

Recommendations and comments from Civil Society on the Draft Access to Information Policy of the Inter-American Development Bank

For the group in charge of the review process of the IDB Access to Information Policy

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INTRODUCTION

This document with recommendations and observations was prepared by civil society organizations that have been doing advocacy work on the Inter-American Development Bank for some time. This document complements the comments and recommendations we made during virtual and in person consultations in Bogota, Montevideo, and DC, in which several of our organizations participated. The document has a section of general recommendations and another of specific comments with suggestions for each of the points of the draft Access to Information Policy (hereinafter AIP). The general comments should be reviewed in conjunction with the specific comments that ground the specific proposals and suggestions.

GENERAL RECOMMENDATIONS AND COMMENTS

- 1. Commitment to access to information as a fundamental human right.** We recommend that the policy recognize access to information as a fundamental human right. There is only one mention of it in point VI of the background of the Draft Access to Information Policy (from now on AIP), but it is insufficient. Access to information as a fundamental human right should be recognized and reflected in the regulatory body of the AIP. It is essential that this approach be incorporated and that the Bank establish clear commitments to guarantee respect for this right. The right to information is also a key access right for the exercise of other fundamental rights, such as consultation, participation, and involvement of people and communities impacted by projects in decisions that affect or may have an impact on their ways of life.
- 2. Implementation Guidelines.** We urge that the AIP Implementation Guidelines proposed by the Inter-American Development Bank (IDB) be subject to consultation through a meaningful participatory process with civil society. The [consultation plan](#) prepared by the IDB does not state whether the Implementation Guidelines will be subject to consultation with civil society and stakeholders in general. Although the Implementation Guidelines are not approved by the Bank's Board of Executive Directors, we consider consultation with civil society and stakeholders to be vital, since in addition to constituting good international practice, they will define key criteria for the effective implementation of the AIP.

At the same time, there is concern that some criteria and parameters that will make the AIP effective are left to be addressed in the Implementation Guidelines. For example, the rules and procedures relating to the: i) harm test, ii) positive override, iii) the Review Mechanism, iv) redaction and preparation of public versions, and v) information

classification and declassification system. Thus, the effectiveness and force of the AIP will depend a lot on the Implementation Guidelines that do not require mandatory compliance as the AIP itself does. The guidelines do not have the obligation to complete what is not covered by the policy, therefore we demand that at minimum the rules and procedures of these five mentioned points be defined in the AIP and not in the Guidelines. Or that, at a minimum, the main criteria for each of these points appear in the Policy.

- 3. Implementation, operationalization, and resource allocation.** We recommend developing an Implementation Plan for the AIP. This Plan should define points related to the allocation of financial, human, and technological resources necessary to guarantee an effective implementation and operationalization of the AIP. Likewise, long-term resources should be allocated to develop institutional capacity with training and constant support at the Bank's internal level and among borrowers to ensure proper compliance with the AIP. To that effect, it is essential that the Office of Access to Information have adequate resources (human, economic, and technological) to be able to carry out its activities effectively and efficiently, including training for borrowers and Bank officials. The current endowment of resources of the Office of Access to Information is clearly insufficient for the role and level of commitment required by the Bank's new AIP.
- 4. Glossary.** We recommend incorporating a Glossary section in the AIP that includes the most relevant basic definitions for the correct interpretation of key concepts of the AIP, for example, "Harm," "Public Interest," among others.
- 5. Commitment to maximum disclosure.** We recommend strengthening and making the commitment to maximum disclosure explicit. In order to strengthen the principle of maximum disclosure, we recommend specifying that all information held by the Bank is presumed to be public and accessible, and that it can only be subject to a limited regime of exceptions. As stated in the draft, the AIP fails to affirm the principle of maximum disclosure or establish a proactive disclosure framework.
- 6. Language ambiguity.** We urge that language flexibility and ambiguity be avoided in the AIP to prevent the use of discretion and non-compliance with respect to its guidelines. The AIP contains a lot of ambiguous language and vague and fuzzy commitments with excess conditionalities, for example, it makes excessive use of expressions such as: "in a timely manner," "sufficient information," "pertinent," "may generate," "if required," "may be answered," "will disclose certain information," among other words. The ambiguity of the language opens the door to different interpretations, including serious breaches and failings. Likewise, it prevents establishing clear requirements for Borrowers and the responsibilities of the Bank itself concerning the AIP. The Bank's Policies and Evaluation

Committee (PEC) indicated this as a recommendation, as set forth in Background VIII of the draft of the new AIP, and a robust approach to that recommendation is not visible.

