential component of its basic infrastructure.<sup>14</sup> The project's total cost is US\$1.086 billion, of which US\$165 million will be financed by the Bank, according to the contract to be entered into with OPAIN, the project's borrower and executing agency.<sup>15</sup> As the parties have not yet signed the loan contract, the Bank has not begun disbursing the funds.

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<sup>10</sup> See Agreement 6000169 OK, Appendix F, Operation Technical Specifications, pp. 5 and 7.

<sup>11</sup> See Agreement 6000169 OK, Appendix F, Operation Technical Specifications, pp. 35-39 and 54-59.

<sup>12</sup> The Concession Agreement stipulates that, after receiving authorization from the Ministry of the Environment, Housing and Territorial Development (MAVDT), Aerocivil will assign to OPAIN the obligations set forth in the Environmental License related to the operation and commercial use of the Concession Area. This Ordinary Environmental License was issued by the then Ministry of the Environment, through Resolution 1330 of 1995, as amended. See Agreement 6000169 OK, Clause 1.78, and ESMR, paragraph. 3.17.

<sup>13</sup> See Agreement 6000169 OK of 12 September 2006. Appendix I. Environmental Considerations, p. 7.

<sup>14</sup> Loan proposal, paragraph 1.7.

<sup>15</sup> Loan proposal, paragraphs 1.3-1.5; and IDB, Project Description, CO-L1029 – El Dorado International Airport, Colombia, updated on 18 August 2011.



Project Ombudsperson

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### C. Potential environmental and social impacts

2.8 Based on its potential environmental and social impacts, the project was classified as a Category B operation, in accordance with Operational Policy OP-703.<sup>16</sup> The project documents classify the operation's adverse environmental effects as follows:

- (i) **Impacts related to the construction activities**, which have to do with waste from demolition activities and higher levels of noise and nuisances for airport users. These impacts would be controlled by the implementation of good construction practices; and
- (ii) **Impacts from the operation of the airport**, which would be related to the "airport's activities, including high levels of noise and air emissions from landing and takeoff, disposal of international waste and blue waters and stress on land use at the airport's surrounding area." The project will face the challenge of reforming the environmental management practices that some airport tenants (such as passenger and cargo airlines) have followed for years.<sup>17</sup>

2.9 The ESMR analyzes other risks that stem from the project and that would be beyond OPAIN's control and associated, inter alia, with the possibility of "Aerocivil deciding to operate the north runway at night, which is restricted in the environmental license in effect for airport operation." The ESMR emphasizes that, although Aerocivil is responsible for air traffic and for operating the runways in accordance with the Concession Agreement, the airport operates under a single Environmental License. The ESMR states that any deviations or noncompliance should be reported to the Bank and properly handled so as to comply with the permits and authorizations in effect.<sup>18</sup>

### D. Safeguards

2.10 With a view to avoiding and/or mitigating such impacts, the ESMR states that, as part of the loan contract, the Bank will require, inter alia, that OPAIN and all project components comply with requirements of Colombian law, with IDB Operational Policies on environmental and social issues, and with the

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<sup>16</sup> Under Operational Policy OP-703, Category B operations are those 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."

<sup>17</sup> Loan proposal, paragraphs 8.3 to 8.5.

<sup>18</sup> ESMR, paragraph 5.29



Environmental Guidelines.<sup>19</sup> The ESMR requires that, in addition to monitoring activities over the course of the loan, OPAIN submit:

- (i) **prior to the financial closing**, an Action Plan on Environmental and Health and Safety Issues (“Action Plan”),<sup>20</sup> which must include “an estimate of costs, timetable of activities, and assignment of responsibilities for executing actions to correct deficiencies and shortcomings identified in some plans and procedures during the Bank’s due diligence,” and
- (ii) **prior to the first disbursement**, a proposal to identify and characterize contaminated soils and groundwater. Once the findings of these studies have been received, the liability-remediation options will be evaluated.<sup>21</sup>

### III. Eligibility Analysis

- 3.1 Article 38 of the Policy Establishing the ICIM (the Policy) states that *“The purpose of the Consultation Phase is to provide an opportunity, applying consensual and flexible approaches, to address the concerns of a party that believes it has been or could reasonably be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-Financed Operation.”*
- 3.2 The Eligibility Analysis is conducted pursuant to the eligibility and exclusion criteria set forth in Articles 40 and 37 of the Policy, respectively.
- 3.3 On the basis of the information submitted in the ESMR, the Requesters’ complaint described in detail the environmental and social impacts that would be caused by the activities planned in the project. Although part of these impacts would have begun before the project, the Requesters state that they persist under OPAIN management and could be perpetuated and/or aggravated during project execution. The Requesters allege that the Bank did not effectively require the executing agency to take the steps needed to eliminate and remedy these liabilities, as well as to prevent, mitigate, and/or remedy future impacts stemming from the new project.

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<sup>19</sup> ESMR, paragraph 8.1.

<sup>20</sup> OPAIN was to have submitted a first Action Plan to the Bank in April 2010. Nonetheless, the plan was to be complemented and updated before the signing of the contract. See: Environmental, Social, and Occupational Health Management Action Plan, April 2010.

