

**IDB Invest’s Access to Information Policy Implementation Guidelines**  
***Comments and Recommendations***  
***December 5, 2019***

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We, the undersigned civil society groups, welcome the opportunity to contribute recommendations to the consultation process of the Inter-American Investment Corporation’s (“IDB Invest” or the “Bank”) Implementation Guidelines (“*Implementation Guidelines*”). The signatories to this submission are human and environmental rights organizations that support communities impacted by projects funded by development finance institutions, including by IDB Invest. This document builds on our complementary analyses of IDB Invest’s information disclosure practices in relation to the revision of its *Access to Information Policy* (“*Policy*”)<sup>1</sup> and IDB Invest’s *Environmental and Social Sustainability Policy*.<sup>2</sup>

We express our disappointment at the short deadline provided for civil society to share comments and recommendations, notably at a time when people in many of our countries face repression and instability. Accordingly, we believe a timeline of 30 days is inadequate. We urge IDB Invest to ensure that future opportunities for public participation are designed in a manner that is inclusive and sensitive to the realities facing civil society in the countries and regions where it operates.

As the main internal guidance in operationalizing the *Access to Information Policy*, the *Implementation Guidelines* constitutes a key document within IDB Invest’s core systems for sustainability and accountability. In providing our comments and recommendations, we considered the *Implementation Guidelines* to be the primary resource for IDB Invest staff to consult when implementing the *Policy*.

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<sup>1</sup> See “Porqué las instituciones de desarrollo deberían reconocer el día del derecho a saber,” available at <https://medium.com/@accountability/por-qu%C3%A9-deber%C3%ADan-las-instituciones-de-desarrollo-reconocer-al-d%C3%ADa-del-derecho-a-saber-b2370c0b5442>; “We need to be consulted! Examining IDB Invest’s Proposed Access to Information Policy,” available at: <https://medium.com/@accountability/we-need-to-be-consulted-examining-idb-invests-proposed-access-to-information-policy-e8a2a474371e>; “In Practice : Information Disclosure at IDB Invest,” available at: <https://medium.com/@accountability/in-practice-information-disclosure-at-idb-invest-a5a5406b2a5e>; and “We Need Prior, Informed Consent! Listen to Community Voices,” available at: <https://medium.com/@accountability/we-need-prior-informed-consent-listen-to-community-voices-5439b2b8d090>.

<sup>2</sup> See “Recommendations to IDB Invest on the Revision of its Environmental and Social Sustainability Policy”, available at: <http://bit.ly/IDBInvestSafeguardComments> ; and “Joint Recommendations and Comments on IDB Invest’s draft Environmental and Social Policy”, available at: [https://bankinformationcenter.cdn.prismic.io/bankinformationcenter%2F74943d25-7048-4ede-8b13-196fe3e4b1a\\_fv-cso+recommendations-idb+invest+draft+policy.pdf](https://bankinformationcenter.cdn.prismic.io/bankinformationcenter%2F74943d25-7048-4ede-8b13-196fe3e4b1a_fv-cso+recommendations-idb+invest+draft+policy.pdf)

We express concern about key omissions that undercut the intent of the *Policy*. Specifically, we are concerned about the failure to reference or explain the core principles committed to within the *Policy*, which are intended to ground both the spirit and the practice of information disclosure. In addition, we are disappointed that - similar to the *Policy* - the *Implementation Guidelines* introduce additional vague, prejudicial and discretionary language, and fail to provide clear guidance and direction on how to interpret and implement such provisions. Furthermore, much of this subjective language serves the purpose of carving out additional exceptions to those indicated in the *Policy*. Throughout, we were disappointed at the lack of specificity and guidance provided to ensure robust information disclosure. Finally, we note that in the *Public Consultation Report* produced as a follow-up from the public consultation process on the *Policy*, IDB Invest committed to addressing several comments and recommendations in the *Implementation Guidelines*. Unsatisfactorily, the *Implementation Guidelines* inadequately address many of these points.<sup>3</sup>

Given these shortcomings, we strongly recommend a second draft of the *Implementation Guidelines* be produced which stays faithful to the language outlined in the *Policy* and provides guidance on implementation for each section and provision. Furthermore, we continue to recommend the Bank reach out to interested stakeholders - including civil society, past requesters of information, affected communities, access to information experts, Bank and independent accountability mechanism officials, and academics - to collaborate in creating a robust implementation and monitoring process for the new *Policy*, including for a second draft of these *Implementation Guidelines*.

