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INVESTIGATION MECHANISM**

**ICIM-B0-2014-079**

**DETERMINATION OF ELIGIBILITY FOR THE COMPLIANCE REVIEW PHASE  
DRAINAGE IN THE MUNICIPIOS OF LA PAZ AND EL ALTO**

**(BO-L1028)**

**This document was prepared by the Chairperson of the Compliance Review Panel.**

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**ELIGIBILITY DETERMINATION MEMORANDUM**

**COMPLIANCE REVIEW PHASE**

**TO:** Requesters, Board of Executive Directors, Senior Management, Project Team and Executing Agency<sup>1</sup>

**FROM:** Mary Rose Brusewitz, Chairperson of the Compliance Review Panel

**VIA:** Victoria Márquez-Mees, Executive Secretary

**PROJECT:** Drainage in the Municipios of La Paz and El Alto (BO-L1028)

**DATE:** September 8, 2014

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**I. EXECUTIVE SUMMARY**

- 1.1 On March 26, 2014, a resident of La Paz, Bolivia, filed a Request with the Independent Consultation and Investigation Mechanism (the “ICIM”), expressing harms that were allegedly caused by a Bank-Financed Operation. The Request was registered on May 16, 2014, upon receipt of confirmation as to certain matters from the Requester.
- 1.2 The Requester has requested that all personal information remain confidential due to fear of retaliation. In accordance with Section 33 of the ICIM Policy, all personal information, as well as some details contained in the Request that could otherwise reveal the Requester’s identity, will not be disclosed.
- 1.3 The Requester is the owner of a business located on one of the streets under which drainage work was implemented as part of Bank-Financed Operation BO-L1028: Drainage in the Municipios of La Paz and El Alto (the “Program”). The Requester alleges, among other concerns, that no mitigation measures were implemented during the execution of the works and that the information made available to the Requester and the public about the drainage project was inaccurate, principally because the work took much longer to complete than was originally disclosed.
- 1.4 The Program is a Sovereign-Guaranteed Operation in the Water and Sanitation Division, and is a loan product known as a “Multiple Works Program.”<sup>2</sup> The work that allegedly

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<sup>1</sup> Unless otherwise defined herein, terms used in this document have the meanings assigned to them in the Policy Establishing the Independent Consultation and Investigation Mechanism (GN-1830-49) (the “ICIM Policy”), approved on February 17, 2010 and available at: <http://www.iadb.org/mici> (the “ICIM Policy”).

caused harm to the Requester was approved to become part of the Program by the Bolivian Country Office (the “Country Office”) of the Inter-American Development Bank (the “Bank” or the “IDB”) on November 7, 2012.

- 1.5 On July 15, 2014, the Request was determined ineligible for the Consultation Phase because the requirement established in Section 40 (g) was not met since the Requester was not amenable to a Consultation Phase exercise.
- 1.6 On July 21, 2014, the Request was transferred to the Panel Chairperson for an independent eligibility determination as required by Section 55 of the ICIM Policy.
- 1.7 After analyzing the Request, relevant Program documents and the Bank’s Relevant Operational Policies (“ROPs”) and communicating with the Requester and personnel of the Bank with responsibility for the Program (the “Project Team”), the Panel Chairperson has determined that **the Request is eligible for a Compliance Review** because it meets the eligibility criteria established in Section 56 of ICIM Policy and no exclusions apply.

## II. COMPLIANCE REVIEW PHASE

### A. Purpose

- 2.1 In accordance with Part D, Section 53 of the ICIM Policy, the purpose of a Compliance Review is to investigate allegations by one or more Requesters that the rights or interests of the Requester(s) have been, or could be expected to be, directly, materially adversely affected by an action or omission of the Bank that may constitute the failure by the Bank to follow one or more of its ROPs in connection with a Bank-Financed Operation. The objective of a Compliance Review is to establish whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non-compliance with one or more ROPs and direct, material adverse effects (potential or actual) to the Requester.
- 2.2 A Compliance Review is a fact-finding exercise. Part D, Section 65 of the ICIM Policy provides that a Compliance Review is not a judicial process designed to establish guilt or innocence or to adjudicate fault or apportion blame. In addition, a Compliance Review does not reach conclusions about the actions or omissions of any party other than the Bank, such as governmental authorities, borrowers, Executing Agencies, project developers, other lenders, Requesters or any other parties.

