



Recommendations for IDB Invest’s Access to Information Policy **September 2018**

The Center for International Environmental Law (CIEL) welcomes the opportunity to comment on the draft of the Inter-American Investment Corporation’s (IIC or IDB Invest) Access to Information Policy (hereafter the Policy) released on May 23, 2018.

Since 1989, CIEL has used the rule of law to protect the environment, promote human rights, and ensure a just and sustainable society. CIEL is a non-governmental organization based in Washington, DC, and Geneva

In fulfilling its mission to protect the environment and communities against the adverse impacts of development, CIEL has worked to strengthen policies and accountability mechanisms within development finance institutions. We provide assistance and accompaniment of people and communities who seek redress for harms caused by development projects.

In September 2017, CIEL joined international partner organizations to submit preliminary comments to the IIC as it developed its draft Policy.¹ CIEL collaborates with other organizations to monitor development projects through the Early Warning System Initiative and assist affected communities in their access to information and participation efforts.

Table of Contents	Page
Introductory Remarks.....	2
Upholding and Setting International Standards.....	3-7
Environmental and Social Sustainability.....	7-13
Improving Clarity.....	13-15
Concluding Remarks.....	16

¹ CIEL et al., Comments on Inter-American Investment Corporation’s Revisions to its Disclosure of Information Policy, September 2017. Available from <https://drive.google.com/file/d/0Bw7265GrnNBLR05CamtJaEtJbIE/view>.

Introductory Remarks

In light of international best practice and States' legal obligations to provide access to information, it is imperative that this Policy solidify the right to access information and participation of affected communities and other stakeholders in order to grant the ability to engage meaningfully in the investments that the IIC undertakes.

Access to information in the region must be rooted in democratic principles, recognizing the inequality and marginalization that exists in Latin America and the Caribbean. Transparency, openness and meaningful participation are essential to a development model that equitably includes women and men in decision-making. Communities must be well informed to participate meaningfully and safely in development decisions that have impacts on their environment, their lives, and their livelihoods.

Strong public participation requires that all stakeholders have access to the same information, in appropriate languages and in a timely manner. If IDB Invest is serious about development, it must create a level playing field for all parties to come together, without fear of retaliation or consequences from voicing opinions and defending their rights.

Through such collaborations, the IIC can ensure that its investments meet the development needs of the target communities while also avoiding unnecessary risks. Not only is this a responsible choice in terms of respecting human rights, but it also makes economic sense. By being transparent, the IIC can secure its investments, while also protecting communities from unintended consequences and harms.

CIEL recognizes the work that the IIC has put into creating this draft Policy. It is clear that the IIC made considerable efforts to improve upon the previous **Disclosure of Information Policy** from 2005 to keep pace with international standards and practice at other development finance institutions. We welcome the Principles outlined in the Policy and while the Policy does integrate some concepts to uphold these Principles, some of the articles may render them superfluous. There also remain several areas for which clarification is needed to ensure that the Policy can achieve what it sets out to accomplish.

We have provided recommendations for areas in which the Policy might be made clearer and more robust, grouping them as follows: **Upholding and Setting International Standards, Environmental and Social Sustainability, and Improving Clarity**. The lack of mention of a specific issue does not signal CIEL's endorsement for the given paragraph or language. CIEL also collaborated with partners from the Coalition for Human Rights in Development in drafting a joint submission which includes *FUNDEPS –Fundación para el Desarrollo de Políticas Sustentables*, *International Accountability Project*, *Fundar –Centro de Análisis e Investigación* among others. This document will be presented separately to ensure that other recommendations are brought to the attention of the IIC.

