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

CO-MICI002-2011

**CONSULTATION PHASE REPORT
EL DORADO INTERNATIONAL AIRPORT**

(CO-L1029)

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Consultation Phase Report

Case CO-MICI002-2011

El Dorado International Airport (CO-L1029)

July 2014

CONSULTATION PHASE

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I. EXECUTIVE SUMMARY

- 1.1 This report summarizes the work done by the ICIM during the Consultation Phase for Case CO-MICI002-2011 related to the “El Dorado International Airport” project (CO-L1029). The comments received from the organization Comunidades Unidas (requesting organization), the Localidad Novena de Fontibón Roundtable, and IDB Management were appreciated.¹
- 1.2 The “El Dorado International Airport” project (CO-L1029) is a non-sovereign guaranteed loan operation for US\$165 million granted to Operadora Aeroportuaria Internacional S.A. (OPAIN), a private consortium to which the Special Administrative Unit of Aeronáutica Civil de Colombia (Aerocivil) had granted a 20-year concession agreement in 2006 to modernize and expand the airport. The loan was approved by the Bank’s Board of Executive Directors on 3 December 2010.
- 1.3 In August 2011, the ICIM received a Request from Ms. Gloria Molina,² on behalf of the neighborhood organization Comunidades Unidas Macroproyecto Aeropuerto El Dorado, made up of residents of the Rubén Vallejo Jaramillo housing development located in Localidad Novena de Fontibón, adjacent to the El Dorado Airport in Bogota, Colombia.
- 1.4 From March 2012 to March 2014, the ICIM acted as the facilitator of a dialogue process on topics involving water management, hazardous waste, noise levels, and social management, in which the primary stakeholders were: Comunidades Unidas, Mesa Aeroportuaria de Fontibón [Fontibón Airport Roundtable], Mesa Aeroportuaria de Engativá [Engativá Airport Roundtable], Mesa Temática y Social de Funza [Funza Thematic and Social Roundtable], OPAIN, and Aerocivil.
- 1.5 In March 2014, the ICIM decided to deem the Consultation Phase exercise concluded, in its belief that continuing the process would not have positive outcomes beyond those already attained.
- 1.6 Following the conclusion of the Consultation Phase, the ICIM will transfer the Request to the Compliance Review Phase at the request of Comunidades Unidas, in order for the Panel Chairperson to determine if the Request is eligible for that phase.

¹ The ICIM has carefully reviewed the comments, in consideration of which it has fine-tuned the document when it deemed it relevant to do so, without compromising the Mechanism’s required independence of opinion. All of the comments, even those not addressed in the document, are highly valued by the ICIM since they represent the diverse perspectives of each of the interlocutors in the process. The time and commitment of all of the parties to the process while it was under way were appreciated.

² <http://www.iadb.org/document.cfm?id=37327165>.