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<sup>2</sup> IDB Operations Processing Manual PR-202, Multiple Works Programs.

## **B. Eligibility**

- 2.3 According to the ICIM Policy, a Request is transferred from the Consultation Phase to the Compliance Review Phase if the Requester has expressed a desire for a Compliance Review and if:
- i. the Consultation Phase has been terminated or concluded for any reason, or
  - ii. the Request was deemed ineligible under the Consultation Phase.<sup>3</sup>
- 2.4 As provided in Section 55 of the ICIM Policy, the Panel Chairperson must “review the Request for eligibility, independently of the determination of the Project Ombudsperson.”<sup>4</sup>
- 2.5 A Request’s eligibility for the Compliance Review Phase is determined based on criteria outlined in the ICIM Policy, which have been included in full in Annex 1 of this memorandum. In making an eligibility determination, no inference or conclusion is made or expressed as to the merits of the Request or whether any action or omission by the Bank in connection with the relevant Bank-Financed Operation has resulted in non-compliance with any of the Bank’s ROPs.

## **III. THE REQUEST**

- 3.1 On March 26, 2014, the ICIM received a Request alleging that a series of harms were or could be caused by actions or omissions of the Bank in violation of one or more ROPs in connection with the Program. The Executive Secretary of the ICIM (the “Executive Secretary”) registered the Request on May 16, 2014, after receiving confirmation from the Requester of interest to proceed with the process.
- 3.2 The Requester has asked that all personal information remain confidential due to fears of retaliation. Consequently, and based on the provision set forth in Section 33 of the ICIM Policy, no such personal information, including details contained in the Request that could reveal the Requester’s identity, will be disclosed in this memorandum.

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<sup>3</sup> Part D, Section 54 of the ICIM Policy.

<sup>4</sup> According to the transition scheme approved by the Board, starting September 1st, 2013, the eligibility determination of the Consultation Phase is made by an Eligibility Committee which is composed by the Executive Secretary of the ICIM and two Case Officers.

- 3.3 The Requester is a resident of the city of La Paz in Bolivia and operates a small business located on one of the streets under which drainage works were implemented within the scope of the Program.
- 3.4 The following are the main allegations raised by the Requester with respect to the Program:
- (a) Water and sanitation work required the closure of the street on which the Requester's business is located for a period of almost a year. The Requester alleges that this time period was substantially longer than was disclosed during the public consultation process. Consequently, the Requester alleges that the information received was not accurate. The Requester claims that if accurate information had been provided, the Requester would have been able to plan accordingly and perhaps the Requester's business would not have been impacted to such a material and adverse extent; and
  - (b) The Requester alleges that during the execution of the work, no mitigation measures against potential or actual harm were implemented; if appropriate mitigation measures had been implemented, the Requester says perhaps the business would not have been impacted to such a material and adverse extent and the Requester could have perhaps taken steps to avoid harm.
- 3.5 The Requester alleges that the small business operated by the Requester is among many such businesses existing in the area in which drainage work was to be carried out, and which would foreseeably be affected by the construction. The most relevant harms alleged by the Requester are the following:
- (a) The Requester states that the business suffered materially during the execution of the work and since it was finished. When compared with the income from the business prior to the start of the work, there has been an 80% reduction in monthly income from the business. The Requester states that 70% of the employees had to be fired due to inability to pay salaries. The Requester also states that customers that patronized the business no longer do so. Due to these effects, the business can no longer compete in its market.
  - (b) The Requester states that lack of cash flow has resulted in an inability to make payments to creditors and suppliers, and those defaults have impacted the reputation of the business in the market. In addition, the Requester had to relinquish use of an additional property to the main business site that had been

used for related commercial purposes and the Requester has thus lost additional sources of income.

(c) In sum, due to these material losses incurred by the business, of which the Requester is the sole owner, the Requester claims the Requester's livelihood and ability to support the Requester's family have been directly, materially, adversely affected.

3.6 The Requester included additional allegations in the Request. At this time, the Panel Chairperson believes a Compliance Review would not investigate some of them, either because they appear to involve actions or omissions attributable to a party other than the Bank or otherwise do not meet the ICIM Policy requirements for a Compliance Review.