Our analysis below expands on these general comments, and provides detailed recommendations on the content of the *Implementation Guidelines*.

### ***Purpose and Principles***

The current draft could benefit from a stronger framing at the outset that explicitly references and expands on the overall principles listed in Section II.C of the *Policy*. Instead, as currently drafted, the *Implementation Guidelines* dive straight into the “Classification” of information created and received by IDB Invest, without providing clarity on the overall purpose of the document, or explaining the framing of the *Policy*, including the principles that ground it. What is lost, as a result of this omission, is the spirit and central tenets

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<sup>3</sup> For example, IDB Invest committed to “taking appropriate measures to incorporate these suggestions in the implementation guidelines of the draft *Policy*”, a comment regarding additional principles of informality, openness and good faith governing IDB Invest’s disclosure practices. Unfortunately, the *Implementation Guidelines* fail to even reference the grounding principles of the adopted *Policy*. See IDB Invest, “Public Consultation Report”, Annex II, p.44. Available at: <https://www.idbinvest.org/en/download/publication/51714/attachment/7929>

which should underpin the interpretation and implementation of the *Policy* and *Implementing Guidelines* by IDB Invest staff.

For instance, we welcomed the recognition in the *Policy* of the human right to access information,<sup>4</sup> including the express recognition of this right under global and regional human rights instruments, but were perplexed to find this crucial framing absent in the *Implementing Guidelines*. During the in-person and written consultation period, we welcomed the shift in title and language from “Disclosure of Information Policy” to the adopted *Access to Information Policy*, because this change in language frames this *Policy* within the human rights framework.

This critical foundation must be evident within all provisions of the *Implementation Guidelines* and further explained in the introduction, in order to ensure that this understanding is operationalized in practice by IDB Invest staff implementing the *Policy*. As we highlight throughout this submission, the *Implementation Guidelines* must reflect and convey that the public has the right to seek and obtain information, and reinforce that this right is not at the discretion of IDB Invest to give. Additionally, the *Implementation Guidelines* offer a key opportunity for IDB Invest to ensure its staff understand the importance of this *Policy* for those affected by the Bank’s operations in enabling their meaningful participation in the design and implementation of projects - to both mitigate harm and ensure that local development priorities are met.

In addition, the *Implementation Guidelines* should explicitly reference that the “*Policy is governed by the principle of maximizing access to information*”<sup>5</sup> and in so doing, that “*IDB Invest commits to proactively disclose as much public information as possible regarding its governance and activities*”;<sup>6</sup> “*it establishes a presumption in favor of disclosure, subject to a list of clear and well-defined exceptions*”;<sup>7</sup> that IDB Invest “*seeks . . . to work [with its clients and third parties] to increase the transparency of their commercial activities . . .*”;<sup>8</sup> that the overall aim is to provide simple and broad access to information to communities and other stakeholders; and that where IDB Invest denies a request for information, it will explain its decision and provide a right of review. These principles ground the *Policy* with a specific ethos and intention that should be central during implementation.

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<sup>4</sup> IDB Invest, “Access to Information Policy”, at para. 3. P.1 Available at: <https://www.idbinvest.org/en/download/publication/51713/attachment/7925>

<sup>5</sup> *Id.* at para. 4, p. 1

<sup>6</sup> *Id.* at para. 10 (noting principle of maximizing access to information)

<sup>7</sup> *Id.* at para.4, p.1

<sup>8</sup> *Id.*

**We strongly recommend that a section be added to the beginning of the *Implementation Guidelines* explaining the significance of framing the *Policy* as one that recognizes access to information as a fundamental human right, the importance and interpretation of the principles in relation to the implementation of the *Policy*, and the purpose of the *Implementation Guidelines* themselves.**

Finally, we recommend that the introduction to the *Implementation Guidelines* clearly articulate the purpose of this document - to provide guidance to IDB Invest staff on how to effectively implement the *Policy*, including mitigating challenges and strengthening access to information for communities affected by IDB Invest operations. In particular, given the increasing threats to environmental and human rights defenders in the Latin American and Caribbean region, we recommend that the *Implementation Guidelines* include specific reference to the problem of shrinking civic space and the constraints that may therefore be in place for those seeking to access and obtain information on development projects. This contextual framing is key to ensuring that the *Implementation Guidelines* promote a people-centered operationalization of the *Policy*, that reinforces access to information as a human right .