II. TENETS OF THE ICIM POLICY FOR THE CONSULTATION PHASE

- 2.1 The Consultation Phase exercise is based on paragraphs 46 through 51 of the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49), as follows:
- 2.2 **Paragraph 46.** Consultation Phase exercise. The objective of a Consultation Phase exercise is to address issues raised by the Requester. There is no guarantee that the Consultation Phase will resolve all issues to the satisfaction of the parties. Consultation Phase exercises will be tailored to the individual Request, depending on factors such as its urgency, principal parties, potential or actual harm involved, remedies sought and the likelihood that the consultation will have positive outcomes. For example, any or more of the following could be used: fact-finding, promoting further discussion and negotiation among the parties to stimulate self-generated solutions; retainer of experts; and more active, consensual, problem-solving approaches such as facilitation, conciliation or mediation or review or investigation. Because the Consultation Phase process is intended to be flexible and tailored to the needs of each operation, there are no standard rules, timeframes or procedures for this phase, except as otherwise explicitly set forth in this Policy.
- 2.3 **Paragraph 47.** Voluntary nature. Any party, except the Project Ombudsperson, can opt out of any part of the Consultation Phase process at any time, in which case the Consultation Phase shall be deemed concluded. A Consultation Phase exercise requires the consent of the Requester, the project executing agency or borrower/recipient and any other parties deemed essential by the Project Ombudsperson. All parties must consent to their participation in the Consultation Phase exercise by approving the recommended course of action, including reaching agreement on the approach and method of consultation, funding arrangements, timing and binding nature of the outcome, as applicable.
- 2.4 **Paragraph 48.** Impact of Consultation Phase. The fact that a Consultation Phase exercise is initiated or ongoing does not halt the processing or execution of the Bank-Financed Operation, including disbursements by the Bank or the MIF, as the case may be. In cases where the Project Ombudsperson believes that serious, irreparable harm may result if processing or execution of a Bank-financed Operation continue, the Project Ombudsperson may recommend to the President, the Board or Donors Committee, as appropriate, that processing or execution be halted. The decision on the recommendation will be made by the body vested with the power to make such decision, subject to applicable Bank policies and legal documentation.
- 2.5 **Paragraph 49.** Country non objection for site visit. Any part of the Consultation Phase process to be conducted in the territory of the borrower/recipient country may be conducted only after obtaining the written non objection of the country, which must be requested in advance of the visit through the office of the relevant Executive Director.

- 2.6 **Paragraph 50. Limitations.** The Project Ombudsperson will not support agreements that would be coercive to one or more parties, are contrary to Bank policies or its code of ethics, or that would violate domestic laws of the parties or international law. Neither the Project Ombudsperson (nor any expert participating in the Consultation Phase) may interfere with the processing or execution of a Bank-financed Operation. The Consultation Phase, by itself, shall not result in the award of compensation or any other benefits to any person, entity or government. This does not preclude, however, the possibility of compensation or other benefits that may be expressly contemplated in any relevant Bank policy and legal documentation or as may be duly and explicitly agreed to by the parties involved.
- 2.7 **Paragraph 51. Consultation Phase report.** The Project Ombudsperson shall be required to prepare a report on the Consultation Phase exercise and its results, which will be distributed to the President, Board (and the Donors Committee, in the case of a MIF-funded operation), Requesters, and posted on the Registry. The terms of a settlement agreement or approved recommendation will be made public via the Registry, unless all of the signatory parties agree on confidentiality, in which case the Project Ombudsperson shall cause an abstract to be posted on the Registry.

III. BACKGROUND OF THE CASE

- 3.1 On 12 August 2011, Ms. Gloria Molina submitted a Request to the ICIM on behalf of the neighborhood organization Comunidades Unidas Macroproyecto Aeropuerto El Dorado, made up of residents of the Rubén Vallejo Jaramillo housing development located in Localidad Novena de Fontibón, adjacent to the El Dorado Airport in Bogota, Colombia. The Request alleged concern among residents over the findings of the Environmental and Social Management Report (ESMR)³ issued by the IDB in the context of the “El Dorado International Airport” operation (CO-L1029⁴) approved by the Bank’s Board of Executive Directors for financing on 3 December 2010.
- 3.2 The “El Dorado International Airport” project (CO-L1029) involves a non-sovereign guaranteed loan operation for US\$165 million granted to Operadora Aeroportuaria Internacional S.A. (OPAIN), a private consortium to which the Special Administrative Unit of Aeronáutica Civil de Colombia (Aerocivil) had granted a 20-year concession agreement in 2006 to modernize and expand the airport. This includes the construction of: (i) a new terminal to provide national and international flight services; (ii) new cargo infrastructure, including additional parking positions for planes; (iii) a new office building for Aerocivil; (iv) a new maintenance area; and (v) a new fire station. In addition to modernization and expansion works, the concession requires the management, operation, maintenance, and commercial use of the concession area during the term of the concession.

