

Comments on Inter-American Investment Corporation's Revision of Disclosure of Information Policy

September 2017

We, the undersigned civil society organizations, welcome the opportunity to comment on the update and revision of the Inter-American Investment Corporation's ("IIC" or the "Corporation") Disclosure of Information Policy (the "Policy"). Many of our organizations have worked directly with communities impacted by development projects within Latin America and the Caribbean. Our comments and recommendations draw on our expertise and past engagement in policy reforms at numerous international financial institutions, in addition to our experience providing direct support to communities harmed by projects finance by these institutions in Latin America and the Caribbean. Finally, as discussed below, this submission is also based on our work monitoring projects, including those financed by the IIC, through the Early Warning System Initiative.¹

Given the importance of the disclosure of information policy, we urge the IIC to establish a formal, inclusive, robust, and transparent consultation process to harness the experiences and insights of civil society groups and communities, particularly those within the region.

For such a process to take place, we emphasize the importance of allocating resources for consultations to happen throughout the continent so that communities and local organizations can properly participate. Also, this process should be conducted with sufficient time for these stakeholders to analyze and discuss the current technical document. We understand that current plans to open a public consultation period early in 2018 may be for only 90 days and at a time in the calendar when possibilities for exchanges are scarce, which should not be considered adequate. This period cannot be deemed proper for communities and organizations to be informed, organize, analyze, and participate in such an important process.

Introductory Remarks

The right to information is a key human right. It is an indispensable foundation for the realization of other human rights and is a recognized component of the right to freedom of expression.² Within the context of development finance, this right is particularly vital: True and sustainable development can only happen when access to information is duly provided, facilitating the active participation of people in the development process to put forward their priorities, and holding to account those who may violate their rights.³

¹ The Early Warning System is co-managed by the Center for International Environmental Law (CIEL) and International Accountability Project. More information available at rightsindevelopment.org/our-work/ews/.

² See Article 19, Freedom of Information, <https://www.article19.org/pages/en/freedom-of-information-more.html>

³ See WRI, Access to Information at Development Banks, <http://www.wri.org/resources/presentations/access-information-development-banks> and International Accountability Project, <http://accountabilityproject.org/>. This is further supported by Principle 10 of the

In addition, it is important to point to the fact that transparency and accountability in accordance with international and regional human rights standards should be considered an obligation by any financial institution making use of any public money. In accordance with international law and norms, the fact that corporations are obligated to conduct their businesses in accordance with human rights norms cannot be contested in this day and age, as indicated by the adoption of the 2011 United Nations Guiding Principles on Business and Human Rights and the work of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises. There is a strong push in the international arena for the adoption of a treaty that enforces the obligation of corporations to act in accordance with those rights only reinforces this assertion.⁴ Such obligations are even stronger when organizations use public money for their operations,⁵ as is the case with the IIC here analyzed. Added to the fact that the IIC utilizes public money for its activities is that it is an organization directed at the development of the Latin American and Caribbean region.⁶ As such, it is an organization that should direct its actions to the realization of all human rights of all peoples.⁷

Within the context of development projects, affected communities have a right to timely information about projects that impact their lives. Additionally, access to adequate project information early in the project cycle can be crucial in identifying and mitigating, if not wholly pre-empting, environmental and social risks, resulting in better designed projects and ultimately better development outcomes. In other words, truly sustainable development simply cannot occur in the absence of meaningful engagement by those who will (or may) ultimately be impacted by a project—and these opportunities to engage must occur from the earliest stages of project design through project implementation and completion. Access to comprehensive and timely information is a precondition to that meaningful engagement.

1992 Rio Declaration on Environment and Development, which is now the subject of a regional agreement being negotiated in the LAC region. *For further discussion, see* <http://www.lacp10.org/principle-10>.

⁴ “At its 26th session, on 26 June 2014, the Human Rights Council adopted [resolution 26/9](#) by which it decided ‘to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.’” At <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntnc.aspx>.

