

## *Civil Society Participation in the Interamerican Development Bank's Activities and Operations: Enhancing Democratic Accountability?*

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**ABSTRACT**

Non-governmental organizations ('NGOs') and civil society organizations ('CSOs') are increasingly influential players both in Spain and the Latin American and Caribbean countries. Since 1998 NGOs and CSOs have progressively enjoyed easy access to, and better possibilities to affect decision-making processes taking place within the Inter-American Development Bank ('the Bank' or the 'IDB'), including also the most recent decisions of the IDB affecting the relationship between Spain and the Latin American and Caribbean (LAC) countries. Indeed, in particular the increasing intensity of NGO and CSO activities and their involvement in the performances and activities of the Bank and of its governing bodies at different levels and stages show that NGOs and CSOs over the last decade have become essential, though often under-recognized components of the operational structures of the internal governance of the IDB. CSOs may be, and often are, eligible to directly receive financings from the Bank. Starting from a brief introduction of the Bank followed by a set of normative arguments on the key accountability challenges facing the IDB Group, the paper will deal with the issue of NGO and CSO participation in relation to the decision-making process on the IDB Group's financed operations, investment and programmatic lending operations. It will also consider the social and environmental accountability initiatives that derive from the Bank's core aims of achieving poverty eradication and effective and sustainable development. In doing so, approaching the topic from an international legal perspective, the paper will first explore the broad and inclusive definition of what constitutes a 'civil society organization' for the IDB and its affiliated organizations. Secondly, and in more detail, it will consider the "Strategy for Promoting Citizen Participation in Bank Activities" as approved by the IDB Board of Directors in 2004 in order to expand, strengthen and systematize citizen and civil society participation in the Bank's activities. Thirdly, the paper will focus on the Guidelines for the functioning of the Civil Society Advisory Councils (the 'Guidelines'). Fourthly, it will describe how NGO and CSO participation is taken into account by the internal instruments of the Bank envisaging citizen and civil society participation in the IDB's financial activities (including the most recent activities to enhance the trade and investment relationship between Spain and LAC countries). Therefore, the key features and characteristics of the Guidelines that are of special significance to NGO and CSO participation in the decision-making process on the IDB's financed operations and in furthering the accountability of the Bank to its constituents – such as the criteria for the establishment and participation of CSOs and NGOs, the notification procedure, the meaning of 'Civil Society Consulting Groups', the methods for consultations at operational level, the possibilities for civil society groups and movements, including Spanish civil society groups and movements, to increase human rights and democratic accountability – will all be, in turn, the subject of specific analyses. Finally, the paper will conclude with some observations on the social and democratic accountability of the IDB to civil society and non-state actors, referring in particular to the experience of the internal accountability mechanism established by the IDB's Board of Governors (the Bank's highest authority) in 1994 – the Independent Investigation Mechanism of the Inter-American Development Bank (the 'Independent Mechanism') – that was established with the aim of "increasing the transparency, accountability, and effectiveness" of the

Bank and recently replaced by the created Independent Consultation and Investigation Mechanism (ICIM) effective on June 30, 2010.

### **Keywords**

Multilateral Development Institutions; Social and Democratic Accountability; Institutions of Global Governance; Spanish General Cooperation Fund (FGE); Civil Society Organizations (CSOs); Non-governmental organizations ('NGOs'); Design and Monitoring of Development Projects; Inter-American Development Bank Group; Public and Development Organizations; Poverty Reduction Strategy Paper (PRSP); NGO-Bank Committee.

### **RÉSUMÉ**

Les organisations non gouvernementales (« ONG ») et les organisations de la société civile (« OSC ») sont des acteurs de plus en plus influents en Espagne et Amérique latine et des Caraïbes (ALC). Depuis 1998, les ONG et OSC ont progressivement bénéficié de meilleures possibilités de facilement accéder et d'influer les processus décisionnels qui ont lieu au sein de la Banque interaméricaine de développement (« la Banque » ou « BID »), y-compris les décisions les plus récentes de l'BID relatives à la relation entre l'Espagne et l'ALC. En particulier, l'intensité croissante des activités des ONG et des OSC et leur participation aux activités de la Banque et de ses organes directeurs, à différents niveaux et stades, montrent comment au cours de la dernière décennie les ONG et les OSC sont devenues indispensables, bien souvent sous-composantes des structures opérationnelles de la gouvernance interne de la BID. Les OSC peuvent recevoir directement, et souvent reçoivent, des financements de la Banque.

Après une brève introduction de la Banque, suivie d'arguments normatifs sur la reddition des comptes clés du Groupe de la BID, le document traitera de la question de la participation des ONG et des OSC au processus de prise de décision du Groupe de la BID en ce qui concerne le financement d'investissements et de prêts programmatiques. Seront également examinées les initiatives de responsabilisation sociale et environnementale dont découlent les objectifs de la Banque relatifs à l'éradication de la pauvreté et le développement efficace et durable. Ce faisant, et du point de vue du droit international, le document explore d'abord la large et inclusive définition d'« organisation de la société civile » adoptée par la BID et ses organisations affiliées. Deuxièmement, et plus en détail, il étudiera la « Stratégie pour la promotion de la participation des citoyens aux activités de la Banque », telle qu'approuvée par le Conseil d'administration de la BID en 2004 afin de développer, de renforcer et de systématiser la participation citoyenne et de la société civile dans les activités de la Banque. Troisièmement, le document met l'accent sur les lignes directrices pour le fonctionnement des conseils consultatifs de la société civile (les « lignes directrices »). Quatrièmement, il décrira comment la participation des ONG et OSC est prise en compte par les instruments internes de la BID. Par conséquent, les fonctionnalités et les caractéristiques des lignes directrices qui sont d'une importance particulière à la participation des ONG et des OSC dans le processus de prise de décision sur les activités financées par la BID et dans la poursuite de la

responsabilité de la Banque envers ses commettants clés seront tous, à leur tour, l'objet d'analyses spécifiques.

Le document se termine par quelques observations sur la responsabilité sociale et démocratique de la BID vers la société civile et les acteurs non étatiques, en se référant en particulier à l'expérience du mécanisme de responsabilisation interne mis en place par le Conseil des gouverneurs de la BID (la plus haute autorité de la Banque) en 1994 – le Mécanisme d'enquête indépendant de la Banque interaméricaine de développement (le « Mécanisme indépendant ») – qui a été créé dans le but « d'accroître la transparence, la responsabilisation et l'efficacité » de la Banque et le Mécanisme d'investigation (MICI) en vigueur le 30 Juin 2010.

### Mots clés

Banque interaméricaine de développement; Espagne; organisations non gouvernementales; responsabilité sociale et démocratique.

### RESUMEN

Las organizaciones no gubernamentales (« ONGs ») y las organizaciones de la sociedad civil (« OSC ») son actores cada vez más influyentes en España y en los países de América Latina y el Caribe. Desde 1998, las « ONGs » y las « OSC » han disfrutado progresivamente de un fácil acceso y mayores posibilidades de influencia en los procesos de toma de decisiones que tienen lugar en el Banco Interamericano de Desarrollo (« el Banco » o el « BID »), incluyendo también las más recientes decisiones del BID que afectan la relación entre España y América Latina y el Caribe (ALC). En efecto, el aumento de la intensidad de las actividades de las ONGs y las OSC y su participación en las actuaciones y actividades del Banco y de sus órganos de gobierno -en los diferentes niveles y etapas- demuestran que se han convertido en actores esenciales en la última década, aunque a menudo no se las ha reconocido como tales en las estructuras operativas de la gestión de gobierno interno del BID. Las OSC pueden ser, y a menudo lo son, elegibles para recibir directamente los financiamientos del Banco. Partiendo de una breve introducción acerca del Banco, seguido por una serie de argumentos normativos vinculados a los principales retos de « accountability » que enfrenta el Grupo del BID, el documento se ocupará de las ONGs y OSC y su participación en el proceso de toma de decisiones vinculadas a las operaciones de financiamiento, inversiones y los préstamos programáticos del Grupo BID. También se tendrán en cuenta las iniciativas de responsabilidad social y ambiental que se derivan de los objetivos fundamentales del Banco para lograr la erradicación de la pobreza y el desarrollo efectivo y sostenible. De este modo, abordando el tema desde una perspectiva jurídica internacional, el documento explorará en primer lugar la definición amplia e inclusiva de lo que constituye una « organización de la sociedad civil » para el BID y sus organizaciones afiliadas. En segundo lugar, y con más detalle, se tendrá en cuenta la « Estrategia para Promover la Participación Ciudadana en Actividades del Banco », tal como fue aprobada por el Directorio del BID en el año 2004, con el fin de ampliar, fortalecer y sistematizar la participación ciudadana y de la sociedad civil. En tercer lugar, el trabajo se centrará en

las Directrices para el funcionamiento de los Consejos Asesores de la Sociedad Civil (las « Directrices »). En cuarto lugar, se describe como está contemplada la participación de las ONGs y OSC en los instrumentos internos del Banco, y la participación de la sociedad civil y los ciudadanos en las actividades financieras del BID (incluidas las actividades más recientes destinadas a mejorar la relación comercial y de inversión entre España y los países de ALC). Consecuentemente, los aspectos principales y características de las directrices que son de especial relevancia para las ONGs y OSC en el proceso de toma de decisiones sobre las operaciones financiadas por el BID y en la promoción de la rendición de cuentas del Banco a sus componentes claves – tales como los criterios para el establecimiento y la participación de las OSC y las ONG, el procedimiento de notificación, el significado de « Grupos Consultivos de la Sociedad Civil », los métodos de consulta a nivel operativo, las posibilidades de los grupos de la sociedad civil y movimientos (entre los que se incluyen la sociedad civil española y sus movimientos) para aumentar los derechos humanos y la responsabilidad democrática – serán a su vez objeto de análisis específico. Finalmente, el documento concluye con algunas observaciones sobre la responsabilidad social y democrática del BID para con la sociedad civil y los actores no estatales, refiriéndose en particular a la experiencia del mecanismo de rendición de cuentas interna, establecida por la Junta de Gobernadores del BID (máxima autoridad del Banco) en 1994 – el Mecanismo de Investigación Independiente del Banco Interamericano de Desarrollo (el “Mecanismo Independiente”) – con el objetivo de “aumentar la transparencia, rendición de cuentas y la eficacia” del Banco que fue recientemente sustituido por el Mecanismo Independiente de Consulta e Investigación (MICI) a partir del día 30 de junio de 2010.

### **Palabras clave**

Instituciones Multilaterales de Desarrollo, Responsabilidad Social y Democrática; Instituciones de Gobernanza Global; Fondo General de Cooperación de España (FGE); Organizaciones de la Sociedad Civil (OSC), Organizaciones No Gubernamentales (ONGs); Diseño y Seguimiento de Proyectos de Desarrollo, Grupo del Banco Interamericano de Desarrollo; Organizaciones Públicas y de Desarrollo; Documentos Estratégicos de Reducción de Pobreza (DERPs), Comité de ONGs del Banco.