### ***Exceptions***

In our previous submissions, we noted with concern that the overly broad scope of exceptions could, in practice, undercut the institution's commitment to the principle of "maximum disclosure."<sup>9</sup> We regret to note that in the *Implementation Guidelines*, the logic of classification of documents as secret continues to follow a pattern that is in direct opposition to the "maximum disclosure" principle. To comply with the human right to information, IDB Invest needs to apply the three part test in case it considers that any information could potentially be classified as secret.<sup>10</sup> The express inclusion of a three part test in the *Implementing Guidelines* would also provide clarity for staff in interpreting and implementing the *Policy*. The rationale for classifying information under broad and often vague categories considered secret does just the opposite. Exacerbating this, the Positive Override test proposed by the institution goes on to confirm that the Bank considers disclosure of information to be its right and not a human right. **We continue to recommend that Bank documents respect, protect and fulfil the right to information as a human right and refrain from treating it as a privilege of the institution and, sometimes, even a privilege of its clients.**

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<sup>9</sup> See "Comments on IDB Invest's Draft Access to Information Policy", September 2018, p.14. Available at [https://ews.rightsindevelopment.org/wp-content/uploads/2018/09/IDBINvest\\_SEP2818.pdf](https://ews.rightsindevelopment.org/wp-content/uploads/2018/09/IDBINvest_SEP2818.pdf)

<sup>10</sup> *Id.*

Paragraph 56 of the *Implementation Guidelines*, in reference to possible Positive Override cases, goes beyond considering information secrecy as a right of the Bank, but innovates when stating that not all rights are legitimate enough for information to be transferred to the public realm. Only "legitimate rights" could transform what is considered secret, without previous detailed and reasoned analysis, into public information.<sup>11</sup> The vagueness in language by the Bank in this case is inexplicable from a human rights standpoint. **If IDB Invest insists on continuing to use the Positive Override test, it should at least make it clear that all human rights are legitimate rights to be considered as a part of the test.**

### ***Commercially Sensitive Information***

Similar to the *Policy*, the *Implementation Guidelines* continue to use vague language to carve exceptions, notably through the use of the expression "*or other non-public information...*"<sup>12</sup> Such an open-ended formulation opens the door to unreasonable interpretations and puts the spirit of the *Policy* in jeopardy. The illustrative examples used in the *Implementation Guidelines* confirm our assertion: the second example rules out the possibility of the public knowing how members of their own State have voted in relation to projects making use of public money; the third example goes on to covertly give IDB Invest clients the power to veto information just by identifying it as secret, in a seeming exclusion of the already problematic Positive Override test. Information shared with a public institution in order to receive public financing should be considered of public interest and only subject to secrecy when falling under narrow and legitimate exceptions. Illustration number III advocates for just the opposite. **Therefore, we reiterate our recommendation to eliminate such vague language as "*or other non-public information...*"**

### ***Financial Information***

IDB Invest once again uses broad language to determine what will not be disclosed.<sup>13</sup> The Bank affirms that information will not be published if it could possibly hurt the financial interest of the institutions or its clients. This position rejects any possibility of human or environmental rights interests being considered legitimate interests that trump

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<sup>11</sup> "The following categories of Information will remain Confidential because IDB Invest has determined that their Disclosure will imply more harm than benefit to **legitimate rights** or interests of affected parties in accordance with the Policy." (emphasis added) IDB Invest, "Access to Information Policy", 2019, at para. 11, p.3.

<sup>12</sup> IDB Invest, "Access to Information Policy Implementation Guidelines," at para 56, p.10

<sup>13</sup> "IDB Invest does not disclose to the public financial Information that **would be detrimental to the financial or commercial interests** of IDB Invest if disclosed, including Information that **may be sensitive** in capital and financial markets or that **may affect** its competitiveness." (emphasis added) *Id.*

commercial and financial interests. By that logic, any documents that would otherwise be public but that could indicate a violation of a right, such as the right to be consulted, will be kept from the public.

The second illustrative example, for instance, seems to prevent the public from knowing at what interest rates public money is expected to be loaned to financial intermediaries, as intermediaries use public money to increase private gains through expected return rates. The public should be able to assess at what cost this intermediation is being conducted.