³ Environmental and Social Management Report, September 2010. [Informe de Manejo Ambiental y Social.](#)

⁴ [http://www.iadb.org/es/proyectos/project-information-page.1303.html?id=CO-L1029.](http://www.iadb.org/es/proyectos/project-information-page.1303.html?id=CO-L1029)

- 3.3 According to the information contained in the ESMR,⁵ the concessioned area, which occupies 397.09 hectares, comprises: the passenger terminals, the national and international cargo areas, the general aviation area, Aerocivil's administrative tower and warehouse, the building of Aerocivil's Operational Systems Department, and the control tower. There is also a nonconcession area, which occupies 569.04 hectares and comprises: the concession to Compañía de Desarrollo Aeropuerto El Dorado (CODAD), the Military Transport Air Command (CATAM), the National Police, the National Aeronautic Center (CNA), the Aeronautical Studies Center (CEA), the areas delivered under loan-for-use (*comodato*) arrangements with the National Ministry of Defense, and Aerocivil's hangar.
- 3.4 Regarding roles and responsibilities,⁶ three main entities interact in the operation of the airport: Aerocivil, OPAIN, and CODAD, with the first acting as the main authority. For operational purposes, the airport's physical space has been structured into two large areas:
- a. Airside – Aerocivil is the State entity responsible for all operations on the airside of the airport, including the administration and operation of the two runways and the corresponding airspace. CODAD is the entity that was granted a concession by Aerocivil for the maintenance of the two runways.
 - b. Landside – OPAIN is responsible for modernizing and expanding the concession areas included on the landside. It is also responsible for the administration, commercial use, and maintenance of the concession infrastructure—with the exception of the Puente Aéreo shuttle terminal, the control tower, Aerocivil, and CATAM.
- 3.5 On 3 November 2011, the then Project Ombudsperson of the ICIM issued a memorandum stating that the Request was eligible for the Consultation Phase.⁷
- 3.6 In March 2012, the Assessment Report⁸ was issued concluding that “the Project Ombudsperson considers that in this case the conditions exist to proceed with the Consultation Phase, and that elements exist for the dialogue to lead to a line of action based on consensus between the Parties.”⁹ The following Parties appear as the primary stakeholders in the report: Comunidades Unidas, as the Requesting organization, which would be joined by the institutional roundtables already operating on the date when the Request was received—the Fontibón Airport Roundtable and the Engativá Airport Roundtable; OPAIN, as the borrower and the party responsible for executing the IDB-

⁵ Environmental and Social Management Report, September 2010, p. 2.

⁶ Environmental and Social Management Report, September 2010, p. 4.

⁷ Memorandum of Eligibility for the Consultation Phase, document MI-23-1.

⁸ Assessment Report for Case CO-MICI002-2011. <http://www.iadb.org/document.cfm?id=36814592>.

⁹ Assessment Report for Case CO-MICI002-2011.

financed operation;¹⁰ and Aerocivil.¹¹ A few months after the Assessment Report was issued, the Funza Thematic and Social Roundtable was added to this list,¹² also as a primary stakeholder.

- 3.7 Regarding issues on which to base the consultation process, the Assessment Report sets out four areas of the Request, related to the findings extracted from the Environmental and Social Management Report: wastewater management; handling of hazardous materials; noise levels; and social management, the latter two being the most important to the communities.¹³

IV. ACTIONS TAKEN DURING THE CONSULTATION PHASE EXERCISE

- 4.1 From March 2012 to February 2013, the Consultation Phase team worked with the Parties to rebuild the channels of communication and trust, broaden the base of affected communities, confirm their willingness to be involved in a dialogue process, and identify all interlocutors. At the same time, the Parties were also being prepared for the dialogue, leading to the joint formulation of: (i) the document containing the rules of and principles for dialogue; (ii) the agenda of the topics to be addressed at the roundtable sessions; and (iii) the methodology document for the dialogue process.
- 4.2 The agreed methodology would involve five phases for each topic to be addressed: (1) preparation of the parties; (2) information sharing; (3) working group; (4) action plan; (5) agreement and close. This methodology would be applied to four main thematic areas, to be addressed in the following order:

Thematic Area 1. Water management

- Information and education on rules, entities, responsibilities
- Main ecological structure (wetlands, rivers, channels, and grading work)
- Water network (wastewater, rainwater, treatment plant, discharges from communities into the airport)

¹⁰ Paragraph 31 of the Assessment Report (MI-23-2) indicates that the company OPAIN is available for limited dialogue on issues relating to its obligations as concession holder and executing agency of the Bank-financed project.

¹¹ Paragraph 32 of the Assessment Report (MI-23-2) notes that, although Aerocivil was included as a primary stakeholder, it has not been consulted regarding its willingness to participate in a dialogue process.

¹² Throughout the Consultation Phase, on various occasions the communities requested the inclusion of new social stakeholders in the dialogue, but the only group that was included as a primary stakeholder in the dialogue after the Assessment Report on the Consultation Phase was the Funza Thematic and Social Roundtable.

¹³ According to the report commissioned from expert consultant Guillermo Yepes by the ICIM during the assessment phase, the communities' basic concerns were the noise level and land-use plan.

Thematic Area 2. Handling of materials and goods

- Information and education on rules, entities, and responsibilities (normative definitions)
- Waste collection and treatment (incineration and disposal)
- Handling of hazardous materials
- Handling of hazardous goods
- Fuel project
- Impacts of communities on the airport's operations (strategies for participation)

Thematic Area 3. Noise and air

- Information and education on rules, entities, and responsibilities (information on potential electromagnetic pollution)
- Environmental license and modifications (extension of schedule)
- Environmental plan (mitigation and compensation measures)
- Monitoring and follow-up systems

Thematic Area 4. Social Management

- Territory: knowledge of the airport's area of influence (information on connectivity)
- Social obligations of OPAIN and Aerocivil (options for job creation and strategies for participation and communication)

4.3 Thematic Area 1 was carried out from February to April 2013. During the process, the concerns of the Requesters were resolved through informational meetings held by OPAIN and presentations given by two experts on flooding, grading work, and wetlands.¹⁴ Accordingly, the Parties agreed to close this thematic area, expressing their agreement on the treatment of the related topics during the sessions.

4.4 Thematic Area 2 was carried out in April and May 2013 and included information sessions held by OPAIN in three methodological stages: (i) expert presentations; (ii) field

¹⁴ The Requesters' concerns regarding water and hazardous waste stemmed from the Environmental and Social Management Report produced by the IDB during the preparation of the operation as part of the due diligence process. In the view of the consultant hired by the ICIM (Guillermo Yepes) during the assessment phase, OPAIN's handling of waste and of the water supply was adequate and in keeping with current legislation.

visits to the reference areas; and (iii) technical presentations to address other related matters.