- 7. Specify what information is to be published proactively, disclosure times, formats, channels, and timeframes.** We urge that the AIP clearly state what information it will proactively publish, by which channels or means, in what formats, and in what timeframes. The AIP should clarify what type of information will be included in the standard disclosure package for each project, the timing for disclosure of information, and at what point in a project cycle it will be disclosed. This, bearing in mind that disclosure of insufficient information or disclosure after a project has been approved or is in the process of being implemented, is detrimental to the effective access to information by communities, since their ability to make decisions about it and to act is substantially reduced. At the same time, the response times to requests for information are excessive, and the IDB reserves the right to extend these deadlines indefinitely, which is related to the above; therefore, the Bank is urged to define shorter and clearer deadlines regarding its responses to requests for information and should at least be aligned with the international standards currently applied.
- 8. Data protection.** We urge the IDB to allow anonymous requests for information, or at least to maintain confidentiality in all cases, and not only when requested by the requester. In turn, the IDB is requested to establish procedures, measures, and sanctions that prevent leakage of this information from within its structure, in order to guarantee the protection of environmental defenders, in accordance with the guidelines of the Escazú Agreement. The AIP does not offer real guarantees for data protection of information requesters. This is particularly sensitive for reprisal prevention management. As civil society we have anecdotal evidence of cases in which leaders of communities impacted by projects have requested information from the IDB on a certain project and then this mere fact has had repercussions in their territories or for those who requested the information.
- 9. Country or Client Proprietary Information.** We recommend it necessary to make explicit that the ultimate decision in the management of information resides with the Bank, as it deems appropriate and in accordance with its principles and its AIP, after consultations in case of concern with the borrower. While we welcome the deletion of the statement concerning the “Country Specific Information Exception”, we are concerned that point 3.2.a “Nature of Information: Proprietary country or client information” ends up undermining the principle of maximum disclosure and openness that is intended with such elimination. It is particularly problematic that *“the opinions of the borrowers and clients with respect to the content and timeliness of disclosure will be taken into account for purposes of the disclosure or protection of this information.”* It is not clear how the “opinions” of borrowers will be contrasted with regard to the right of access to information,

for example, in the event that the Bank wishes to publish project documents and the borrower in question states that the information contained therein is confidential. This point 3.2.a) may open up a high degree of discretion since its scope and application may ultimately be determined by the opinions of borrowers and end up operating as a hidden country exception.

10. Exceptions. We recommend that the exceptions be more precise and that clear criteria be established for their application, as well as the identification of specific documents or information to which access will not be given under the exception. We recommend that the IDB follow the recommendation made by the PEC to define the scope of the exceptions and restrict their application and the suggestion of the IDB's Office of Evaluation and Oversight (OVE) in its 2013 report.

Therefore, the Bank is urged to eliminate any expression that gives rise to the application of the country exception, and we recommend delimiting the remaining exceptions more precisely to provide greater clarity and transparency regarding the type of document or information included in each exception.

11. Harm test. We welcome the inclusion of a harm test for the application of exceptions. It is definitely a provision that will strengthen the AIP. However, clear criteria and scales should be specified to delimit its application. If an effort is not made to define these criteria and procedures in the body of the Policy (and left for the Implementation Guidelines), there is a risk that during its application discretion in the use of exceptions by the Bank and Borrowers will end up prevailing. We recommend incorporating the criterion of public interest in the harm test, as a counterbalance to the harm, and to make the results of the harm test public in each specific case.

12. Platform to publish requests for information and their responses. We recommend that the IDB develop, within the framework of implementation of the AIP, a platform where information requests made, and their respective responses, are published. The details of the platform can be defined in the Implementation Guidelines.

13. Open data, simple language, accessible formats, and usability of the information. The information that is disclosed and published should be useful for those who request it, especially for communities affected by IDB projects, paying attention to marginalized groups, such as Indigenous Peoples, Afro-descendants, people with disabilities, women, the LGBTQI population, etc. Accessible format, simple language, and the generation of open data are related to the usability of information. We recommend that the IDB address the issue of accessible formats, simple language, and open data in more detail and in a transversal manner throughout the AIP, taking into account the importance of this aspect, especially for marginalized groups. It would be important for the IDB to be able to map the beneficiaries/users of that information and the type of information they are requesting, to analyze how to improve the disclosure of information that is usable.

We also recommend that the IDB evaluate how accessible and understandable the information it discloses is and the channels it uses for this purpose. Based on our experience, the documents related to projects are extensive and very technical; they often do not contain clear and actionable information needed by communities and stakeholders. It is important that documents, such as the Public Monitoring Report (PMR), are adapted to provide information that communities and other stakeholders require on the implementation of projects, including location of projects, updates on mitigation of environmental and social impacts, and risk management, instead of focusing on measuring performance and progress in meeting goals and results. We also recommend that the IDB add documents such as the Operations Manual to the standard disclosure package for each project, which would allow stakeholders to have more detailed information on implementation plans in order to monitor project implementation and track compliance with the commitments of implementers.

14. Mechanism to request information and Review Mechanism. We recommend that the power to appeal to the Access to Information Committee and the External Review Panel, which is limited to cases where access to information requests have been denied, be expanded to cover other Policy implementation issues as well. This would allow requesters to question other issues that may come into tension with the principle of maximum access to information, such as the lack of disclosure within the required timeframe, the External Review Panel being able to review redacted documents, for example, the proper use of positive override, among others.

15. Indicators. We suggest creating a system of indicators of transparency and effectiveness of the use of information and implementing a system to track levels of transparency over time. This is necessary to ensure that implementation of the Policy effectively increases disclosure and accessibility of information produced by the Bank.