The third illustrative example also highlights that sometimes a balance needs to be struck and a solution needs to be found that preserves the right of clients to secrecy while guaranteeing that discrimination will not be a part of credit rating assessments.

The aforementioned observations confirm our initial statement of this section - that the language is too broad and possibly detrimental to rights. **We recommend that the *Implementation Guidelines* confirm and provide explicit examples and guidance for instances where human and environmental rights concerns could legitimately trump financial and commercial information.**

### ***Deliberative Information***

As the *Policy* recognizes, IDB Invest is an “international financial institution to which public funds have been entrusted ...” and as such, it “is accountable for the use and management of its resources.”<sup>14</sup> The *Implementing Guidelines* state that “[w]hen the deliberative process has concluded, and a decision has been made, IDB Invest makes public the final decision, results, and agreements that emerge from these processes,” providing a non-exhaustive list of documents for which IDB Invest does not provide access. Citizens have a right to know how their countries are voting in relation to specific investments, including in Board discussions. The intention is not to prevent the free and candid exchange of ideas, but to make information available for citizens so they know how their own governments are planning for development that affects their lives and environment. It is unfortunate that the Bank has not replicated best practice in its *Policy*. Nonetheless, **we continue to recommend that IDB Invest follow the lead of other international institutions,**<sup>15</sup>

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<sup>14</sup> *Id.* at para. 8, p. 2

<sup>15</sup> See, for example, Article 68 of the OAS Inter-American Commission on Human Rights determines that hearings should be public, unless warranted by exceptional circumstances. See <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>; UN General Assembly meetings are also available live or on demand. See <http://www.un.org/en/ga/meetings/>. Recorded UN Security Council meetings are also available at <http://www.un.org/en/sc/meetings/>.

**demonstrating that meetings of public organization themselves should be public, and not only their minutes.<sup>16</sup>**

### ***Legal, Disciplinary, or Investigative Matters***

While it is understandable that IDB Invest refrains from disclosing information about legal procedures while they are still occurring, once concluded, the Bank should commit to disclosing information about the results of the proceedings - regardless of their outcome. **In particular, as a public institution, it stands to reason that the Bank must publicly inform and recognize when the result of the proceedings show that the institution and/or its staff have violated or witnessed violations of human and environmental rights.** In cases of this magnitude, the Bank cannot justify that it will not publish information due to a risk of facing litigation. It is indeed possible and at times probable that the Bank might face litigation when its legal proceedings reveal that violations have occurred. As an institution operating with public financing, IDB Invest should publish the results of these proceedings and face the consequences before the public that finances it.

### ***Communication of Executive Directors' Offices***

As a public institution utilizing public money, IDB should repeal illustration number III. **Agendas of Executive Directors and Bank management should be made public and transparent so as to build public trust and guarantee no preferential treatment in relation to clients or States vis-a-vis communities or civil society organizations advocating for human and environmental rights in specific investments or in relation to specific policies.** It is problematic that the *Implementation Guidelines* continue to support an example of the *Policy* that contributes to more opaqueness within IDB Invest.

### ***Security and Safety***

While very important to preserve the safety and security of all stakeholders, the *Implementation Guidelines* continue to replicate the broadness and vagueness of the *Policy*. **We continue to recommend that the Bank defines what is information that “could endanger the national security of a member country”; or “could endanger the life, health or safety of any individual or the environment if disclosed”.<sup>17</sup> Again, a document aimed at providing concrete guidance for operationalizing the *Policy* should refrain from vague and discretionary language in all instances.**

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<sup>16</sup> At the very least, other institutions (such as the IFC) disclose Board proceedings at the end of the relevant deliberative process.

<sup>17</sup> IDB Invest, “Access to Information Policy Implementation Guidelines,” para. b, p.10

It is important to know, for instance, how transparency in relation to IDB Invest investments or conduct could possibly endanger the environment instead of doing just the opposite. It is also important to know how the Bank will prevent broad and subjective interpretation of the term "*national security*" to the detriment of legitimate interests of transparency when dealing with cases of, for instance, widespread or consistent human and environmental rights violations.<sup>18</sup>

### ***Personal Information***

While there are legitimate reasons to keep personal information secret, the second illustrative example given in this section has absolutely no harbour in best practices of access to information of public institutions.<sup>19</sup> **Selection and appointment process of people that will work for and/or receive income from a public institution should be completely transparent and justified.** Diverging from this best practice would open doors for personal favours, corruption and other cases of misconduct. The transparency of such selection processes would, on the other hand, guarantee a fair and optimal process in the interest of the public.