Upholding and Setting International Standards

1. International standards for multilateral development banks' access to information policies have evolved since the advent of access to information rights. With globalization and technology enhancing communication across the globe, civil society has a greater ability to exercise their rights to access information, which requires that development banks react accordingly. This is even more important, in light of banks' missions to finance projects that maximize social and environmental development for the region and eliminate poverty. In Latin America, States have obligations to their citizens to grant public access to information in addition to meeting international standards.
2. Since 1948, access to information has become integrated into international law and international good practice. Indeed, the Universal Declaration of Human Rights' (Universal Declaration) Article 19² affirms that everyone has the right to seek, receive, and impart information. Following this historic declaration, the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights, both widely ratified, codified the right to access information in international law.³
3. We draw the IIC's attention to Article 19 of the ICCPR, which mirrors the Universal Declaration's language in requiring States to allow everyone access to information. While we recognize that the IIC is not a Party to this treaty, every shareholder State of the bank excluding one has signed and ratified the treaty.⁴ Therefore, both donors and borrowers of the institution are obligated to allow their citizens to access information related to the government's activities, including their involvement in multilateral development institutions.
4. In March of 2018, after five years of negotiations, Latin American and Caribbean States enacted a legally binding agreement to ensure that millions of people have access to information and participate in decision-making that affects their lives. The **Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean**, known as the Escazú Agreement, reaffirms Principle 10 of the 1992 Rio Declaration on Environment and Development. Article One of the agreement states its objective:

“To guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation,

² United Nations, The Universal Declaration of Human Rights, adopted 10 December 1948. G.A. 217 A <http://www.un.org/en/universal-declaration-human-rights/>

³ United Nations, International Convention on Civil and Political Rights, G.A. 2200 A 16 December 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, American Convention on Human Rights 1969 http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf

⁴ China, a non-regional partner, signed the ICCPR in October 1998 but has yet to ratify the document.

contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development.”⁵

5. Following this objective, the Escazú agreement outlines its principles including Article 3(h), which is the principle of **maximum disclosure**. This recently adopted agreement will commit the signatory governments to certain standards of right to information access within their countries. In order for the IIC to prepare for the entry into force of this agreement in Latin America and the Caribbean, it should preemptively ensure that the Policy does not include any provisions that could contradict the agreement. Doing so will put IDB Invest’s Policy in line with international best practices and enhance cooperation between member States and the corporations that operate within these States.
6. The UN Guiding Principles on Business and Human Rights (Guiding Principles) outline responsibilities of States when acting as members of multilateral institutions, including development banks.⁶ Given that States have recognized their responsibility under international law and codified access rights domestically, the acknowledgement of the role of multilateral institutions within the Guiding Principles to ensure that they do not hinder States from meeting their duty to protect human rights is crucial. To this end, straightforward access to information policies can enable this Guiding Principle to be met.
7. Furthermore, considering that the IIC’s role is to invest in the private sector in Latin America and the Caribbean, the Guiding Principles acknowledge how business enterprises should have policies and processes to show they respect human rights in practice. This can only occur by providing measures of transparency to individuals and groups who may be impacted, including other relevant stakeholders. To this end Guiding Principle 21 defines ways of informing and communicating how impacts should be addressed:

“In order to account for how they address their human rights impacts, business enterprises **should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders**. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

 - (a) Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences;
 - (b) Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved;

⁵ Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted 4 March 2018, LC/CNP10.9/5.

https://accessinitiative.org/sites/default/files/regional_agreement_on_access_to_information_-_costa_rica.pdf

⁶ United Nations, Guiding Principles on Business and Human Rights, 2011. HR/PUB/11/04. Principle 10.

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality

8. In line with the principle of maximum disclosure, CIEL applauds the establishment of a Positive Override within the Policy. We recommend an addition to paragraph 63 to create even more clarity about the circumstances that would warrant the positive override, thus it should read as follows (changes in italics):
 - In such cases, the information would be disclosed on the most restricted basis necessary to achieve the intended purpose. If the non-public information has been provided by or relates to an IIC client, the IIC would make such disclosure only after informing the client of the IIC's concerns and considering the client's plans *so that no additional harm is caused to affected communities.*
9. CIEL understands the IIC's prerogative to keep information on internal investigations confidential to an extent within the prior-mentioned legal framework. International best practice, including the Integrity Framework⁷ and the Agreement for Mutual Enforcement of Debarment Decisions,⁸ however, calls for the IIC to continue to subscribe to the IDB Group's Sanctions System.⁹ CIEL suggests that the IIC add the following language to make it clear that the IIC will continue to release information such as the name, duration of debarment, and reason for debarment for clients found in violation of its transparency and corruption policies (changes marked with italics):

