

PUBLIC

**DOCUMENT OF THE INDEPENDENT CONSULTATION AND  
INVESTIGATION MECHANISM**

**MICI-BR-2013-076  
DETERMINATION OF ELIGIBILITY FOR THE CONSULTATION PHASE.  
DRAINAGE, ROADS, WATER, AND SEWERAGE PROJECTS IN LOW-LYING  
AREAS OF BELÉM  
(BR-0055)**

This document was prepared by the Eligibility Committee for the Consultation Phase in keeping with the transition arrangement approved by the Board of Executive Directors on 10 July 2013.

Under the Access to Information Policy, this document is subject to public disclosure.

**MEMORANDUM OF DETERMINATION OF ELIGIBILITY  
CONSULTATION PHASE**

**To:** Requesters, Board of Executive Directors, Senior Management, Project Team, and Executing Agency

**From:** Consultation Phase Eligibility Committee

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

**Cc:** Independent Consultation and Investigation Mechanism

**Project:** Drainage, roads, water, and sewerage project in low-lying areas of Belém (BR-0055)

**Date:** 4 March 2014

---

**I. EXECUTIVE SUMMARY**

- 1.1 On 18 December 2013 the Independent Consultation and Investigation Mechanism (“ICIM” or “Mechanism”) received a Request (see Annex 2) in relation to the “Drainage, roads, water, and sewerage project in low-lying areas of Belém” (BR-0055) (“the project”) from Mr. Antônio Carlos Pantoja Soares and Mr. José Alexandre de Jesus Costa, who identified themselves as the sole Requesters. The Request states that since 2005 the Una basin area has suffered repeated and increasingly frequent flooding, directly affecting the Requesters. The Requesters allege that this flooding is due to the lack of maintenance of the infrastructure works carried out under the project, the failure to carry out the project’s complementary works, and the ineffectiveness of the civil oversight body. The floods have become worse over time.
- 1.2 The project was a sovereign guaranteed loan in the water and sanitation sector for US\$145 million approved by the Board of Executive Directors of the Inter-American Development Bank (“IDB” or “the Bank”) on 20 November 1991. It envisaged the environmental cleanup of the Una basin in the city of Belém, State of Pará, through the building and maintenance of drainage, sewerage, and road and canal infrastructure works.
- 1.3 In January 1993 a loan contract was signed with the Federative Republic of Brazil as guarantor, the State of Pará as the borrower, and the Companhia de Saneamento do Estado do Pará [State of Pará Sanitation Authority] (COSANPA) as the executing agency. The project’s last disbursement was on 31 December 2004, and the project’s final report was issued in March 2005.

- 1.4 The requirements of the IDB Operational Policies relevant to this Request in force at the time of project approval, namely the Basic Environmental Sanitation Policy (OP-745), Environment and Safeguards Compliance Policy (OP-703), and Maintenance and Conservation of Physical Works and Equipment (OP-707), included: (i) that the Bank's assistance on sanitation projects be backed by an appropriate organization ensuring efficient maintenance of the systems; (ii) that the quality and timeliness of the maintenance of projects in each sector be assessed; (iii) that the project's physical infrastructure, machinery, and equipment be maintained properly; (iv) that financing of measures necessary to avoid or minimize adverse environmental effects be considered in all development projects; (v) that the environmental measures to be adopted be economically and socially beneficial; and (vi) that the design of specific projects include the institution of an oversight mechanism to avoid adverse effects.
- 1.5 Following an analysis of the documentation received and that included in the Bank's records, the Consultation Phase Eligibility Committee, which is responsible for determining the eligibility of this Phase, under the ICM Policy (document GN-1830-49) and the transitional arrangements approved by the Board of Executive Directors<sup>1</sup> (see Section II below), has concluded that this **Request is not eligible** for the Consultation Phase as it does not comply with the requirements of Section 40 points (h) and (e) of the Policy, where point (e) refers to the exclusions set forth in Section 37 (f) and (i) of the ICIM Policy.