## **I. INTRODUCTION**

The Inter-American Development Bank,<sup>1</sup> an international financial institution that is headquartered in Washington but that has recently opened its representation office for Europe in the city of Madrid,<sup>2</sup> was established in 1959 to accelerate economic and

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<sup>1</sup> The Inter-American Development Bank (IDB) was set up by the ‘Agreement Establishing the Inter-American Development Bank’, available at: <[www.iadb.org/leg/Documents/Pdf/Convenio-Eng.Pdf](http://www.iadb.org/leg/Documents/Pdf/Convenio-Eng.Pdf)> (hereinafter ‘IDB Charter’).

<sup>2</sup> See ‘IDB opens its office for Europe in Madrid’, available at: <http://www.iadb.org/en/news/announcements/2012-07-06/idb-opens-its-office-for-europe-in-madrid,10052.html>.

social development in Latin America and the Caribbean.<sup>3</sup> It has only recently sought to involve civil society movements and NGOs in the elaboration and implementation of bank-supported projects and operations.<sup>4</sup> In the last few years, due to NGOs growing relevance and influence in development-related issues in Latin American and Caribbean (LAC) countries, the Bank's interaction with NGOs including Spanish NGOs has gradually started to extend beyond project financing.<sup>5</sup> In particular since 1998, this interaction has grown significantly in the IDB's policy and operational areas, often in projects concerning the environment and social issues. This paper discusses the Bank's interaction with civil society movements and NGOs, especially the legal issues arising from the Bank-NGO cooperation.

The foundation for the Bank's interaction with international governmental institutions is set forth in article XIV, section 2 of the Inter-American Development Bank's Articles of Agreement (Articles of Agreement) which provides that: "The Bank may enter into arrangements with other organizations with respect to the exchange of information or other purposes consistent with this Agreement". Therefore the Bank may cooperate with general international institutions as well as public international organizations and national public entities such as the Spanish Agency for International Development Cooperation<sup>6</sup> which hold specific responsibilities in fields relevant to the Bank's activities

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<sup>3</sup> For information on the history and work of this organization, see F. Adam, *Le financement extérieur pour le développement: le rôle de la Banque interaméricaine de développement*, in *Etudes internationales*, 2005, p. 301 ff; G. Briggs, *El financiamiento multilateral en América Latina – su marco legal: el caso del Banco Interamericano de Desarrollo*, in *Cursos de derecho internacional / Comité Jurídico Interamericano*; prep. por la Subsecretaría de Asuntos Jurídicos, Departamento de Derecho Internacional de la Secretaría general de la Organización de los Estados Americanos, 2003, t. 2, pp. 163–193; J. Broide, *Banco Interamericano de Desarrollo: Sus Antecedentes y Creación*, Washington DC, 1968; E. Carranza, M. Ángel, *El Banco Interamericano de Desarrollo, in Derecho internacional económico y de las inversiones internacionales*, in *Biblioteca de arbitraje del Estudio Mario Castillo Freyre*, Lima: Palestra, 2009, pp. 225–259; D. Cordovez Zeger, *El Banco Interamericano de Desarrollo*, Santiago de Chile: Editorial Universitaria, 1962; G. Monroy, *Inter-American Development Bank*, in *American University International Law Review*, 1998, p. 838 ff; S.S. Dell, *The Inter-American Development Bank: A Study in Development Financing*, New York, 1972, p. 9 ff; D. Tussie, *The Inter-American Development Bank*, London, 1995. See also E.V. Iglesias, *The new Latin America and the Inter-American Development Bank*, in P.F. Diehl (ed.), *The politics of global governance*, Boulder, Colo., [etc.]: Rienner, 1997, pp. 233–242.

<sup>4</sup> See J. Howell, J. Pearce, *Civil Society and Development: A Critical Exploration*, Boulder, Colorado: Lynne Rienner Publishers, 2001, p. 217 ff. See also S. Ahmed, *The Impact of NGOs on International Organizations: Complexities and Considerations*, in *Brooklyn Journal of International Law*, 2011, p. 817 ff.

<sup>5</sup> References in A.L. Domike, *Civil society and social movements: building sustainable democracies in Latin America*, Washington D.C.: Inter American Development Bank, 2008, p. 200 ff.

<sup>6</sup> The Spanish Agency for International Development Cooperation, (AECID) is a public entity within the Ministry of Foreign Affairs and Cooperation, responsible to the Secretary of State for International Cooperation and for Latin America (SECIPI). Under the International Development Cooperation Act 23/1998, of 7 July 1998, AECID is the governing body for Spanish policy on international development cooperation, and its fundamental aim, according to the AECID statutes, is to promote, manage and implement public policies for international development cooperation, with particular emphasis on reducing poverty and achieving sustainable

and call on the Multilateral Investment Fund (MIF)<sup>7</sup> and the Inter-American Investment Corporation (IIC),<sup>8</sup> IDB's sister organizations, to cooperate with public international institutions which supply technical and financial assistance to less-developed areas of the globe, as clearly suggested by its text. The IDB has entered into formal cooperation agreements with the Organization of American States (OAS);<sup>9</sup> however, the Bank has collaborated informally with international NGOs from countries such as Spain and the United States and, more recently, local NGOs and civil society movements.

The Bank's recognition of NGOs' importance to IDB projects, programmes and activities heightened in the early 2000s and resulted in the "Strategy for Promoting Citizen Participation in Bank Activities" (the Strategy), approved by the IDB Board of Directors in 2004.<sup>10</sup> The Strategy's aims – to expand, strengthen and systematize citizen and civil society participation in the Bank's activities and operations – focused on developing new approaches to cooperation between the Bank and NGOs, reviewing the instances in which Bank/NGO cooperation had been successful, and suggesting activities which could prove beneficial to both NGOs and the borrowing member countries of the Bank.<sup>11</sup>

#### A. Evolution of Current Bank-Civil Society Policy

Prior to 2000, Bank staff only occasionally invited NGOs to perform different roles in Bank-supported activities in several of the IDB's borrowing member countries.<sup>12</sup> In 2000 the Bank moved from this ad hoc approach in dealing with NGOs to the organization of specific annual meetings with the civil society organizations of the region to hold a regular dialogue with representatives from civil society organizations and exchange

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*cont.*

human development in developing countries, as defined in each four-yearly AECID Master Plan. Among other activities, the AECID with the Inter-American Development Bank administer the Cooperation Fund for Water and Sanitation (FCAS) that finances projects in drinking water, sewage treatment, storm water drainage, and climate change adaptation. Further information on the activities of the AECID are available at: <http://www.terravivagrants.org/Home/view-grant-makers/government-organizations/spanish-agency-for-international-development-cooperation>.

<sup>7</sup> For the text of the MIF see: [http://wetten.overheid.nl/BWBO001828/geldigheidsdatum\\_30-01-2013](http://wetten.overheid.nl/BWBO001828/geldigheidsdatum_30-01-2013).

<sup>8</sup> Agreement establishing the Inter-American Investment Corporation (IIC), with annex. Drawn up/Signed in Washington November 19, 1984 and entered into force March 23, 1986. TIAS 12087.

<sup>9</sup> The OAS and the IDB signed several other agreements in specific areas which have supplemented cooperation agreements between the OAS, the IDB and the Economic Commission for Latin America and the Caribbean (ECLAS). More information is available at [http://www.oas.org/en/ser/dia/institutional\\_relations/Documents/Cooperation\\_Profile-IADB.doc-o6/22/2011](http://www.oas.org/en/ser/dia/institutional_relations/Documents/Cooperation_Profile-IADB.doc-o6/22/2011).

<sup>10</sup> See 'Promoting Citizen Participation in Bank Activities: Corporate Strategy (2004)', available at: <http://www.iadb.org/en/publications/publication-detail,7101.html?id=16746%20&dcLanguage=en&dcType=All>.

<sup>11</sup> Ibidem.

<sup>12</sup> See Strategic Planning and Operational Policy Department, *Modernization of the State and Strengthening of Civil Society*, Washington D.C: Inter-American Development Bank, 1996, p. 3.



ideas about issues related to the socio-economic development of the LAC region.<sup>13</sup> In so doing the Bank adopted a broad and inclusive definition of what constitutes a civil society organization, so as to encompass inter alia community organizations, community groups, groups of residents directly affected by Bank-financed projects, non-profit organizations and business organizations.<sup>14</sup> No less important than this is that since 2000 the Bank has identified specific roles that NGOs could play in Bank-financed projects and outlined potential benefits and problems.<sup>15</sup>

The benefits arising from the new IDB's approach to NGOs included increased access to the intended beneficiaries of Bank-financed projects.<sup>16</sup> For example, without a regular dialogue with NGOs' representatives on community development projects in Latin America and the Caribbean, the implementation of several community-driven projects sponsored by the Bank in that region probably would have been often confronted by hostile, un-cooperative target groups. Another noted benefit involved access to comments and suggestions from NGOs regarding the Bank's initiatives, in order to improve the Bank's effectiveness in the social and economic development of borrowing countries.<sup>17</sup> But according to the IDB, participation does not mean replacing or reducing the role of the governments of IDB member countries as the primary stakeholders in the Bank and as members of its highest management and decision-making bodies.

Even more importantly than these benefits, the organization of specific annual meetings with the civil society organizations and movements of the region has led to the adoption of the "Strategy for Promoting Citizen Participation in Bank Activities". This presents a corporate strategy for the first time and refers to the procedures by which the Bank incorporates citizen participation into its operational activities by means of: a) the definition of agendas, plans and policies for country development; b) the formulation of sectoral strategies and country strategies; c) project preparation and implementation; d) evaluation of the Bank's activities.<sup>18</sup>

Another significant step in the IDB's policy on collaboration with NGOs occurred after the adoption of the Guidelines for the functioning of the Civil Society Advisory Councils (the 'Guidelines') in 2010.<sup>19</sup> In fact, in the intention of its drafters, the Guidelines

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<sup>13</sup> IDB, *Citizen Participation in the Activities of the Inter-American Development Bank*, Washington D.C.: Inter-American Development Bank, 2000.

<sup>14</sup> See supra n. 10. See also C.H. Waisman, *Civil Society and the Bifurcated State: Mexico in the Latin American Mirror*, in D. Drache (ed.), *Big Picture Realities: Canada and Mexico at the Crossroads*, Waterloo, Ont.: Wilfred Laurier University Press, 2008, p. 270; D.M. Trubek, D.R. Coutinho, M. Schapiro Sr., *Towards a New Law and Development: New State Activism in Brazil and the Challenge for Legal Institutions*, in Univ. of Wisconsin Legal Studies Research Paper No. 1207, 2012.