- 4.5 During Thematic Area 2, the Parties agreed to prepare a newsletter to periodically inform the rest of the population adjacent to the airport on the work and agreements reached at the roundtable sessions. The newsletter was to be drafted jointly by the Parties, and the representatives of Comunidades Unidas and the Fontibón, Engativá, and Funza Roundtables would assume responsibility for distributing it in the reference communities.¹⁵ This initiative served to issue a first newsletter reporting on the progress achieved in Thematic Areas 1 and 2; however, given the problems encountered in distributing it, this method of dissemination was discontinued.
- 4.6 In May 2013, Thematic Area 2 was closed with some information requirements still pending and after an agreement was reached to include some of the topics that came up during the sessions in Thematic Area 4.
- 4.7 Thematic Area 3 began in May 2013, following the conclusion of Thematic Area 2, with a series of initial questions for Aerocivil, the entity responsible for this area. During the first phrase of the dialogue on Thematic Area 3, a positive atmosphere was created, making it possible to conduct the dialogue in an open environment. This resulted from the fact that the parties had converged in order to find common ground allowing them to attain their shared objectives regarding the operation of the airport and its coexistence with the neighboring communities.
- 4.8 In June 2013, in parallel with the ICIM process, Aerocivil began a process before the National Environmental Permits Authority (ANLA) to modify the environmental license in order to extend the hours of operation at the airport so as to allow construction work on one of the runways. Because the modifications to the environmental license would result in an extension of the flight schedules, and this point had been included in the agenda for Thematic Area 3, the Project Ombudsperson requested Aerocivil's support to address the modification of the environmental license as part of the ICIM dialogue. Aerocivil accepted this, given that, according to Colombian regulations, this ANLA process required the support of the communities, and the ICIM forum represented an already organized option to carry out the public consultation.
- 4.9 Against this backdrop, the Parties agreed on the inputs to carry out a process agreement. The most noteworthy element of this agreement was the design and implementation of a Special Operations Pilot Plan (PPOE), which would include consensus-based operational mitigation and follow-up measures related to noise in different affected localities and for a given length of time. In the third quarter of 2013, the Parties, with ICIM support, strove to formulate a methodological protocol for the operation of the PPOE roundtables. OPAIN, in keeping with what had been said during the assessment phase,¹⁶ reported that

¹⁵ The first newsletter jointly prepared by the Parties received one-time funding from the ICIM for printing.

¹⁶ See footnote 9.

it would not participate in the protocol, given that the PPOE was connected exclusively to managing noise—an issue for which Aerocivil alone was responsible.

- 4.10 Nevertheless, it was clear that given the objective of the PPOE (the modification of the environmental license) and the broad nature of the requirements for it to comply with Colombian legislation,¹⁷ there was no room for the participation of the ICIM— notwithstanding the contribution of the primary stakeholders in the ICIM dialogue to the process when it was conceived and agreed on. Based on this responsible analysis, the ICIM informed the Parties that it could not participate in the PPOE process, the success and legitimacy of which required a broad community scope and representativity.
- 4.11 In principle, this should not have undermined the continuation of the work of Thematic Area 3, where the ICIM maintained the commitment made by the then Project Ombudsperson to commission the contribution of an independent expert on noise management and mitigation and community relations. The expert would submit to the Parties the most relevant international experiences to date and collaborate with Aerocivil and OPAIN to examine relevant opportunity areas for the specific case of the El Dorado Airport.
- 4.12 Until then, and despite some setbacks, the Parties had worked on a collaborative basis, seeking common ground for understanding, particularly focused on producing timely, quality information. All Parties had agreed on the importance of strengthening relations between the airport (through the various bodies in charge) and local residents (through their representatives), which was expected to allow long-term sustainable communication mechanisms to be built.
- 4.13 However, starting in October 2013, undoubtedly because noise was the main focus of the concerns of the communities and because the process of seeking a modification to the environmental license was taking place at the same time, a series of actions and events began to occur that affected the viability of the process, in particular in the areas noted below:
- 4.14 **Representativity.** More than two years after the receipt of the Request, and as is normal in protracted processes, the original interlocutors representing the communities¹⁸ began to leave and were replaced by new interlocutors. In general, the new interlocutors were unfamiliar with the background involving the ICIM consultation process and with the scope of the process and the agreements reached up to that time. Moreover, in some cases their efforts were focused on fulfilling objectives that were different from the original objectives.

¹⁷ According to Colombian legislation (Decree 765/99), modifying the environmental license to extend the hours of operation at the airport requires a community consultation process.

¹⁸ Of the four community groups represented, two—the Engativá airport roundtable and the Funza Thematic Roundtable—underwent important changes.