⁵ “Applying ATI laws to such entities [that receive public funds] makes good sense: the approach (a) avoids the uncertainties that flow from a lack of agreement as to what constitutes “public functions;” (b) is rational, given that (i) the public should be entitled to obtain information from, and hold accountable, entities that receive substantial public funds, and, in any event (ii) most entities that receive public funds perform functions that benefit the public; and (c) is fair, applying a common test across the board.” At: <http://www.right2info.org/scope-of-bodies-covered-by-access-to-information/private-bodies-and-public-corporations>.

⁶ See IIC, About Us, <http://www.iic.org/en/who-we-are/about-us#.WC74s6lrJsM>

⁷ Alexandre Sampaio et al, “Desafios da Transparencia no Sistema de Justicia Brasileiro (2013), https://www.academia.edu/18891196/Desafios_da_Transpar%C3%Aancia_no_Sistema_de_Justi%C3%A7a_Brasileiro p. 34.

This submission provides recommendations to improve the text of IIC's Disclosure of Information Policy⁸ and provides recommendations on specific language, where applicable.

The following section will analyze the IIC's Disclosure of Information Policy and provide analysis and recommendations to improve the language of the Policy. It will do so in two parts. Part 1 reviews the provisions of the current policy and provides recommendations to strengthen transparency and access to information. Part 2 will make reference to what is missing from a policy directed at providing access to information to the public.

PART 1 – Weaknesses in the Existing Policy Provisions

SECTION I (Introduction)

Section I clarifies that this policy is only applicable to documents prepared after 2005 and that documents that precede this date are subjected to another policy and any applicable agreements between the corporation and its clients. Hence, any eventual advancements on the interpretation of the right to information that the IIC might have made with the current policy does not apply to documents produced before 2005, which is not a reasonable aim for a policy set up to guarantee a human right in the context of development. **We recommend that the IIC make clear that the disclosure of documents applies to all documents produced by or in possession of the IIC, its clients, and third parties that relate to IIC's financing activities.**

SECTION II (Basic Principles)

Section II should be praised for starting with a commitment to transparency and accountability of the organization in all its activities. The policy should also be commended for determining that information should be available in any of its member countries. Despite these stated principles, however, the absence of time bound requirements for most of IIC's projects (e.g., not Category A) effectively renders these commitments hollow, decreasing transparency and access to information for potentially affected communities.

In fact, the last three points of the section do not seem to fit the description of principles, and as such, their inclusion jeopardizes the few principles included. With whom the final decision regarding access to information rests should be specified in a section clarifying the appeals system of the policy. Provisions determining who directs the activities of the organization that are not related to access to information and emphasizing the immunity of the organization seem to be out of place in an access to information policy. In sum, the IIC policy set out only three principles, in its first three provisions, that are applicable to the whole document, which correspond to only a small fraction of the principles on access to information endorsed by the UN Special Rapporteur on

⁸ It should be noted that the analysis will follow the structure utilized by the current Policy. The policy has 5 sections, namely: I – introduction; II – Basic Principles; III – Information Available from the Corporation; IV – Restrictions; and V – Other.

Freedom of Opinion and Expression and the Organization of the American States Special Rapporteur on Freedom of Expression.⁹

We recommend that the policy should reflect all the principles endorsed by regional and international experts on the theme and repeal provisions that are misplaced when it comes to the principles section. Specifically, we recommend that:

- **The “Principles” section determines the application of the following principles in the work of the organization: maximum disclosure¹⁰, obligation to publish¹¹, promotion of open environment¹², limited scope of exceptions¹³, processes to facilitate access¹⁴, costs¹⁵, open meetings¹⁶, disclosure takes precedent¹⁷, protection for whistleblowers¹⁸.**
- **The “Principles” section repeals provisions not related to and that jeopardize the full application of the abovementioned principles.**

We also recommend that the bank incorporate the principles of the “Transparency Charter for International Financial Institutions: Claiming the Right to Know”, which were specifically designed by expert organizations to fit the work of IFIs such as the IIC.¹⁹

⁹ See Article 19. The Public’s Right to Know: principles on freedom of information legislation. At <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>.