<sup>15</sup> Ibidem.

<sup>16</sup> See J. Howell, J. Pearce, supra n. 4, p. 217 ff.

<sup>17</sup> See supra n. 12.

<sup>18</sup> See supra n. 10.

<sup>19</sup> IDB Civil Society Advisory Councils, *Guidelines for the functioning of the Civil Society Advisory Councils*, available at: <http://www.iadb.org/en/civil-society/public-consultations/civil-society-consulting-group/civil-society-advisory-councils,5683.html>



shall operate as a reference point to each Bank's Country Office ('COF') with the aim of supplying guidance and support to the institutional relationship that the COFs are currently establishing, or will establish, with various CSOs in their respective countries.<sup>20</sup>

Recent political and historical events have provided additional justification for such Bank-NGO (and CSO) cooperation: NGOs even in the LAC region are often filling gaps left by state and market failures, and increasing pluralism is naturally leading to wider public, and thus NGO, participation.<sup>21</sup> The IDB and its borrowers are gradually learning how NGOs, especially local NGOs in borrowing countries, can give contributions to national development. However, as James Petras pointed out, it is true that: 'NGOs in Latin America emphasize projects, not movements; they "mobilize" people to produce at the margins but not to struggle to control the basic means of production and wealth; they focus on technical financial assistance of projects, not on structural conditions that shape the everyday lives of people'.<sup>22</sup>

## B. Current Bank-Civil Society Relations

The IDB's enlarged interest in civil society participation led to the Bank's approval of the Guidelines for the functioning of the Civil Society Advisory Councils (the 'Guidelines'), as noted earlier, which are intended to provide Bank staff with clear guidance on cooperation with local civil society movements and groups.<sup>23</sup> Drawing from the experience gathered from civil society's participation at different stages of the project cycle in a number of Bank-supported projects, the Guidelines sets forth the procedures to be followed in the Bank's cooperation with Civil Society Consulting Groups (CSOs).

Any interaction with CSOs regarding Bank-supported projects is strongly influenced by the circumstance that the Bank, an international institution, which lends only to, or with the guarantee of, a member government, unavoidably works with governments in its lending operations. Therefore, regardless of the prospective benefits of such involvement, the Bank may work directly with NGOs in a borrowing country only in a way consistent with that government's policies toward the NGOs and with the full awareness of the government concerned. On the other hand, despite this primary relationship with governments, the IDB has established mechanisms to guarantee maximum possible involvement of local and international civil society movements in Bank-supported projects and activities.<sup>24</sup>

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<sup>20</sup> Ibidem.

<sup>21</sup> See G. Casaburi, D. Tussie, *La Sociedad Civil y los Bancos Multilaterales de Desarrollo*, in D. Tussie (ed), *Luces y Sombras de una Nueva Relación*, Buenos Aires: FLACSO, Temas Grupo Editorial, 2000, p. 17.

<sup>22</sup> See J. Petras, *Imperialism and NGOs in Latin America*, available at: <http://www.rebellion.org/hemeroteca/petras/english/ngola170102.htm>.

<sup>23</sup> See *supra* n. 19.

<sup>24</sup> See *infra* paras. II–III.

## II. CSO AND NGO COLLABORATIVE ROLES IN BANK-SUPPORTED ACTIVITIES AND OPERATIONS

The stage at which an NGO becomes involved in a Bank-supported operation or activity depends upon a multiplicity of issues, such as the type of project involved and the relationship between the borrower government and the NGO, and the type of NGO. Under the “Strategy for Promoting Citizen Participation in Bank Activities” NGOs may become involved at all stages of a Bank project, both before and after the project has been approved.<sup>25</sup> These stages, indicated in the Strategy in the same order in which a project proceeds, include such functions as:

- a) consultation processes for projects with environmental and social impacts and those entailing population resettlements;
- b) sector-strategy consultations with key civil society stakeholders (unions, non-governmental organizations, business associations, community organizations, political parties, academic institutions, indigenous communities, interest groups, other civil society organizations;
- c) project design;
- d) project financing;
- e) project implementation (including community auditing, which helps ensure that a project will achieve its goals), and
- f) project supervision and evaluation in particular through the elaboration of indicators to be used as guideposts for an eventual ex post evaluation with citizen participation.

The degree of civil society organizations and NGO involvement in those functions has varied. Notwithstanding the fact that NGO involvement in project implementation remains the most common practice, in recent times there has been a shift towards a greater involvement in co-financing, elaboration and supervision.<sup>26</sup> In fiscal year 2011, NGOs and CSOs were consulted and provided advice on important issues such as the Ninth General Capital Increase (GCI-9), the Climate Change Strategy, the Strategy for Institutions for Growth and Social Welfare, the Operating Policy on Gender Equality in Development, the trade and investment relationship between Spain and LAC countries<sup>27</sup> including the Memorandum of Understanding on cooperation over the next three years between Spain, the EU-LAC Foundation and the IADB<sup>28</sup> and the flow of workers from LAC countries to Spain.<sup>29</sup> NGOs and CSOs also carried out and provided advice on

<sup>25</sup> See *supra* n. 10.

<sup>26</sup> See *infra*. para. II, lett. C), D), E).

<sup>27</sup> See O. Méndez, ‘IDB spurs business bridge Spain – Latin America and Caribbean’, available at: <http://www.microdinero.com/index.php/english/nota/5439/idb-spurs-business-bridge-spain-latin-america-and-caribbean>.

<sup>28</sup> See ‘EU-LAC Foundation signs Agreement with Inter-American Development Bank’, available at: <http://www.eulacfoundation.org/news/eu-lac-foundation-signs-agreement-inter-american-development-bank>.

<sup>29</sup> See ‘Labor Migration’, available at: <http://www.iadb.org/en/topics/labor-and-pensions/idb-and-labor-migration-in-latin-america-and-the-caribbean,2954.html>.

the Private Sector Development Strategy<sup>30</sup> and the Camisea Gas Pipeline project.<sup>31</sup> In addition, the Strategy sets out the main weaknesses and strengths associated with the involvement of civil society representatives in IDB-financed activities and operations.

#### A. Consultations for Projects with Environmental and Social Impacts

Several CSOs and NGOs have been involved in the development of projects proposed for Bank-financing. In particular, they have played a major role assisting governments in the development of country-wide strategies (the frameworks for Bank action in each country) and sector-wide strategies, culminating in the identification of Bank-financed projects. Recent good examples of such country-wide strategies are the Country Strategy with Argentina covering the period 2004–2008,<sup>32</sup> the country strategy with Costa Rica for the period 2006–2010<sup>33</sup> and the country strategy with Nicaragua for the period 2008–2012.<sup>34</sup> This role has been especially notable in the fields of gender equality, culture and the environment.<sup>35</sup> CSOs and NGOs are also particularly well-placed to advise on the preparation of programs aimed at alleviating the adverse effects of structural adjustment programs on the poor and have been instrumental in assisting the IDB group in this area.<sup>36</sup>

#### B. Project Design

As “specific projects may require ad hoc participation approaches, which should be addressed at the early stages of project identification” the IDB has consulted CSO and NGO representatives under normal Bank guidelines and since January 2010 under the new operational guide for the Civil Society Consulting Groups (ConSOC) on pre-investment

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<sup>30</sup> See ‘IDB begins public consultation on new Private Sector Development Strategy’, available at: <http://www.iadb.org/en/news/news-releases/2011-01-21/latin-america-private-sector,9024.html>.

<sup>31</sup> References in R. Montgomery, ‘The IDB and the Camisea Project’, available at: <http://www.iadb.org/idbamerica/index.cfm?thisid=3765>.

<sup>32</sup> See IDB, IDB country strategy for Argentina focuses support on Norte Grande region and greater Buenos Aires area, available at: <http://www.iadb.org/en/news/news-releases/2012-12-12/country-strategy-with-argentina-2012-2015,10261.html>.

<sup>33</sup> See IDB, IDB: country strategy with Costa Rica 2011–2014, available at: <http://www.iadb.org/en/countries/costa-rica/costa-rica-and-the-idb,1068.html>.

<sup>34</sup> See IDB, IDB: country strategy with Nicaragua 2008–2012, available at: <http://www.prevention-web.net/english/professional/publications/v.php?id=8792>.

<sup>35</sup> Gender Action, the World Conservation Union, the World Wildlife Fund, the Civil Society Consulting Groups in Guyana and Jamaica on various occasions have assisted governments in adopting country strategies in tandem with the IDB’s work with governments on preparing national action plans, in the fields of respective competences. NGOs and CSOs have played significant roles in the preparation of national environmental and gender equality plans.

<sup>36</sup> More generally, for a good resume of the disadvantages of preventing participation of civil society movements and NGOs in the activities of international organizations see recently S. Charnovitz, *The Illegitimacy of Preventing NGO Participation*, in *Brooklyn Journal of International Law*, 2011, p. 891 ff. See also K. Tsutsui, C. Whitlinger, A. Lim, *International Human Rights Law and Social Movements: States’ Resistance and Civil Society’s Insistence*, in *Annual Review of Law and Social Science*, 2012, pp. 367–396.

projects, programmes and studies.<sup>37</sup> The Bank benefits in those circumstances from the NGOs' most valuable understanding of local institutional, socio-cultural and technological environments. When the IDB does consult an NGO, the Bank enters into an appropriate formal or informal Bank–civil society liaison arrangement such as the Civil Society Advisory Councils ('CSACs') that operate in some of the Bank's Country Offices, and the NGO works directly to support the Bank's staff and assist the government concerned in the development of the proposed project. When an NGO-affiliated individual works alone on a project, the Bank may employ the individual as a consultant, for instance through an exchange of letters.<sup>38</sup>

One example of NGO collaboration in project design involves a recommendation on pre-investment projects in Guatemala under the Inter-American Development Bank (IDB)-CELADE agreement.<sup>39</sup> The Bank's involvement in the preparation of these projects helped lay the grounds for future investment planning in Guatemala.<sup>40</sup> The Centro Latinoamericano y Caribeño de Demografía (CELADE/CEPAL), a major NGO in Guatemala, participated in this effort.<sup>41</sup>

### C. Project Financing

International NGOs and civil society organizations, such as Conservation International, the Nature Conservancy and the World Wildlife Fund, have co-financed some components of IDB financed projects and activities.<sup>42</sup> The Bank has found, nevertheless, that NGOs, civil society organizations and CSOs more often finance activities complementary to a Bank-financed project. One significant and precedent-setting example of "complementary" financing involving an NGO concerned a debt-for nature swap transaction in Bolivia.<sup>43</sup> In this case, Conservation International arranged a debt-for nature swap transaction with the Government of Bolivia to conserve important biological resources

<sup>37</sup> According to the IDB's official webpage (<http://www.iadb.org/en/civil-society/civil-society-consulting-groups-consocs,7238.html>), the new operational guide for the Civil Society Consulting Groups (ConSOC) approved on January 29, 2010 will promote civil society participation and interaction with the IDB. See also A. Calderón Hoffmann, *Foreign direct investment in Latin America and the Caribbean: an assessment at the start of the new millennium*, in Z. Vodusek (ed.), *Foreign direct investment in Latin America: the role of European investors*, Washington, DC: Inter-American Development Bank, pp. 17–41.

