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

CO-MICI002-2011

**DETERMINATION OF ELIGIBILITY FOR THE COMPLIANCE REVIEW PHASE
EL DORADO INTERNATIONAL AIRPORT**

(CO-L1029)

This document was prepared by the Chairperson of the Compliance Review Panel.

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ELIGIBILITY DETERMINATION MEMORANDUM

COMPLIANCE REVIEW PHASE

TO: Requesters, Board of Executive Directors, Senior Management, Project Team and Executing Agency¹

FROM: Mary Rose Brusewitz, Chairperson of the Compliance Review Panel

VIA: Victoria Márquez-Mees, Executive Secretary

PROJECT: El Dorado International Airport (CO-L1029)

DATE: November 21, 2014

I. EXECUTIVE SUMMARY

- 1.1 On August 12, 2011, a Request was submitted to the ICIM by Ms. Gloria Molina on behalf of a group of residents of the Fontibón community, which is adjacent to the El Dorado International Airport (the “Airport”) in Bogota, Colombia. The Requesters expressed harms that were allegedly caused by a Bank-Financed Operation to support the modernization, expansion, operation and maintenance of the Airport.
- 1.2 The relevant Bank-Financed Operation is the “El Dorado International Airport” project (operation CO-L1029, the “Project”), a Loan for up to US\$165 million granted to *Operadora Aeroportuaria Internacional S.A.* (“OPAIN” or the “Executing Agency”). OPAIN holds a 20-year “Concession Agreement” awarded in 2006 to modernize, expand and operate the Airport. The Loan was approved by the Board on December 3, 2010.
- 1.3 The Requesters alleged several concerns having to do with possible negative environmental impacts and a lack of information sharing about the Project, however, it appears to the Panel Chairperson that the Requesters’ main concern with relation to the Project is a fear that the Project already is, and will continue, to contribute towards increased noise levels for the surrounding communities. This concern is reflected in the allegation of the Requesters that the carrying out of Project works may have required an expansion in the permitted schedule for flight landings on the runway closest to the

¹ Unless otherwise defined herein, terms used in this document have the meanings assigned to them in the Policy Establishing the Independent Consultation and Investigation Mechanism (GN-1830-49) (the “ICIM Policy”), approved on February 17, 2010 and available at: <http://www.iadb.org/mici>.

Requesters' community and consequently, increased noise; and that in the future, once modernization and expansion activities associated with the Project have been completed, the Airport could receive increased landings and takeoffs thus generating increased noise impacts for the surrounding communities.²

- 1.4 The Request was first processed by the ICIM Consultation Phase. The Project Ombudsperson declared the Request eligible for that Phase on November 3, 2011. The Consultation Phase engaged the stakeholders in a series of dialogues aimed at resolving the Requesters concerns for approximately two years. The Consultation Phase was closed by the Executive Secretary in July 2014, after deeming that conditions were no longer present to continue with the dialogues.
- 1.5 The Requesters asked that their Request be considered in the Compliance Review Phase. The Executive Secretary thus transferred the Request to the Panel Chairperson for an independent eligibility analysis on July 21, 2014.³
- 1.6 After analyzing the Request, relevant Project documents and the Bank's Relevant Operational Policies ("ROPs") and communicating with the Requester and Bank personnel in charge of the Project (the "Project Team"), the Panel Chairperson has determined that the Request is eligible for a Compliance Review because it meets the eligibility criteria established in Section 56 of ICIM Policy and no exclusions apply. Further eligibility analysis can be found in Section VI and Annex I of this document.

