

May 12, 2010

Board of Directors  
Interamerican Development Bank  
1300 New York Avenue, NW  
Washington, DC 20577  
United States of America

**Re: Review of the Inter-American Bank’s Information Disclosure Policy**

We, the undersigned organizations and individuals, welcome the review currently being conducted by the Inter-American Bank of its Information Disclosure Policy and the Bank’s commitment to improved transparency. We especially welcome the Governors Assembly mandate given at the last Annual Meeting in Cancun “*to implement a new disclosure policy that meets the highest standards applied by other Multilateral Financial institutions*”<sup>1</sup>

We applaud the general commitment to transparency and accountability and we recognise a number of important advances in the Bank’s proposals. The Bank is stating in a more clear way that all Bank information should be available to the public unless it falls within the scope of the regime of exceptions. Other positive commitments include:

- Assuring the possibility of voluntary disclosure within the Board of Directors (Access to Information Background paper)
- Providing simultaneous disclosure of certain Board documents at the time of distribution to Board of Executive Directors (Section 5.1)
- Establishing an independent appeals body (Section 9.1)

Among these positive changes we welcome the provision assuring the possibility of voluntary disclosure within the Board of Directors. This could be a first step in a process of making Multilateral Development Bank’s Boards more accountable. In this sense, we recommend making reference to the “voluntary disclosure of statements of Executive Directors” within the policy itself and not only in the background paper. In addition, the simultaneous disclosure of certain Board documents could be an important tool to broaden the level of stakeholder engagement in development policy discussion.

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<sup>1</sup> Interamerican Development Bank, Cancun Declaration, Background, p.2

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Nevertheless, GTI analysis concludes that while the revised policy will bring greater transparency to the Bank, it still falls well short of the standards set out in the GTI's [Transparency Charter for International Financial Institutions](#). Thus, there are some issues of concern on which this letter will focus:

- Weak presumption of disclosure as the general principle
- An unduly broad system of exception
  - Third party veto
  - Failure to provide for a harm test for all exceptions
  - Presence of a “negative” override
  - Need for public guideline for exceptions ruling
- Unacceptable transparency standards for Non-Sovereign Guaranteed (NSG) operations
- Lack of clarity in the request procedure
- Lack of proactive dissemination standards
- Limited scope of independent appeals function

It is noteworthy that the review process has been too rushed, with no space for a proper consultation with civil society organization. As a consequence, the draft policy is not reaching the highest standards of other international finance institutions and lacking the details needed to duly comply with the goal of maximizing access to information, as it is stated in section 3.1.

Having presented that general claim, we will now focus on some specific points that need to be addressed in order to improve the draft policy.

### **Weak presumption of disclosure as the general principle**

Although 3.1 states that *“the Bank seeks to maximize access to information that it produces and will therefore disclose any information not contained on a list of exceptions”* this statement is somehow weakened by a previous provision. The scope of the policy is defined in section 1.2 and it states that *“the policy will apply to information produced by the Inter-American Development Bank and to specific information that is in the possession of the Bank, subject to a list of exceptions.”* In order to fully comply with the presumption of disclosure and the principle maximizing access to information (section 2.1) there should be a more clear statement on this regard. In this sense, the word “specific” should not be present of the previous statement. The policy should apply to all the information in possession of the Bank. In addition, there is no need to list specific offices whose information will fall under the policy. As a general policy such a statement only weakens the scope of it.

### **An unduly broad system of exceptions**

The GTI recognises that certain interests need to be protected through exceptions, for example to protect personal information, health and safety. However, it recommends

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nanced and precise harm-based tests to protect legitimate interests such as relations with other States, the commercial interests of third parties, and the free and frank provision of internal advice.

#### Third party veto

Governments and third parties, such as Bank contractors, would be able to veto the release of almost any information they provide to the Bank considering the vagueness of section 4.1.e which refers to *“information provided in confidence; and business/financial information”*. See also Principle 2, in section 2.1, which reflects the same idea. The GTI has consistently argued against a third party veto, which is not an approach that is employed in national right to information laws, and which substantially undermines the principle of access. Instead, we call for harm-based exceptions to protect legitimate third party interests and relations with countries and other intergovernmental organisations. Third parties’ interests should also receive procedural protection in the form of a right to be consulted whenever there is a possibility that information provided by them may be disclosed.

#### Failure to provide for a harm test for all exceptions

In section 2.1, the draft policy states that *“any exceptions to disclosure will be predicated upon the possibility, narrowly and clearly defined, that the potential harm to interests, entities or parties arising from disclosure of information would outweigh the benefits (...)”*. However, many of the substantive provisions on exceptions fail to live up to this standard. As an example, The GTI does not believe that it is legitimate to withhold all information relating to the deliberative process, which is defined very broadly in section 4.1.g of the draft Policy. The task of defining the specific harm to be avoided in this area – such as the free and frank provision of advice or the success of a policy initiative – has been addressed successfully in many right to information laws and this approach should be taken in the Bank’s policy as well. Other exceptions which lack a proper harm test include sections 4.1.c, 4.1.e, 4.1.f and 4.1.j.