<sup>38</sup> See the operational guide for the Civil Society Consulting Groups (ConSOC), *supra* n. 36, which states that: "Civil Society Advisory Councils (CSACs) in the Bank's Country Offices do not preclude other liaison and coordination arrangements between Country Offices and civil society organizations" (emphasis added).

<sup>39</sup> See GUATEMALA: Redatam and GIS training for IDB pre-investment projects, available at: <http://www.cepal.org/cgi->

<sup>40</sup> *Ibidem*.

<sup>41</sup> Further information on the activities of the CELADE/CEPAL is available at: <http://www.eclac.cl/celade/>.

<sup>42</sup> Information on these activities can be found at the official webpages of these organizations respectively at: <http://www.eclac.cl/celade/default.asp?idioma=IN>.

<sup>43</sup> References are found in C. Kilbane Gockel, L. C. Gray, *Debt-for-Nature Swaps in Action: Two Case Studies in Peru*, *Ecology & Society*, available at: <http://www.ecologyandsociety.org/vol16/iss3/art13/>.

in exchange for the reduction of foreign debt owed by Bolivia.<sup>44</sup> Part of the transaction involved the establishment of an operational fund for the management of the Beni Biosphere Reserve.<sup>45</sup>

In another breakthrough operation, a debt-for-nature swap signed between the Inter American Development Bank and Mexico granted funds from the IDB-supported conservation trust funds established by the Government of Mexico, the IDB and the World Wildlife Fund to finance activities designed to protect threatened tropical forests in Mexico.<sup>46</sup>

NGOs also provided some financing in the Bank's major health sector effort in Brazil, the Maués Integrated Sanitation Program, which involved funding sanitation and water improvements in the municipality of Maués in the Amazon with a loan of \$24.5 million.<sup>47</sup> This program includes financing for drainage and urbanization works for the Maresia, Prata, and Donga lagoons that consist of 33,000 meters of sanitary lines and drainage networks, 14 hectares of green areas, 3.4 km of bicycle lanes, and 900 square meters of multiuse area for fairs and expositions.<sup>48</sup> Unlike earlier programmes, the local government in this case readily agreed to interact with civil society movements and mechanisms for wider civil society support are evolving.

#### **D. Project Enforcement**

Most likely since participation processes have a cost, in terms of time and resource requirements, only a small percentage of IDB-NGO involvement occurs when NGOs act as project implementation entities for borrowing governments. Unsurprisingly, therefore, this has led to some unsatisfactory results, as also demonstrated by some recent activities of the Bank. In Mexico, for example, the IDB has spent more than 100 million dollars on private projects for wind energy, especially in the southern state of Oaxaca, but the energy and financial benefits did not extend to the local communities. This is also due to the lack of involvement of civil society movements and organizations during the implementation stage of the project.<sup>49</sup> According to ten NGOs from Brazil, Chile, Colombia, Ecuador, Mexico, Peru and the United States, priority was not given in that case either to initiatives for local and decentralised development, or to policies and

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<sup>44</sup> Conservation International paid US dollars 100,000 to purchase US dollars 650,000 face value in debt owed by Bolivia to commercial creditors.

<sup>45</sup> See *supra* n. 42.

<sup>46</sup> References are in I. Tomaselli, Brief Study on Funding and Finance for Forestry and Forest-Based Sector, available at: [http://www.un.org/esa/forests/pdf/publications/brief\\_funding\\_tomaselli.pdf](http://www.un.org/esa/forests/pdf/publications/brief_funding_tomaselli.pdf).

<sup>47</sup> The IDB loan has a 25 years term, a grace period of five-and-a-half years, and an interest rate based on the Libor.

<sup>48</sup> Brazil gets \$24.5 million IDB loan for sanitation and water improvements in the municipality of Maués in the Amazon, available at: <http://www.iadb.org/en/news/news-releases/2012-11-22/water-and-sanitation-in-brazil,10227.html>.

<sup>49</sup> See E. Godoy, We Need Sustainable Development Banks, Say NGOs, available at: [http://www.insidecostarica.com/special\\_reports/2010/2010-07/banks\\_development.htm](http://www.insidecostarica.com/special_reports/2010/2010-07/banks_development.htm).

directorates that are participatory and transparent, 'in order to strengthen governance and prevent an increase in social conflicts'.<sup>50</sup>

Another noticeable example of the non-involvement of NGOs in project implementation is the Camisea natural gas pipeline project in the Peruvian Amazon, "arguably the most damaging project in the Amazon Basin".<sup>51</sup> Consequently this has been bitterly criticised by several NGOs on these and other grounds, especially after five ruptures along the pipeline route caused contaminant spills onto the ancestral lands of indigenous peoples and into the pristine rivers and streams through the region.<sup>52</sup>

Furthermore, and significantly, NGOs' representatives were not involved in project implementation even at the end of the IDB's annual meeting in the southeast Mexican resort of Cancún in 2010, where the delegates from the institution's 48 member countries agreed to a general capital increase of 70 billion dollars, greater transparency in the allocation of funds, and a stronger focus on climate change.<sup>53</sup> Consequently, 110 non-governmental organisations from 22 countries of Latin America and the Caribbean firmly objected to that sum, maintaining that the IDB had not justified that amount, had refused to share a draft of its replenishment proposal, and had failed to give responses to recommendations for reforms.<sup>54</sup>

### E. Monitoring and Assessment

With their ability to operate at the 'grass roots' level, civil society organizations and movements may supply ongoing monitoring and evaluation of the Bank-financed activities and projects.<sup>55</sup> Depending upon the specific circumstances, NGOs can do this work alone, together with the government or a government agency, with a project entity, or with the Bank.<sup>56</sup>

There are only a few examples of such NGO monitoring and evaluation, but the IDB expects greater activity in the near future. For instance, NGO consultants have supplied periodic evaluations on behalf of a borrower during technical and management assistance contracts and service delivery. In the Camisea gas project in Peru, 23 major Peruvian civil society movements monitored the implementation (or more precisely, the non-implementation) of the social and environmental protection measures in the

<sup>50</sup> *Ibidem*.

<sup>51</sup> See S. Walden, B. Edwards, Whistleblowers Reveal Inter-American Development Bank (IDB) Covered up Deficiencies in Camisea Gas Project, available at: <http://www.whistleblower.org/blog/31-2010/832-whistleblowers-reveal-inter-american-development-bank-idb-covered-up-deficiencies-in-camisea-gas-project>.

<sup>52</sup> *Ibidem*.

<sup>53</sup> See E. Godoy, LATIN AMERICA: IDB Agrees to Reforms, But NGOs Will Keep Up Pressure, available at: <http://www.ipsnews.net/2010/03/latin-america-idb-agrees-to-reforms-but-ngos-will-keep-up-pressure/>.

<sup>54</sup> *Ibidem*.

<sup>55</sup> See G. Casaburi, M.P. Riggiozzi, M.F. Tuoizzo, D. Tussie, MDBs, Governments and Civil Society: Chiaroscuros in a Triangular Relationship, in *Global Governance*, 2000, pp. 493–517. See also T. Kelley, Wait! That's Not What We Meant by Civil Society!: Questioning the NGO Orthodoxy in West Africa, in *Brooklyn Journal of International Law*, 2011, p. 993 ff.

<sup>56</sup> See J.L. Cohen, A. Arato, *Civil Society and Political Theory*, Cambridge, MA: MIT Press, 1992.

Amazon Basin.<sup>57</sup> Other international NGOs involved in this project, such as *Médécins-sans-Frontières* and *Friends of Earth*, share responsibility for managing the well being of local indigenous people affected by the Camisea Gas Project in Peru.<sup>58</sup>

Local NGOs are also helping monitor and evaluate the anti-corruption, anti-poverty and rural development programs in Bolivia.<sup>59</sup> However, and significantly, in the recently approved IDB credit for renewable energy projects and modernization of the Rio Macho hydropower plant to improve performance and its life span, neither local nor international NGOs played a constructive and effective role in the reform process of the energy sector and to diversify the energy matrix.<sup>60</sup>

In the recently enhanced policy to establish the Independent Consultation and Investigation Mechanism, NGOs serve on a steering committee established to determine the general operation and functioning of the mechanism, namely to help to increase the access for local communities to express their concerns on Bank supported-projects in their countries and monitor their execution, including compliance with the Bank's operational policies during the design and implementation of projects financed by the organization.<sup>61</sup>

### III. CSOS AND NGOS' ROLE IN CARRYING OUT ACTIONS DEMANDED UNDER BANK ACTIVITIES

#### A. Involuntary Resettlement Policy

When Bank-financed operations, in the public or private sector, contemplate involuntary physical displacement of people living in the Latin America and the Caribbean region, Operational Policy OP-710, entitled 'Resettlement', delineates the procedures and policies a prospective borrower should follow.<sup>62</sup> OP-710 states as its core guiding principle that involuntary resettlement must be avoided or minimized where feasible and that all viable alternative projects designs must be reviewed.<sup>63</sup> This implies, for instance, that: 'when displacement is unavoidable, a resettlement plan must be prepared to ensure

<sup>57</sup> See S. Walden, B. Edwards, *supra* n. 50.

<sup>58</sup> *Ibidem*.

<sup>59</sup> See A. Bebbington, *New States, New NGOs? Crises and Transitions among Rural Development NGOs in the Andean Region*, in *World Development*, 1997, pp. 1755–65.

<sup>60</sup> See IDB, IDB approves \$500 million conditional credit line for Costa Rica's power company, available at: <http://www.iadb.org/en/news/news-releases/2007-10-24/idb-approves-500-million-conditional-credit-line-for-costa-ricas-power-company,4103.html>.

<sup>61</sup> The Inter-American Development Bank (IDB) recently adopted a new accountability mechanism under which local communities impacted by an IDB-financed project may request investigation of possible violations for the IDB's safeguard policies including its environmental policy. The newly created Independent Consultation and Investigation Mechanism (ICIM) replaces the IDB's old mechanism and became effective on June 30, 2010.

<sup>62</sup> This Operational Policy (OP-710) was approved by the Board of Executive Directors of the Inter-American Development Bank on July 22, 1998. The full text of OP-710 is available at: <http://www.iadb.org/intal/intalcldi/PE/2010/07171.pdf>.