SPECIFIC RECOMMENDATIONS AND COMMENTS

Background for the New Proposed Access to Information Policy

I. Commitment to transparency.

- We recommend strengthening and reflecting more explicitly the IDB's commitment to the principle of transparency in the AIP. In the current draft, the commitment to transparency is not expressly reflected.
- The current AIP since 2010 clearly and explicitly reflects this commitment to transparency in paragraph 1.1: “The Bank reaffirms its commitment to transparency in all aspects of its operations as a means of aligning itself with international best

practice, especially among the countries of Latin America and the Caribbean, and as a matter of enhancing its accountability and development effectiveness.”

II. The current Access to Information Policy.

- Although it is true that progress has been made with the current AIP, the Bank's implementation of the policy and the exercise of disclosure and dissemination of information is far from ideal. The biggest shortcomings are related to the proactive disclosure of information (active transparency) and the provision of information through access requests (passive transparency).
- For this reason, beyond the fact that the new AIP is robust on paper, there should be a strong commitment from the IDB to an effective implementation of the Policy, which translates into concrete improvements in the disclosure of information, especially for projects of environmental and social categories A and B.

III. Advances in Access to Information at the regional and global levels.

- In this point we recommend adding and making specific mention of the Escazú Agreement, which is the main regional reference on access to information, public participation and access to justice in environmental matters in Latin America and the Caribbean. In addition, the Escazú Agreement is explicitly incorporated into the IDB's Environmental and Social Policy Framework (ESPF).

IV. Preparation of a Policy Profile.

- We emphasize the need for the IDB to adopt the highest international standards on access to information, such as the OAS Inter-American Model Law 2.0 on Access to Public Information, the Escazú Agreement, the American Convention on Human Rights in Article 13, the principles of “openness” for IFIs established in the Transparency Charter for International Financial Institutions (Transparency Charter) - prepared by the Global Transparency Initiative (GTI).

V. Recent IDB Group policies.

- We suggest including a specific mention of the IDB's Environmental and Social Policy Framework (ESPF), and especially its environmental performance standard No. 10 on Stakeholder Participation and Information Disclosure. Both policies, the ESPF and the AIP, are two sides of the same coin: neither can function effectively without the other. Both are basic policies that govern the activities financed by the IDB, in order to prevent harm, establish high international social and environmental standards, and guarantee transparency, access to information, the participation of affected people, and accountability. The IDB should clarify and make explicit how the AIP will interact with the ESPF.

1. Objective, Coverage, and Scope

1.1. Objective. The wording of the AIP objective should more clearly express what the IDB seeks to achieve. We propose to explicitly mention that access to information is a fundamental human right. We recommend modifying the following expression: “*To acknowledge the right of access to information and improve accountability and transparency in the activities and results of the Inter-American Development Bank*”, for “*Guarantee and maximize the right of access to information understood as a fundamental human right, strengthen accountability and transparency in the activities and results of the Bank*”. Understanding access to information as a human right is essential for the Policy to be centered on people.

1.2. Coverage and Scope. Regarding the coverage and scope of the AIP, we recommend explicitly mentioning that it also applies to the Bank’s Office of Institutional Integrity and Sanctions Committee. Neither of these offices is explicitly mentioned in the AIP, but they are included in the current AIP of 2010.

2. Principles

2.1.

a) Maximizing access to information and proactive disclosure. We recommend clearly affirming the principle of maximum disclosure, making it explicit that all information is of public interest and, therefore, should be accessible, and that it can only be restricted to a limited regime of exceptions¹. The proposed text in the AIP avoids clearly affirming and declaring this principle. Also, the description of this principle only focuses on the principle of disclosure when access integrates other aspects such as accessibility. We recommend specifying the description as follows (see bold): “*The IDB will disclose complete, current, and clear information, in an effective and proactive manner, throughout the entire project cycle: during its preparation and approval, and while it is being implemented. Facilitating access to information through the use of all practical and simple means, and under the open data format, in order to allow meaningful involvement of stakeholders and communities affected by Bank projects*”.

b) Clear and narrow exceptions to disclosure. We recommend reformulating the description of this principle since it does not refer to the clarity and delimitation of exceptions. We suggest specifying the description of the principle, emphasizing the importance of generating a clear and limited list of exceptions to disclosure. In the proposed AIP, everything could constitute an exception in favor of a borrower, since the exceptions are stated in a vague and imprecise way, conflicting with the commitment stated in this principle. Therefore, we recommend the following wording (see bold): “*The IDB may only limit access to and protect information covered by the exceptions expressly and exhaustively established in this Policy, and whose disclosure may*

¹ For information on jurisprudence in this regard, see the [case of Claude Reyes y otros vs. Chile](#)– §92, so that “all information held by the State is presumed to be public and accessible, subject to a limited regime of exceptions” –judgment of 11-24-2010, [case of Gomes Lund et al. \(Guerrilha do Araguaia\) vs. Brasil](#), §§ 199 and 230.

cause greater harm to the benefit of making it public”.

c) Explanation of decisions and right to review. We suggest returning to the description of the current AIP, to expressly recognize the right of applicants to an appeal process when they are denied access to information. The description of the principle only refers to the justification of decisions but does not mention the right to review. The IDB should establish clear procedures to guarantee the right of appeal.

d) Simple and broad access. We recommend including “Simple and broad access” as a fourth principle, present in the current AIP. It is necessary to explicitly mention this principle, emphasizing the commitment to facilitate access to information and to identify deficiencies in the way the Bank disseminates information or provides responses to requests for information. There is much to be done in this area, and the Bank maintaining the principle of “simple and broad access” would be a positive sign.