### ***Environmental and Social Information***

Previous submissions as part of the *Access to Information Policy* review and consultation process have underscored the need for IDB Invest to prioritize access to environmental and social information for communities affected by the Bank's investments.<sup>20</sup> Many of the recommendations offered directly spoke to the implementation of the *Policy*, and revealed serious shortcomings in the Bank's current information disclosure practices.

Given this prior engagement, we are disappointed that the *Implementation Guidelines* fail to provide any concrete guidance on improving the quality and intent of IDB Invest's disclosure practices, beyond repeating the provisions of the *Policy* itself. As the primary document guiding IDB Invest staff involved in operationalizing the *Policy*, the *Implementation Guidelines* should embed the ethos of its principles and understanding of access to information as a human right, and the importance of information disclosure for

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<sup>18</sup> *Id.*

<sup>19</sup> See for example how selection processes for experts are open and transparent at the United Nations Office of the High Commissioner for Human Rights, where selection procedures are clearly laid out, the vacancies and their requirements are published for anyone to apply and application papers are proactively published. <https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/HRC43.aspx>

<sup>20</sup> See IAP, "In Practice: Information Disclosure at IDB Invest," September 25, 2018. Available at <https://medium.com/@accountability/in-practice-information-disclosure-at-idb-invest-a5a5406b2a5e>; and "Comments on IDB Invest's Draft Access to Information Policy", September 2018. Available at [https://ews.rightsindevelopment.org/wp-content/uploads/2018/09/IDBINvest\\_SEP2818.pdf](https://ews.rightsindevelopment.org/wp-content/uploads/2018/09/IDBINvest_SEP2818.pdf)

those affected by the Bank's operations - particularly with regard to environmental and social information.

Acting upon the findings and recommendations of previous contributions, the *Implementation Guidelines* should clearly convey that access to information is the foundation for the meaningful engagement and participation of those affected by the Bank's operations. In particular, the *Implementation Guidelines* should provide explicit guidance on how to ensure the language used in the Investment Summary and Environmental and Social Review Summary (ESRS) is accessible for a broad audience with examples, such as instructions to refrain from using acronyms or overly technical language. In addition, the *Implementation Guidelines* should recommend that IDB Invest staff clearly outline the applicable safeguards, and identify which environmental and social documents were mandated to be produced for the project in question, including Environmental and Social Action Plans (ESAPs) and stakeholder engagement plans. To strengthen transparency, the *Implementation Guidelines* should instruct IDB Invest staff to also outline the rationale for the inapplicability of any environmental and social documents which were not required for the project in question.

As projects progress, information disclosure must be similarly dynamic. Again, as a document aimed at providing practical guidance for IDB Invest staff, it is insufficient for the *Implementation Guidelines* to state that information updates will be provided "*as necessary.*"<sup>21</sup> In order to operationalize the *Policy*, the *Implementation Guidelines* should, at the bare minimum, provide examples for when an update would be necessitated - for example, when the status of a project changes, or when the nature of the project is adjusted - in order to ensure that communities and the public at large remain informed.

### ***Confidential Environmental and Social Information***

Paragraph 86 of the *Implementation Guidelines* establishes another vaguely worded exception to disclosure and further limits disclosure of information that is unquestionably of public interest.

With regard to possible environmental and social impacts, we believe there is no justification that merits keeping this information confidential. Communities and civil society require access to precisely this type of information in order to assess the impact to their rights and dialogue with the necessary stakeholders in order to avoid or remedy violations. What could and should be confidential is the individual information of those impacted by such violations. Such confidentiality can always be remedied via redaction of

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<sup>21</sup>IDB Invest, "Access to Information Policy Implementation Guidelines," para. 83, p. 15

personal information, as it is of interest to the public and communities impacted to know if all members are being treated equally and fairly in, for instance, compensation negotiations.