<sup>63</sup> Art. II.



that the affected people receive fair and adequate compensation and rehabilitation'.<sup>64</sup> The Policy also notes that the experience of NGOs can often be used to guarantee that the interests and needs of local communities to be affected by possible resettlement are expressed and taken into adequate consideration.<sup>65</sup>

Bank consultations with NGOs on resettlement issues proved essential in the Mexico Hydroelectric Project (MHP), which took place in the early 1990s and included two separate dam projects, displacing a total of 3,500 people.<sup>66</sup> With respect to this project, Accountability Counsel, an international NGO based in the US, in cooperation with Mexican and international organizations such as Habitat International Coalition América Latina ('HIC-AL') and Servicios para una Educación Alternativa A.C. ('EDUCA') supplied, amongst other things, fundamental knowledge of local conditions and greatly contributed to the design of a more socio-culturally sensitive resettlement scheme.<sup>67</sup> Accountability Counsel performed a social survey of the communities in Oaxaca, Mexico, assessed relocation potential, and prepared a Final Problem-Solving Report summarizing its perception of the problem-solving process.<sup>68</sup>

## B. Indigenous Peoples Policy and the Strategy for Indigenous Development

In February 2006 the IDB issued the long awaited Operational Policy OP-765, entitled 'Indigenous Peoples', and its complementary Strategy (GN-2387-5) for indigenous development or in other words for a 'development with identity', to provide guidance to the Bank's personnel and to prospective borrowers on issues arising out of bank-financed projects and investments which affect such peoples.<sup>69</sup>

The Bank's stated aims in this Operational Policy are in particular: "a) to give wider visibility for indigenous peoples including ethnic groups and their specificity through for instance systematic and relevant mainstreaming of indigenous issues in national development programs and agendas and in its own operations portfolio; b) to support national governments in elaborating public policies which reflect the recognition of indigenous peoples in accordance with most countries' legal frameworks, that incorporate multi-ethnicity and multiculturalism; c) to promote, in order to fulfil countries'

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<sup>64</sup> Art. III, par. 2.

<sup>65</sup> See e.g. Art V, par. 2.

<sup>66</sup> For a good account of these issues see Jason Stanley, *Financing Matters: Where funding arrangements meet resettlement in three Mexican dam projects*, RSC Working Paper No. 14, October 2003, available at: [http://www.rsc.ox.ac.uk/publications/working-papers-folder\\_contents/RSC-workingpaper14.pdf](http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSC-workingpaper14.pdf).

<sup>67</sup> Information is in the Accountability Counsel's official webpage at: <http://www.accountability-counsel.org/>.

<sup>68</sup> *Ibidem*.

<sup>69</sup> For their texts and a commentary see IDB, *A brief independent guide to the Inter-American Development Bank's New Operational Policy on Indigenous Peoples (OP-765)*. See also J.W. Head, *Protecting and Supporting Indigenous Peoples in Latin America: Evaluating the Recent World Bank and IDB Policy Initiatives*, in *Journal of International Law and Practice*, 2006, p. 383 ff.

development aims including the ‘Millennium Development Goals’;<sup>70</sup> a breakdown of the most common indicators and the enactment of socio-culturally appropriate and specific indicators for ethnic groups and indigenous peoples. Moreover, as it appears from the reference to poverty reduction strategies and assessments, OP-765 aims to ensure that indigenous peoples and ethnic groups receive culturally compatible economic and social benefits.<sup>71</sup> This Operation Policy also explicitly recognizes that the issue of how to approach indigenous peoples and ethnic groups is highly controversial and states that the strategy for addressing the issues concerning indigenous peoples should be based on the informed participation of the indigenous peoples themselves.<sup>72</sup>

With the view of building indigenous issues into IDB programs and projects as well as of guaranteeing such informed participation, OP-765 demands that, before proceeding with a project that may adversely affect indigenous peoples or ethnic groups, a development assessment should be planned in a manner thoroughly consistent with IDB policy.<sup>73</sup> This implies in particular that such an ‘indigenous peoples’ development assessment should be structured around the pivotal concept of ‘development with identity’ and must be based on a systematic and complete evaluation of the options selected by the indigenous peoples to be affected by the implementation of the Bank’s project, program or investment.<sup>74</sup> Recognizing the fundamental role of local and international civil society (but also of public foundations, private enterprises, other indigenous groups, etc.) in ‘materialising’ the options of indigenous peoples, OP-765 provides that the institutions responsible for government engagement with ethnic groups and indigenous peoples must normally involve NGOs any time that this is not only ‘necessary’ but also when this is ‘socio-culturally relevant’.<sup>75</sup> Therefore, each development assessment should have the characteristics that are typical of ‘integrated local development projects’ that: ‘acknowledge the leadership role played by indigenous organizations and communities in project conceptualization, participatory planning, decentralized execution, and local capacity-building’;<sup>76</sup> and local and international civil society must be involved in devising mechanisms which enable local peoples to participate in decision-making. This approach has also been recently endorsed by the Inter-American Court of Human Rights (‘ICtHR’) in the *Sarayaku* case<sup>77</sup> where it was declared that Ecuador had failed to meet its international responsibility in failing to consult the Sarayaku indigenous

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<sup>70</sup> The United Nations Millennium Development Goals are eight goals that all 191 UN member states have agreed to try to achieve by the year 2015. The United Nations Millennium Declaration, signed in September 2000, commits world leaders to combat poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women. The MDGs are derived from this Declaration, and all have specific targets and indicators.

<sup>71</sup> Articles IV.B.4.4.a.i and V.5.3.b).

<sup>72</sup> Art. IV.B.4.4.a.ii and iii)

<sup>73</sup> Art. IV.A.4.2.b).

<sup>74</sup> Art. IV.B.4.4.b).

<sup>75</sup> Art. V.5.3 (a).

<sup>76</sup> Art. IV.B.4.4.a.ii and iii).

<sup>77</sup> *Kichwa Indigenous Community of Sarayaku v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 245, para. 176 (June 27, 2012).

community when it granted oil concessions in the community's ancestral lands.<sup>78</sup> Moreover, once such mechanisms are in place, CSOs and NGOs must be solicited to assist with the supervision and evaluation of the development assessment. As a proper way for the project's management to absorb the preferences of indigenous and ethnic groups beneficiaries, OP-765 encourages supervision by representatives of indigenous peoples and ethnic groups' own organizations.<sup>79</sup>

In some countries of the LAC region, nevertheless, it is not clear whether indigenous peoples or representative CSOs and NGOs may efficiently organize and express their options. For this reason, OP-765 provides for the benefit of these categories of vulnerable individuals: a) a brief assessment of the status of indigenous peoples and ethnic groups (more than 400, with their high ethnic and linguistic diversity) in the Latin American and the Caribbean region; b) a summary of the Bank's experience – the long-term objectives, principles, requirements, conditions, and rules for Bank activities *vis-à-vis* indigenous peoples in general.<sup>80</sup>

To sum up, OP-765 and its complementary Strategy for the very first time explicitly provides local and international civil society with a concrete role in dealing with the prospective borrower on projects of relevance to ethnic groups and indigenous peoples.

### C. Environmental Assessment Policy

In the early 1990s, during the latter part of Mr. Iglesias's presidency, the IDB started a substantial revision of its outdated, 452-word Environment policy, which had served as the standing policy on this fundamental issue since its adoption in 1979.<sup>81</sup> In so doing the Bank made a significant step toward the incorporation of environmental considerations into Bank-financed development projects, but it addressed the issue mainly on an informal basis until the early 2000s.<sup>82</sup> In March 2004, however, the IDB Executive Directors approved and disclosed an advanced profile of a revised environment and safeguards compliance policy for comment, and one month later the IDB announced a plan for consultation with civil society movements on the advanced profile of the policy.<sup>83</sup> After successful consultation periods on the environment policy, the IDB decided to withhold the draft version of the Environment and Safeguards Compliance Policy (ESCP) that was submitted to the IDB's Policy and Evaluation Committee, despite promises from the IDB Board and Management that this would be shared with NGOs.<sup>84</sup> This absence of transparency ultimately negatively affected the whole consultation process, since it was impossible for civil society organizations (CSOs) to know if their observations and

<sup>78</sup> For a commentary see L. Brunner, K. Quintana, The Duty to Consult in the Inter-American System: Legal Standards after Sarayaku, in ASIL Insights, vol. 16 (35), available at: <http://www.asil.org/insights121128.cfm>.

<sup>79</sup> Art. IV.B.4.4.a.ii and iii).

<sup>80</sup> Art. IV.B.4.4.a. ii, iii) and g).

<sup>81</sup> Information on this policy is available at: <http://www.bicusa.org/en/Article.2448.aspx>.

<sup>82</sup> Ibidem.

<sup>83</sup> See IDB GROUP NEWS, IDB approves new environmental policy, available at: <http://www.iadb.org/idbamerica/index.cfm?thisid=3873>.

<sup>84</sup> Ibidem.

suggestions had been included in the new draft.<sup>85</sup> Eventually, in late October 2005, the IDB Executive Director for Argentina supplied CSOs with a copy of the draft Environment policy.<sup>86</sup> In compliance with the Bank's Environment Strategy (GN-2208-4),<sup>87</sup> approved by the Board in July of 2003, which identifies key principles and priority actions to improve the effectiveness of internal Bank activities and procedures, a new Environment and Safeguards Compliance Policy strengthening the Bank's commitment with environmental sustainability in the region was finally adopted in 2006.<sup>88</sup> This policy applies both to the IDB and the MIF, and includes financial and non-financial products; public sector and private sector operations; environmental aspects of the Bank's project procurement practices and management of its own facilities.<sup>89</sup>

The Policy expressly recognizes the role of local NGOs and CSOs, providing for consultation with affected groups and local NGOs and CSOs to have their views fully taken into account in project design and implementation, especially during the preparation of an Environmental Assessment (EA).<sup>90</sup> The Policy encourages that such consultations take place once a draft environmental assessment report (alias a country-level environmental analysis) has been elaborated.<sup>91</sup> However, the Policy does not provide a checklist on community involvement to guide IDB staff in identifying and interviewing community representatives, NGOs and experts.

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<sup>85</sup> See *supra* n. 80.

<sup>86</sup> *Ibidem*.

<sup>87</sup> The Bank's Environment Strategy (GN-2208-4) is a guiding instrument whose fundamental objective is to attain greater effectiveness in the support that the Bank offers each of the borrower countries of Latin America and the Caribbean to achieve their sustainable development goals. The strategy sets forth guiding principles and general priority areas of action that the Bank would promote, on a cross cutting basis, in the context of the pipeline of operations agreed with each borrowing country. More information is available at: <http://www.iadb.org/en/publications/publications,4126.html?doctype=&docTypeID=AllPublic&searchLang=&keyword=Integration%20%26%20Trade%20%3A%3A%20Globalization%20%26%20Regionalization&selectList=All&topicDetail=1&tagDetail=0&jelcodeDetail=0&publicationCover=0&topic=Integration%20%26%20Trade%20%3A%3A%20Globalization%20%26%20Regionalization%3BCOSO&page=7>.