3. Standard for Disclosure and Nature of the Information

3.1. Standard for Disclosure. We recommend adding the following phrase to the first sentence (see bold): “*In line with the principle of maximum access to information and proactive disclosure, the Bank discloses all information that is not protected pursuant to Section 4 of this Policy*”. We also recommend modifying the sentence: “*Following is an illustrative, but not exhaustive, list of information on topics that reflect the IDB’s high commitment to disclosure*”, for the following: “*Following is an illustrative, but not exhaustive, list of information **that the IDB agrees to disclose***”.

We also recommend clarifying at this point or in an annex the documents that are part of the standard disclosure package of each IDB project and whose proactive disclosure will be mandatory. We suggest adding documents such as the Operations Manual to each project's standard disclosure package, providing stakeholders with more detailed information about their location and implementation plans so that communities can monitor project implementation and demand that implementers meet their commitments.

- a) **Information on environmental and social impacts and risks.** We recommend eliminating the adjective “sufficient” (see bold) in the following sentence: “*The IDB works in close collaboration with its borrowers to provide and disclose **sufficient** information on the environmental and social impacts and risks stemming from the projects it finances*”, since this adjective is discretionary. For example, the Escazú Agreement is much more explicit and enshrines the right of access to “any written, visual, sound, electronic or recorded information in any other format, relating to the

environment and its elements and natural resources, including that which is related to environmental risks and possible associated adverse impacts that affect or may affect the environment and health, as well as that related to environmental protection and management.” This requires access to all information on risks and impacts, and not merely that which is deemed “sufficient.” Likewise, the word sufficient is in contradiction with the Disclosure Standard which establishes that the Bank discloses all information that is not protected in accordance with section 4 of the Policy.

- b) ***Information in relevant local languages.*** We recommend adding to the following sentence that indicates that information should be appropriate to the context (see bold): “*Information relating to projects classified in environmental and social impact categories A or B in accordance with the ESPF will be disclosed in the local languages, where possible including indigenous languages, relevant for the involvement of stakeholders.*” Likewise, we recommend clarifying and specifying what materials the IDB will disclose regarding consultations conducted by the Bank. All consultation materials should be published proactively, explaining whether they are related to the requirements of the ESPF Social and Environmental Standard 10.

We recommend adding a paragraph in point d) of section 3.1, which clarifies that, in line with the principle of “simple and broad access,” information that will be provided proactively will be delivered in accessible formats and using simple language, prioritizing its usability.

3.2. Nature of the information.

- a) ***Proprietary country or client information.*** We recommend that the IDB follow the recommendation of the [2013 OVE Report](#), which provides that **it is necessary to make explicit that the ultimate decision in the management of information resides with the Bank, as it deems appropriate and in accordance with its principles, after consultations in the event of concerns on the part of a country** (page 11). One option, as a limit and minimum criterion, is that borrowers, in these cases, request the redaction of specific information produced by them, which will be subject to the application of harm test and its justified result in a complete and clear manner.

This point 3.2.a) of the AIP is inconsistent with the fundamental principle of transparency and ends up undermining the principle of maximum disclosure and openness that is intended to be achieved with the elimination of the “Country specific information exception” included in the current AIP. [OVE’s 2013 Evaluation report on the Access to Information Policy](#) recommends eliminating this exception, since it undermines the objective of transparency and is not present in the exception lists of other peer institutions. In other words, this provision, by making it clear that “*the opinions of the borrowers and clients with respect to the content and timeliness of disclosure will be taken into account for purposes of the disclosure or protection of this information,*” grants countries the same powers to deny or not provide information of public interest.

Given that most of the information generated in the framework of development projects financed by the Bank is produced by Borrowers, it is complex that Borrowers have the expectation that such information can be kept classified or confidential.

- b) ***Information produced by the Bank.*** In the face of the possibility that a country considers that if certain information is disclosed it could affect its ability to manage its financial or economic policies, and requests its protection, we recommend that the justifications of the countries and the result of the harm test be made public effectively and as soon as it is defined, and the Bank should establish a certain and limited period for its disclosure. In the event that this happens, it should be established what information will not be disclosed at its request. Once again, the Bank should make explicit that the ultimate decision in handling information lies with the Bank itself, in accordance with its principles and the assessment of the harm.

4. Exceptions

While we welcome the removal of the “country-specific information” exception and the reduction in the number of exceptions compared to the current AIP, we consider the exceptions included to be generic and diffuse. We recommend that the exceptions be more precise and that clear criteria be established for their application as well as the identification of the specific documents or information to which access will not be granted under the exception. As they are proposed, the exceptions open up excessive space for free interpretation and discretion when applying them, generating the opposite effect to the one sought, which is to limit their scope, weakening the AIP.