Paragraph 55 (i)

 - Information regarding deliberations and materials considered in the proceedings of the Board, the Anti-Corruption Policy Committee, and the Sanctions Committee; *these exceptions will not infringe upon the IIC's responsibilities to release information related to sanctions of clients or individuals in accordance with the IIC's other policies.*
10. CIEL welcomes the Policy's two-step **Review Mechanism**. Giving affected communities and other stakeholders the ability to appeal the IIC's decision to keep certain information confidential builds trust and transparency for the IIC's reasoning on confidentiality. The timeline allows for stakeholders to understand the timeline for their request, and the next steps in the process should they be denied upon using the first review tool available under the mechanism. The creation of this two-tiered review system follows international standards set by the World Bank in its 2010 Access to Information Policy. Under this system, requesters will receive important confirmations of receipt and the IIC

⁷ Inter-American Investment Corporation, Integrity Framework, 27 July 2016, available from https://www.iic.org/sites/default/files/iic_integrity_framework_english.pdf.

⁸ Agreement for Mutual Enforcement of Debarment Decisions, the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group, 17 September 2006. Available from https://www.iic.org/sites/default/files/pdf/mdb_agreement_on_cross_debarment.pdf.

⁹ Inter-American Development Bank Sanctions System, 2015, <https://www.iadb.org/en/about-us/idb-sanctions-system%2C8619.html>.

will make information available on its website. To strengthen this process, we suggest that:

- The IIC create a database or webpage for information related to access to information requests that is updated as frequently as possible. This database or webpage should be available in all of the IIC's four official languages (English, French, Portuguese, and Spanish).
- In this database, the IIC should include the following information:
 - Title and nature of requested items;
 - Timeline for their passage through the review mechanism;
 - Summary information on number of requests submitted, granted, denied, and the reason for the corresponding decisions.
- The Policy should make clear the qualifications for those serving in the review mechanism.
- The Policy should establish general operational rules for the activities of the review mechanism.
- The Policy should set out how stakeholders and interested parties can communicate with the review mechanism, including a phone number, address, and contact person.

11. CIEL commends the IIC for including requirements for investments made through financial intermediaries within the section on Investment-Related Information. Adding information disclosure requirements for such investments is a clear step forward toward international best practice. As lending through financial intermediaries increases, the IIC has shown its commitment to maintaining information standards that will allow for key stakeholders and affected communities to have the necessary information to interact with clients to ensure compliance with environmental and social due diligence standards.

12. We would like to call special attention to paragraph 75 of the Policy which states, "The IIC may charge reasonable *fees* for the cost of producing and sending copies to requesters." Charging fees for information requested stands in opposition not only to the purpose and principles of the Policy but also to international practice and law. By requiring a monetary expense from those seeking information, the IIC creates barriers to the information that the Policy states should be disclosed. Furthermore, this article would create greater inequality between those with the means to ask for information and those without. As disparities already exist in Latin America in which marginalized indigenous peoples and the rural poor are frequently impacted by bank investments and have limited means, this article would put these vulnerable populations at even greater risk. Placing the burden of fees on affected communities and other stakeholders is a blatant unshouldering of responsibility and attempt to conceal information that this Policy aims to disclose.

- We recommend that paragraph 75, which allows for the IIC to charge for access to information, be deleted in its entirety from the Policy.