- 4.15 The process of modifying the environmental license and the concern that it generated among all of the local residents led some of them who did not feel represented in the ICIM process to file complaints¹⁹ over not being able to participate. One explanation for these complaints would seem to be the confusion caused by the simultaneous presence of two dialogue processes, that is, the ICIM and the PPOE processes, as well as the fact that the ICIM process was not limited to the topics linked to the mandate of the Mechanism. These complaints led OPAIN and Aerocivil to request evidence regarding the capacity of representation of the persons seated at the table. For OPAIN and Aerocivil, the value of the process lay in extending the agreements reached in the ICIM dialogue to the remaining communities adjacent to the airport.
- 4.16 Similarly, the frictions between outgoing and incoming representatives weakened the dialogue process by placing private interests before those of the group and the process.
- 4.17 **Adherence to the Rules and Principles of Dialogue.** Although the Parties had agreed on the rules and principles for the dialogue process, from the beginning of the process there were actions of noncompliance with those rules and principles. Initially these instances were overcome, but when it came time to address the topics that the communities were truly concerned with, accusations by both sides increased, weakening the foundation of trust required for a process of this type. Their positions, already polarized, moved even further apart. This was particularly exacerbated by the process of modifying the environmental license and the manner in which the PPOE roundtable sessions were being carried out.
- 4.18 **Scope of action of the ICIM.** During this period, the Parties began to request that the ICIM play an active role in the PPOE process,²⁰ in particular for the application of sanctions or the determination of which direction to move in. The ICIM declined to adopt any role beyond that mandated by the ICIM Policy,²¹ with the consequent frustration of the parties.
- 4.19 In this context, the ICIM conducted missions in November and December 2013, seeking to clarify the scope of the ICIM dialogue, confirm all Parties' willingness to engage in dialogue, and ensure that the new members of the roundtable received similar

¹⁹ In fact, at one point the ICIM was summoned in a legal protection case by one neighborhood organization that alleged that it limited democratic participation by Colombian organizations.

²⁰ The ICIM was repeatedly asked to actively participate in the PPOE process, as well as to assume a role beyond that of mediator/facilitator and to impose sanctions on the "offending" parties.

²¹ According to paragraph 50 of the ICIM Policy, "the Project Ombudsperson will not support agreements that would be coercive to one or more parties, are contrary to Bank policies or its code of ethics, or that would violate domestic laws of the parties or international law. . . The Consultation Phase, by itself, shall not result in the award of compensation or any other benefits to any person, entity or government."

information in order to move forward in the process, always within the limits of the ICIM process.²²

- 4.20 In December 2013, the noise expert gave a presentation to the Parties based on a review of the documentation she had received up until then, the information obtained from the technical meetings carried out with Aerocivil and OPAIN to better understand the operation of the airport, and the field visit that she made to the areas adjacent to the airport. The purpose of the presentation was to inform the Parties of relevant international best practices and, from that perspective, to analyze the current situation at the El Dorado Airport. This was complemented by a report²³ to be shared with all the parties, setting forth available alternatives for dealing with the related topics that would help them reestablish collaboration.
- 4.21 Following the dialogue sessions held in November, the Parties ratified their commitment to the rules and principles of dialogue, understanding that the PPOE was beyond the scope of the ICIM. They even established a timeframe to confirm (i) the representativity of the new interlocutors through the submission of supporting documentation; and (ii) their intention to continue in the dialogue process. January 2014 was set as the start date for Thematic Area 4, through the submission of information by the entities, following the established methodology.
- 4.22 Based on the agreements reached in November to move forward to Thematic Area 4 and the methodology that had been agreed upon, once the expert had given her presentation,²⁴ the Parties were asked to agree on closing Thematic Area 3. The community representatives indicated that they did not consider it viable to close it, but only to temporarily halt it pending the results of the PPOE. In particular, Comunidades Unidas would withdraw from the ICIM process if the results of the PPOE were not as expected. OPAIN stated that even though it was willing to continue with Thematic Area 4, it would withdraw from the dialogue if discussions on the noise issue continued, since this issue was beyond its responsibility stemming from the concession agreement and the IDB-financed project.