The Bank should accommodate the general comment made in relation to this section.

- a) **Personal information and communications.** We recommend specifying and detailing what type of information will not be accessed within the framework of this exception, beyond the application of the harm test criterion. Likewise, add and detail what is understood or considered personal information and communications of Bank officials.
- b) **Safety and security.** We recommend establishing clear criteria for the protection of the security of Bank employees and their families and the type of documents that apply to this exception. Along the same lines, clear criteria should be established to define what type of information puts national security at risk. For example, in the case of Mexico, by declaring infrastructure projects as “national security”, the contracts of the armed forces with public and private companies to provide security during the implementation of megaprojects have been kept confidential.

We recommend reviewing the expression “or any other individual”, since it is very broad and can give rise to multiple interpretations and applications of this exception.

- c) **Information provided in confidence.** We recommend establishing clear criteria to define what is considered information provided in confidence and what type of information will not be accessed within the framework of this exception, beyond the application of the harm test criterion. This exception allows the entities that generate information used by the Bank in the framework of its projects to hide relevant information from stakeholders. **The mere fact that the originator of the information identifies it as confidential should not be sufficient criteria to exempt it from the disclosure obligation.** Anyone who provides information to the Bank should be notified of its access to information policy and, therefore, cannot have an expectation of privacy, regarding the information used by the Bank to make decisions regarding projects, programs, etc.
- d) **Deliberative information.** We recommend establishing and detailing explicitly and specifying what type of information or documentation will not be accessed within the framework of this exception, beyond the application of the harm test criterion.
- e) **Financial information.** We recommend establishing and detailing explicitly and precisely what type of information, documentation, or reports will not be accessed within the framework of this exception, beyond the application of the harm test criterion.
- f) **Legal, disciplinary or investigative matters.** We recommend explicitly detailing what type of information beyond disciplinary or investigative information could expose the Bank to an undue risk of litigation or violate applicable regulations if disclosed. The current wording may justify the concealment of irregular actions by the Bank.

4.2. Harm test. We welcome the inclusion of the harm test for the application of exceptions. It is definitely a provision that strengthens the AIP. However, clear criteria and scales should be specified to delimit how the harm test will be applied. If these criteria and procedures are not defined in the body of the Policy (and left for the Implementation Guidelines), there is a risk that during its application, discretion in the use of exceptions by the Bank and Borrowers will end up prevailing. In addition, harm test is a key point in the AIP because it relates to almost the entire Policy: 4.1. Exceptions. 5. Positive Override. 3.2. Nature of the information. 7. f. Responses to information requests. 8. Review Mechanism. 8.1.b. Action of the External Review Panel in the event of positive override; and various other points. In this regard, **we recommend reviewing the criteria presented and incorporating the concept of public interest into the definition of harm test. That is, that the harm is weighed against the public interest.** In other words, the public interest is the argument that must serve as a counterweight against the harm. As a reference to define public interest, we recommend reviewing the [General Law of Transparency and Access to Public Information \(2015\)](#) of Mexico, article 3 XII where information of public interest is defined as *“information that is relevant or beneficial to society and not simply of individual interest, the disclosure of which is useful for the public to understand the activities carried out by obligated subjects”*.

4.3. Outcome and registration of the harm test. We recommend modifying part of this paragraph (see bold) to make it explicit that the decision about the protection of information should not only be registered, but also made public: “*The outcome of the test undertaken in accordance with Section 4.2 and the decision made on protecting the information shall be registered **and published, clarifying that it is under the exception***”. This register should be complete, easily accessible, and up to date, with respect to cases in which the harm test was applied. The register should provide inputs when identifying lessons learned and evaluations in the annual reports on the implementation of the policy.

4.4. Redaction and public versions. We recommend defining minimum rules for the procedure of information to be redacted in the body of the Policy and not leaving everything related to the rules for its application in the Implementation Guidelines, taking into account that what is related to redaction and public versions can become a double-edged tool. Although this mechanism makes it possible to avoid the complete denial of information, failure to establish clear rules on the procedures for its application can give rise to excessively redacted documents that do not present any relevant and usable information.

5. Positive Override

5.1. For the Positive override to have an effective application, we recommend that the criteria for the application of the harm test be established in the previous section.

5.2. The Access to Information Committee will play a key role in the application of positive override. We recommend defining minimum criteria to be applied by the Access Committee to determine the application of positive override. We also recommend that the External Panel may also review the application of positive override in the event that a request is made in this regard.

6. Classification and Declassification of Information

6.1. Classification and Declassification.

6.2. Simultaneous disclosure and routine disclosure. We recommend adjusting the wording to avoid ambiguous and imprecise language, as follows (see bold): “*Within the information classified as public, the **Bank will disclose certain information** at the time of its distribution to the Board of Executive Directors*”. Regarding the second part of this point, “*which will be considered “Public” information for “simultaneous disclosure,” and it will also make all routinely disclosed information available to the public in a timely, proactive manner*”, we recommend clarifying in a footnote what public information will be disclosed simultaneously and what information will be disclosed routinely. It is also not clear what is meant by “timely information” and what are the implications of classifying information as timely. **We recommend clarifying in the glossary what timely information means for the Bank.** It is also important to specify in the Implementation Guidelines where and how this information will be disclosed and to clarify where to find and reach this information.