## **II. TRANSITIONAL ARRANGEMENTS FOR THE CONSULTATION PHASE AND THEIR IMPLICATIONS FOR THE DETERMINATION OF ELIGIBILITY PROCESS**

- 2.1 The process for determination of eligibility for the Consultation Phase is conducted pursuant to Sections 37 and 40 of the current ICIM Policy (see paragraph 1.5 above).
- 2.2 In January 2013, in view of the findings and recommendations of the ICIM evaluation report prepared by the Office of Evaluation and Oversight (OVE), the Bank's Board of Executive Directors decided to launch a process of adjusting the ICIM's Policy and operating structure in order to strengthen the Mechanism and ensure that it is managed more effectively and efficiently.
- 2.3 In particular, in view of human resource changes, as of 1 September 2013 the Board of Executive Directors instructed the entry into force of transitional operating arrangements, until the new revised ICIM Policy comes into effect, in which the eligibility of requests for the Consulting Phase is determined by an Eligibility Committee ("the Committee"), comprised of the Executive Secretary and the two Case Officers from the Consulting Phase team. This determination of eligibility has

---

<sup>1</sup> Minutes of the 24 June 2013 meeting of the Organization; Human Resources, and Board Matters Committee, approved on 10 July 2013 at the meeting of the Board of Executive Directors.

been conducted under the transitional arrangements and pursuant to the provisions of the ICIM Policy in force for this stage (see paragraph 2.1 above).

### III. RELEVANT OPERATIONAL POLICIES

- 3.1 Under Section 26 of the ICIM Policy, as of 9 September 2013, the Mechanism applies all the relevant Operational Policies in force on that date. Additionally, the version applicable for projects already approved by the Board is that in force at the time of approval.
- 3.2 Therefore, with respect to the Request in question, the ICIM is to review those relevant Operational Policies in force that apply to issues raised in the Request based on the version in force at the time of project approval by the Board in November 1991.

### IV. THE REQUEST

- 4.1 On 18 December 2013, the ICIM received a Request submitted by Mr. Antônio Carlos Pantoja Soares and Mr. José Alexandre de Jesus Costa, residents of the city of Belém, Pará,<sup>2</sup> as the sole Requesters,<sup>3</sup> expressing their interest in the Request being considered by both phases of the ICIM process.
- 4.2 The Requesters initially asked that their Request be handled confidentially,<sup>4</sup> among other reasons, due to its “being a matter in which major interests are involved.”<sup>5</sup> However, during the eligibility stage of the Consultation Phase, they confirmed their withdrawal of this confidentiality request as, among other things, their complaints about the local situation were public.<sup>6</sup>
- 4.3 The Request relates to the Bank-financed “Drainage, roads, water, and sewerage project in low-lying areas of Belém” (BR-0055).<sup>7</sup>
- 4.4 The Requesters allege they have found themselves in a “calamitous situation” since April 2005 due to the constant flooding of the area covered by the Bank-financed project.<sup>8</sup> They point out that the project’s objectives included installing drainage systems to allow floodwaters to be drained from the area, and that this entailed

---

<sup>2</sup> The Requesters submitted evidence of their place of residence.

<sup>3</sup> Although in various communications the Requesters stated that they belonged to the *Frente dos Moradores Perjudicados da Bacia do Una*, in response to the Committee’s inquiry they stated that the Request was being submitted only in their name and not that of the organization, such that they are the sole Requesters.

<sup>4</sup> Pursuant to ICIM Policy, Section 33.

<sup>5</sup> *Cfr.* Communication from the Requesters on 14 January 2014.

<sup>6</sup> *Cfr.* ICIM communication to the Requesters on 13 February 2014 summarizing the content of the teleconference on 12 February 2014 and communication from Requesters on 28 February 2014.

<sup>7</sup> In a number of their communications the Requesters referred to the adverse effects potentially deriving from another Bank-financed sanitation project in the Estrada Nova watershed (PROMABEN). However, as they confirmed that they were not affected by that project, the Committee will not draw conclusions thereon.