However, the information that this section tries to omit is clearly and solely directed at the financial interests of the Bank and its clients, in complete disregard for the public's right to know. **We strongly urge the removal of this section from the *Implementation Guidelines*, as it contradicts the right to information.**

### ***Requests for Information***

Further, we express serious concern and dismay at the addition of several prejudicial and discretionary provisions in section C.A of the *Implementing Guidelines*, which create ambiguous and unnecessary barriers to access information and which are absent from - and largely unsubstantiated by - the *Policy*.

While we welcome the assertion that “requesters are not required to provide any reason or proof of interest for their Request,”<sup>22</sup> Paragraphs 96, 97, 98 and 99 of the *Implementation Guidelines* make reference to “unreasonable or unsupported requests for information” - language that is not found in the *Policy* itself. These paragraphs give discretionary power to IDB Invest staff in determining the characteristics that fall in the realm of requests that are “unreasonable or unsupported,” language which itself is biased and prejudicial against those filing a request for information. This is further underscored in Paragraphs 97 and 106 where IDB Invest staff are instructed to undertake a “reasonable search” for the requested information.<sup>23</sup> Furthermore, while the *Policy* clearly states that the only circumstance where IDB Invest will deny a request for information is “when it determines that the information requested is “confidential” under the *Policy* exceptions”,<sup>24</sup> Paragraph 97 of the *Implementation Guidelines* creates another exception by stating that “IDB Invest may refuse unreasonable or unsupported Requests for Information.”<sup>25</sup> Adding to this, Paragraph 98 of the *Implementation Guidelines* states that in situations where the request is “unreasonably broad” and “the Requester does not provide sufficient clarification, IDB Invest will refuse the Request pursuant to Paragraph 71 of the *Policy*.”<sup>26</sup> However, Paragraph 71 of the *Policy* does not provide for the refusal of information requests on these grounds, and simply outlines procedure for clarifying or narrowing the scope of requests.<sup>27</sup> Paragraph 99

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<sup>22</sup> *Id.* at para.96, p.18

<sup>23</sup> *Id.* at para. 106, p.19

<sup>24</sup> IDB Invest, “Access to Information Policy”, at para. d.73, p.14

<sup>25</sup> IDB Invest, “Access to Information Policy Implementation Guidelines”, at para. 97, p.18

<sup>26</sup> *Id.* at para. 98, p.18

<sup>27</sup> IDB Invest, “Access to Information Policy”, at para. D.71, p.14, providing, in part, that: “Requests for information must identify the specific information requested; where a request is insufficiently clear or precise

continues to outline guidance on the assumption that refusal of information “*in the case of unreasonable or unsupported Requests*” is valid under the adopted *Policy*.

We are alarmed by the addition of these vague and discretionary loopholes that create subjective barriers to accessing information and reach far beyond the language of the adopted *Policy* within the *Implementation Guidelines* - an internally-facing document which does not require adoption. Although the language in the *Policy* is vague at times, the purpose of the *Implementation Guidelines* should be to clarify these ambiguities. Creativity in the *Implementation Guidelines* should be restricted to and focused on elaborating examples on existing *Policy* provisions, not creating new provisions that counter the very principles and ethos of the adopted *Policy*. **We strongly recommend removing Paragraphs 97 through 99 and excising all language in the *Implementation Guidelines* which uses prejudicial and discretionary terms, including differentiating between “unreasonable and unsupported” requests and “reasonable” searches.**

### ***Responding to Requests for Information***

As outlined in the *Implementation Guidelines*, the proposed Transparency Hub fails to fulfil the criteria for an automated, intuitive, accessible and intelligent system. We recommend the creation of a system wherein information requests made by individuals would be automatically recorded in the system, along with the date the request was made and the date of its eventual response. Such an automated system would not only be useful to the requester, but also to Bank staff in monitoring and responding to requests. Such a system would further eliminate the necessity of a 5 days deadline to acknowledge the receipt of a request or an appeal. **We urge the Bank to facilitate the implementation of the right to information by making an automated and intelligent Transparency Hub available to the public and its own staff.** In such cases that a request was made by telephone, the information request should be recorded in the system by the staff member receiving the request and the protocol number should be given to the requester, along with the date when a response is due.

**The *Implementation Guidelines* should refute the necessity of a statement by the requesters explaining the basis for an appeal.** It cannot be presumed that requesters will have or should be required to have knowledge of the access to information norms and practices, or even the details of the Bank’s policies. It is the responsibility of Bank staff, the External Panel and the Board of Directors to know whether a denial of request did or did

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to identify the information required, or is unreasonably broad, IDB Invest reserves the right to ask the requester to provide clarifications or to narrow down the scope of the request.”

not follow such parameters and issue a decision in favor or against disclosure after such analysis.