6.3. Confidential information to be disclosed over time. We recommend defining the criteria to establish that information is eligible for declassification for future disclosure, whether at 1, 5, 10, and 20 years, and specifying based on which criteria the number of years in which the information will be declassified is defined. Otherwise this decision is subject to discretion. If it is planned to define these aspects in the Implementation Guidelines, this should be made explicit in the Policy.

7. Information Request Mechanism

7.1. It is positive that the draft AIP specifies the procedure with requirements on the mechanism for requesting information. However, a limited approach is proposed regarding the way of providing information, especially in relation to current times and technological advances. There are no mentions of open data, information portals, among others. The AIP should include at least commitments in this area and, in any case, when relevant, go into depth in the Implementation Guidelines.

- a) **Where to access the information.** We recommend clarifying that the main source of access to the Bank's information, although not the only one, is the institutional website, since technically all the information can be requested through an information request. Likewise, the right of access to information implies that it is made available to the public through a multiplicity of channels and formats. It should be considered that access to Information and Communication Technologies (ICTs) is neither universal nor uniform.
- b) **How to submit an information request.**
 1. We recommend that it be clarified with which areas, positions, and officials of the Bank the data that applicants include in the virtual access to information request form is shared. Also, regarding the point "*Requesters are not required to provide reasons supporting their information request*", we recommend that the form to be completed to request the information leaves open the option to omit these details, as well as the requester's email.
 2. It is key to specify how the contact channels established in this point can be accessed, beyond simply mentioning that requests for information can be made in person, by telephone, or online at the Bank's offices. If it is intended to address these procedures in the Implementation Guidelines, we recommend clarifying in the AIP that the Guidelines will provide precise details on each of the existing channels for making requests for information. In addition, it should be guaranteed that these alternatives for making requests for information are effective, since experience indicates that it is almost impossible to obtain in-person or telephone service at Bank offices. For example, the Bank could consider a centralized hotline. Likewise, in the event that the request can be made in person, clarify where to do it and provide information on the addresses, days, and hours of operation. In case of a telephone request, clarify numbers, days, hours, and available languages.

3. We recommend changing the expression “*the Bank will **facilitate** access to persons with disabilities*” for “*the Bank will **guarantee** access to persons with disabilities*” (see bold). We recommend adding that the mechanisms that will be defined in the Implementation Guidelines to guarantee access must apply to everyone, including people with visual, hearing, intellectual, psychosocial disabilities, etc., and they must be in accessible formats and simple language.
- c) **Confidentiality of the identity of parties requesting information.** We recommend modifying this point to make it possible to make anonymous requests for information, in particular, with the aim of protecting the identity of information requesters who are at high risk of reprisals in the framework of a project that the Bank plans to finance or that is being financed. There is no justification for the Bank not accepting anonymous requests, considering that this is information of public interest and that the requirement to identify oneself will tend to discourage and/or limit many requests. We also recommend clarifying that for cases in which the request for information is not anonymous, the confidentiality of the data of requesters be ensured. In this sense, the Bank should guarantee the existence of effective data protection mechanisms and guarantees of identity protection of requesters.
- d) **Languages.** Regarding the point “*The information requested will be provided in the language in which it is available*”, we recommend modifying and clarifying that a basic criterion to guarantee effective access and usability of information is that the requested information be shared in the official language of the country in which the project is carried out or will be carried out. Regarding the point, “*in cases of requests related to projects whose environmental and social impact classification is category A or B, pursuant to the Environmental and Social Policy Framework, such requests **may** be answered in the relevant local language, in an accessible and culturally appropriate manner*”, we recommend avoiding the conditional and reaffirm the Bank's explicit commitment to offer effective access to information to whoever requests it. In this sense, we recommend modifying this paragraph with the following: “*in cases of requests related to projects whose environmental and social impact classification is category A or B, pursuant to the Environmental and Social Policy Framework, such requests **will be** answered in the relevant local language, in an accessible and culturally appropriate manner*”. Likewise, what the Bank refers to as the “pertinent” local language should be defined. In many countries in the region, there is more than one local language.
- e) **Response times.**

The AIP should require that requests for access to information be answered as soon as possible, that is, even before the established mandatory deadline.

Regarding points 2 and 3, we have the following recommendations:

2. “*The IDB will provide the response within 30 calendar days.*” We recommend that the

IDB reduce the term to respond to standard information requests, in line with best international practices. The IDB should have the capacity to manage these requests in shorter terms. For example, 20 days is what is established in the OAS Model Law. It should also be clear that this term is counted from the receipt of the request for information by the Bank (i.e. not from the acknowledgment of receipt).

3. “The IDB will respond within 45 calendar days to requests for historical information.”

We recommend that the IDB reduce the term to respond to requests for historical information since 45 days is much longer than the term considered international best practice. A 30-day timeframe is suggested, with the option of an extension for more complex requests. Different deadlines can be established according to the complexity of the request. That is, establish *ex ante* deadlines according to the complexity or type of information requested.