II. COMPLIANCE REVIEW PHASE INTRODUCTION

A. Purpose

- 2.1 In accordance with Part D, Section 53 of the ICIM Policy, the purpose of a Compliance Review is to investigate allegations by one or more Requesters that the rights or interests of the Requester(s) have been, or could be expected to be, directly, materially adversely affected by an action or omission of the Bank that may constitute the failure by the Bank to follow one or more of its ROPs in connection with a Bank-Financed Operation. The objective of a Compliance Review is to establish whether (and if so, how and why) any

² Once the case was transferred to the Compliance Review Phase, the Panel Chairperson gave the Requesters the opportunity to complete their Request in accordance with Section 57 of ICIM Policy. For most purposes of this Eligibility Memorandum, the term "Request" includes the original Request received in August 2011 and the complementary information (further described in Section 3 below) received in September 2014.

³ See ICIM Policy Sections 54 and 55.

Bank action or omission, in respect of a Bank-Financed Operation, has resulted in noncompliance with one or more ROPs and direct, material adverse effects (potential or actual) to the Requester.

- 2.2 A Compliance Review is a fact-finding exercise. Part D, Section 65 of the ICIM Policy provides that a Compliance Review is not a judicial process designed to establish guilt or innocence or to adjudicate fault or apportion blame. In addition, a Compliance Review does not reach conclusions about the actions or omissions of any party other than the Bank, such as governmental authorities, borrowers, executing agencies, project developers, other lenders, Requesters or any other parties.

B. Eligibility

- 2.3 According to the ICIM Policy, a Request is transferred from the Consultation Phase to the Compliance Review Phase if the Requester has expressed a desire for a Compliance Review and if:

- i. the Consultation Phase has been terminated or concluded for any reason, or
- ii. the Request was deemed ineligible under the Consultation Phase.⁴

- 2.4 As provided in Section 55 of the ICIM Policy, the Panel Chairperson must “review the Request for eligibility, independently of the determination of the Project Ombudsperson.”⁵

- 2.5 A Request’s eligibility for the Compliance Review Phase is determined based on criteria outlined in the ICIM Policy, which have been included in full in Annex 1 of this memorandum. In making an eligibility determination, no inference or conclusion is made or expressed as to the merits of the Request or whether any action or omission by the Bank in connection with the relevant Bank-Financed Operation has resulted in noncompliance with any of the Bank’s ROPs.

⁴ Part D, Section 54 of the ICIM Policy.

⁵ According to the transition scheme approved by the Board, starting September 1st, 2013, the eligibility determination of the Consultation Phase is made by an Eligibility Committee which is composed by the Executive Secretary of the ICIM and two Case Officers.

III. THE REQUEST⁶

- 3.1 On August 12, 2011, Ms. Gloria Molina (the “Representative”) submitted a Request to the ICIM on behalf of a community group, *Comunidades Unidas Macroproyecto Aeropuerto El Dorado* (“Comunidades Unidas” or the “Requesters”), comprised of residents of *Localidad Novena de Fontibón*, a neighborhood adjacent to the Airport. The Requesters expressed concerns regarding the Project to finance the modernization, expansion, operation and maintenance of the Airport.
- 3.2 The Requesters claimed both in the Request and during further discussions with the Project Ombudsperson that the participation and information campaigns implemented in connection with the Project had been inadequate and not sufficiently participatory, and that it did not seem there would be means for addressing the concerns of the persons affected by the Project or appropriate measures to mitigate negative impacts on the local community.⁷ The Request specifically alleged concern among residents over the findings of the Environmental and Social Management Report (the “ESMR”) issued by the IDB in the context of the Project. These concerns included: (i) pollution of the water supplied to the Airport; (ii) pollution caused by alleged shortcomings in the wastewater collection and treatment system; (iii) lack of operation of a solid waste incinerator; (iv) lack of a plan to manage hazardous materials and prevent and reduce pollution; and (v) noise levels that exceed the limits set forth in domestic environmental legislation.
- 3.3 The Consultation Phase dialogues took place over the course of more than two years. Once the Request was forwarded to Compliance Review Phase, the Panel Chairperson entered into contact with the Requesters to better understand their main concerns in relation to the Bank-Financed Operation. The Request cites various concerns, but at present, the main concern of the Requesters appears to be an alleged increase in noise levels the Requesters believe was caused by or related to the Project. The Requesters were concerned that this issue was not sufficiently articulated in the original Request. In accordance with ICIM Policy, Section 57, which provides that the Panel Chairperson shall provide a Requester reasonable opportunity to complete or correct a Request, the Panel Chairperson permitted the Requesters the opportunity to submit complementary information on this issue. Such information was received on September 3, 2014 (the [“Complementary Information”](#)).