13. We applaud the Policy's advances in transparency on extractives, which sets standards for other financial institutions to follow suit. As the policy section on Information Disclosed by the Client in Extractive Projects states in paragraph 48: "In extractive projects (oil, gas, mining), the IIC promotes transparency of revenues payments to host governments. Accordingly, the IIC requires that clients disclose any material project payment to the host government (such as royalties, taxes, and profit sharing)," the IIC makes it clear that it takes seriously the risks surrounding such projects. Extractive projects have long been under review by external organizations not only for the environmental and social risks involved, but also for their tendency to cater toward corruption. With the addition of paragraph 48, the Bank demonstrates that it has closely followed civil society commentary on the issue, particularly through standards outlined by the Extractive Industries Transparent Initiative (EITI).¹⁰ It also takes a leap forward in preventing harm and corruption in extractive projects.
14. Considering the constant evolution of information and communication technology, CIEL recommends that the IIC provide more precision on the treatment of digital communication, such as email, message streams, blogs, reports, and social media posts. **We suggest that the same standards of disclosure be applied to some of these communication tools.** Additionally, we suggest that **the IIC expand the methods through which information can be accessed and requested, including but not limited to SMS messages, telephone calls, and mail and parcel delivery, among others.**
15. The IIC need not reinvent the wheel in creating or implementing this Policy. By relying on existing documentation and good practices, the IIC can firmly place its Policy in line with international best practice. Accordingly, CIEL suggests that the IIC include a section with a list of resources and documents that may be of use to affected communities and other stakeholders in understanding the Policy and how to access information.¹¹

Environmental and Social Sustainability

16. Access to information is deeply tied to environmental conditions in both international best practice and the legal frameworks of member states. Much of the codification of the first access to information and transparency legislation in the Americas harkens back to Principle 10 of the Rio Declaration, namely that "Environmental issues are best handled with the participation of all concerned citizens."¹² As recognized and affirmed in the Declaration, it is imperative for civil society to have access to information that is relevant,

¹⁰ For more information on the Extractive Industries Transparency Initiative, see <https://eiti.org/>.

¹¹ For an example of such a resources section, please see the World Bank's Policy: Access to Information, pages 20-21. Available from <http://pubdocs.worldbank.org/en/393051435850102801/World-Bank-Policy-on-Access-to-Information-V2.pdf>.

¹² United Nations, Rio Declaration on Environment and Development, adopted 14 June 1992, G.A. A/CONF.151/26 (Vol. I). Available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

timely, and freely provided to ensure meaningful participation in decision-making so that investment designs are as thorough as possible.

17. The IIC's own Environmental and Social Sustainability Policy (ESSP) commits to "good international practice in the context of all social aspects of the projects it finances including *human rights*."¹³ With a strong access to information policy that takes the inclusion and consideration of human rights seriously, the IIC can further demonstrate its commitment to uphold international standard and practice. Additionally, the creation of a new access to information policy is an excellent opportunity for the IIC to recommit to its own standards around best environmental and social practice, and raise the bar for all multilateral development institutions' disclosure policies.

18. Environmental and Social Review Summaries are a useful tool for affected communities to learn about the potential impacts of a given project. CIEL notes improvements in this section from the past disclosure policy. In particular, we welcome the inclusion of 32(v), which requires a "description of the status of the process of the free, prior, and informed consent (FPIC) of indigenous people." In order for this to be a strong provision in line with international practice, including standards established in the Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly of the United Nations in 2007,¹⁴ CIEL has the following recommendations:

- Monitoring client activities and plans regarding the process of obtaining the free, prior, and informed consent of indigenous people is critical because it allows for proper due diligence and accountability to the IIC. This article lacks any mandate to actually *obtain* free, prior, and informed consent. To make the text fully functional, **the article should read "a description of the status of the process of *obtaining* the free, prior, and informed consent of indigenous people."**
- Broad community support from affected communities with added consideration with regard to indigenous groups is a clear prerequisite for development project planning. Examples of the negative impacts of investment without broad community support can be seen throughout Latin America. To avoid situations like these before they occur, **the IIC should disclose a report of the process outlining how it made a determination of broad community support prior to a vote on the project by the Board.**
- While desk reviews for the purpose of information gathering can be highly useful, they can often omit key information regarding the situation of communities and indigenous peoples located in remote rural areas. In order to ensure that indigenous peoples are given the right to free, prior, and informed consent, **the IIC should require site visits to areas in which the population is unknown or if there is the potential for the existence of indigenous peoples.**

¹³ IIC Environmental and Social Sustainability Policy, paragraph 7. <https://www.iic.org/environmental-and-social-sustainability-policy.pdf>

¹⁴ United Nations, Declaration on the Rights of Indigenous Peoples, 13 September 2007, G.A. 61/295. Available from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

- Gender plays a role in how individuals interact with project information. To ensure equality in participation, the IIC should require clients to show that they have taken gender into account when conducting stakeholder outreach, information disclosure, participation, and engagement in general. To this end we point to the IDB's Operational Policy on Gender Equality in Development and current Gender Action Plan.