Regarding the point, “*if additional time is required to respond, due to the scope or complexity of the request received, the IDB will communicate in writing with the requesting party, informing them of the delay and indicating the estimated time required to provide a response*”, we recommend setting a maximum limit or deadline for extensions, giving notification of this extension before the original deadline expires and information on the justification for the extension. Clear limits to extensions are essential to avoid scenarios where information ends up being denied due to delayed response times.

- f) **Responses to information requests.** This point is confusing, so we recommend adjusting the wording by including the text that is added in bold: “*in cases where the Bank receives requests for information that may be subject to protection, **subject to the exceptions in section 4.1 of this Policy**, for purposes of providing a response, the criteria for the harm test established in Section 4.2 of this Policy shall be applied*”. We also suggest eliminating the mention of the Implementation Guidelines, since in section 4.2 of the AIP we recommend defining clear criteria as well as the procedure for applying the harm test.
- g) **We recommend adding this additional point g) in section 7.1. “Justification for the denial of information.** *In cases where access to information is denied, the IDB will provide a response substantiating its decision, detailing the reasons that justify the application of the exception or exceptions, and describing how the harm test criterion was applied.*”
- h) **We recommend adding this additional point h) in section 7.1. “Public portal with information on requests.** All requests for information received and their respective responses will be recorded and published on a public web portal that the Bank will develop and open for this purpose.” Said portal should have specific search tools, filters by class, project, and subject matter, among others, as well as being available in different languages.
- i) **We recommend adding this additional point i) in section 7.1. “Requests for**

information do not have any monetary cost for the requester”. We recommend adding this point in section 7.1 to clarify that filing an access to information request is free.

8. Review Mechanism

8.1. The review mechanism should ensure an efficient, simple, understandable, short, and effective process for the requester. In this regard, the procedure for the effective use of the review mechanism should be clear (clearly stating the deadlines for the review process, maximum terms for the extension of these limits, providing written responses accompanied by a justification, etc.). Furthermore, the possibility of appealing to the Access Committee should not be limited to cases where requests have been denied. We recommend that the possibility of appeal be extended to cover all grievances or problems related to correct implementation of the Policy. **The same recommendation applies to the External Panel.**

- a) **Phase one.** Regarding the point *“The rules and procedures governing the review of denial or restriction of information of the Board of Governors and Board of Executive Directors will be established in guidelines approved by the Board of Executive Directors”*, we recommend that the AIP define the rules and procedures related to the review of denial or restriction of information from the Board of Governors and Board of Executive Directors. This item should be regulated by the Policy; otherwise this provision could function as a blank check.
- a) **Phase two.** Regarding the point *“In the event that the Access to Information Committee confirms the denial of the access to information request, the requesting party may request that this denial be reviewed by the External Review Panel established in Section 9.4 of this Policy”*, we recommend that there be the possibility for the requesting party to go directly to the External Review Panel (without first going through the Access Committee). We also recommend that External Panel decisions, like those of the Access Committee, be made in writing and accompanied by justification. We also suggest that the IDB develop a platform where the responses generated by the Access Committee and the External Review Panel are published, safeguarding the identity of requesters in cases where the requester requires it (this point may be developed in Implementation Guidelines). In addition, the External Panel is urged to have a more proactive role, not just a reactive one, with powers not only to review cases of denial of information but also to review other issues that will guarantee an implementation of the AIP in line with the principle of maximum access and proactive disclosure, for example, reviewing redacted documents, the proper use of the positive dispensation, among others.

8.2. Regarding the point *“The Access to Information Committee or External Review Panel, as applicable, will make its decision within 30 calendar days following the notification of receipt of the applicable review request”*, we recommend reducing the deadlines and aligning them with international best practices in the field, such as the Inter-American Model Law 2.0. on Access to Public Information, which in Article 22 establishes a response period of twenty (20) business days.

When adding up all the timelines of the process (provision, denial, appeal, among others), obtaining the requested information can take several months, which undermines the right of access to information. The Bank should also issue an automatic certificate that a request has been received, providing a copy of the form for the requester's record. It should be made clear in the AIP that the response of the Access Committee or External Panel must be in writing, accompanied by a justification or reason for the decision. In the event that the response comes from the Access Committee, clear instructions on how to appeal the decision to the External Panel should also be provided or attached.

Likewise, regarding the following point, we recommend establishing maximum response times and clarifying it in line with the following suggestion (see bold): “*When these bodies, as applicable, require additional time due to the scope or complexity of the review request received, they will serve written notice to the requesting party to inform them of the delay and indicate the estimated time required to issue a decision. **However, this cannot extend beyond the maximum period of 15 days***”.

9. Governance

The incorporation of this new section that offers a more solid and robust institutional structure for the correct implementation of the AIP is celebrated. However, this institutional structure also requires that the necessary financial and human resources be prioritized in order to guarantee an effective implementation of the AIP.

9.2. Access to Information Office (ATI). It is welcomed that the Access to Information Office is recognized as a technical unit responsible for coordinating the implementation of the AIP. However, in order to effectively fulfill these roles and responsibilities, we recommend that the IDB guarantee the financial resources necessary to effectively carry out its functions. Also, we recommend clarifying more precisely that the ATI will have a clear and active role in: a) follow-up and management of requests by keeping a public record of all requests for information and their responses; b) monitoring and supervision of correct implementation of the AIP by different vice-presidencies, departments, and units of the Bank; c) communication and support to information requesters; d) development of internal and external training.