¹⁰ “Freedom of information legislation should be guided by the principle of maximum disclosure.” At Article 19. The Public’s Right to Know: principles on freedom of information legislation. At *idem*.

¹¹ “Public bodies should be under an obligation to publish key information.” At *idem*.

¹² “Public bodies must actively promote open government.” At *idem*.

¹³ “Exceptions to the right to access information should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests.” At *idem*. As of now, the policy does not determine that the “three-part-test” is utilized to determine whether information should be provided or not when there might be reasons for secrecy; and it does not establish the principles of *in dubio pro homini* and *in dubio pro justitia socialis* as the basis for decisions when it comes to determining whether information should be provided to affected communities.

¹⁴ “Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.” At *idem*.

¹⁵ “Individuals should not be deterred from making requests for information by excessive costs.” At *idem*.

¹⁶ “Meetings of public bodies should be open to the public.” At *idem*.

¹⁷ “Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.” At *idem*.

¹⁸ “Individuals who release information on wrongdoing – whistleblowers – must be protected.” At *idem*.

¹⁹ See Transparency Charter for International Financial Institutions: Claiming our Right to Know” from the Global Transparency Initiative (GTI): http://www.ifitransparency.org/doc/charter_en.pdf

- Principle 1: The Right of Access
- Principle 2: Automatic Disclosure
- Principle 3: Access to Decision-Making
- Principle 4: The Right to Request Information
- Principle 5: Limited Exceptions
- Principle 6: Appeals
- Principle 7: Whistleblower Protection
- Principle 8: Promotion of Freedom of Information
- Principle 9: Regular Review

SECTION III (Information Available from the Corporation - Operational Information)

This section sets out the practice for how, what, and when the IIC will disclose information publicly. Before delving into recommendations, we set out findings gathered from IAP's review of 96 projects proposed for funding by the IIC between March 1, 2015 and April 1, 2017:

Sampling of IIC Project Disclosures

IAP reviewed 96 projects disclosed between 1 March 2015 and 1 April 2017 to understand the IIC's current practice of disclosure and impacts on communities' access to information and input into the project. The analysis was conducted based on the information that was available on the project disclosure webpage at the time projects were made public. In addition, in response to information that was lacking, IAP staff filed information disclosure requests to IIC for over 40 projects, over the relevant time period.

As noted below, we believe the IIC's current practice falls short of what is required both by international law/norms and the best practice of other development finance institutions.

During the relevant time period, information disclosed for 96 projects was reviewed.¹ Of the 96 projects, 8 were Category A; 6 were Category C; and 31 were categorized as FI (FI-1, FI-2, and FI-3). Over half of the projects (51 projects) disclosed in the time period were Category B.

We highlight our findings below:

Disclosure periods before board dates are insufficient for the vast majority of IIC projects.

For Category A projects (8 projects), which has the longest disclosure period for IIC projects, disclosure of information is an average of 169 days before Board consideration. However, for the vast majority of projects (lower risk categories), the timeframe for and scope of disclosure are far more limited.

As an example, disclosure for Category B – or more than half of IIC projects proposed for funding - happens on the IIC website, on average, 39.5 days before Board consideration of a project.

This timeline does not encourage meaningful community input into the design of a project and may in fact hinder the valuable inputs of communities at the earliest stages of a project, where ideally environmental and social risks could be flagged and mitigated, if not avoided wholly. To further illustrate, this provides a community member in Panama, for example, just over a month to get information about a project proposal, request and receive additional information from the IIC, sift through what could possibly be hundreds of pages of technical documents that are likely not in their native tongue, consult with and mobilize their community, and then relay their concerns to decision-makers sitting before the board date.

Similarly, the content of disclosure is insufficient.

For the projects disclosed between March 2015 and September 2016, very little project information was provided.