²² Given the circumstances surrounding the process, the ICIM shared some considerations on the conditions for dialogue and recalled some issues, which, if they arose, could weaken the process. Specifically: (a) expectations that in many cases go beyond the powers and capacity of the ICIM; (b) the risk of politicization of the dialogue process in light of an imminent electoral process; (c) the fact that dependence on the ICIM can become an obstacle to developing commitments for finding an appropriate channel for sustained rapport between the Parties; and (d) the Parties' need to evaluate their willingness to reach a consensus-based agreement within a feasible timeframe and to commit to carrying it out.

²³ Informe sobre Gestión y Mitigación de Ruido, Aeropuerto Internacional El Dorado [Report on Noise Management and Mitigation, El Dorado International Airport], May 2014. In November 2013, the ICIM commissioned WSP, a company in Great Britain, to prepare the report as part of the process of having independent experts clarify issues so as to support the voluntary dialogue process.

²⁴ The same expert confirmed to the parties orally as well as in her written report that the noise issue was beyond the scope of responsibility and influence of the ICIM dialogue.

- 4.23 Nevertheless, and given the importance of social management for long-term relations between the Parties, they proposed the option of continuing with Thematic Area 4. The option was accepted and a timetable was established. Despite the agreements that had been reached, however, in early 2014 the community representatives gave notice of their decision to temporarily suspend their participation in the dialogue on Thematic Area 4, due to the risk of it becoming politicized in light of the electoral process scheduled for early March 2014.²⁵
- 4.24 Similarly, and despite several deadline extensions, the issues related to community representativity remained pending, given that Aerocivil and OPAIN did not validate the information furnished by some groups and one of the primary stakeholders as of that date still had not sent the agreed documentation.
- 4.25 In light of these circumstances and following a period of analysis on the viability of the dialogue and the likelihood of its success, the ICIM determined that the conditions were such that there was no assurance that continuing with the process would have positive outcomes.²⁶ On the contrary, the ICIM process appeared to be aggravating the situation rather than offering an option for resolution, and distrust and polarization were deepening.
- 4.26 In March 2014, the Consultation Phase team went on a final mission to Colombia to personally inform the parties of this decision. The Requesters were informed that they had the option of requesting a compliance review if they believed that the reason some topics remained pending was the Bank's failure to comply with its operational policies. On 24 March 2014, the consultation process was formally terminated, two years and seven months after the date of receipt of the Request.
- 4.27 In May 2014, Ms. Gloria Molina informed the ICIM, on behalf of Comunidades Unidas, of its interest in its Request being considered for a compliance review. Consequently, after this report is issued, the original Request and the documentation of the process will be transferred to the Panel Chairperson for the corresponding eligibility analysis under the Compliance Review Phase.

²⁵ In fact, some interlocutors in the ICIM dialogue were at that moment running for local election. In itself, this was not an obstacle to continuing with the dialogue, provided that this process was not used by any of them for political and/or election purposes.

²⁶ According to paragraph 46 of the ICIM Policy (document GN-1830-49), in the case of the El Dorado Airport, in the consultation phase exercise, the parties adopted ad hoc guidelines to regulate it (Principles and Rules for Constructive Dialogue) establishing that "the Project Ombudsperson may at any time during the dialogue decide to end this process, based on (a) the impossibility of reaching an agreement, (b) a determination that dialogue is no longer feasible because of the Parties' lack of consent or good faith, or (c) interference with judicial or arbitration proceedings."

