

**CONSULTATION PHASE  
ELIGIBILITY DETERMINATION**

**TO:** Victoria Márquez-Mees, Executive Secretary  
**FROM:** Isabel Lavadenz Paccieri, Project Ombudsperson  
**CC:** Independent Consultation and Investigation Mechanism  
**REFERENCE:** San Francisco-Mocoa Alternate Road Construction Project – Phase 1  
**COUNTRY:** Colombia  
**DATE:** 16 August 2011  
**ELIGIBILITY  
DETERMINATION:** The Request is **Eligible** for the Consultation Phase

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**I. Summary of the Request**

- 1.1 On 13 July 2011, the Independent Consultation and Investigation Mechanism (ICIM)<sup>1</sup> received a Request from Carmenza Tez, on behalf of the Inga and Kamentsa Indigenous Communities (the Communities), concerning the environmental and social impacts that the San Francisco-Mocoa Alternate Road Construction Project - Phase 1 (the Project) is having and will continue to have on the communities she represents.
- 1.2 The Request alleges that: (i) the Project's design and implementation plans fail to take into account the existence of the Inga and Kamentsa Indigenous Communities within the Project's area of influence; (ii) the Project has been carried out without consulting with or duly obtaining the prior and informed consent of the Communities; and (iii) the Project is creating and will create serious and irreversible environmental and social impacts on these vulnerable communities. The greatest impacts described by the Requesters include:
- 1.2.1 **Transfer and invasion of indigenous lands:** The Project will directly affect the traditional lands of the Communities, which have not had a voice in the Project's design, and will create additional indirect pressure on the lands adjacent to the Project.
- 1.2.2 **Impact on the self-governance system:** According to the Requesters, the failure to consult with and obtain the prior, informed consent of the Communities, the

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

pressure created by the Project on certain sectors of the Communities, and the nonrecognition of the position of certain Community leaders have violated and continue to violate the decision-making systems of the Inga and Kamentsa Indigenous Communities.

- 1.2.3 **Impact on the environment/Mother Earth:** The San Francisco-Mocoa alternate road will directly affect natural resources that are essential for the Communities, such as the water, forest, and biodiversity resources existing in the Project's area of influence. Aside from the Project's direct impact, the Requesters anticipate impacts resulting from accelerated changes in land use due to access to commercial hubs. These impacts include an increase in illegal logging in the forest and the proliferation of monoculture on Community lands.
- 1.2.4 **Impact on health:** According to the Requesters, the increase in traffic generated by the alternate road will have an adverse impact on the health of Community members.
- 1.2.5 **Socioeconomic harm:** Building and operating the alternate road will increase competition for and pressure on Community lands by outside users, jeopardizing traditional local livelihoods.
- 1.3 **The impacts described by the Requesters** would occur as a result of violations of the Environment and Safeguards Compliance Policy (Operational Policy OP-703), Involuntary Resettlement Policy (Operational Policy OP-710), and Indigenous Peoples Policy (Operational Policy OP-765) of the Inter-American Development Bank (IDB).

## II. Project Background

- 2.1 The objective of the Project is “to improve the efficiency and safety of the Tumaco-Pasto-Mocoa road corridor, promoting the physical and economic integration of southern Colombia with the country's main production and consumption centers, while seeking to conserve its ecosystems and promote sustainable economic and social development.”<sup>2</sup> The Project has total financing of US\$203 million, of which US\$53 million is financed by the Bank and the remaining US\$150 million by the local counterpart. Now in its implementation phase, the Project was approved by the IDB Board of Executive Directors on 14 December 2009 and the loan contract was signed on 3 May 2010. No funds have been disbursed to date. The executing agency is Instituto Nacional de Vías [National Institute of Roads] (INVIAS), acting through its Large Project Management Office.
- 2.2 The Project finances construction of the San Francisco–Mocoa alternate road over a total length of 45.6 km, as well as the socioenvironmental mitigation and compensation measures required for its execution and operation. The alternate road

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<sup>2</sup> Project Profile, Colombia Pasto-Mocoa Road Corridor, San Francisco-Mocoa Alternate Road, p. 2 <http://www.iadb.org/en/projects/project.1303.html?id=CO-L101>.