⁶ NB: This section is reported as a summary of concerns brought forth by the Requesters in communications to the ICIM; it should be read as such and is not intended to reflect any judgment by the Panel of the merits or lack thereof of any of the allegations. Any verification of such allegations would only be undertaken by the Panel, if a Compliance Review were subsequently recommended by the Panel and approved by the Board, as per ICIM Policy.

⁷ ICIM Consultation Phase Assessment Report, El Dorado International Airport, CO-MICI002-2011, March 2012, paragraph 3.

- 3.4 The Complementary Information describes in more detail the Requesters’ allegations related to noise. The Requesters state that, though noise has been a serious issue for them for years, the Project already has and will continue to increase noise, which negatively impacts their community. The Requesters allege that the Project’s modernization and expansion activities will permit the Airport to handle significantly more flights, which will bring about, as a consequence, greater noise. The Requesters also allege that the IDB violated its ROPs by not requiring the implementation of sufficient mitigation measures to address the risk of increased noise and the potential that harm could potentially be caused if such measures were not properly implemented. Finally, the Requesters allege that the IDB did not appropriately consider the government agency the *Unidad Administrativa Especial de la Aeronáutica Civil de Colombia* (“UAEAC” or “Aerocivil”) as a “Third Party”, in accordance with the Environment and Safeguards Compliance Policy (“OP-703”). According to OP-703, a Third Party is “a public agency that is not identified as an executing agency in a loan agreement but whose involvement is necessary for the effective mitigation of impacts or environmental enhancement of a project.” The Requesters allege that Aerocivil meets the standard of that definition, as their performance was key to mitigate the negative effects that could be generated by a major risk of the Project – increased noise. The Requesters point out that both outside sources and Bank Project documents confirm that noise levels already exceeded current national limitations, and highlighted a track record of non-compliance by Aerocivil with national standards. The Requesters allege that the IDB had notice of these risks and failed to appropriately require the Executing Agency to adequately manage known risks associated with this Third Party.
- 3.5 The Requesters also allege that they have already experienced negative effects as a result of the Project. According to the Requesters, flights on the “Second Runway” nearest their community have a restricted schedule according to national legal limitations: take-offs and landings are only permitted between 6 a.m. and 10 p.m.⁸ The Requesters say that night flights have been carried out on the Second Runway until midnight for a period of more than one year. According to the Requesters, this was due to the Executing Agency’s need to divert flights from the “First Runway” to the Second Runway in order to carry out works associated with the Project near the First Runway. The Requesters view this use of the Second Runway for night flights as something they believe to be a logical result of the Project (motivated by both financial and efficiency incentives) which the Bank should have anticipated and for which the Bank should have required that the Executing Agency put into place appropriate mitigation measures.

⁸ As shown on the map in Section IV, there are two runways at the Airport, an older runway on the north side of the airport (the “First Runway”) and a newer runway on the south side of the airport (the “Second Runway”).