V. CONCLUSIONS

- 5.1 In March 2014, by decision of the ICIM, the Consultation Phase was terminated. Although the process did not completely dispel the concerns of the Requesters, it produced important results.
- 5.2 The consultation process helped dispel the Requesters' doubts regarding Thematic Areas 1 and 2. In addition, independent experts stated for the record that OPAIN's management of these matters complied with current regulations and the management plans agreed upon with the Bank.
- 5.3 As to Thematic Area 3, which focused on the Requesters' priority topics of interest, when the Request was submitted (that is, the search for mitigation measures and compensation for the negative impact of noise from the airport on neighboring communities), it was not possible to deal with it to the satisfaction of the Parties. The two primary reasons for which a resolution in this matter was in no event feasible for the Consultation Phase were that: (i) given that the negative impacts suffered by the communities go back more than 20 years and the entity responsible for handling this issue is Aerocivil, which answers, on this point, to Colombia's Ministry of the Environment, the body to appeal to would in all events be Aerocivil, not the IDB; and (ii) considering that the consultation process is voluntary,²⁷ it must be remembered that the executing agency had expressed, from the outset, that it would not participate in this topic given that it is beyond its responsibility.
- 5.4 Nevertheless, the ICIM considered that advancing to Thematic Area 4 would have resulted in gains for all Parties, strengthening the peaceful coexistence of the airport with the neighboring communities over the long term, were it not for the opposing positions expressed to the ICIM by the parties and the fact that the central concerns and the possible resolution of those concerns were linked to actions and entities outside the scope of the ICIM. Improving communication between the airport and local residents remains, however, a priority pending task.

VI. REFLECTIONS AND LESSONS LEARNED

- 6.1 The Consultation Phase exercise for the El Dorado Airport case generated important lessons for the ICIM, primarily the following:
- 6.2 The Mechanism has a clear mandate, established by its policy, and a scope of action that is also framed in that policy. Accordingly, it is important to ensure from the outset that the topics to be addressed are directly linked to the Bank's possible noncompliance with operational policies in the context of the operation in question. This means that some topics brought up by the Requesters, despite their importance and impact, cannot be addressed by the ICIM. This is the case of the adverse effect of noise, which undoubtedly

²⁷ Paragraph 47, Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49).

has a high impact on the communities adjacent to the airport. However, it was not caused by the Bank-financed operation nor has it emerged as a result of noncompliance with its relevant operational policies. An unbiased, objective analysis and strict fulfillment of the eligibility criteria are essential in order to exercise the Mechanism's functions.

- 6.3 The success of a consultation process lies largely in the assessment phase, in which the feasibility of a consultation process should be initially determined according to criteria not only of efficiency and effectiveness but, more importantly, of impact. This requires a candid inquiry into the motivations and interests on the basis of which each of the interested parties agrees to participate in a process and an unbiased, objective evaluation of the capacity of the process to achieve outcomes consistent with those interests and motivations. Therefore, the assessment of the El Dorado Airport case required determining if those interests found a common ground that could engender dialogue with the possibility of generating positive outcomes, and provided that—*sine qua non*—the issues, interests, and objectives were linked to the Mandate of the Mechanism.
- 6.4 The ICIM Policy requires knowing who the Requesters are even if they access the Mechanism through a representative. In cases such as the one at hand, which involves a large number of Requesters, it is necessary to focus the ICIM's initial work on determining who are the persons or groups linked to the Request who are affected (or potentially affected) by the IDB project. This also entails establishing with the greatest possible degree of precision and clarity who will act as the representatives of those persons or groups and ensuring that these representatives effectively "represent" the interests of those they represent. Experience has shown that it is difficult to identify and separate the interests of those affected and those of their representatives; for this reason, it is important to analyze all the factors involved in the case and to ensure that they remain in effect throughout the process.
- 6.5 Moreover, and given that the participation of an independent third party is highly important under specific circumstances in which dialogue and trust have been severely eroded, this participation should last only as long as necessary to give the Parties tools in their search for sustainable, long-term coexistence. An extended term generates frictions that have a negative impact and that detract from the progress that has been made. Without acting in haste, it is important to take into account that tedious or protracted processes can have adverse effects both on the relations between the parties and on the achievement of long-term solutions. To this end, a key tool is the formulation of a plan setting forth objectives, expected outcomes, and deadlines, agreed by consensus between the parties and capable of serving to guide the process.