While it is possible that Bank staff, External Panel or the Board need more than 30 days to answer to an appeal, this should not exempt these actors to have a fixed response deadline. Otherwise, these actors could not possibly be held accountable when not answering an appeal request. **We recommend that the *Implementation Guidelines* establish a reasonable deadline for cases when additional time is required to respond to appeal requests.**

**In order to safeguard the independence of the External Panel from IDB Invest Management,<sup>28</sup> it is important that the selection process is made public<sup>29</sup> and that their selection is solely focused on their expertise in relation to information and transparency.** The emphasis put by the *Implementation Guidelines* on people with focus on private sector is very misplaced. As we have repeatedly stated, the right to information is a human right, and its fulfillment, while taking into consideration the nature of the information, is not dependent on the public or seemingly private nature of the institution's transactions. An expert on the theme will be to evaluate whether an information belongs to the public realm or is protected under the right to privacy, which is detailed in the Exceptions sections of the *Implementation Guidelines* and *Policy*.

It is important that IDB Invest leaves no one behind. While its *Policy* determines that requests can be made via telephone calls, the *Implementation Guidelines* do not seem to embrace this type of accessibility when it comes to appeals. As stated above, requests made by telephone calls should be recorded at the Transparency Hub and requesters should receive a protocol number and a deadline for response. If the information requested is denied or if the requester receives no response, **the Bank should accept an appeal also made by telephone call, which should also be recorded on the Transparency Hub while providing the requesters with a protocol number and a deadline for response.**

Finally, we recommend that IDB Invest respond to any request in the same language in which it was received and provide all facilities for applicants and affected communities to have the information translated in cases where the language is different. We also recommend deleting the paragraph 110 (Costs). IDB Invest must bear the costs of information requests. Many communities have difficulties in accessing information,

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<sup>28</sup> The *Policy* at paragraph 77 provides that “ an external panel independent of IDB Invest Management may review any denial confirmed pursuant to such mechanism. This mechanism will be regulated in the *Policy*'s implementation guidelines.”

<sup>29</sup> See best practice of selection process referenced in footnote 16 above.

therefore, adding economic costs can create a barrier in the processes of requesting information but, also in the processes of consultation and participation in the framework of project development.

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IDB Invest should ensure that adequate resources and training are provided in order to ensure that implementation of the *Policy* is in line with the committed principles and the right to information. Additionally, the Bank should consider carrying out annual periodic public enquiries to gather experiences about the *Policy's* operation and implementation to strengthen it, and perform regular and thorough reviews of both the *Policy* and *Implementation Guidelines*, in transparent and participatory processes.

We strongly urge IDB Invest to substantively revise the *Implementation Guidelines*, so that they not only address our concerns and recommendations, but become a document that will successfully guide IDB Invest staff in understanding and applying the *Policy*, and fulfilling the right to information.

### **Signatories**

1. International Accountability Project (IAP), International
2. Fundación para el Desarrollo de Políticas Sustentables (Fundeps), Argentina
3. Comunidades Unidas, Colombia
4. Acción Ciudadana, Guatemala
5. Ecoa – Ecologia e Ação, Brazil
6. Iniciativa para las Inversiones Sustentables China-América Latina (IISCAL)
7. Fundación Ambiente y Recursos Naturales (FARN), Argentina
8. Derecho, Ambiente y Recursos Naturales (DAR), Perú
9. Gender Action, USA
10. Asociación Ambiente y Sociedad, Colombia
11. Centro de Incidencia Ambiental, Panamá
12. Project on Organizing, Development, Education and Research (PODER), Regional
13. Accountability Counsel, USA
14. Coalición Regional por la Transparencia y la Participación, Regional
15. Fundación CAUCE, Cultura Ambiental - Causa Ecologista, Argentina
16. Fundación Cambio Democrático, Argentina
17. Sociedad y Discapacidad - Sodis, Perú

18. Asociación Unión de Talleres 11 de Septiembre, Bolivia
19. Fundación Tierra Viva, Honduras
20. Both ENDS, The Netherlands
21. Bank Information Center (BIC), USA
22. Center for International Environmental Law (CIEL), USA