- is part of the Road Development in Southern Colombia program, which covers the Tumaco-Pasto-Mocoa-Puerto Asís and Airport-Mojarras-Popayán corridors. Once completed, the Project will contribute to international transportation between Colombia and Ecuador through the Andean Integration Hub and will facilitate the connection with Brazil through the Multimodal Amazon Hub.<sup>3</sup>
- 2.3 The 78 km section currently connecting San Francisco to Mocoa has serious traffic restrictions, steep slopes, unstable areas, constant cloudiness, and high cliffs, making the accident rate on this section one of the highest in the country. According to the Project document, to rehabilitate the San Francisco - Mocoa section using the same route would be *very costly and environmentally inappropriate*, thus justifying the construction of an alternate road.<sup>4</sup>
- 2.4 According to the Project document, 68% of the proposed alternate road crosses the Protected Forest Reserve of the Upper Mocoa River Basin and partly coincides with a Camino Real used by Andean and Amazonian indigenous communities as an overland route since ancestral times.<sup>5</sup> The Project document indicates that there are no indigenous communities in the area<sup>6</sup> of the alternate road,<sup>7</sup> while recognizing the close sociocultural relationship between the indigenous communities and the forest reserve.
- 2.5 Given its design, the Project was classified as a category A operation due to its potential impact on critical natural habitats. Consequently, the Project includes the following: (i) updating and supplementing the environmental impact study (EIS) and preparing an environmental and social management plan for the alternate road; (ii) a regional environmental assessment (REA) for the Pasto-Mocoa corridor; (iii) a Basic Environmental and Social Management Plan (BESMP) for the Forest Reserve of the Upper Mocoa River Basin; (iv) institutional strengthening of INVIAS and Corpoamazonia; and (v) implementation of a socioenvironmental monitoring and control system for the alternate road's construction and operation.
- 2.6 According to the loan proposal, the right of way in the vicinity of Mocoa is occupied by close to 100 displaced families<sup>8</sup> who are already in the process of

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<sup>3</sup> Loan proposal for Colombia, San Francisco-Mocoa Alternate Road Construction Project, Phase 1 (CO-L1019), p.2 <http://www.iadb.org/en/projects/project,1303.html?id=CO-L101>.

<sup>4</sup> Idem p.2.

<sup>5</sup> Idem p.3.

<sup>6</sup> From a reading of the Project Profile, it would appear that the nonexistence of indigenous communities refers to the Project's direct area of influence. The Project's direct area of influence is defined in the updated and supplemented environmental impact study of the San Francisco – Mocoa alternate road as “the 30-m strip of land (15 m on each side of the roadway) required as a right of way for construction.”

<sup>7</sup> According to Interior Ministry certifications 4805 dated 15 November 2001, for indigenous communities, and 318, quoted in the Project Profile.

<sup>8</sup> Displaced persons are those who are forced to leave their homes due to a crisis (violence, in this case) but who, unlike refugees, remain within the borders of their country of origin.



being relocated under a separate municipal government program. The Project team is monitoring this resettlement process only to ascertain that the resettlement is carried out under terms acceptable to the Bank and consistent with Operational Policy OP-710.<sup>9</sup> Depending on how this resettlement proceeds, the Project will (or will not) provide for establishing a resettlement program, if needed, or divert the segment of the road that affects these 100 families. The Project also estimates that some five families will be affected on the road's planned path inside the forest reserve, and a resettlement plan is being created accordingly. In addition, the Project provides a plan for linking the community to the protection of protected areas, including a Plan to Improve Quality of Life through Sustainable Projects and a Plan to Support Indigenous Communities.

- 2.7 The Project documents show that a process of consultation and participation was initiated. For example, the original EIS and the terms of reference (TOR) for updating and supplementing the EIS, the REA, and the BESMP were made available to the public (the EIS on 11 June 2006 and the TOR on 1 November 2006) and extensively discussed at meetings with the local population and NGOs in 2007. It is also known that INVIAS sends monthly progress reports on the studies to the main NGOs and local stakeholders; furthermore, both the REA and the BESMP have been prepared based on a process of broad participation by local stakeholders. According to the Project Profile, "no adverse reactions to the project were identified during the consultation process." On the other hand, it has been impossible to reliably determine the degree and level of the consultations conducted with the indigenous communities, an issue that will be examined in greater detail during the Assessment.

### III. Eligibility Analysis

- 3.1 Section 38 of the Policy Establishing the ICIM (the Policy) provides that "[t]he purpose of the Consultation Phase is to provide an opportunity, applying consensual and flexible approaches, to address the concerns of a party that believes it has been or could reasonably be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-Financed Operation."