#### Presence of a “negative” override

The draft Policy proposes a limited public interest override pursuant to which it would have the discretion, in *“exceptional circumstances”* to either disclose exempt information or to withhold information normally subject to disclosure (Section 8.1). We note that almost no national right to information laws include a power to override the disclosure of otherwise non-exempt information and that this is highly problematical, given the clear opportunity for abuse. In this way, the Access to Information Committee would have the possibility to virtually break down the presumption of disclosure. Furthermore, even the positive public interest override does not apply to information subject to a third party veto, making this exception even more problematical.

#### Need for public guideline for exceptions ruling

Considering the lack of clarity and details on the system of exceptions, the Bank should come up with public guidelines on how to interpret and apply these exceptions in accordance with the goal of maximizing access to information, as it is stated in section 3.1.

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These guidelines should be done in an open, transparent and participatory way which would help to compensate the lack of participation in the current process.

### **Unacceptable transparency standards for Non-Sovereign Guaranteed (NSG) operations**

Information related to non-sovereign guaranteed operations is, under section 4.1.j, established as one of the exceptions of the system. This kind of information has a different system which does not comply with the presumption of disclosure and the principle maximizing access to information (section 2.1). According to section 4.1.j, in order to be publicly disclosed, the NSG information should be listed within the short annex II of the policy and it should be expressly authorized by country governments. As it can be seen, such an approach denaturalizes the policy itself.

Following the Cancun Declaration and consistent with the highest MDB standards, the IADB should adopt a single policy for all Bank operations – including NSG. The IADB should assure full disclosure of the same project cycle documents as with SG operations, including the Environmental and Social Monitoring report (ESMR) prior to Board approval; determination of risk categorization and stakeholder support; supervision reports, project implementation and completion reports. Finally, NSG development outcome reporting should be at the project level.

### **Lack of clarity in the request procedure**

The draft Policy should be much clearer about the manner in which requests for information will be processed. It should state clearly that requests may be made in different forms and in different languages, that requesters do not have to provide reasons for their requests, and that the Bank will provide assistance to requesters as needed. Additional clarity in the policy is also needed regarding the notice to be provided in case of refusals of access, the forms in which information may be accessed, and any fees which may be charged. If these issues are left to be decided during the implementation, this stage should be open and transparent in order to allow civil society participation.

### **Lack of proactive dissemination standards**

The Bank *“seeks to maximize access to any documents and information that it produces and to information in its possession that is not on the list of exceptions”* (section 2.1, Principle 1; see also Principle 3 in the same section) but it does not have provisions regarding proactive dissemination. The World Bank, on the other hand, has a clear statement in para. 30 of its Policy regarding the need to ensure greater dissemination of operational information in order to build closer links between the Bank’s Disclosure Policy and increased participation of beneficiaries. It also refers to the need for *“proactive measures to ensure greater dissemination of operational information (for example, through information kiosks),*

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*particularly to those who are affected by Bank operations.” The IADB should set such a standard considering the importance of making information really accessible to those communities directly affected by Bank’s activities. In addition, provisions related to proactive dissemination should also be connected to translation needs as many communities affected by Bank’s activities do not speak any of the IADB official languages. This situation should be addressed by proactive measures seeking to make information really accessible. These modifications would be in accordance to the GTI Charter principle 3, which states that “International financial institutions should disseminate information which facilitates informed participation in decision-making in a timely fashion, including draft documents, and in a manner that ensures that those affected and interested stakeholders can effectively access and understand it (...).”*

### **Limited scope of independent appeals function**

We welcome the inclusion of a commitment to establish an independent appeals function, which we view as critical to the successful implementation of the policy. At the same time, we note that the policy includes no detail whatsoever as to the composition of this body. At least a general framework for this should be included in the policy. At a minimum, this should be resolved in an open manner through discussions relating to implementation of the policy.

We would like to see the independent appeal body empowered to at least make recommendations, if not necessarily binding decisions, regarding public interest disclosures. It would also be useful to empower the appeal body to make more general recommendations for reform of the policy, where the complaints they receive suggest the need for structural reforms. According to this draft, then, if a requester asserts a public interest in accessing restricted information, only the interdepartmental Access to Information Committee would have jurisdiction, raising independence issues. In addition, there should be clear guidelines to assure the independence of the appeals body, matching the highest standards of other international financial institutions. Finally, the policy should make it clear that the appeals body will set out a clear procedure for the processing of appeals.

We recognize the challenges that arise in drafting an improved Information Disclosure Policy especially taking into account the limited timeframe set up by the Governors Assembly. Considering this fact, it could be understandable that certain details of the policy will be dealt with during the implementation process. If this is the case, the implementation should be an open and transparent process allowing civil society participation. Such a decision would be also in accordance with the highest standards among international finance institutions. The World Bank is currently undergoing an open implementation process with a formal monitoring role played by different Civil Society Organizations.



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In addition, and again taking into account the limited timeframe of this process, the formal review of the policy should be conducted relatively soon, such as in two years. This timeframe for review will allow the gathering of data and experience on the application of the policy and will also provide an early stage to improve the policy which was not a consequence of a regular and participatory review process.

To conclude, the GTI calls on the Inter American Development Bank to revise the draft Policy so that it is better aligned with the standards set out in the GTI Transparency Charter. It is ready to offer any assistance to the Bank to achieve this goal.