<sup>8</sup> *Cfr.* E-mail with original Request, received 18 December 2013.

complex engineering works designed to improve basic sanitation, achieve urban renewal, and promote the socioeconomic growth of an area with a population of 600,000.<sup>9</sup> They stated that the project made the following commitments: (i) once completed, Companhia de Saneamento do Estado do Pará [State of Pará Sanitation Authority] (COSANPA) and the Secretaria de Saneamento [Municipal Sanitation Department] (SESAN) would be responsible for maintenance of its various components, and that the project had financed equipment and machinery for this purpose; (ii) the municipality would continue the pending microdrainage works to ensure the project became fully operational, and (iii) a Management Board for the Una basin would be set up to supervise, report on, and provide support and social monitoring of the project works and services. According to the Requesters, breach of these commitments has created new problems in the form of floods, causing material losses and moral damages to a significant number of Belém residents.<sup>10</sup>

- 4.5 The Requesters allege that flooding since the conclusion of the project has mainly occurred as a result of the following omissions and irregularities: (i) lack of maintenance of the works, as the machinery and equipment financed for this purpose has been misplaced and/or used inappropriately; (ii) failure to carry out the complementary microdrainage works that were pending on project completion; and (iii) failure to act by the Management Board set up as required by the IDB to ensure the project's continuity and sustainability through public participation, in light of the state of neglect of the works. They also say that in view of these omissions and irregularities there are a total of 20 neighborhoods (with approximately 397,000 inhabitants) affected by flooding. Moreover, due to the lack of maintenance, this flooding has worsened over time, with ever more catastrophic results.<sup>11</sup> Lastly, they indicated that the floods had caused health impacts, given the contamination of the water in the flooded areas.<sup>12</sup>
- 4.6 The Requesters indicated that they wanted to (i) file a complaint about what had happened in order to find ways of improving their situation, and (ii) raise the IDB's awareness during project financing decision-making, in particular because there is another sanitation project in the Estrada Nova watershed that could be causing similar problems.<sup>13</sup>

---

<sup>9</sup> *Cfr. La mayor reforma urbana de América Latina, ocurrida en Belém, Capital del Estado de Pará* [Latin America's largest urban reform in Belém, Capital of the State of Pará], page 1. Document included with the original 18 December 2013 Request.

<sup>10</sup> *Cfr.* Footnote 9 above, pages 2, 3, 6, and 9.

<sup>11</sup> *Cfr.* Requesters' communication of 14 January 2014.

<sup>12</sup> *Cfr.* ICIM communication of 7 January 2014 summarizing the content of the teleconference with the Requesters on 6 January 2014.

<sup>13</sup> Footnote 12 above and Requesters' communication of 28 February 2014.

## V. THE PROJECT<sup>14</sup>

- 5.1 In order to analyze this Request, the Committee has had access to a wide range of project documentation, which has enabled it to reach the conclusions presented here (see Section VI). However, the Committee is prevented from disclosing the content of this documentation as it was classified as confidential under the access to information policies in force at the time the various project documents were issued. Thus, for the purposes of ensuring the confidentiality of the information concerned, no references will be made to the content of these documents.
- 5.2 The project was a sovereign guaranteed loan operation in the water and sanitation sector for US\$145 million approved by the Board of Executive Directors on 20 November 1991. The project envisaged the environmental clean-up of the Una basin in the city of Belém, State of Pará, by building drainage, sewerage, road and canal infrastructure works.<sup>15</sup>
- 5.3 In January 1993 a loan contract was signed, with the Federative Republic of Brazil as guarantor, the State of Pará as borrower, and the Companhia de Saneamento do Estado do Pará [State of Pará Sanitation Authority] (COSANPA) as executing agency.<sup>16</sup> The final project disbursement was made on 31 December 2004,<sup>17</sup> and the final project report was issued in March 2005.<sup>18</sup>
- 5.4 The project's main objective was to solve the flooding problem in the low-lying areas of the Una basin by building an effective drainage system emptying into the Guajará bay. It was also intended to provide the population with basic environmental conditions to improve their living conditions.<sup>19</sup>
- 5.5 To this end the following works and activities were planned: (i) **main components:** drainage works (including the construction of canals and sluice gates), sanitation (including sewerage and household drinking water connections), roads (including, road surfacing, construction of bridges and walkways) and micrometering (procurement and installation of household meters), and (ii) **complementary components:** procurement of maintenance equipment, expropriation and resettlement of families, and environmental education. The procurement of equipment included the machinery and equipment necessary for the collection and

---

<sup>14</sup> Various sources of information were used in the preparation of this section, including the project document, the loan contract, the project final report, and project maintenance reports.