- **No environmental and social impact assessments for most projects.** Apart from 5 exceptions (or around 5 percent of the projects), no environmental and social impact assessments for Category B projects were disclosed.
- **No Stakeholder Engagement Plans.** At the time of the research, none of the 96 projects we researched disclosed stakeholder engagement plans. This information would be useful in enabling an affected community to understand when and how they can be consulted on a project, and how to file any grievances.
- **No Project Contacts, Emails, and Phone Numbers.** At the time of research, only 2 Category B projects provided project-specific contact information and none of the other IIC projects provided this information. This runs counter to the best practice of other multi-lateral development banks, including the International Finance Corporation, which generally provide a specific staff contact or email for the project. The IIC project pages often list a general IIC email¹ to submit a general request for disclosure. However, as discussed below, based on IAP's experience in requesting information through this channel for numerous projects over a period of several months resulted in neither a reply nor disclosure of additional information.
- **No Applicable Safeguards or standards applicable to the project.** At the time of research, only 1 Category A project and 4 Category B projects provided this information. Publishing the safeguard policies and standards that apply to projects provides affected communities with notice as to the identified risks of a project, the IIC's responsibilities, and affected communities' entitlements, such as the compensation they are due to receive if they are to be resettled.
- **No Information or links to IIC's independent accountability mechanism, MICI.** At the time of research, none of the projects contained a link to the independent accountability mechanism of the IIC, the MICI. This is important information to disclose to ensure adequate access to information and accountability should communities feel they are harmed by an IIC investment.

In order to ascertain additional project information to support outreach to community groups, IAP filed information requests to the IIC for 44 projects from April to July 2016.¹ Since that time, we have never received a confirmation, let alone the information requested for the projects. Finally, it was unclear if and how one could appeal or then follow up on our unanswered requests for information.

The policy and practice of IIC should allow adequate time for potentially affected communities and other stakeholders to access information, understand it, and respond to it, as it seems fit in a timely and culturally appropriate manner. Unfortunately, the current policy as drafted would rarely facilitate such an exchange.

Information disclosure is not timely under current policy.

According to subsection 4(a), only projects that are category IV will have an EIA available 120 days before board decision. Letter (a) of subsection 2 of Section III A of the policy determines that Summary Investment Proposals will only be mandatorily available to the public 30 days before board decision. Thirty days is hence considered by the organization as sufficient time for those possibly affected by the projects financed by the Corporation to analyze the technical documents, request more information in case they deem it necessary, organize community meetings, and write an eventual response to the Board before it considers the approval of the project. By adequately consulting with affected communities early in the project cycle, the IIC has the opportunity to work with communities to fully assess, articulate, mitigate, or wholly avoid environmental and human rights risks.

Information disclosure is not adequate under current policy

In addition, for all risk category projects, the IIC should publish more information than is currently shared in the Project Summary.

Subsection 2(b) of Section III A determines that additional technical information will only be provided upon request. If the Corporation were to follow the principles of maximum disclosure, all information that pertains to a project and that does not fall under the limited scope of exceptions should be published proactively and in an accessible language. This would seem to include not only the summary investment proposal, but also the EIAs and any other relevant documents, such as minutes of consultation processes and the analysis of safeguards triggered.

Relatedly, under the principle of maximum disclosure, the IIC should proactively publish all relevant documents pertaining to a project, with the exception of the information that might fall under a limited scope of exceptions. Exceptions should be defined within the policy and interpretations of exceptions should be construed narrowly.²⁰

²⁰ “While commercial sensitivity may legitimately require confidentiality in some situations, it should not prevent the disclosure of environmental and social information. In a recent report regarding a private sector project within the IDB portfolio, MICI said current experience shows “that there may be an excessively broad interpretation of the confidentiality obligation”, preventing the disclosure of important environmental and social information (Compliance Review Report El Dorado International Airport Project CO-MICI002-2001, para 4.10). MICI explained: “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.” MICI also specifically noted that the existence of a positive list of documents to be disclosed, as currently exists in Section III, creates difficulties in implementation, for example if formal document titles do not neatly fall within the categories of documents to be disclosed even though their content is of a type that should be disclosed. Instead, MICI recommended that the policy “explicitly requir[e] the disclosure of **all** environmental and social information about Bank operations, not only for transparency but to ensure robust consultation and