We recognize the recent publication titled "Social Impact Assessment – Integrating Social Issues in Development Projects" as part of the IDB Series on Environmental and Social Risk and Opportunity, which highlights the importance of access to information and opportunities for stakeholders to engage with the project with particular attention to indigenous peoples. CIEL welcomes the section in Appendix A titled: "**Reaching Agreement: Free, Prior and Informed Consent**,"¹⁵ which offers useful guidance on FPIC.

19. In order for affected communities to seek redress for harms, it is essential that they understand the mechanisms and procedures in place. CIEL applauds the IIC's addition of a requirement for disclosure of information related to the existence of the Independent Consultation and Investigation Mechanism in its Environmental and Social Review Summary (ESRS). In order to make this requirement more robust, CIEL recommends that the IIC clarify the language in 32 (vi) to read as follows (additions in italics):

- **General information on the Independent Consultation and Investigation Mechanism (ICIM), *including how to file a complaint, protections for complainants, and steps and a timeline for the complaint process. Information should also be provided during consultations and informational meetings with communities in the appropriate language.***
- **Additionally, we recommend creating an identifiable link to the ICIM from both the homepage of the IDB Invest's website and the "Our Projects" page. This would serve to provide a direct connection and clear information about the existence of the accountability mechanism.**

20. The space for civil society worldwide has become more restricted in recent years. As conditions on the ground become more contentious and the free press is attacked globally, those seeking to protect and defend human rights are increasingly under attack. Indeed, environmental human rights defenders in Latin America are frequently threatened and killed for their lawful actions to shed light on environmental damage and human rights abuses. The 2016 report *A Deadly Shade of Green*¹⁶ details the conditions in countries in which those who advocate for human and environmental rights frequently have their own rights violated. As Latin America is by far the most dangerous region of

¹⁵ Inter-American Development Bank, Social Impact Assessment – Integrating Social Issues in Development Projects, 2018 page. 116, Available: <https://publications.iadb.org/bitstream/handle/11319/8917/Social-Impact-Assessment-Integrating-Social-Issues-in-Development-Projects.pdf?sequence=1&isAllowed=y>

¹⁶ A Deadly Shade of Green, Article 19, CIEL and Vermont Law School, August 2016. https://www.ciel.org/wp-content/uploads/2016/08/Deadly_shade_of_green_English_Aug2016.pdf

the world for environmental human rights defenders, it is imperative that the IIC use the opportunity for the creation of this new Policy to aid rather than hinder the efforts of providing for the safety and ensuring the rights of defenders.

21. Notably, the Escazú Agreement is the first legally binding instrument that recognizes the need for States to protect environmental and human rights defenders. As we previously stated the passage of this regional agreement for Latin American and the Caribbean creates a clear path for the IIC to follow. The agreement not only recognizes defenders, but also articulates the responsibilities of each country to ensure that defenders are able to act free from the threat of retaliation, including by adopting measures to prevent, investigate, and punish attacks.
22. Because of the dangerous situations in which many of those in affected communities live and as a result of possible retaliation for reporting on human rights violations, the IIC has a responsibility to carry out its due diligence to protect these individuals. One way that the IIC can do this is by preventing IIC officials and staff from inquiring into the identity or intent of those who request information. Information requests by individuals should not be construed as a means of confrontation with bank officials, but as the legitimate appeal by persons in the region. In addition, once individuals have obtained information, they should be able to take appropriate action with that information without fear of retaliation. In the event that information released by the bank reveals violations of its own policies, affected individuals should be able to seek redress through grievance mechanisms. To make it clear that requesting information will not preclude people from using grievance mechanisms in the future; the IIC should include language in the Policy that makes this clear.
23. Some problems can also be effectively solved at the project level if space is created to allow individuals to express their concerns. For this reason, CIEL suggests that the IIC add a sub-line to the ESRS requirements contained in paragraph 32, clarifying the procedure for project-level grievance mechanisms. Sample language is as follows:
 - **A description of the project-level grievance mechanisms in place, including a way for affected individuals to lodge anonymous comments and complaints in a way that is conducive to community and individual safety.**
24. In the current draft Policy, Category A projects require additional screening due to the fact that they are expected to have major, diverse, and irreversible effects on the environment. In accordance with US Government's "Pelosi Amendment,"¹⁷ environmental impact assessments must be disclosed to the Executive Directors of the multilateral bank and the public 120 days prior to a vote. Indeed, this Amendment has set the global standard for environmental and social information disclosure. The IIC is