<sup>15</sup> <http://www.iadb.org/es/proyectos/project-information-page.1303.html?id=BR0055>, last accessed 4 March 2014.

<sup>16</sup> Footnote 15 above.

<sup>17</sup> According to the information in the Transaction History Report for loan 649/OC-BR-CPS, last accessed on 21 February 2014.

<sup>18</sup> *Cfr.* Loan contract between the Inter-American Development Bank and the State of Pará (Drainage, roads, water, and sewerage project in low-lying areas of Belém). Loan 649/OC-BR. Resolution DE-197/91.

<sup>19</sup> Magallanes Fernanda and Di Villarosa, Francesco, editors. *Slum Upgrading: Lessons Learned from Brazil*, Inter-American Development Bank, 2012, Annex 2, page 125. (<http://www.iadb.org/en/publications/publication-detail.7101.html?id=50626%20&dcLanguage=pt&dcType=All>)

disposal of solid waste, maintenance of the canals and drainage systems, and the road system.<sup>20</sup> The project envisaged oversight of maintenance for a period of 10 years through annual reports sent by the Municipal Sanitation Department.<sup>21</sup>

## VI. CONSULTATION PHASE ELIGIBILITY ASSESSMENT

- 6.1 During the eligibility phase conducted from 29 January to 4 March 2014,<sup>22</sup> the Committee held a number of telephone conversations with the Requesters and one with the project team, and various written communications were exchanged with the Requesters and the project team to understand the content of the Request and its links to the project in more detail.<sup>23</sup>
- 6.2 The Operational Policies associated with this Request are: the Basic Environmental Sanitation Policy (OP-745), Environment and Safeguards Compliance Policy (OP-703), and Maintenance and Conservation of Physical Works and Equipment (OP-707).
- 6.3 Eligibility for the Consultation Phase is assessed on the basis of the exclusion and eligibility criteria set forth in Sections 37 and 40, respectively, of the ICIM Policy. This involves a *prima facie* examination of the facts alleged in the Request in terms of their eligibility to be addressed by the ICIM in accordance with the Mechanism's mandate from the Board of Executive Directors. On no account does this analysis or the final decision represent a judgment as to the validity of the issues raised.
- 6.4 In view of the above, as can be confirmed in Annex 1 of this Memorandum, the Request complies with the requirements established in Section 40, points (a), (c), (d), (f), and (g). Section 40 (b) is not applicable to this Request, as the Requesters acted in their own name without a representative.
- 6.5 However, the Committee considers that this Request does not comply with the provisions of Section 40 points (h) and (e) of the Policy, in the case of point (e) because some of the exclusions established in Section 37 are applicable. For the purposes of clarification for the interested parties, the reasons why the Committee considers the Request not to comply with the aforementioned Section are given below.

---

<sup>20</sup> Footnote 19 above, pages 126-129.

<sup>21</sup> Minutes of the fifth meeting of the Legislative Assembly's External Temporary Committee to investigate the complaint submitted by inhabitants of areas of the Una basin, 6 November 2012, page 2, and Final Report of the State of Pará Legislative Assembly's Una Basin Representative Commission, 2013, page 54.

<sup>22</sup> The Eligibility Committee required an extension of seven working days from the original date set in order to request additional information from the Requesters and the project team and to give time for the final report to be translated into Portuguese.

<sup>23</sup> The Committee held telephone conversations with the Requesters on 6 January and 11 February 2014, and written communications were exchanged on 7, 12, 14, and 28 February 2014. A teleconference was held with the project team on 29 January 2014, and written communications were exchanged on 26 January and 11, 13, 19, and 21 February 2014.