IV. THE PROJECT

A. Overview

- 4.1 The El Dorado International Airport Project (CO-L1029) is a Bank-Financed Operation for up to US\$165 million granted to OPAIN, a private consortium to which Aerocivil granted a 20-year Concession Agreement in 2006 to modernize, expand and operate the Airport. The Loan was approved by the Board on December 3, 2010.
- 4.2 The Project is a Non-Sovereign Guaranteed (“NSG”) operation and as such, according to the Bank’s Access to Information Policy (OP-102), exceptions apply limiting the Bank’s ability to disclose information about the Project.⁹ The confidentiality requirements for NSG operations apply equally to all documents produced by the Panel.
- 4.3 According to Bank documents:
- i. The Project was designed to include the following improvements: “i) a new terminal that will include domestic and international flight services equipped with the most modern technology in terms of baggage handling, flight information systems and security; ii) a new cargo terminal, including additional parking positions for airplanes; iii) a new six story office building for Aerocivil; iv) a new maintenance area; v) relocation of a firefighter station and construction of an additional one with state-of-the-art equipment, and; vi) relocation of the control tower.”¹⁰
 - ii. The Bank expected the following development outcomes from the Project: “i) passenger and aircraft delay savings resulting in an overall productivity improvement; ii) expansion of services offered to both airlines as well as users of the facility; iii) improved security and safety throughout the airport; iv) overall enhancement of passenger comfort and convenience through better terminal services and shorter waiting times and v) macroeconomic impacts such as exports, employment, and tourism earnings once passenger and cargo capacity are expanded.”¹¹

⁹ According to the Access to Information Policy, information related to NSG operations shall not be disclosed except: Initial Project Abstracts, Environmental and Social Strategies (“ESS”), Environmental Impact Assessments (“EIA”), Strategic Environmental Analyses, Environmental Analyses (“EA”), Environmental and Social Management Reports (“ESMR”), Abstracts of Approved Projects and information which the respective borrower has expressly consented to disclosure. See: Access to Information Policy (OP-102), Paragraph 4.1 (j), 2010.

¹⁰ CO-L1029 El Dorado International Airport, Project Abstract, February 28, 2008, page 1.

¹¹ Ibid, page 2.

B. Potential Environmental and Social Impacts

4.4 The Project was classified as a category B operation in accordance with OP-703, a medium risk designation given to “operations that are likely to cause mostly local and short-term negative environmental and associated social impacts and for which effective mitigation measures are readily available.”¹²

4.5 In the preparation stage for the Project the Bank identified the following possible environmental and social impacts:

“The principal environmental and social impacts are associated with medium scale construction activities and incremental effects due to an increase in airport activities and services that may result from the investment program. The principal risks are potential existing environmental and social liabilities...The medium scale construction activities will generate mainly local and short term environmental and social impacts. Construction related impacts include: i) generation of dust, noise and waste; (ii) deterioration of air quality resulting from construction activities; (iii) the risk of conducting construction activities concurrently with the operation of the airport; and iv) general disturbances related to the execution of the construction in the vicinities of the airport...

During operations, the expanded airport will result in increased noise and emissions from additional take-off and landing operations, generation of wastewater and waste, potential complications due to the heightened use of local infrastructure such as local roads, wastewater and sanitation networks.”
(Emphasis added)¹³

4.6 As part of the Bank’s process with respect to the Project, Project documents state that the Bank identified potential direct and indirect impacts of the Project, which the Bank would ensure were reviewed during the due diligence. In particular, the May 2007 Environmental and Social Strategy (ESS) highlighted the noise issue among these potential impacts, stating that “the adequacy of the assessment of noise and air quality impacts due to increase operations and the commitment and capacity of Aerocivil consortium to implement the environmental and social mitigation measures (i.e. noise, traffic) to adequately control and mitigate impacts from the operation of the airport...” would need to be independently assessed.¹⁴

4.7 The September 2010 ESMR makes note of the noise issue in its analysis of social and environmental issues related to the Project. It notes that as part of its responsibilities

¹² Classifications under OP-703 are made according to its Policy Directive B.3 on Screening and Classification.

¹³ Environmental and Social Strategy (ESS), May 2007, paragraphs 1.4 and 1.5.

