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February 18, 2003

Mr. Enrique Iglesias, President  
Inter-American Development Bank  
1300 New York Avenue, NW  
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Dear Mr. Iglesias:

We are writing to bring to your attention the general lack of transparency and effectiveness in the operations of the Inter-American Development Bank's (IDB's) Independent Investigation Mechanism (IIM). At the moment the IDB has one project undergoing investigation, the Termoelectrica del Golfo project in Mexico. Two additional projects, the Yacyretá hydroelectric project in Argentina and Paraguay, and the Cana Brava hydroelectric project in Brazil, are apparently pending board decision on whether to move forward with an investigation.

According to the IDB, the IIM "affords people whose lives stand to be affected by projects financed by the IDB a means to ensure that due diligence has been exercised by the Bank in the design, analysis and negotiation of those projects." The IIM is intended to ensure that the IDB hears the concerns of local communities affected by its operations and potentially harmed by its failure to comply with its policies or procedures. It was established through the request for funds from the US Congress for its eighth replenishment in 1994, in which the IDB states that "disclosure of information and transparency of operations is an important element in ensuring accountability." Unfortunately, the IIM operates with limited transparency and no clear timelines, and as a result the claimants and others have significant concerns about how these cases are being processed. Because these cases present the first significant test of the IIM, we also believe that they are revealing systemic problems that require the immediate attention of the IDB's President and Board of Directors.

This letter is divided into three sections. First, we outline some of the problems that have arisen in the IDB's handling of each of the cases brought before the IIM. The second section identifies procedural problems consistent in the three cases, which we believe reveal systemic flaws in the IIM's process that are preventing it from being an effective accountability mechanism. The third section lists recommendations we believe the IDB should strongly consider.

### **I. Cases brought before the IIM**

The IIM currently has three claims that are pending action. Except for a claim filed seven years ago regarding the Yacyretá project, these are the first claims filed with the IIM. They

are thus the first significant test of the process, and thus far we believe the IDB is failing that test.

*Termoelectrica del Golfo Project, Mexico*

The Termoelectrica claim illustrates both the transparency and the timing problems. The affected communities made their first request for an investigation on August 11<sup>th</sup>, 2000. Yet, the investigation was not authorized until July 2002, *almost two full years after the original request for investigation was filed.*

Moreover, the claimants have been kept in the dark through much of this process, receiving very little information from the IIM. Despite repeated requests, the claimants have never received copies of the consultant's report that compelled the full investigation nor the terms of reference (TOR) that define the scope and content of the investigation. They have never received this information and have been told the consultant's report is not a public document. How can the IDB realistically expect the claimants to be effective participants in the processing of their claim, if they do not even know the scope and terms of the investigation?

*Yacretá Hydroelectric project, Argentina/Paraguay*

In 1996, both the IDB's IIM and the World Bank's Inspection Panel conducted investigations of this project. Because over six years later the corrective actions have not been fully implemented and the problems have not been resolved, the affected communities filed new claims at both the IDB and World Bank. The filings occurred concurrently on May 1, 2002.

Six months later, on November 5, 2002 (and only after repeated inquiries for a status report from the Bank Information Center on behalf of the claimants), the IIM Coordinator stated that the process to appoint a consulting member of the Roster to perform the initial review was underway. It is now nine months since the filing of the complaint and the claimants have yet to learn of any clear timeline of how the process will proceed. In fact, the claimants have received only one official communication from the IDB in the form of a letter from the secretary of the IDB's President dated June 18, 2002, acknowledging receipt of their letter of complaint and promising to forward their complaint along to the IIM coordinator. The IDB has yet to post to its website any notice acknowledging receipt of the letter of request.

In contrast, the World Bank's process commenced at the same time and has already resulted in a site visit by a Panel member, a Board decision to allow a full investigation, and a clear timeline on how the process will unfold. The disparity in treatment highlights how dysfunctional the IIM is.

*Cana Brava Hydroelectric Project, Brazil*

On May 30, 2002, a claim was sent to the IDB's inspection mechanism signed by individuals who had lost their land and livelihood as a result of the project. Shortly thereafter, a more detailed document alleging violations of several IDB policies and procedures was sent to the IIM coordinator. When the Bank Information Center (BIC) followed up on behalf of the

claimants with the IIM coordinator he first stated that the letter requesting investigation did not contain any return address, making it impossible to acknowledge receipt of the letter. In response to later inquiries by BIC, the IIM coordinator claimed that local MAB (Movement of Dam-Affected people) representatives indicated they were not sure if they wanted to proceed with the claim, and stated it would be "helpful" if they could send another letter confirming their interest in pursuing the claim.

On August 16, 2002 MAB national coordinators, including the local representative at Cana Brava, faxed a letter to the IIM coordinator confirming their commitment to pursuing the claim and complaining of interference by the IDB's Private Sector Department Manager, who is accused by MAB of pressuring affected families to withdraw their claim. Eight months after the initial complaint and four months after the second complaint, the IDB has yet to officially confirm receipt of a request for investigation! There is also nothing posted to the IDB's website concerning a request for investigation of this project.