- 6.6 Section 40 (h) requires that the Requesters have taken steps to bring the issue to the attention of Management. On this point, the Requesters stated that they had not contacted Management directly. Therefore, pursuant to Section 41<sup>24</sup> of the ICIM Policy, the Committee gave the Requesters the opportunity to rectify this situation and contact Management. Subsequently the Requesters stated that they had not proceeded to contact Bank Management as during the meeting on 6 November 2012, promoted by the Legislative Assembly's Temporary External Committee, IDB representatives had told them that the Bank could do nothing about their situation.<sup>25</sup> Consequently, the Committee considers the requirement of Section 40 (h) not to have been met.
- 6.7 Section 40 (e) of the Policy requires that none of the exclusions listed in Section 37 apply. The Committee considers that Section 37 points (a), (b), (c), (d), (e) and (g), do not apply to the current Request (see Annex 1).
- 6.8 Nevertheless the Committee considers that Section 37 points (f) and (i) do apply, the reasons for this being given below.
- 6.9 Section 37 (f) of the ICIM Policy establishes that this Phase will not apply to requests referring to a Bank-financed operation submitted more than 24 months after the last disbursement. In this regard, the Request was submitted on 18 December 2013 and the last project disbursement took place on 31 December 2004.<sup>26</sup> Thus the Request was presented more than 24 months after the last disbursement. Consequently, the exclusion established in Section 37 (f) applies to this Request.
- 6.10 Article 37 (i) establishes that this Phase will not be applied to Requests that raise issues under arbitral or judicial review by national, supranational, or similar bodies. In the current case the Requesters, together with other persons, complained to the Public Ministry of the State of Pará, in view of the omissions of the institutions responsible for continuing the complementary microdrainage work and maintenance of the works executed by the Una basin project. In April 2008 the Public Ministry filed a Public Civil Environmental Action with the Court of Justice of the State of Pará. The judicial proceedings concerning this action by the Public Ministry are still underway and are currently pending a conciliation agreement between the parties.<sup>27</sup>
- 6.11 The Committee considers that the Public Civil Environmental Action was brought with the aim of making the Municipality and COSANPA responsible for the breach of the obligations to carry out the microdrainage work, and ensure project

---

<sup>24</sup> The Section in question stipulates that "Prior to making a determination of ineligibility, [...] the Requester [shall be given a] reasonable opportunity to complete or correct a Request."

<sup>25</sup> Communication from the Requesters on 28 February 2014.

<sup>26</sup> Financial Executive Summary, loan 649/OC-BR-CPS, last accessed 21 February 2014.

<sup>27</sup> The information on the judicial proceedings is taken from the Public Civil Environmental Action document sent by the Requesters, the Final Report of the Legislative Assembly of the State of Pará's Una Basin Representative Commission, and the information which the Committee has been able to access on the website of the Court of Justice of the State of Pará.

maintenance under the terms specified in the operation and maintenance manuals of the Una basin's sanitary sewerage and drinking water system by means of the use of the equipment and machinery supplied to the Municipality for this purpose. Accordingly, the Committee considers the object of these judicial proceedings to coincide with that of the Request submitted to the ICIM. Moreover, the Committee considers that although in the aforementioned Civil Public Action the Requesters submitting their request to the ICIM do not appear as plaintiffs, they were, together with other persons, the parties reporting these facts to the Public Ministry. Moreover, as a public civil action, which aims to defend public or diffuse goods such as the environment, this action could only be initiated by particular legally established actors, such as the Public Ministry or the Office of the Public Defender.<sup>28</sup>

- 6.12 Thus, within the framework of the Civil Public Action there has been at least one conciliation hearing (on 26 September 2013), at which the parties agreed to enter into a preliminary agreement under the following terms: the Municipality, under the new administration, expressed its willingness to solve the problem, and that the solution was not only being driven by this process but also by the political will to tackle the problem; and that the Mayor was making an effort to obtain resources from the IDB, which would be in process and require at least until January 2014 in order to present a proposed agreement. A period of 120 days was set for a conciliation agreement to be submitted for the court's approval.<sup>29</sup> On 28 January 2014, in the context of the fresh conciliation hearing, the parties requested a further extension of 120 days, during which proceedings should be suspended, bearing in mind the need to draw up the loan contract with the IDB, which was accepted by the Public Ministry.<sup>30</sup>
- 6.13 In view of the foregoing, bearing in mind (i) the similarity between the matters raised in the Request and the Public Civil Environmental Action; (ii) the status of the judicial proceedings, which are pending an agreement between the parties; and (iii) the direct impact this agreement may have on issues raised by the Requesters, the Committee finds that interferences and/or duplication might arise if a Consultation Phase were to proceed, given its nature and objectives.<sup>31</sup>
- 6.14 Consequently the Committee considers that the Request raises the same issues as those currently the object of judicial analysis under Public Civil Environmental Action 0014371-32.2008.814.0301, which was initiated by the Requesters through the Public Ministry, and consequently the exclusion envisaged in Section 37 (i) of the ICIM Policy applies.