<sup>21</sup> ESMR, paragraphs 8.2 and 8.3.





- 3.4 Although under the Concession Agreement and according to the ESMR some of the impacts alleged in the Request are the responsibility of Aerocivil, they are closely related to activities for which OPAIN is responsible. In addition to renovating and/or building facilities that are essential for the flight operation and control at the airport, OPAIN is also responsible for some activities on the airside of the *Concession Area*. These activities ensure that Aerocivil has the services, tools, and infrastructure for air traffic control and the operation of the airport's runways (paragraphs 3.4 and 3.5 above). On the basis of a preliminary analysis, it was determined that the institutions would therefore have shared, concurrent, and complementary responsibilities in environmental performance.
- 3.5 Consequently, according to Operational Policy OP-703, Aerocivil could emerge as a third party "*whose involvement is necessary for the effective mitigation of impacts or environmental enhancement of*" the project. In this case, the Bank would have to analyze whether the impacts stemming from Aerocivil's responsibilities could constitute "*risk factors that may affect the environmental sustainability*" of the project and, if so, encourage OPAIN and Aerocivil to design the appropriate measures to manage such risks. The project ESMR identified the potential risk of Aerocivil deciding to operate the north runway of the airport at night and the need for this potential breach of the Environmental License to be notified to the Bank (paragraph 3.9 above). Apparently, however, the Action Plan would not include a strategy to manage this risk factor.
- 3.6 Regarding the other impacts, despite the existence of the Action Plan and the future updates to it (paragraph 3.10 above), the tentative dates for proceeding with additional studies on the project's environmental and social impacts, as well as for designing the respective prevention and mitigation measures, could apparently be after the deadlines set forth in Operational Policy OP-703 for the fulfillment of these requirements—in particular, because, for Category B loans, the policy requires that the mitigating measures be designed and the framework for their implementation be determined with the participation of the persons who might be affected by the project, prior to the Bank's approval of the operation.
- 3.7 In view of the foregoing, and for purposes of the Eligibility Analysis, the Requesters' arguments meet the requirements of Article 40(f) of the Policy Establishing the ICIM, inasmuch as they describe in a reasonable way how the communities would and could continue to be directly, materially, and adversely affected by an action or omission of the Bank in violation of relevant Operational Policies. Nonetheless, the Ombudsperson will examine the merits of these arguments during the Consultation Phase.



3.8 Also in connection with the review of compliance with the ICIM Policy’s requirements, it was determined that the Requesters had contacted the IDB Country Office in Colombia and the project team, in order to address the concerns set forth in the Request. Consequently, in accordance with Article 40(h) of the Policy, the Ombudsperson decided to suspend Eligibility Analysis regarding the Request for 45 days, during which the Requesters and Bank Management met on two occasions and were able to exchange information. On 27 October 2011, this period ended without the parties making progress in resolving the issues detailed in the Request.

3.9 The results of this Eligibility Analysis are given in the following table:

**E. Summary of Eligibility Analysis**

Eligibility Criteria	Determination by Ombudsperson	Comments
Name and contact information of the Requester	In compliance	The contact information of the Requesters is on file.
Names and contact information of the Representative, if any, and proof of the authorization	In compliance	The contact information of the Representative is on file, as is the evidence that she represents the Requesters.
Project or operation duly identified	In compliance	Modernization, Expansion, Operation, Commercial Use, Maintenance, and Management of the El Dorado International Airport (loan 2477A/OC-CO).
The Requester resides in the country where the operation is or will be implemented (or a qualified Representative has been appointed).	In compliance	The persons who would be affected by the project reside in Colombia, in the areas adjacent to the airport. The Requesting organization is also established in Colombia.
None of the exclusions set forth in Section 37 applies.	In compliance	None



Eligibility Criteria	Determination by Ombudsperson	Comments
The Requester has reasonably asserted that it could be expected to be adversely, directly, and materially affected by an action or omission of the Bank in violation of one or more Relevant Operational Policies.	In compliance	The Requesters have amply described the environmental and social impacts that could result from actions or omissions of the project, as well as the environmental impacts that could be aggravated and perpetuated by it.
The parties agree to take part in a consultation or mediation process.	In compliance	The Requesters and the project team have shown their willingness to enter into a dialogue.
The Requester has taken steps to bring the issue to the attention of Management.	In compliance	The Requesters contacted the IDB Country Office in Colombia and the project team. The Bank's management has met twice with the Requesters.

#### IV. Conclusion

The Project Ombudsperson, in the exercise of her duties and under the authority granted her by the Policy, determines that the Request described herein is **eligible** for the Consultation Phase.

This determination does not imply any final judgment on the part of ICIM on the merits of the issues raised in the Request.

The Executive Secretary will proceed to notify the Requesters, the Board of Executive Directors, the President, the Country Office, the project team, and the executing agency of this Determination of Eligibility, and will post this Determination of Eligibility on the Public Registry of the ICIM five business days after its distribution to the Board of Executive Directors.

**Isabel Lavadenz Paccieri**  
**Project Ombudsperson**



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