## **II. Problems with the IIM**

*Lack of transparency:* These three cases demonstrate a consistent lack of transparency in the proceedings of the IIM. By not posting to its website the requests for investigation as they come in, and all consequent correspondence with claimants, the IDB's IIM makes it impossible for any independent interested party to track the IIM's activities. The Bank's refusal to disclose the TOR in the Termoelectra del Golfo case is inconsistent with the practices of other multilateral development bank (MDB) accountability mechanisms. For example, during the Inspection of the Asian Development Bank (ADB) funded Samut Prakarn Investigation, the ADB sent a draft TOR to the claimants, as well as bank staff and the borrowing government, soliciting their comments.

The IDB has been unwilling to respond to information requests regarding its budget and staff resources and has refused to disclose information about who sits on the IIM's Independent Roster of Experts. This also is inconsistent with other MDBs. The ADB has a list of current Roster members for the ADB's Inspection Function posted on their website. The World Bank maintains the names and brief biographies of current and former Inspection Panel members on their website.

*Lack of Independence:* The lack of transparency also leads to concerns regarding the potential lack of independence. With no information about inspectors, terms of references, or even the status of current claims, claimants and the public are left doubting the independence of the mechanism. A lack of information inhibits the claimants from providing input or participating actively in the inspection of their claim. This undermines the idea of an independent inspection, given that management and project designers at IDB Headquarters have on-going access to the investigation process, which is kept out of reach of claimants. The interference by an IDB manager in the Cana Brava case, for example, raises concerns about whether the IIM can operate independently. More generally, the fact that the IIM Administrator answers to the IDB Management, that the office is not at a Vice President level, that the legal department and other IDB management appear to play a substantial role in the review of eligibility, and that the IIM does not have an independent budget all underscore concerns over the independence of the process.

*Unacceptable delays in the process:* The length of the current IIM process, as illustrated by the current cases, is simply unacceptable by any objective measure. The Yacyretá claimants have waited nine months and the Cana Brava claimants six months simply to learn whether and how their claims' eligibility will be determined! Termoelectrica was filed over two years ago and only recently did the IIM's consultants begin their investigation. Either the IDB is unable or unwilling to address claims in a timely manner, but in either case the situation must be addressed. The delays are clearly due at least in part to a process that has few timelines. For example, once an investigation request is submitted, there is no deadline for when a consultant must be selected from the roster or how long it will take to determine whether the request is eligible or not. There is also no limit to the amount of time that the Board can spend deliberating whether or not to approve an investigation. Additionally, some of the steps in the current process seem redundant, as is the case with having the President assign a consultant from the Roster of potential panel members to evaluate the request's eligibility after both the coordinator and legal department have already evaluated whether the request is eligible for investigation.

*Lack of Resources:* The IIM does not have its own budget, and resources are apparently allocated only when they are needed for a specific activity. Currently, the IIM has no permanent staff; the mechanism's Coordinator works only part-time on IIM issues. The legal advisor responsible for evaluating the eligibility of requests is not exclusively assigned to IIM work and is unable to assess investigation requests in a timely manner because of other job responsibilities.

### **III. Recommendations**

The problems described are of great concern to civil society and should be to governments seeking greater accountability and development effectiveness of the IDB's operations, and greater accountability by the IDB to those project-affected communities that seek an independent and viable process for investigating their claims that projects are having a negative impact on their daily lives. Addressing the situation of the IIM will require two parallel efforts. First, processing of the current cases must proceed in a more transparent, effective and efficient way. This will require the clear direction of the President and the Board, with additional resources made available immediately if necessary. Second, the President and the Board need to agree now to begin a process of evaluating and revising the IIM, so that in the future communities will be met with a more efficient and effective process.

*Greater transparency:* The IDB should immediately disclose all documents relevant to the current IIM cases, including correspondence from and to claimants, consultants' reports and TORs for investigation. Release of these and other IIM related documents would be a step toward demonstrating the Bank's commitment to ensuring that the investigation is transparent, thereby facilitating its independence. More generally, the IDB should make information on IIM cases available to the public as soon as an Investigation Request is sent to the Bank. It is essential that the IDB provide updated information about the progress of investigations to the claimants through direct communications and to the general public by way of its website.

*Proactive communication with and involvement of claimants:* The IDB should proactively seek input from claimants at various stages of the IIM process. Claimants should be asked to provide input on the consultant's report in order to help verify information. They should be involved in the drafting of the TOR as a signal that their input will be sought by the Panel throughout the investigation process, and they should be part of the planning for the consultants' site visits. The IDB should list the names of the Roster of Experts on its website. When a Panel is established for a case the IDB should immediately provide the names and contact information of the panelists to the claimants.

*Timely processing of cases:* It is essential that the IDB establish time limits for the various stages in the IIM process so that cases can be processed in a timely manner. The IDB must allocate more resources to the IIM so that cases can be processed more quickly. For the current cases, the IIM should immediately provide the claimants with detailed timelines for how the process will go forward into the future. The claimants deserve at least that much respect.

*Effective impact* Given that the IIM is activated only in the case of IDB-financed projects which violate IDB policies or procedures and cause material harm, it is important to condition or suspend loan disbursements, from the time the first request letter is received until the investigation concludes or the case is deemed ineligible. If the investigation concludes that the project does violate IDB policies and that the project can not be brought into compliance, it seems only logical to cancel the balance of the loan and also to seek compensation for the harm caused.

Sincerely,

Amy Gray  
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 Bank Information Center  
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