¹⁷ Multilateral Development Banks' Environmental Assessment and Information Policies: Impact of the Pelosi Amendment, Congressional Research Service, Library of Congress, <http://www.bankinformationcenter.org/wp-content/uploads/2016/11/98-180.pdf>

encouraged to think about its shareholder countries' legal frameworks to ensure that countries can vote on its investments that provide crucial aid to communities. In light of these two facts, CIEL recommends that the IIC extend its timeframe for disclosing information for all projects to 120 days prior to Board approval. This could be done through the following changes in paragraphs 35, 36, and 37 (changes noted with italics):

- **35. The IIC discloses the Investment Summary and the ESRS no later than *120* calendar days prior to the Board or Management approving the investment, as the case may be.**
- **36. The IIC discloses the EIAs for category A and *F1-1* projects as far in advance as possible and no later than *120* calendar days prior to the Board approving the investment.**
- **37. The IIC discloses the EIAs or other environmental and social evaluations required for projects other than category A projects no later than *120* calendar days prior to approval of the investment.**

25. Including language on affected community-led research and third party review can help the IIC build credibility for its ESRSs among relevant stakeholders. This step can also provide important information about local conditions that those in a community will be most able to provide and that would fail to come to light in a desk review. CIEL proposes that IIC include the following language as a requirement for Category A projects:

- **For Category A projects, the ESRS must also include a description of the efforts of the client to involve the affected community in project design through community-led research or the provision of a third party review.**

26. As projects' conditions are susceptible to change, it is imperative that stakeholders and affected communities receive up-to-date information. This is of particular importance for high-risk investments. For this reason, we recommend that paragraph 46 be amended with the following language (changes marked with italics):

- **For Category A Projects, the IIC will update and disclose the ESAPs *as they become available or at least once every 60 days, whichever time period is shorter. In addition, whenever new or revised relevant environmental or social documents for these projects are made available, such documents will be disclosed per the preceding timeline.***

27. Disclosing information on subprojects allows stakeholders to understand the source of the funding for investments in their area. This information permits them to participate and seek redress from the proper body if they are adversely affected. In order to further strengthen this aspect of the Policy, we recommend adding the following language to the list of requirements for financial intermediaries in paragraph 34:

- **(iv) a summary and description of the main environmental and social risks of subprojects, as they become available.**