The Eligibility Analysis has been conducted in accordance with the eligibility and exclusion criteria set forth in Sections 40 and 37 of the Policy and based on the information gathered by ICIM and provided by the Requesters and the project team. The main results of this analysis are summarized in the following table:

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<sup>9</sup> Project Profile, Colombia Pasto-Mocoa Road Corridor, San Francisco-Mocoa Alternate Road, p. 5.



### *Summary of the eligibility analysis*

<i>Eligibility criteria</i>	<i>OMBUDSPERSON DETERMINATION</i>	<i>COMMENTS</i>
Names and contact information of the Requester	Complies	The name and contact information of the Requesters' representative are on file.
Project or operation has been duly identified.	Complies	San Francisco-Mocoa Alternate Road Construction Project – Phase 1 (2271/OC-CO)
The Requester resides in the country where the operation is being implemented.	Complies	The Requesters reside in Colombia.
None of the exclusions listed in Section 37 applies.	Complies	The Requesters have a pending legal action on a matter separate from the Request submitted to ICIM (further details below in the analysis of the Request based on Section 37(i)).
The Requester has reasonably asserted that it has been or could be expected to be directly, materially adversely affected by an action or omission of the IDB <u>in violation of one or more Relevant Operational Policies</u> .	Complies	The Requesters have satisfactorily described the Project's environmental and social impacts associated with a violation of the Environment and Safeguards Compliance Policy (OP-703), the Involuntary Resettlement Policy (OP-710), and the Indigenous Peoples Policy (OP-765).
The parties agree to participate in a consultation or mediation process (Section 40(f)).	Complies	The Requesters have expressed their interest in participating in the Consultation Phase.
The Requester has taken steps to bring the issue to the attention of Management.	Complies	The Requesters have been in contact with the project team and have participated in some activities organized by the project team.

### **Review of the Request based on Section 37(i) of the Policy**

- 3.2 According to Section 37(i) of the Policy, “[n]either the Consultation Phase nor the Compliance Review Phase will be applied to requests that raise issues under arbitral or judicial review by national, supranational or similar bodies.”
- 3.3 Some members of the Communities are initiating an *acción popular* (class action) filed in November 2010 at the Pasto Administrative Court against INVIAS, the Ministry of the Environment, the Ministry of the Interior, and Corpoamazonia. The



claim was answered by the respondents and the Court is in the process of collecting evidence and testimonies and inspecting the land. The primary purpose of the class action is to challenge the environmental license and obtain a preliminary injunction preventing the start of construction of the alternate road. In addition, the claimants are requesting that the section currently connecting San Francisco to Mocoa be improved and, thus, the alternate road not be built.

- 3.4 The class action and the Request submitted to the ICIM have different objectives, as the ICIM Request relates solely to Project actions or omissions that violate IDB Operational Policies and, according to the Requesters, have harmed and may potentially harm the Indigenous Communities. In particular, the Requesters emphasize that, in their opinion, the Communities were not properly informed or consulted and the Project therefore did not receive their prior informed consent. While significant similarities may be found in the arguments used in the two cases, it is also true that the proceedings brought before the local authorities are essentially aimed at appealing an administrative act, namely, the grant of an environmental license, in order to put an end to and prevent the further violation of rights recognized under Colombian legislation. On the other hand, the complaint to the ICIM reflects the Communities' need and intent to find a safe space to engage in informed dialogue and seek solutions to their current problem.
- 3.5 If, during the Assessment Stage or Consultation Phase, any indication is found of an overlap between this ICIM process and the aforementioned class action or any other similar judicial, arbitration, or administrative action initiated by the Requesters or any of the parties, making dialogue impossible, or there is a danger that this ICIM process may interfere with such judicial proceedings, the Ombudsperson will terminate the Consultation Phase.

#### IV. Conclusion

Based on the aforementioned arguments, this Ombudsperson has determined that the Request is **eligible for the Consultation Phase**. This determination does not imply any final judgment on the part of ICIM on the substance or merits of the issues raised in the Request.

Within the next five business days, the Executive Secretary will proceed to arrange for an official translation of this memorandum, post the notice of registration on the Registry, and notify the Requesters, the Board of Executive Directors, the President, the project team, the Country Office, and the executing agency of this Determination.

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