¹⁴ ESS, paragraph 1.7.

required by the “Environmental License” (described in Section IV Part D below), Aerocivil monitors noise and has established a categorization system for the levels detected according to how critical they could be considered. It notes that monitoring “in general” had registered levels close to 75 dB in the daytime in residential areas adjacent to the Airport, and median values of 65 dB day/nighttime, which exceed the established limits in the national environmental law. The ESMR posits that these elevated noises, especially the nighttime levels, could be related to the increase in nighttime operations towards the west.¹⁵

- 4.8 The ESMR analyzes other risks that stem from the Project and that would be beyond OPAIN’s control, including the possibility that Aerocivil would operate the Second Runway at night, which was restricted in the Environmental License then in effect. The ESMR emphasizes that, although Aerocivil is responsible for air traffic and for operating the runways in accordance with the Concession Agreement, the Airport operates under a single Environmental License. The ESMR states that any deviations or noncompliance should be reported to the Bank, and properly handled, so as to comply with the permits and authorizations in effect.

C. Legal Framework

- 4.9 The physical area conceded to OPAIN (the “Concession Area”) via the Concession Agreement was approximately 397 hectares, highlighted in yellow in the graphic below. The Concession Area included the following facilities: (i) passenger terminals; (ii) domestic and international cargo areas; (iii) the general aviation area; (iv) Aerocivil’s administrative tower; (v) Aerocivil’s warehouse; (vi) Aerocivil’s Operational Systems Secretariat building; and (vii) the control tower.¹⁶

¹⁵ ESMR, septiembre, 2010, paragraphs 4.4 and 4.5.

¹⁶ Ibid., paragraph 2.4.



- 4.10 For operational purposes, the Airport’s physical space has been structured into two main areas – airside and landside:
- i. Airside – encompasses zones for moving aircraft such as the two runways, taxiways, and adjacent lands, gates for cargo and passengers, and buildings related to these operations (Civil Aviation, Air Navigation, Customs and Police Control, Flight Plan, and Meteorology). Aerocivil is the state entity responsible for all operations on the airside of the airport, and in the corresponding airspace. Another concessionaire, the Compañía de Desarrollo Aeropuerto El Dorado (“CODAD”) is in charge of the administration, operation and maintenance of the two runways.
 - ii. Landside – consists of areas related to all ground activities linked to the Airport’s operations, such as passenger and cargo terminals, service facilities for aircraft and passengers, and commercial premises. OPAIN is responsible for the modernization and expansion of the concession areas included on the landside. It is also responsible for the administration, operation, commercial use, and

maintenance of the concession infrastructure – apart from Puente Aéreo, Aerocivil, and the Military Transport Air Command (CATAM).¹⁷

D. Environmental Responsibilities

- 4.11 The Airport is operated under a single Environmental License originally granted on November 7, 1995, which has been amended, modified and or extended a number of times. In 2005, Aerocivil requested a technical ruling from the relevant ministry at the time (*Ministerio del Medio Ambiente*, the “MMA”) as to the need for a new environmental license or amendment of the existing one, for the execution of the Project works by a concessionaire. According to the ESMR, the MMA did not consider any additional license necessary for the Project provided that: the operational configuration of the runways is not altered; there are no night operations on the Second Runway; and that the frequency of takeoffs and landings on the Second Runway is not increased.¹⁸
- 4.12 On June 1, 2009, via Resolution 1001, the Ministry of the Environment, Housing and Territorial Development (*Ministerio de Ambiente, Vivienda y Desarrollo Territorial*, “MAVDT”) approved the partial transfer of certain responsibilities set forth in the Environmental License to OPAIN.
- 4.13 Under the terms of the Concession Agreement, Aerocivil maintained at its charge and excluded OPAIN from responsibilities relating to mitigation measures and monitoring of noise, the monitoring of air quality and social management, but such exclusion only covered such responsibilities to the extent these were not directly linked to the activities covered by the concession, such as: modernization and expansion, operations, commercial use, maintenance and administration of the Concession Area.¹⁹
- 4.14 The terms of the partial transfer of the Environmental License stipulated that OPAIN assumed responsibility for: (i) the construction of an engine testing zone; (ii) compliance with the Airport’s Solid Waste Management Plan; (iii) monitoring surface and ground water; (iv) weighing aircraft; and (v) disseminating written information to all staff involved in the Project about the obligations established by the relevant environmental authority and as per the Environmental License.²⁰

¹⁷ ESMR paragraph 2.18.