<sup>88</sup> See IDB, IDB approves new environment and safeguards compliance policy, available at: <http://www.iadb.org/en/news/news-releases/2006-01-9/idb-approves-new-environment-and-safeguards-compliance-policy,2643.html>. See also R. Bowen, Walking the Talk: the Effectiveness of Environmental Commitments Made by Multilateral Development Banks, in *The Georgetown International Environmental Law Review*, 2010, p. 731 ff.

<sup>89</sup> *Ibidem*.

<sup>90</sup> *Ibidem*.

<sup>91</sup> In particular this Policy provides that:

'Country-level environmental analysis should be strategic in nature and focused on targeted sectors or areas that are likely to be highly relevant in the overall Bank's engagement with the country. In this context, this analytical work will consider relevant aspects such as: (i) the identification and analysis of environmental priority issues and opportunities across sectors, including their links to social and economic drivers, and poverty reduction objectives, as well as their regional and global implications; (ii) the state of environmental governance (e.g., level of institutional development, civil society participation, etc.' ("Supporting Environmental and Natural Resources Management Operations", para. A. 2, p. 6).

#### D. Disaster Risk Management Policy

NGOs can make a difference in disaster risk management ('DRM') efforts through participation and empowerment in the planning, decision-making and implementation processes.<sup>92</sup> Fully aware of this, the Bank envisions similar collaboration between NGOs and other project participants in the management of disaster risks.<sup>93</sup> As a result, the operational policy for disaster risk management adopted on February 2007<sup>94</sup> to replace OP-704 on 'Natural and Unexpected Disasters' provides that Bank staff must consult with NGOs as appropriate, bearing in mind the capacity of NGOs of managing "risks related to natural hazards at the regional, national and local levels and for the successful achievement of this policy's objectives".<sup>95</sup>

#### E. Gender Equality

In November 2010 the Bank issued a new operational policy, to provide guidance to the IDB's staff and to prospective borrowers on gender issues across development sectors and throughout the elaboration, enforcement, supervision and assessment of IDB-financed activities and operations.<sup>96</sup> More specifically, the new policy expressly seeks to enhance projects that define gender equality or women's empowerment as their main goal.<sup>97</sup> A noteworthy example of such an operation currently in execution is a project with MiBanco in Peru where the IDB is lending \$10,000,000 to widen access to financial services for women and micro entrepreneurs.<sup>98</sup> Even more significantly here: "the Bank will seek the equitable participation of women and men, as well as the participation of civil society organizations" as requested by this policy in para. 16. Furthermore, the policy also provides that: "In project-related consultations, the Bank will seek the inclusion of the women and men affected in a gender-sensitive and socio-culturally appropriate manner".<sup>99</sup>

In order to ensure such informed participation, the policy demands that, before proceeding with a project which can affect the right to equality between women and men, as well as the specific rights of women, as established in the national legislation of the regional member countries and in applicable international treaties, a development plan

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<sup>92</sup> See K. Chandra Samal, *State, NGOs and disaster management*, Bangalore: Rawat Publications, 2005; D.P. Coppola, *Introduction to International Disaster Management*, Amsterdam: Elsevier, p. 488 ff. See also R. Lester, *The World Bank and natural catastrophe funding. The Changing Risk Landscape: Implications for Insurance Risk Management*, Proceedings of a Conference sponsored by Aon Group Australia Ltd, Sydney, Australia, 1999.

<sup>93</sup> See P.K. Freeman, L.K. Martin, R. Mechler, K. Warner, P. Hausmann, *Catastrophes and Development. Integrating Natural Catastrophes into Development Planning*, Washington DC, 2002.

<sup>94</sup> Information is available at: <http://www.iadb.org/en/topics/natural-disasters/disaster-risk-indicators/disaster-risk-indicators,1456.html>.

<sup>95</sup> *Ibidem*.

<sup>96</sup> IDB, *Operational Policy On Gender Equality In Development*, 3 November 2010.

<sup>97</sup> Art. IV, para. 1.

<sup>98</sup> Information is available at: <http://www.iadb.org/en/news/news-releases/2010-08-06/peru-mibanco-to-boost-credit-for-women-microentrepreneurs-idb,7613.html>.

<sup>99</sup> Art. IV.

should be elaborated in a manner consistent with Bank policy.<sup>100</sup> This gender equality development plan should be based on: “affirmative actions specifically targeted to women or men with the goal of closing existing gender gaps, meeting specific gender-based needs of either group, or ensuring the participation of either group in consultations will not constitute discrimination or exclusion”.<sup>101</sup> Recognizing the key – though by no means exclusive – role of civil society movements and organizations in assessing operations’ potential adverse impacts on gender equality, the policy provides that the institutions responsible for boosting the analysis and mainstreaming of gender in policies and programs should normally involve civil society organizations and movements with expertise in gender issues.<sup>102</sup> Therefore, NGOs and civil society movements must be involved in devising mechanisms which enable the equitable participation of women and men in decision-making. Moreover, once such mechanisms are in place, civil society movements must be invited to assist with the monitoring and evaluation of the development plan. As an efficient way for the project’s management to absorb gender perspectives into development plans and poverty reduction plans, the IDB encourages monitoring by representatives of NGOs and civil society movements involved in gender issues.

In conclusion, the new operational policy for the first time expressly provides civil society organizations and NGOs with a concrete role in dealing with the prospective borrower on projects involving gender issues.

#### **IV. CONSULTATION WITH CSOS AND NGOS ON BANK POLICIES AND STRATEGIES**

In a critical development, CSOs and NGOs have only very recently started to become directly involved in the drafting of the IDB policies, directives and strategies of special interest.<sup>103</sup> Indeed prior to 2004 the IDB issued policies and directives to be used almost exclusively by IDB staff and other specifically authorized persons and not to be disclosed, quoted, or cited at least in principle outside of the Bank.<sup>104</sup> In 2004 the Bank’s Board of Executive Directors adopted the Strategy for Promoting Citizen Participation in Bank Activities, including the drafting of operational policies and Bank’s strategies, with the view of turning the IDB from a relatively closed institution into an institution accountable and open to civil society.<sup>105</sup> At the same time, Bank management under the strong pressure of the representatives of several NGOs and CSOs such as Amazon Watch, the Centro de Derechos Humanos y Medio Ambiente and Oxfam America decided that although the IDB intended the operational policies and directives primarily for use within the Bank, these policies and directives could be shared with member countries, specialized OAS agencies, and other multilateral public development institutions and

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<sup>100</sup> Art. V.

<sup>101</sup> Art. IV, para. 18.

<sup>102</sup> Art. IV, para. 13.

<sup>103</sup> See also A. Vianna Jr., *Civil Society Participation in World Bank and Inter-American Development Bank Programs: The Case of Brazil*, in *Global Governance*, 2000, pp. 457–72.

<sup>104</sup> See *supra* n. 10.

<sup>105</sup> *Ibidem*.

interested parties and groups, including the Spanish Agency for International Development Cooperation, (AECID), NGOs and CSOs.<sup>106</sup>

This new transparency has led to Bank debates with local and international NGOs on certain IDB operational policies and strategy issues. Therefore, after the November 2004 issuance of the Operational Policy on Gender Equality in Development, Bank staff held special meetings with CSOs and NGOs to inform those CSOs and NGOs of the IDB's new policies and procedures with respect to gender equality in the Latin American and Caribbean region.<sup>107</sup>

In addition, in March 2011 the Bank departed from its traditional practice and invited CSOs and NGOs to attend a meeting to discuss the IDB's new Climate Change Strategy before its adoption by the Board of Executive Directors.<sup>108</sup> The IDB then incorporated CSOs and NGOs' views into its policy paper. In March 2001, the IDB undertook similar exercises with CSOs and NGOs on draft Bank strategy on Social Policy for Equity and Productivity.<sup>109</sup>

Currently, the IDB invites CSOs and NGOs to several international conferences and meetings the IDB organizes (for instance, the Social Innovation in Human Capital Development Seminar convened in Washington in November 2012 by the Bank);<sup>110</sup> indeed, the IDB and several CSOs and NGOs have jointly sponsored several international meetings.<sup>111</sup>

At the annual meetings of the IDB's Board of Governors, generally held in March or April of each year to review the Bank's operations and make major policy decisions, Governors representing IDB member countries have stressed the role of NGOs in IDB activities and strategies.<sup>112</sup> In addition, the Board of Executive Directors that is responsible for the conduct of the operations of the Bank has specially recognized the fundamental role that NGOs can play, especially in activities relating to the indigenous peoples, involuntary physical displacement of people and disaster risk management.<sup>113</sup>

NGO representatives have gained access to another forum of the IDB Group through their participation in an informal meeting with the Multilateral Investment Fund's management in March 2011, in the context of the discussions on the second MIF replenishment.<sup>114</sup> Although this type of Bank-NGO interaction is not likely to be regular (mainly

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<sup>106</sup> Ibidem.

<sup>107</sup> Information is available at: <http://www.iadb.org/en/civil-society/the-idb-and-civil-society,6160.html>.

<sup>108</sup> Ibidem.

<sup>109</sup> Information is available at: <http://www.iadb.org/en/civil-society/public-consultations/public-consultation-strategy-on-social-policy-for-equity-and-productivity/strategy-on-social-policy-for-equity-and-productivity,1886.html>.

<sup>110</sup> Ibidem.

<sup>111</sup> Some noteworthy examples are the Annual IDB – Civil Society Meetings in Latin American and Caribbean countries, devoted exclusively to dialogue with civil society organizations in the region and in other countries such as the United States and Europe.

<sup>112</sup> Information on this issue is available at the IDB's official webpage at: <http://www.iadb.org/>.

<sup>113</sup> See *supra* para. 3, B.