## **IV. THE PROGRAM**

### **A. Background**

4.1 Due to historically unprecedented storms in the Municipality of La Paz and surrounding areas in February 2002, the Municipality of La Paz developed a Storm Drainage Master Plan ("PMDP" or the "Master Plan"). The Bank supported the development of the Master Plan and some of the necessary and foreseeable construction work and complementary activities through two previous Bank-Financed Operations comprised of technical cooperation assistance TC0210050: Master Drainage Plan for La Paz; and project BO0223: La Paz Storm Drainage Program in the amounts of US \$60 million and \$22 million respectively.

### **B. The Program**

4.2 On November 3, 2010, in order to supplement project BO0223 and further support storm drainage improvements in La Paz, the Board approved loan BO-L1028: Drainage in the Municipios of La Paz and El Alto.

4.3 The Program is a Multiple Works Program that involves aggregate financing of US\$33 million. It is a Sovereign-Guaranteed Operation in the Water and Sanitation Division of the Bank.

4.4 Multiple Works Programs are designed to finance similar components of infrastructure. Generally not all components to be financed are identified at the time such a program is

submitted for approval by the Board. Only a representative sample of items, generally comprising approximately 30% of the program loan total, are fully defined at the time a Multiple Works Program is presented to the Board. Thereafter, if the program is approved, the relevant country office is responsible for approving the addition of other works during the life of the program, as requested by the borrower. For additional items to be added to such an approved program, the borrower must submit a formal request accompanied by necessary viability and/or impact studies, which the country office evaluates to assess whether the given component may be incorporated and financed as part of the program. For additional components to be approved as part of the program, the borrower must demonstrate compliance with the Bank's ROPs.

- 4.5 In this case, the work that is the subject of the Request was not part of the representative sample that was presented to the Board for approval, but was later approved by the Country Office to be added to the Program on November 7, 2012.
- 4.6 According to Bank documents, the Program as a whole was classified as a category B operation<sup>5</sup> under the Bank's Environmental and Safeguards Compliance Policy (OP-703), a designation given to "operations that are likely to cause mostly local and short-term negative environmental and associated social impacts and for which effective mitigation measures are readily available."<sup>6</sup>
- 4.7 The Program's general objective is to help improve the quality of life for inhabitants of the municipalities of La Paz and El Alto by reducing human loss and property damage caused by extreme geo-hydrological events through the construction of works and complementary activities to improve the storm drainage systems in La Paz and El Alto and to support their management.<sup>7</sup>
- 4.8 The executing agencies of the Program as a whole are the Autonomous Municipal Government of La Paz ("GAMLP") and the Autonomous Municipal Government of El Alto ("GAMEA"), and the borrower is the Plurinational State of Bolivia. However, only the GAMLP was involved as the executing agency for the component of the Program that is relevant to the Request (such component defined as the "Work" below). Thus the term "Executing Agency" in this memorandum refers only to GAMLP.
- 4.9 Together with a letter dated September 18, 2012, the Executing Agency sent the Country Office a series of documents related to the bidding process for the "Construction and

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<sup>5</sup> Loan Proposal, Drainage in the Municipios of La Paz and El Alto (BO-L1028), paragraph 2.3

<sup>6</sup> Classifications under OP-703 are made according to its Policy Directive B.3 on Screening and Classification.

<sup>7</sup> Supra note 5, paragraph 1.7

repair of the *embovedado* (vaulting) of Jancokollo River, Landaeta Ave. sector” (the “Work”) and requested that the Work be included in the Program.

- 4.10 On November 7, 2012 the Work became part of the Program when the Country Office issued a non-objection to the bidding process for the Work.
- 4.11 According to the Project Team, the execution of the Work began on June 18, 2013 and was completed on February 24, 2014.<sup>8</sup>

## V. ICIM ACTION TO DATE

- 5.1 After the Request was registered it was transferred to the Consultation Phase Eligibility Committee (the “Eligibility Committee”) for its eligibility analysis.<sup>9</sup>