Letter (b) of subsection 4 of Section III A problematically indicates that EIAs that are not for Category IV projects will only be made available upon written request of interested/affected parties. Firstly, the reason for the information not to be proactively published should be asked, as it violates the principle of maximum disclosure, which is promoted by the Corporation's policy at the principles section.²¹

Secondly, the reason for the information to be available only for those that are interested/affected parties should also be questioned, as the maximum disclosure principle dictates that people should not have to give reasons as to why they want to access information – a universal right. Having this last requirement in place also creates the problem of indicating who decides who the interested parties are – only directly affected communities? According to which study? What if the study does not include a community that wants access to information precisely because it thinks it might be affected? What about organizations working with these communities or that are interested in sharing information with communities possibly affected? What about the general public interested in knowing more about how the development process is being conducted in his/her country or region?

Subsection 4(c) of Section III A follows the same pattern of letter (b) discussed above. There is no clear reason as to why the Corporation would not publish the documents it possesses and no clear indication on how the decision is made to publish an EIA that is not of a category IV project. This provision means that affected people have to rely completely on the Corporation's assessment as to whether a project is adequately classified as category IV or not.

With the aim of increasing access to timely project information for project communities, we recommend the IIC:

- **Implement time bound requirements for disclosure.** Specifically, require that project information be disclosed as soon as possible, but no later than 120 days of project information disclosure before board date for all projects. This information should, at a minimum, include key environmental and social documents, such as Environmental and Social Impact Assessments.
- **Remove or significantly limit, through clear criteria, the ability of a client to veto information disclosed.** Equally problematic is the provision that gives the client the

participation processes.” (para 4.9, emphasis added). As MICI notes, this recommendation is equally relevant to the IIC as the IDB.

²¹ This is inconsistent with the IDB Access to Information policy, which currently requires the proactive disclosure of environmental and social strategies, impact assessments, analyses and management reports, in all private sector projects for which those documents exist. MICI has recommended adding environmental and social risk management plans to this list (see footnote 24 above, para 4.9, recommendation 7). While a positive list of documents to be disclosed poses challenges for implementation of the policy (as discussed in idem), if it is used it must be comprehensive.

power of approval for information disclosed. This would seem to mean that the client can veto information that it deems problematic to be shared with those affected by the projects.

- **Implement a disclosure policy based on a presumption of disclosure, with narrowly defined and construed criteria for exceptions.** In support of the presumption of disclosure, the policy should explicitly require proactive disclosure of all information about environmental and social risks or impacts, including environmental and social assessments, management plans and monitoring reports.
- **In compliance with the principle of maximum disclosure and of limited exceptions, the policy should not exclude from the public information that it deems sensitive without any further justification. General exclusion of public oversight based on types of documents without any regard for its contents should be repealed by the IIC. Documents with sensitive parts should be redacted so as to allow public oversight of the parts that are not justifiably considered secretive.** Under subsection 4 of Section III C, without any justification and just by claiming it is “sensitive” information, and not elaborating on the nature of the sensitivity, the Corporation excludes from public oversight all contracts, agreements and legal documents relating to loans, equity investments, guarantees and other financial operations. The provision does not even allow for the “sensitive” parts of the documents to be redacted from a public version. The subsection also determines that bilateral or multilateral agreements are only made available if mutually agreed by the parties and after the documents have being signed, effectively impeding any chance of public influence in the negotiation process.
- **Disclose documents, project contacts, and ways to request additional information on a project, and project-level grievance mechanisms in a language and format that is accessible to local communities.** The policy does not provide for the translation of documents to local languages that are relevant to affected communities.²² In addition, not all project affected communities may have access to digital documents through the internet. As part of the consultation process, the IIC should ensure that documents, project contacts, and project-level grievance mechanisms, and ways to request additional information from the IIC and its clients are disclosed in a language and format that is accessible to local communities - Including any members of those communities suffering from relevant disabilities.
- **Require that the IIC’s clients provide information to affected communities on the accountability mechanism (MICI) of the IIC and how to request further information from the bank.**

²² Relevantly, MICI recommended that the Bank “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.” (see footnote 24 above, para 4.9, recommendation 8).