<sup>114</sup> See F. Seatzu, *The Role of the Multilateral Investment Fund (MIF) in the Promotion of Foreign Private Investments in the Latin American and Caribbean Region*, in A. Tanzi, A. Asteriti (eds.), *International Investment Law in Latin America*, Naples, 2013 (on file with the author).



since these meetings are not scheduled on a regular basis), this initial encounter was an important step in the IDB Group's increasing awareness of the significant contribution that civil society organizations, grass-root movements and CSOs may provide in enhancing the effectiveness of the strategies and projects of the IDB Group.<sup>115</sup> Discussion at this informal meeting focused on issues of appropriate criteria for the evaluation of poverty, governance and social costs of structural adjustments.<sup>116</sup>

## V. SPECIAL ISSUE: DISCLOSURE OF INFORMATION

CSOs and NGOs have an effective interest in access to IDB information regarding specific programmes and projects similar to the CSOs' and NGOs' interest in the IDB's policy-making process. Environmental NGOs in particular have strongly criticized the IDB for limiting the access to information that they contend is of relevance to the public opinion.<sup>117</sup> The NGOs base their criticism on the assertion that the IDB and other public multilateral development organizations which use public funds to lend for public purposes must be transparent and always open to public scrutiny.<sup>118</sup> While this criticism was formulated initially by NGOs in developed countries, analogous complaints have also been expressed by NGOs and CSOs in developing countries. For instance, 110 non-governmental organisations from 22 countries of Latin America and the Caribbean have recently criticised the IDB for not sharing a draft of its replenishment proposal, as well as for failing to provide adequate responses to recommendations for reforms formulated by the representatives of these and other NGOs and CSOs.<sup>119</sup>

As mentioned above, in recent times the IDB has been willing not merely to discuss its policies but to make its internal operational procedures and directives available to interested groups, as well as to NGOs and CSOs.<sup>120</sup> The IDB should guarantee, nevertheless, that it keeps its relationships with borrowing countries at an appropriate level of reciprocal confidence.<sup>121</sup> Moreover, the IDB should continue to receive from borrowing countries the information indispensable to the efficient performance of the IDB's work. IDB policy therefore seeks an appropriate balance concerning disclosure.<sup>122</sup> IDB's

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<sup>115</sup> See more generally on the interaction between civil society movements and multilateral banks' managements during replenishment processes of these institutions S. Babb, *Behind the Development Banks: Washington Politics, World Poverty, and the Wealth of Nations*, Chicago: University Press, 2009.

<sup>116</sup> See F. Seatzu, *supra* n. 113.

<sup>117</sup> See *inter alia*, H.J. Johnson, *Multilateral Development Banks: Public Consultation on Environmental Assessments*, Washington DC, 1998, p. 49 ff.

<sup>118</sup> References are found in K. Menemcioglu, *A Critique of Inter-American Development Bank's Neoliberal Discourse of Exclusion*. Msc Thesis, Reading University (2008).

<sup>119</sup> See E. Godoy, *LATIN AMERICA: NGOs Demand Transparency, Reforms in IDB*, available at: <http://www.globalissues.org/news/2010/03/17/4883>.

<sup>120</sup> But the international financial institutions including also the IDB fared poorly in the "freedom of information" category of the recently issued ratings by Publish What You Fund (<http://www.freedominfo.org/2012/10/ifis-rate-low-on-access-by-publish-what-you-fund/>).

<sup>121</sup> *Ibidem*.

<sup>122</sup> See W. Carrington and H. Jin Lee, *Governance and Accountability at the Regional Development Banks*, in *The University of Iowa Center for International Finance and Development Research Papers*, May 2008.

General Operational Policies encourage governments and the IDB staff to be responsive to CSO and NGO demands for information while keeping these demands of information subject to the limitations in the IDB's new Policy on Access to Information Disclosure for the institution (the 'Access Policy'), which since January 1, 2011 has replaced the Bank's Disclosure of Information policy of 2003.<sup>123</sup>

Re-affirming the Bank's commitment to transparency (or more precisely the Bank's efforts and commitment to adopt the highest standards of transparency in all aspects of its operations and activities), the Access Policy reflects the best practices that IDB clients, principally the countries of the Region that IDB serves, have adopted in recent years, including 'information disclosure', 'borrower disclosure practice' and the 'use and dissemination of information' indicators in assessing results-based budgets, projects and programs.<sup>124</sup> The language of this Policy, in particular the reference to 'a compelling reason not to disclose information, shows the existence of a clear presumption in favour of disclosure, both outside and within the Bank. The same conclusion arises from Principle 3 of the Policy which, after having asserted at the beginning that IDB: 'will employ all practical means to facilitate access to information', declares that the: 'guidelines for maximizing access to information will include clear and cost-effective procedures and timelines for processing requests and will be based on use of a system for classifying information according to its accessibility over time'. Analogous conclusions are suggested by Principle 4 which declares that: 'When denying access to information the Bank will provide an explanation for its decision'. Moreover, a further confirmation is also that at any exceptions to disclosure should be predicated upon the possibility, narrowly and clearly defined, that the potential harm to interests, entities or parties arising from disclosure of information outweigh the benefits according to the Policy. The Policy nonetheless restricts the circulation of some documents such as: a) the documents related to the Bank's decision-making process; b) the documents containing confidential information provided to the IDB on the condition of no external disclosure; c) the documents that the Bank is legally obligated to non-disclosure; d) the documents that the Bank has received with the understanding that information contained therein will not be disclosed; e) the documents containing information which may affect the Bank's activities in capital and financial markets or to which such markets may be sensitive.<sup>125</sup>

However, the Policy introduces a two-stage review mechanism for requesters who are denied access to information in the form of: a) an interdepartmental 'Access to Information Committee' and b) in the event that the interdepartmental Committee were to deny the request, a three-member external panel.<sup>126</sup> The Bank bases its new policy

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<sup>123</sup> Full text of the new "Access to Information Policy" is available at: <http://www.iadb.org/en/news/news-releases/2010-05-12/new-inter-american-development-bank-access-to-information-policy-idb,7133.html>. This policy will supersede the version of OP-102 (GN-1831-18) dated August 17, 2006 (<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=784916>) with respect to documents and information produced on or after January 1, 2011.

<sup>124</sup> Para. 2 (Principles).

<sup>125</sup> Principle 2 (Narrow and clear exceptions).

<sup>126</sup> Principle 4 (Explanations of decisions and right to review).

on documents dealing with Bank decision-making on the assumption that documents are not final while under deliberation by the Bank and decision-makers in borrowing countries. Thus, the documents must not be made available to third parties before the parties involved have taken definite positions as premature disclosure might compromise the decision-making process. Moreover, if the documents belong to the IDB, the IDB must be able to guarantee the authors their freedom to write their drafts with simplicity, unhindered by the concern that whatever they write can automatically become public knowledge and adversely harm the Bank's relationship with a borrower.<sup>127</sup> If the documents involved belong to a borrower, the Bank cannot disclose those materials without its approval.

Despite these and a few other restrictions on disclosure explicitly recalled in the Policy,<sup>128</sup> the Bank has recently adopted a much more pro-disclosure approach concerning environmental assessment reports.<sup>129</sup> For instance, when an environmental assessment ('EIA') is performed, the IDB expects a prospective borrower to engage local NGOs, affected groups and communities in meaningful consultations. Indeed EIAs are made available to affected populations and local nongovernmental organizations by the borrower before the Bank proceeds to the formal analysis of a project. Several other environment related directives encompass provisions on the sharing of information. The 2006 Environment and Safeguard Compliance Policy that prompted environmental issues to be identified and addressed during the project design, for instance, provides that systematic information sharing and regular consultation among host populations and local NGOs lead to increasing access for people to voice their concerns and monitor closely what the Bank is doing about their requests.<sup>130</sup>

Open disclosure policies are also being pursued by the 'Strategy for Indigenous Development' and its companion 'Operational Policy on Indigenous Peoples' with respect to projects that may affect indigenous peoples.<sup>131</sup> As a corollary to the formal consultations with local NGOs and grassroots organizations prior to the design of Bank operations and the enactment of activities that may potentially and significantly impact indigenous peoples through, for instance, the formation of councils and spaces for dialogue with indigenous peoples' representatives when appropriate, all documents including a summary of the consultation plan and the technical studies for preparation of the strategy and operational policy are made available to any interested parties, including NGOs, through the Bank's official website ([www.iadb.org/sds/ind](http://www.iadb.org/sds/ind)). Moreover, measures such as assessments, expert screenings, and whenever possible, early and socio-culturally appropriate consultation and good faith negotiation processes, aimed at identifying the indigenous peoples affected and their genuine representatives, will be adopted to guarantee that

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<sup>127</sup> Para. 8.

<sup>128</sup> See *supra* n. 125.

<sup>129</sup> Para. 5.2.

<sup>130</sup> IDB, Environment and Safeguards Compliance Policy, *supra* n. 88, paras. 1.3, 4.5, 4.11, 5.3.

<sup>131</sup> IDB, Operational Policy on Indigenous Peoples and Strategy for Indigenous Development, available at: <http://www.iadb.org/en/topics/gender-indigenous-peoples-and-african-descendants/indigenous-peoples,2605.html>.

those peoples are not intentionally or involuntarily excluded from projects or activities which could potentially benefit them significantly.<sup>132</sup>

## VI. IDB FINANCING FOR CSOS AND NGOS

Like the majority of international development institutions (including the public multi-lateral institutions belonging to the 'World Bank Family')<sup>133</sup> the IDB, in conformity with its general operational policies, is forbidden to make loans to CSOs and NGOs without the previous and formal guarantee of the local government of the country in whose territories the project should be carried out.<sup>134</sup> Therefore, unsurprisingly, financial support to NGOs and CSOs is most likely to be realised in the form of grants to formally incorporated organizations.

However, unlike in the cases of other international development banks such as the World Bank, the prohibition to make loans to non-governmental organizations without a previous guarantee of a governmental entity applies to the IDB only in principle or, to use the same words of Art. III, section 8 of its establishing Agreement, exclusively: 'when the Bank deems it advisable'. Always according to Art. III, section 8 of the establishing Agreement, the: 'guarantor could be alternatively a public institution or a similar agency of the member acceptable to the Bank'.

That said, long-term practice dating back to the late 1980s has recognised the Bank's power to provide financial aid through grants (non-reimbursable funds), including policy-based grants.<sup>135</sup> In fact, although the IDB agreement does not explicitly indicate this power, a well established common practice has considered grant-making as an implied power of the IDB to the extent that grant-making allows this Organization to fulfil the purposes and functions set forth in Article 1 of its Establishing Agreement – the acceleration of the process of economic and social development of the regional developing member countries, individually and collectively, provided the Bank makes such grants out of the Bank's profit or surplus and also that the applications for financial aid are channelled via the IDB office in the corresponding country.<sup>136</sup> While, like the IDB's partial credit guarantees, most of the IDB's technical assistance in the form of grants have been made to its affiliate MIF – which supports, mostly through technical assistance grants, the enhancement of programmes and initiatives aiming to ameliorate access to finance, markets and capabilities and fundamental services for small businesses and

<sup>132</sup> See *supra*, n. 130, p. 8.

<sup>133</sup> Five institutions, taken together, constitute the so called World Bank Group: The International Bank for Reconstruction and Development (IBRD), The International Development Association (IDA).

<sup>134</sup> Civil society organizations having a national government guarantee are eligible for IDB lending (<http://www.iadb.org/en/about-us/idb-financing/eligibility-for-public-sector-financing.6059.html>).

<sup>135</sup> Information can be found at: <http://www.iadb.org/en/civil-society/the-idb-and-civil-society,6160.html> and also at: <http://www.iadb.org/en/topics/culture/cultural-center/cultural-development-grants,1671.html> (with specific reference to the cultural development grants programs).