---

<sup>28</sup> Federal Supreme Court, Brasília: [http://www2.stf.jus.br/portalStfInternacional/cms/verGlossario.php?sigla=portalStfGlossario\\_es\\_es&indice=A&verbete=190222](http://www2.stf.jus.br/portalStfInternacional/cms/verGlossario.php?sigla=portalStfGlossario_es_es&indice=A&verbete=190222), last accessed 21 February 2014.

<sup>29</sup> Judicial Branch, Court of Justice of the State of Pará, document 20130207941726, 26 September 2013.

<sup>30</sup> Judicial Branch, Court of Justice of the State of Pará, document 20130280950328, 28 January 2013.

<sup>31</sup> Under Section 46 of the ICIM Policy, the aim of the Consultation Phase is to address issues raised by the Requester, through consensual approaches such as mediation, conciliation, and others.

- 6.15 Additionally, the Requesters mentioned other complaint processes regarding the facts in the Request, such as: (i) request for intervention of the Municipal Chamber of Belém to verify compliance with the commitments and responsibilities referred to in the Public Civil Environmental Action; (ii) complaint filed with the State of Pará Legislative Assembly, requesting the same verification, leading to the creation of a Temporary External Commission to investigate the reasons for the constant floods and the reports of irregularities and omissions in the execution and maintenance of the works; and (iii) the Requesters' statement that they had contacted the United Nations Special Rapporteur for Water and Sanitation on an informal basis to mention their case. However, as none of these processes is judicial or arbitral in nature, the exclusion in Section 37 (i) does not apply here.

## VII. CONCLUSION

- 7.1 The Committee therefore concludes that, on the basis of the foregoing, and without making any judgment as to the merits of the case, Request MICI-BR-2013-076 **is not eligible** for the Consultation Phase as it does not comply with the requirements of Section 40 points (h) and (e) of the Policy, where point (e) refers to the exclusions contained in Section 37 (f) and (i).

## Annex 1 Eligibility Analysis Table

	Eligibility Criteria	Analysis
a.	Names and contact information for the Requester	The Requesters are Mr. Antônio Carlos Pantoja Soares and Mr. José Alexandre de Jesus Costa. Both provided the ICIM with their contact information.
b.	Names and contact information for the Representative	Not applicable to the present Request (see paragraph 6.4 above).
c.	Project or operation has been identified	Drainage, roads, water, and sewerage project in low-lying areas of Belém (BR-0055)
d.	The Requester resides in the country in which the operation is being implemented.	According to the documentation provided, the Requesters reside in Brazil.
e.	<p>None of the exclusions set forth in Section 37 applies.</p> <p>37. a. 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;</p> <p>37. b. Requests related exclusively to the laws, policies, or regulations of the host country(ies), borrower/recipient or the executing agency;</p> <p>37. c. Actions or activities that do not relate to a Bank-financed operation or that are not subject to the Bank's relevant Operational Policies;</p> <p>37 d. Procurement decisions or processes (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank);</p>	<p>Not fulfilled.</p> <p><b>Not applicable</b> – Although the Request refers to an alleged noncompliance by the executing agency and other entities associated with the project of their obligations as regards maintenance thereof, it is the IDB's responsibility to comply with its operational policies, such as the Environment and Safeguards Compliance Policy (OP-703), Basic Environmental Sanitation Policy (OP-745), and Maintenance and Conservation of Physical Works and Equipment (OP-707).<sup>32</sup></p> <p><b>Not applicable</b> – The Request does not refer to these aspects.</p> <p><b>Not applicable</b> – The Request states that the damage being suffered by the Requesters derives from activities envisaged in the IDB-financed project.</p> <p><b>Not applicable</b> – The Request does not refer to procurement procedures.</p>

<sup>32</sup> In relation to the scope of the IDB's relevant policies (paragraphs 3.1 and 3.2 above), the Basic Environmental Sanitation Policy (OP-745) and Maintenance and Conservation of Physical Works and Equipment Policy came into effect in 1984 and 1982, respectively, and remained in effect until September 2013. In this regard, the version of the policies in force at the time of approval of the operation by the Board of Executive Directors, i.e. on 20 November 1991, is applicable to this analysis.