28. In line with the previous recommendation, it is important to note that there are cases in which financial intermediary projects can include the risk-equivalent of Category A projects. Accordingly, CIEL recommends that the IIC clarify its position on the documentation and timeline for release of FI-1 project information to a period of 120 days prior to Board approval. The IIC could change the language in paragraph 36 to the following (changes noted with italics):
- a. **The IIC discloses the EIAs for category A and FI-1 projects as far in advance as possible and no later than 120 calendar days prior to the Board approving the investment.**
29. We understand the necessity for keeping some deliberative information classified. Since the outcomes of deliberations have direct impacts on the lives of those from affected communities, however, it is important that deliberative meetings are not concealed in their entirety. In addition, countries have national requirements to make certain information available to their citizens. For these reasons, **CIEL suggests that the IIC release agendas, minutes, and resolutions of the preliminary and voting meetings for investments at the very least once a month with periodic monthly updates. The IIC’s webpage titled “IIC Board Meeting – Agenda and Minutes” should be kept up to date to provide a reliable and constant source of information regarding project approval in the region.**
30. CIEL welcomes paragraph 18, which allows for the Board to approve an external public consultation process for key policies and investments. To make this step more concrete, **we recommend that the IIC add language specifying that a two-round consultation period will be required for particularly impactful policies or investments.**
31. Publishing development outcomes allows for interested parties to understand best practices from the investment by revealing what constitutes sustainable development in each project. In reality, some information resulting from project outcomes may not all be positive when goals are unmet, which could be potentially detrimental to the IIC’s reputation. Under these circumstances, it becomes ever more valuable as a matter of practice when the IIC is transparent about not accomplishing certain project goals, not only as this information should be disclosed in the public interest, but as a method of learning and improving on past mistakes. To this end, we recommend that the IIC rephrase the language surrounding information on development impacts (changes marked with italics):
- **With the client’s consent and protecting confidential information in accordance with the exceptions established in this Policy, the IIC discloses information on the standard development impact indicators for each investment; this information will be updated in the Investment Summary as the results become available. The IIC also discloses information on the results of development impact studies and ex-post evaluations that may be conducted relating to each investment or IIC area of business. *Investments with unsatisfactory development results will be particularly susceptible to disclosure, as unfavorable results cannot be a reason for a client to dissent from disclosure nor for the IIC to withhold documents.***

32. To ensure that language plays as small a role as possible in preventing stakeholders from accessing information; documents should be translated as a matter of practice. In order to make the language requirements facilitate the Policy's Principles, paragraph 70 should be amended to read (changes marked with italics): **Requests for information may be submitted in any of the four official languages of the IIC. *The requested information will be provided in the language of the request. For requests made by affected communities in high-risk projects, requests can be made in the local language and will be responded to in the same language. Where people with disabilities have been identified as part of the stakeholder group, the IIC will make the documentation available in accessible formats.***

For this principle to be carried into early disclosure, CIEL recommends that paragraph 42 be amended to add the following sentence at the end of the current draft article: *Documents disclosed under article 42. Early Disclosure are subject to translation in order for affected communities and other stakeholders to be able to quickly and easily access the information. Where people with disabilities have been identified as part of the stakeholder group, the IIC will make the documentation available in accessible formats.*

Improving Clarity

33. The Policy states in key paragraphs that the **implementation guidelines** will further define and create timelines for: (i) routinely disclosed items;¹⁸ (ii) content that must be released to affected communities;¹⁹ and (iii) which access to information policy prevails regarding information from different Bank branches.²⁰ While we understand the necessity of creating additional procedural detail within implementation documents, leaving these sections to the discretion of internal IIC policy unravels much of the progress made in this Policy. **We therefore recommend that the IIC specify the timeline for routinely disclosed items, as well as delayed disclosure, the content that must be released to affected communities, and which access to information policy prevails in the final version of this Policy.**

34. CIEL would like to recommend that the IIC clarify the wording for the implementation guidelines cited in relation to the aforementioned sections in the following ways (changes indicated with italics):

- **14. The information described below is a non-exhaustive, illustrative list of the types of information that the IIC routinely discloses. The IIC will disclose this information after it has been approved, authorized, or its consideration by the applicable governance body has concluded, *and as soon as possible after the relevant meeting or at the latest 30 days after body meeting.***

¹⁸ Access to Information Policy, IDB Invest, para 14.

¹⁹ Access to Information Policy, IDB Invest, para 39.

²⁰ Access to Information Policy, IDB Invest, paras 20, 61.

- 39. To allow affected communities and interested parties to substantively participate in the processes prior to the approval of the investment, the IIC will disclose high-quality contents that are suitable for disclosure. These parameters will be developed through this Policy's implementation guidelines. *Among the documents that must be disclosed to communities and should be accompanied by additional documentation when relevant and available are:*
 - *Investment Summary*
 - *Environmental Impact Assessment*
 - *Environmental and Social Action Plan*
 - *Cumulative Impact Assessments*
 - *Biodiversity Action Plans*
 - *Grievance Mechanisms*
 - *Resettlement Action Plans*
 - *Stakeholder Surveys*
 - *Information on how to request information from the IIC.*
- 61. Information of a confidential nature contained in joint IIC and IDB documents will be protected. The criteria for the application of this provision will be developed through implementation guidelines. *IDB's Information Disclosure Policy will prevail over IIC's Access to Information Policy.*