The current composition of the ATI and the current resources are clearly insufficient for the level of responsibilities and demands that the new AIP will require.

9.4. External Review Panel. We recommend that the IDB ensure that the selection of independent experts does not depend on the administration (the AIP article establishes that they will be appointed by the Board of Executive Directors at the proposal of the Bank President). We believe

that the only way for the IDB to guarantee that these experts are effectively independent from the administration to fulfill their role and are prepared to provide technical opinions on the issues that concern them, is that the process of selecting the members of the Panel depends on the Board and is not left in the hands of the presidency. Also, the selection process of Panel members should be a transparent process where interested parties and civil society can be invited by the Board to give their opinion on the background of applicants. Along the same lines, we recommend that people who make up the Panel should show evidence of a long history in defense of the right of access to information. We also suggest expanding the Panel's powers in order to be able to review and address other AIP implementation issues. The following wording is suggested for this point (see bold): *“The Panel is independent of Management and will comprise three members **approved by the Board of Executive Directors. The three members should be independent experts with a background and track record in defending the right of access to information and the ability to provide technical opinions regarding requests for review submitted by the public and regarding the application of the AIP**”*. Likewise, we recommend that robust procedures be established to protect Panel members from being arbitrarily removed before the end of their term.

10. Information Related to the Activities of the Independent Offices of the Bank.

10.3. Resolution of discrepancies regarding classification. In line with what was stated in point 9.4 regarding the formation of the Panel and requirements for the selection process of its members, we recommend that the AIP ensures that the Expert Review Panel is truly independent from the administration so that they can fulfill their role effectively. We recommend that the members of the Panel are not proposed by the President of the Bank to the Board of Executive Directors, but rather that they be selected directly by the IDB Board of Executive Directors. It is even suggested that it be added that, during the selection process, the Board may seek opinions from civil society and other interested parties if deemed necessary. In addition, to play an effective role in resolving classification discrepancies, Panel members should be qualified and prepared to provide technical opinions on the matter.

11. Implementation Guidelines.

11.1. The Implementation Guidelines accompanying the proposed AIP are encouraged to be submitted for public consultation through a meaningful participatory process with civil society. In the [consultation plan](#) prepared by the IDB, there is no mention of whether the Implementation Guidelines will be subject to consultation with civil society and stakeholders in general. Although the Implementation Guidelines are not approved by the Bank's Board of Executive Directors, we consider it vital that they be subject to consultation with civil society and stakeholders in general since, in addition to constituting a good international practice, it has been identified that the Implementation Guidelines will define many criteria that will be key to the effective

implementation of the AIP. In this regard, the following modification should be included at the end of paragraph 11.1 (see bold): “*these Guidelines will be approved by the Access to Information Committee and subject to prior consultation with the Board of Executive Directors, **with the participation of civil society and other stakeholders through a meaningful consultation process***”.

At the same time, it is a matter of concern that some criteria and parameters that would make the AIP effective are left to be addressed in the Implementation Guidelines. For example, the rules and procedures guidelines on i) harm test, ii) positive override, and iii) the Review Mechanism. In this way, the effectiveness and strength of the AIP will depend to a large extent on the Implementation Guidelines, compliance with which is not mandatory, as it is with the AIP itself. Guidelines are not required to supplement the policy; therefore, we urge that at least the rules and procedures referring to these three points be defined in the AIP and not in the Guidelines.

12. Policy Review

12.1. “*Each year, the Access to Information Office will prepare and send to the Board of Executive Directors a report on the status of the Policy’s implementation, which will be made public.*” Regarding this point, we recommend specifying in the Implementation Guidelines the specific information that this report should contain. For example: number of requests received, disaggregated by country; response times, number of denials, number of requests for review, rate of compliance with active transparency obligations, panel decisions, etc. Likewise, we suggest that the preparation of this report be carried out based on exchanges and feedback from civil society and different stakeholders, including communities affected by IDB projects, who can report on their experience in accessing and requesting information.

12.2. We recommend adding one more point in this section on the development of indicators, in line with the recommendation of the 2013 OVE evaluation. Identify transparency indicators and implement a system to track levels of transparency over time. This is necessary to ensure that the implementation of the policy is effectively increasing the disclosure and accessibility of information produced by the Bank.

ANNEX I ENVIRONMENTAL AND SOCIAL INFORMATION

In the annex, we recommend clarifying the following point: “*in accordance with the Environmental and Social Policy Framework, the Bank will disclose documentation relating to the environmental and social risks and impacts and the management of all projects classified in categories A and B prior to the analysis mission to be conducted during project preparation*”, that it is an obligation of active transparency. We also recommend clarifying in what time frames and by what means each type of document will be published.

We recommend that the IDB also add documents such as the Operational Manual to the standard

disclosure package for each project, providing project stakeholders with more detailed information on project location and implementation plans, so that communities can monitor project implementation and demand that implementers meet their commitments.