### A. Consultation Phase

- 5.2 On June 18, 2014, and as per Sections 40 (h) and 91 of the ICIM Policy, the Eligibility Committee suspended its eligibility determination process because the Project Team and the Requester agreed to hold conversations to address the concerns raised by the Requester.
- 5.3 According to the Project Team, on June 26, 2014, Bank representatives met with the Requester in La Paz. Bank representatives state that the Requester explained the concerns surrounding the Work and that they offered to, with the Requester’s authorization, establish contact with the Executing Agency in order to see if the Requester’s concerns could be addressed.
- 5.4 On July 1, 2014, the Requester informed the Eligibility Committee that due to fear of retaliation, the Requester was not willing to contact the Executing Agency. This rendered impracticable a resolution of the Requester’s concerns with the Executing Agency.
- 5.5 On July 15, 2014, the Eligibility Committee determined that the Request was not eligible for that Phase. The Eligibility Committee considered that the Request did not fulfill the

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<sup>8</sup> Report PDP 036/2014 dated February 25, 2014, signed by a technical officer of the Executing Agency.

<sup>9</sup> According to a transition plan approved by the Board, starting September 1, 2013, the eligibility determinations with respect to the Consultation Phase are made by an Eligibility Committee comprised of the Executive Secretary of the ICIM and two ICIM Case Officers.



requirement established in Section 40 (g) because the Requester was not amenable to a Consultation Phase process.<sup>10</sup>

## **B. Compliance Review Phase**

- 5.6 On July 21, 2014, the Executive Secretary transferred the Request to the Panel Chairperson as required by Section 55 of the ICIM Policy and sent out communications to the Requester and to Bank Management informing them of the transfer and explaining next steps according to the ICIM Policy.
- 5.7 The Panel Chairperson began to analyze the relevant Bank documents and other information related to the Program and the Request. In addition, the Panel Chairperson and Compliance Review staff have had conversations and other communications with the Requester and the Project Team.

## **VI. ELEGIBILITY ANALYSIS FOR THE COMPLIANCE REVIEW PHASE**

- 6.1 Section 55 of the ICIM Policy requires the Panel Chairperson to make an independent eligibility determination for the Compliance Review Phase. Requests are analyzed based on the exclusions and eligibility requirements set forth in Sections 37 and 56 of the ICIM Policy.
- 6.2 The Panel Chairperson has determined that the Request meets the eligibility criteria established in Section 56 of ICIM Policy and that no exclusions apply.
- 6.3 In that regard, the Panel Chairperson considers that:
- (a) The Requester has reasonably asserted that the Requester has been or could be directly, materially adversely affected by an action or omission of the Bank in violation of one or more ROPs in the context of the Program. Such is the case because the alleged concerns and harms detailed in this memorandum appear to be related to Bank compliance with the Environment and Safeguards Compliance Policy (OP-703).

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<sup>10</sup> See: Consultation Phase Eligibility Determination Memorandum for case MICI-BO-2014-079, July 15, 2014.

- (b) A Compliance Review would assist in determining whether Bank actions or omission may have resulted in non-compliance with ROPs which resulted in direct, material adverse impacts (potential or actual) to the Requester.
- 6.4 Additionally, the Panel Chairperson has examined the Request in light of the exclusions set forth in Section 37 of the ICIM Policy. Based on the information contained in the Request and documents relating to the Program, the Panel Chairperson has determined that none of the exclusions contained in Section 37 are applicable to the Request.
- 6.5 Consequently, the Panel Chairperson determines that the Request described herein is **ELIGIBLE** for a Compliance Review. A more detailed analysis of each eligibility criteria and exclusion can be seen in the table in Annex 1 of this memorandum.
- 6.6 As per Section 55 of the ICIM Policy the Requesters, the Board, the President, Management as well as the Borrower will be informed about this Eligibility memorandum and a notice will be posted in the ICIM Registry within five business days of distribution to the Board.