- **Require in loan agreements and covenants that clients agree to implement the disclosure policy and explicitly include for the dissemination of information on the MICI to project-affected communities.**

SECTION IV – (Restrictions)

In our experience, corporations and development finance institutions have relied on overly broad exceptions to disclosure to withhold information that would be vitally important to affected communities and for which they should have right. The results have been devastating.²³ For instance, within the use of financial intermediary lending, a blanket reliance on client confidentiality and commercial laws and regulations has meant that affected communities are deprived of access to sub-project information and remedy. Our analysis and recommendations of this section are also based on best standards and practices that find an anchor in access to information principles endorsed by expert individuals and organizations²⁴ – and upon a presumption that communities have a right to know who is financing a project and how the project will impact their lives.

On its face, Section IV begins by stating that “information concerning the Corporation and its activities will be made available to the public in the absence of a compelling reason for confidentiality.” However, what follows is an overly broad list that, in practice, will negate the logic of transparency and accountability established in the basic principles of the Policy.

In its totality, this section, when read with the list of broad exclusions, wholly inverts the logic of transparency and accountability established in the principles part of the Policy, squarely putting business interests in front of the public interest, or of the interests of people who may be impacted by IIC’s projects. It is conceivable that the Corporation would be allowed to withhold timely and material information that a project by one of its clients could possibly violate the rights of affected communities, as it would be contrary to the interest of said client.

We provide specific comments on provisions below:

Subsection 1 of Section IV, which sets the logic and parameters for the provisions that follow, prohibits the publication of any information that can cause “material harm to the business and competitive interests of the Corporation’s clients.” Subsection 4 of Section IV follows the same pattern of subsection 1 analyzed above and determines that information that could expose the Corporation to undue litigation risk will not be published.

As mentioned in Section II above, there are mechanisms and principles that should be utilized and considered so as to determine whether information withheld by the

²³ See Inclusive Development International at: <http://www.inclusivedevelopment.net/campaign/campaign-to-reform-development-lending-through-financial-intermediaries/>

²⁴ See footnotes 9 to 19 above and accompanying texts.

Corporation should not be disclosed in the interest of the public. While there might be commercial information that could be legitimately kept by the institution, there is information that might indeed be detrimental to the image of partner clients and countries that should be disclosed so as to comply with human rights principles and best practices.²⁵ Information pertaining to human and environmental impacts, risks or violations, for example, should not be kept from the public and partner clients and countries should not have veto power over this information.

Subsection 5 of Section IV follows the same problematic pattern as subsections 1 and 4 analyzed above, giving prominence to businesses interests at the cost of the rights of those affected by these interests. The publication of any information that can have a material impact on the Corporation, a member country or the clients of the corporation can be delayed or withheld. Again, this language lends itself to an overly broad interpretation that could chill disclosure. It is conceivable that information pertaining to problems which might affect communities and that result from an investment might be retained. There is clearly no legitimate motive for delaying or withholding such information. An eventual harm to a business interest caused by the Corporation and its clients cannot be considered to be greater than the public interest in accessing information that is essential for democratic participation and for securing the rights of those affected by projects.²⁶

Subsection 6 of Section IV adds to subsection 5 above and establishes that the Corporation and its partners (including clients) may veto the publication of any information if identified by them as sensitive or that may affect the relations between the Corporation and member countries or clients. There is no indication of what “sensitive” information might mean and the public is left at the total discretion of the Corporation and its partners.

Similarly, subsection 7 of Section IV prohibits the disclosure of the records of deliberation by the Board. These documents are presumed secret unless otherwise established by the Board. The voting records of members of the board in relation to projects should clearly be considered of public interest and their publication should be the rule, not the exception. The schedule of the board calendar and voting records for projects should be disclosed as a matter of public interest.