35. We recognize that in case of a delay when releasing information as described by paragraph 38, the Policy requires the Board to be informed of the delay. While it is important for the Board to know that essential document disclosure has been delayed, it is also necessary for the IIC to ensure that affected communities have adequate time to review investment information before the project goes to a vote. CIEL recommends that the Board date be moved back in order to allow the required amount of time for proper stakeholder consultation and participation. The language of the paragraph could be made more robust in the following way (changes in italics):

- 38. When exceptional circumstances impede the IIC from complying with these timelines, as would occur in the case of a delay in disclosure in accordance with paragraph 60 of this Policy, the Board shall be informed of any delay in the publication of the Investment Summary or the environmental and social information *and the vote will be delayed to give stakeholders the required 120 days for review before the vote.*

36. We acknowledge the importance of safeguarding IIC staff privacy to protect the confidentiality of their personal information. In the Policy, however, the IIC also refers to *any individual* having the right to privacy in paragraph 58. CIEL requests that this wording be clarified to indicate precisely whose information is protected under the Policy. We suggest that in order to strengthen the provision, *any individual* is replaced or edited to include **affected community members, complainants, and other individuals requesting anonymity.**

37. With the passage of time, information becomes less sensitive and once-confidential documents should become accessible to the public. Good international practice requires that a timeline be established for declassifying information. In order to facilitate disclosure, the IIC should establish a well-outlined confidentiality rating for documents and other information items within this Policy. Following declassification rules will allow the IIC to sort documents for historical release in a time-sensitive manner. As such, CIEL recommends that the IIC include a section in the Policy on historical declassification by using the following language, adding lists of its own priority documents for this declassification.

- **The IIC will routinely declassify and disclose certain types of restricted information (including information prepared under earlier disclosure policies of the IIC) as their sensitivity diminishes over time. Some restricted information may not be eligible for declassification.**
- **Information Not Eligible for Declassification.**
- **Information Eligible for Declassification. Documents eligible for declassification will be made publically available 5 or 10 years after the original date of the document depending on their level of restriction, provided that they do not contain or refer to information that is not eligible for declassification until a later date.**

38. As with all newly inaugurated policies, it is essential that there be both quantitative and qualitative review of the implementation of this Policy. We therefore recommend that the IIC add the following language to paragraph 82 of section VII. Implementation Progress and Policy Review:

- **The implementation of this Policy will be subject to annual review. A publicly available report will detail the effectiveness of the Policy and stage of implementation, including staff training progress and access to information requests granted.**

39. Throughout the Policy, the IIC refers to any financial contribution as investment. In order to make it clear that the Policy applies across all product lines, CIEL suggests that the IIC add a definition of investment in section V. Disclosure-Related Terms. Indeed, the 2005 Information Disclosure Policy²¹ defines the term investment, which we have used in our following recommended definition:

- **Investments, when referred to in this Policy, are any loan, equity investment, guarantee, or other financing operation that the IIC undertakes in its course of business. The Policy applies to each product line without exception.**

²¹ Inter-American Investment Corporation, Information Disclosure Policy, 1 December 2005, paragraph 2(a). Available from https://www.iic.org/sites/default/files/pdf/disclosure_of_information_policy_in_english.pdf.

Concluding Remarks

We appreciate the opportunity to provide comments and recommendations for IDB Invest's Access to Information Policy. We hope that our recommendations will serve to strengthen the Policy so that it can serve as a standard for international best practice on information access for all stakeholders involved in development finance activities.

In order for that to happen, there remain key changes that must occur as we have outlined above. We would underscore three key elements that would make the Policy more robust: **eliminating access to information fees; time-bound requirements for minimum disclosure of environmental and social documents; and requiring investment information to be disclosed 120 days prior to the Board vote.**

If you should have any questions regarding this submission or seek to discuss further, do not hesitate to contact us at cgarcia@ciel.org.

Carla García Zendejas
Center for International Environmental Law