<sup>136</sup> See M.E.S. Capek, M. Mead, *Effective Philanthropy: Organizational Success through Deep Diversity and Gender Equality*, Boston: The MIT Press, 1997, p. 192 ff.

micro entrepreneurs in the Latin America and Caribbean region<sup>137</sup> – the IDB has made other grants to various recipients, including CSOs and NGOs as well as academic institutions.<sup>138</sup> The IDB has made these grants through the Sustainable Energy and Climate Change Initiative ('SECCI') Trust Funds,<sup>139</sup> the Anti-corruption Fund<sup>140</sup> and the Social Entrepreneurship Program ('SEP')<sup>141</sup> which provides financing through local partner organizations to individuals and groups that generally do not have access to commercial or development loans on regular market terms.<sup>142</sup> The grants have financially supported such organizations as the CSAG/C in Guyana to help reduce poverty,<sup>143</sup> CSOs in Brazil to support programs concerning the inappropriate presence of destitute children in urban streets ('street-children'),<sup>144</sup> and various OAS agencies' special programs like, in 2007, the 'memorandum of understanding between the IDB and OAS to cooperate in the implementation of the Inter-American Convention against Corruption ('CICC')'.<sup>145</sup>

In addition, the Bank established its Better Conditions for Productivity ('MAP') program to support innovative activities and leading research on financial and private sector development through calls for proposals.<sup>146</sup> Research financed by MAP contributes to areas like development, credit and training tools for banks and entrepreneurs, agricultural finance, and regulatory simplification, among others. The work focuses on rigorous impact assessments and activities that improve the effectiveness of IDB activities and operations. Last but not least, the IDB established a Structured and Corporate Finance Department ('SCF') through which it provides grants to non-profit organizations and others to develop and enhance specific technologies and business models which may benefit projects supported by the IDB, and those that may promote discussion and dissemination of information on a wide and heterogeneous range of development issues of special relevance to the IDB Group. SCF also operates as a knowledge broker gathering together NGOs and academic organizations with its clients.<sup>147</sup> In selecting beneficiary

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<sup>137</sup> References in Seatzu, *supra* n. 114.

<sup>138</sup> *Ibidem*.

<sup>139</sup> More information is at: <http://www.iadb.org/en/topics/climate-change/secci,1449.html>.

<sup>140</sup> Information is at: <http://www.iadb.org/en/topics/transparency/support-for-countries/anticorruption-activities-trust-fund-aaf,1194.html>.

<sup>141</sup> See G.D. Westley, *Guidelines for monitoring and evaluating projects of the social entrepreneurship program*, Washington DC.: Inter American Development Bank, 2002.

<sup>142</sup> Under this program, the Bank provides loans and grants to private, non-profit and local or regional government organizations that provide financial, business, social and community development services to disadvantaged populations. The SEP provides approximately \$10 million in financing each year to projects in 26 Latin American and Caribbean countries. More information on the SEP and its activities are available at: <http://www.iadb.org/en/about-us/idb-financing/grants-,6039.html>.

<sup>143</sup> See IDB, GY-T1064: Strengthening Civil Society Participation in Poverty Reduction and Development, available at: <http://www.iadb.org/en/projects/project-description-title,1303.html?id=GY-T1064>.

<sup>144</sup> See R. Moran, C. de Moura Castro, *Street-children and the Inter-American Development Bank: Lessons from Brazil*, Discussion Paper, March 13, 1997.

<sup>145</sup> Information is at: [http://www.oas.org/juridico/spanish/dna\\_res17.pdf](http://www.oas.org/juridico/spanish/dna_res17.pdf).

<sup>146</sup> Information can be found at: [http://www.iadb.org/en/about-us/departments/about,1342.html?dept\\_id=SCF](http://www.iadb.org/en/about-us/departments/about,1342.html?dept_id=SCF).

<sup>147</sup> *Ibidem*.

institutions, the IDB takes into consideration, amongst other things, whether the activity to be financed furthers the Bank's development aims, whether the activity involves a separate contribution reflecting the Bank's comparative advantage, and whether such financial aid by the Bank might marshal financial contributions from other donors. The IDB has made small grants under this program to a wide range of NGOs in both developed and developing countries.

## VII. FINAL REMARKS: PROSPECTS FOR THE FUTURE

So what is the answer to the initial question in the title: have the Bank's connections and engagements with CSOs and NGOs made this public multilateral institution and its affiliated organizations socially and democratically accountable to national and local communities affected by IDB activities and operations?<sup>148</sup> The answer is negative, at least if one considers the numerous and often specific criticisms of the activities and operations of the IDB Group raised by several international, national and local NGOs and CSOs in their official reports and blogs.<sup>149</sup> But the answer does not radically change if one bears in mind what has been indicated above, namely that the successes of civil society organizations and movements in enhancing democratic and social accountability in the IDB have largely been at the policy level.<sup>150</sup>

Going even further than that, some writers and opinion leaders are also critical about the Bank's operational policies and procedures and they have observed that appeals by the IDB and its affiliated institutions for wider and deeper CSO and NGO involvement were merely 'window-dressing' so the results would not be consistent with the pursued aims.<sup>151</sup> According to Jude A. Howell and Jenny Pearce,<sup>152</sup> CSOs and NGOs have encountered increasing Bank-financed ecological and social debacles and they are disillusioned with the IDB's environmental and social reform programmes. In this critic's opinion, it is ironic that the limits of the IDB's reforms are becoming evident just as the CSOs and NGOs are succeeding in enhancing similar institutional changes in other international development banks like the World Bank, the Asian Development Bank ('ADB') and the European Bank for Reconstruction and Development ('EBRD').<sup>153</sup>

Nevertheless, it is also true that the IDB's review process over the past twenty years or so has gradually become more accessible. More often than not, it turns out to be the outcome of a dialogue and interactions of civil society representatives and the governing bodies of the Bank and thus the subject of a broad and sustainable consensus. The process has also become more participatory, in the sense that it has slowly but

<sup>148</sup> For a thorough exposition of the meaning of NGO accountability see Kenneth Anderson, *What NGO Accountability Means – And Does Not Mean*, in *Am. J. Intl. L.* 1, 2009, p. 107 ff.

<sup>149</sup> For a good resume of these criticisms see *supra* n. 188.

<sup>150</sup> See *supra*, especially paras. I, II and IV.

<sup>151</sup> See e.g. J. Pereira, *Democratic Ownership beyond Busan: Building Inclusive Partnerships for Development*, Alliance 2015, p. 5 ff; J. Griffin, and R. Judge, *Civil Society Policy and Practice in Donor Agencies*, overview report commissioned by DFID, INTRAC, 2010.

<sup>152</sup> See J.A. Howell, J. Pearce, *supra* n. 4, p. 216 ff.

<sup>153</sup> For an account of these successes see H.J. Johnson, *Multilateral Development Banks: Public Consultation on Environmental Assessments*, Washington DC, 1988, p. 23 ff.



gradually become more incorporative of representatives of civil society groups and movements, as a result of the improvement in the IDB's engagements and connections with CSOs and NGOs.<sup>154</sup>

The discussions over the role of CSOs and NGOs in the IDB's operations and activities show in particular that future success requires continued and increased interactions between the Bank and its affiliated institutions on one hand, and social society groups and movements on the other. As part of this process, action by the IDB and its affiliated organizations in this direction encompasses certain measures that are being pursued at present. In this context, the following steps can be pointed out:

- 1) Bank staff review selected bank initiatives and projects which involve CSOs and NGOs to establish how the IDB-CSOs and NGOs relationship can be further improved and strengthened; and
- 2) the IDB, as well as its affiliate organizations, is increasing its efforts to disclose information on its operations and policies to CSOs and NGOs and to the public at large in pursuit of the goals of openness and transparency which are now emphasized in its dialogue not only with the primary stakeholders in the Bank, the member countries, but also in its dialogue with the representatives of NGOs and CSOs. A good example of such efforts toward openness and transparency is the opening of on-line media pre-registration for the Annual Meeting of its Board of Governors, the main forum for discussion of political, economic and social development in Latin America and the Caribbean. Another noteworthy example is provided by the new whistleblower protection policy – “Staff Rule No. PE-328 Whistleblowers and Witnesses”<sup>155</sup> – that is a substantial improvement on its previous protections (though some fatal flaws persist, at least according to some observers);<sup>156</sup>
- 3) the IDB management and staff actively seek CSO and NGO involvement in IDB-financed projects and investments to the extent that there are benefits to be drawn from such involvement. Partnership operations and/or advocacy at the national, regional, and transnational levels in areas such as education, environment, micro-enterprise, health and rural development are good examples of this practice;
- 4) the IDB now pays special attention to the practice of involving the beneficiaries and potentially adversely affected residents and local communities by a Bank-financed project or programme at the earliest possible stage in design of Bank-supported investments and projects and allows properly constituted local and international CSOs and NGOs to play a key role in this process, especially where this interaction is expressly provided for, e.g., Operational Policy

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<sup>154</sup> See *supra*, especially paras. I to IV.

<sup>155</sup> See Staff Rule No. PE-328 “Whistleblowers and Witnesses”, available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35179900>.

<sup>156</sup> See e.g. Inter American Investment Corporation Observer Blog, *Inter-American Development Bank Passes Improved Whistleblower Protections; Fatal Flaws Remain*, available at: <http://iicobserver.wordpress.com/2010/06/19/inter-american-development-bank-passes-improved-whistleblower-protections-fatal-flaws-remain/>.



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- 5) the IDB invites a dialogue with CSOs and NGOs on issues and topics of shared concern not only through the ‘IDB Civil Society Consulting Group (ConSOC)’ – which is a forum for exchanging information, strengthening dialogue, and for ongoing consultations between the IDB and the CSOs that are pertinent to its work in the countries where it functions – but also through other and more informal and flexible forms of consultative relations with CSOs and NGOs in the ordinary course of Bank activities and operations, and through other venues such as the examination of a dossier containing a summary of proposals to the Bank for policy reforms;<sup>159</sup>
- 6) the IDB management and staff is reinforcing the practice of setting up Civil Society Advisory Councils (‘CSACs’), which are often broad-based and diverse with members periodically renewed, in the Bank’s Country Offices;
- 7) IDB management and staff are increasing their efforts, in open consultation with the ConSOC, to issue specific operational guidelines for the Bank’s investments, operations and activities in the countries where ConSOC functions.

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<sup>157</sup> See *supra* n. 123.

<sup>158</sup> See *supra* n. 69.

<sup>159</sup> A dossier containing a summary of proposals was submitted by a group of civil society organizations to the Inter-American Development Bank in 2010. These recommendations focus on two core areas of the IDB’s comparative advantage as a development bank in Latin America, Sustainability and Management for Development Results (<http://www.bicusa.org/en/Article.12221.aspx>).