Finally, subsection 14 of Section IV over-reaches any reasonable exception that an access to information policy could contain. It establishes that the exceptions provided for in the policy are not exhaustive, simply giving a carte blanche for any other reason to be included at the discretion of those holding the information, with no justification or oversight needed. Along with some of the previous exceptions analyzed above, this exception renders the whole policy null and void.

²⁵ See footnote 13 above and accompanying text.

²⁶ See Article 19. The Public’s Right to Know: principles on freedom of information legislation. At <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>

We recommend the IIC put into practice the principles of transparency and accountability by removing the overly-broad restrictions in the Policy that would prohibit information disclosure where such information would harm the reputational interests of the client of the Corporation. For instance, the IIC should:

- **Establish a limited and reasonable number of exceptions that can be utilized to withhold information from the public. These exceptions must relate to a legitimate aim, the disclosure of the information that is classified must threaten to cause substantial harm to that aim, and the harm to that aim must be greater than the public interest in having the information.²⁷**
- **Publish board calendars for upcoming discussions of proposed projects and subsequently publish a summary of board minutes.**
- **For financial intermediary lending, disclosure of all sub-projects and sub-clients should be a condition of investment and codified in contractual covenants between the IIC and its borrower clients. This information should be publicly disclosed on the IIC project website.**

SECTION V (Other)

Subsection 2 of Section V determines that the information retained by the corporation will only be made available 20 years after issuance. Hence, all information deemed secret is considered to be equally sensitive. Degrees of secrecy that differentiate between levels of sensitivity of information required would allow for quicker public access to certain documents.

Subsection 4 of Section V clarifies that internet and physical access at the headquarters are the primary methods for requesting and accessing information held by the Corporation. Given that most project-affected people will not have physical access to the headquarters and that access to the Internet is not universal in the region the Corporation invests in, the policy should provide for other means as primary methods of accessing information as well.

We recommend that the IIC:

- **Attribute different degrees of secrecy according to the level of sensitivity of the information that would allow for access to documents in a shorter period of time.**
- **Provide for more vehicles as primary methods for requesting and accessing information, such as SMS messages, radio broadcasts, telephone calls, brochures, and posted signs, among other options.**

²⁷ See International Standards: right to information - Principle 4. At <https://www.article19.org/resources.php/resource/3024/en/international-standards:-right-to-information>.

PART 2 - What is Missing from the Current Policy

The section above praised the merits of the current IIC Disclosure of Information Policy and highlighted a number of problems it contains. The present section of the analysis uses bullet points to reference what could be considered as missing from an optimum policy directed at providing access to information to the public – including improvements to the IIC’s project website pages to increase access. It is not a section dedicated to the analysis of the structure of the current policy, even though it is a factor that should be analyzed and criticized, as its provisions, at various times, are located in inappropriate sections, sometimes seemingly conflicting with other provisions located elsewhere.

The policy should create an accessible public registry for information disclosure requests.

Our recommendations for a public registry are based on IAP’s filing of information disclosure requests to the IIC for over 40 projects disclosed between March 2015 to September 2016. For all but one of those requests, IAP staff never received a confirmation email after filing the request. Again, for all but one of those requests, IAP staff never received a substantive response from the IIC and/or additional project documentation, as requested. This practice falls significantly below that of other development finance institutions, who have similar access to information policies. This also serves as a significant barrier for communities in obtaining additional project information.

The policy currently does not provide for a tracking system through which the party that made a request can follow it. Nor does the policy provide for a clear appeal system, nor for deadlines when information is denied. In addition, the current policy does not establish an independent body to revise the decisions of the Corporation to deny access to information.