	Eligibility Criteria	Analysis
	<p>37 e. 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>37 f. Requests dealing with a Bank-financed operation that are filed after 24 months of the last disbursement;</p> <p>37 g. 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>37 h. Any Request that on its face (i) is without substance, or (ii) has been submitted to gain a competitive business advantage;</p> <p>37 i. Requests that raise issues under arbitral or judicial review by national, supranational, or similar bodies.</p>	<p><b>Not applicable</b> – The Request does not refer to any matters that have been verified by the ICIM or its predecessor.</p> <p><b>Not applicable</b> – The Request was filed on 18 December 2013 and the last disbursement took place on 31 December 2004, which was therefore more than 24 months prior to receipt of the Request.</p> <p><b>Not applicable</b> – The Request does not refer to matters subject to scrutiny by other bodies within the Bank.</p> <p><b>Not applicable</b> – The Committee considers the Request to be duly grounded and that there is no reason to consider its purpose to be to obtain a competitive business advantage.</p> <p><b>Applicable</b> – The Request raises the same issues as those subject to judicial examination under Public Civil Environmental Action 0014371-32.2008.814.0301, which was initiated by the Requesters through the Public Ministry, due to its involving the protection of collective goods. Consequently the exclusion envisaged in Section 37 (i) of the ICIM Policy applies to it. The other processes mentioned by the Requesters are not national or supranational arbitral or judicial proceedings.</p>
f.	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 Policy.	<b>Fulfilled</b> – Following an analysis of the original Request, written communications subsequently received, numerous photographs of the situation giving rise to the complaint, and supporting documentation sent by the Requesters, the Eligibility Committee finds that the Requester has reasonably asserted the impact suffered since 2005, associated with the referenced project, consisting of continual flooding allegedly due to lack of maintenance of the project, and which are allegedly causing material damage and harm to health.

	Eligibility Criteria	Analysis
		<p>Maintenance of the works by the executing agency was included as a component of the project. The lack of control mechanisms over project maintenance could contravene Operational Policies OP-703, OP-745, and OP-707, which require, <i>inter alia</i>: (i) IDB assistance on sanitation projects to include an appropriate organization to ensure efficient maintenance of the systems; (ii) assessment of the quality and timeliness of project maintenance in each sector; (iii) adequate maintenance of the physical infrastructure, machinery, and project teams to be ensured; (iv) financing of measures necessary to avoid or minimize adverse environmental effects to be considered on all development projects; (v) that the environmental measures to be adopted are economically and socially beneficial; and (vi) that the design of specific projects includes an oversight mechanism to avoid adverse effects.</p> <p>In view of the foregoing, without going into a detailed analysis of the matter, the Committee considers the criteria set forth in Section 37 (f) to be satisfied.</p>
g.	The parties are amenable to a consultation or mediation exercise.	<p>The Requesters stated that they were amenable to participation in the Consultation Phase, and indicated their interest in an internal Bank investigation being carried out through the Verification Phase.<sup>33</sup></p> <p>Specifically, as regards the willingness to undertake a consultation process, given that the Requesters expressed their doubts as to whether the executing agency would be willing to participate in a process in which they were interlocutors, and that other eligibility criteria were not met, the Committee saw fit not to consult the Municipality as to its willingness to take part in a Consultation Phase process.</p>
h.	The Requester has taken steps to bring the issue to the attention of Management.	<p><b>Not fulfilled</b> – The Requesters stated at the outset that they had not contacted Management directly. Under Section 41 of the ICIM Policy, the Committee gave them the opportunity to remedy this by contacting Management, but the Requesters have nevertheless stated that they do not intend to contact Management directly.</p>

<sup>33</sup> Communication from the Requesters on 14 January 2013.

**Annex 2**  
**Original Request**

<http://www.iadb.org/es/mici/detalle-de-reclamo,1804.html?ID=MICI-BR-2013-076>