## ANNEX 1: COMPLIANCE REVIEW PHASE ELIGIBILITY ANALYSIS TABLE

Eligibility Criteria	Determination by the Chairperson
<b>56 a.</b> The names and contact information for the Requester are available	<b>Meets criteria:</b> The Request included the name and contact information of the Requester. Such information will not be disclosed because the Requester has requested confidentiality. <sup>11</sup>
<b>56 b.</b> Names and contact information of the Representative, if any, and proof of the authorization are available	<b>Meets criteria:</b> Not applicable.
<b>56 c.</b> The Bank-Financed Operation(s) at issue has been identified	<b>Meets criteria:</b> The Project has been identified as Bank-Financed Operation BO-L1028: Drainage in the Municipios of La Paz and El Alto.
<b>56 d.</b> The Requester resides in the country where the relevant Bank-Financed Operation is or will be implemented (or a qualified Representative has been appointed)	<b>Meets criteria:</b> The Requester resides in Bolivia according to information provided to ICIM staff.
<b>56 e.</b> None of the exclusions set forth in Section 37 applies	<b>Does meet criteria:</b> See below.
<b>37 (a)</b> actions that are the responsibility of parties other than the Bank, such as a borrower/recipient, technical cooperation beneficiary, or Executing Agency, and that do not involve any action or omission on the part of the Bank	<b>Exclusion does not apply:</b> The Request includes allegations that appear to relate to the Bank's responsibility to comply with its own ROPs.
<b>37 (b)</b> Requests related exclusively to the laws, policies or regulations of the host country(ies), borrower/recipient or the Executing Agency	<b>Exclusion does not apply:</b> The Request is not exclusively related to allegations of such kind.
<b>37 (c)</b> actions or activities that do not relate to a Bank-Financed Operation or that are not subject to the Bank's Relevant Operational Policies	<b>Exclusion does not apply:</b> The Requester has alleged that the harm was caused by execution of a work financed by the Bank.

<sup>11</sup> Confidentiality is provided for in Section 33 of the ICIM Policy.

Eligibility Criteria	Determination by the Chairperson
<p><b>37 (d)</b> procurement decisions or processes (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank)</p>	<p><b>Exclusion does not apply:</b> The Request does not make reference to procurement elements.</p>
<p><b>37 (e)</b> a particular matter or matters that have already been reviewed pursuant to the Mechanism, or its predecessor, unless justified by new evidence or circumstances not available at the time of the initial Request</p>	<p><b>Exclusion does not apply:</b> The Request does not raise issues that have been previously reviewed by the ICIM or its predecessor.</p>
<p><b>37 (f)</b> Requests dealing with a Bank-Financed Operation that are filed after twenty-four (24) months of the last disbursement</p>	<p><b>Exclusion does not apply:</b> The Request was filed on March 26, 2014. As of September 4, 2014, the Bank had disbursed approximately 53.67% of the Loan.</p>
<p><b>37 (g)</b> ethics or fraud questions, specific actions of Bank employees, non-operational matters such as internal finance or administration, allegations of corrupt practices, or other matters subject to review by other bodies established by the Bank (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank)</p>	<p><b>Exclusion does not apply:</b> The Request does not make reference to these elements.</p>
<p><b>37 (h)</b> any Request that on its face (i) is without substance, or (ii) has been submitted to gain a competitive business advantage</p>	<p><b>Exclusion does not apply:</b> A prima facie review of the Request indicates that the Requester has made allegations that appear to assert plausible substantive harm and that the allegations do not appear to be made for purposes of gaining a competitive business advantage.</p>
<p><b>37 (i)</b> Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies</p>	<p><b>Exclusion does not apply:</b> The Panel Chairperson is not aware of any arbitral or judicial review related to the concerns raised in the Request.</p>
<p><b>56 f.</b> 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 in violation of a Relevant Operational</p>	<p><b>Meet criteria:</b> The Requester has reasonably asserted harm that was allegedly caused by the execution of a work that was part of a Bank-Financed Operation. A prima facie review of the Request, Program documents</p>

Eligibility Criteria	Determination by the Chairperson
<p>Policy in a Bank-Financed Operation and has described in at least general terms the direct and material harm caused or likely to be caused by such action or omission in the Bank-Financed Operation</p>	<p>and ROPs suggests that the alleged harm could be related to potential violations of the Environment and Safeguards Compliance Policy (OP-703).</p>
<p><b>56 g.</b> With respect to an issue raised in the Request, a Compliance Review may assist in determining whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non-compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requester</p>	<p><b>Meets criteria:</b> A Compliance Review of the issues raised in this Request could establish whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non-compliance with one or more ROPs and direct, material adverse effects (potential or actual) to the Requester.</p>
<p><b>56 h.</b> The Requester has taken steps to bring the issue to the attention of Management</p>	<p><b>Meets criteria:</b> The Requester took steps to bring the issue to the attention of the Project Team and 45-day period was provided to allow Management an opportunity to address the Requester's concerns during the Consultation Phase.</p>