We recommend that IIC:

- **Create a system that acknowledges the receipt of each request in a timely manner, provides users with a registration code of their requests and that allows them to track the status of their requests.**
- **Create a specific “Access to Information” section on its website, similar to the one on IDB’s website (<http://www.iadb.org/en/access-to-information,18645.html>), with information about the policy, direct access to newly disclosed documents, and an electronic form to request information, among other relevant elements.**
- **Create and provide timely updates to a public registry of information disclosure requests. This registry should include information, such as the information requested, the IIC’s response and rationale, and the timeline for these communications.**

- **Similarly, the IIC should create and provide a list of information considered classified by the Corporation and the legitimate reasons for such classification.**
- **The Corporation should also create and provide a list of unclassified information to be released once information is considered public after the lapse of time or reconsideration by the Corporation.**
- **There is a clear appeal system for when information disclosure requests are denied (“or deemed denied where no decision on the information request is made within a reasonable pre-established number of working days”). The appeals body should be independent, with allocated budget and staff and reporting to a body that is independent from the bank. The process and timeframe for utilizing the system should be clearly set out and available online in multiple languages that are used in the region.**
- **Periodically publish a report that analyzes the IIC’s compliance with the Policy. If implemented well, a public information disclosure registry could provide lessons learned to improve the disclosure practices of the IIC.**

In addition, the policy should require a minimum amount of project documents and information be disclosed on the website in a timely manner. We recommend that the IIC:

- **Require that the language used by the Corporation on its webpage and documents is as accessible as possible for those not familiar with technical terms. Information can also be provided in an open data format whenever possible.**
- **The website should be available not only in English and Spanish but, at least, in all four official languages of the Bank, including Portuguese and French.**
- **As noted above, and in line with best practice for multi-lateral development banks, for each project page, centralize all information related to a project, including: contacts for project staff leads; information on the independent accountability mechanism of the IIC, the MICI; a listing of each of the safeguards triggered by a project or program; the status of the project; and all environmental and social documents.**
- **On the Home Page of the website there should be clearly visible links to relevant sections such as how to access to information about projects and how to access the MICI, such as the link that the IIC home page currently has on “apply for financing”.**
- **The operational policies of the IIC should be easily accessible through the website. Currently the website does not have a specific section where all the policies are listed (or at least it is not easily accessible). For example: to access the policy on access to**

information it is required to enter first to the section “Projects.” In general terms, it is recommended that users of the website (and especially affected communities) should be able to find any relevant information (such as how to access to information about projects, the MICI, the Bank’s operational policies, or other relevant information) with no more than two or three mouse clicks.

In order to foster and protect an environment prone to the publication of essential information, we recommend that the IIC:

- **Provide protection from any sanction, reprisal, or professional or personal detriment, as a result of having made that disclosure” (GTI Transparency Charter for International Financial Institutions)**

Concluding Remarks

Affected communities have a right to know who is financing a project, how the project will impact their lives, and what they can do to engage in a project, whether that be through filing a request for information or filing a complaint with the MICI. A robust information disclosure policy that maintains access to information for communities and the general public can also result in better designed projects.

We believe that the analysis and recommendations above serve to demonstrate that in order to comply with best standards and practices, the future access to information policy of the IIC should be significantly different from the current one. Only then will communities and local organizations be able to properly access relevant information and effectively participate in a process of true development.

The collective of organizations signing this document are at your disposal for further clarifications that might be required.

Signatories:

Accountability Counsel – International

Amazon Watch – USA

Bank Information Center (BIC) – International

Center for International Environmental Law (CIEL) – USA

Centro de Estudio y Conservación del Patrimonio Natural (CECPAN) - Chile

Chile Transparente - Chile

Comunidades Unidas - Colombia

Conseil Regional des Organisations non gouvernementales de developpement – DR Congo

Derecho Ambiente y Recursos Naturales (DAR) – Peru

Fundación Ambiente y Recursos Naturales (FARN) – Argentina

Fundación para el Desarrollo de Políticas Sustentables (FUNDEPS) - Argentina

Human Rights Council-Ethiopia - Ethiopia

Internacional dos Serviços Públicos (ISP Americas) - International

International Accountability Project - International

International Rivers – International

Lumiere Synergie pour le Developpement - Senegal

Movimiento Ríos Vivos Antioquia - Colombia

NGO Forum on ADB - Regional, Asia

Otros Mundos/Chiapas - México

Oxfam International - International

Urgewald - Germany

Zo Indigenous Forum, Mizoram - India