¹⁸ ESMR paragraph 3.17.

¹⁹ ESMR paragraph 3.14.

²⁰ ESMR paragraph 3.15.

V. ICIM ACTION TO DATE

5.1 The Request was received on August 12, 2011. At the time, the Requesters had not yet contacted Management, as required by ICIM Policy, so they were put into contact with the Project Team. The Request was ultimately registered on September 12, 2011.

A. Consultation Phase²¹

5.2 The Project Ombudsperson declared the Request eligible for the Consultation Phase on November 3, 2011. After mapping stakeholders and issues during the assessment, the Consultation Phase team facilitated a dialogue process over the course of approximately two years beginning in March 2012. Topics in the dialogue were grouped in four thematic areas: i) water management; ii) handling of hazardous materials; iii) air quality and noise levels; and iv) social management.

5.3 During the Consultation Phase dialogues relating to the first two topics were undertaken and closed. The third thematic area was commenced but not closed due to various complicating factors. The fourth thematic area was then embarked upon but the Executive Secretary found that appropriate conditions were no longer present to continue with the dialogue and thus closed the Consultation Phase. In March 2014, the decision to close the Consultation Phase was communicated to the parties and the Consultation Phase Report was later issued in July 2014, formally ending that Phase.²²

B. Compliance Review Phase

5.4 In May 2014, the Representative informed the ICIM of the Requesters' intent that the Request be considered for a Compliance Review. On July 21, 2014, once the Consultation Phase had officially terminated, the Executive Secretary transferred the Request to the Panel Chairperson for the purposes of the independent determination of eligibility as required by Section 55 of the ICIM Policy.

5.5 The Panel Chairperson and the Compliance Review staff began to analyze the relevant Bank documents and other information related to the Project and the Request. As described in Section III of this memorandum, the Panel Chairperson had a discussion with the Representative and the Requesters subsequently submitted additional written

²¹ On September 1, 2013, the Project Ombudsperson's contract ended and a transition scheme was put into place by the Board. Under such scheme the management of active cases was to be undertaken according to a transition plan by which local facilitators would facilitate dialogues and the Consultation Phase would be managed by two Case Officers and supervised by the Executive Secretary.

²² For further information see: Consultation Phase Report, Case CO-MICI002-2011, El Dorado International Airport (CO-L1029), Section IV, July 2014.

information in the form of the Complementary Information, received on September 4, 2014. The Panel Chairperson and Compliance Review staff have also met and communicated with the Project Team regarding the Request (including the Complementary Information) and the Project. The Project Team was provided with an opportunity to formally respond in writing to the Request and the Complementary Information; these responses were received August 14 and October 3, 2014, respectively. This process of information gathering and follow-up with the Requesters and the Project Team required time and thus several extensions of the deadline for this eligibility determination were issued in accordance with ICIM Policy, Section 91. The Panel Chairperson wishes to thank all stakeholders for their patience and collaboration throughout the process of information-gathering and analysis.

VI. ELEGIBILITY ANALYSIS FOR THE COMPLIANCE REVIEW PHASE

- 6.1 As per Section 55 of the ICIM Policy, the Panel Chairperson must make an independent eligibility determination from that of the Consultation Phase. For the Compliance Review Phase, Requests are analyzed based on the exclusions and eligibility requirements set forth in Sections 37 and 56 of the ICIM Policy.
- 6.2 After careful review of the Request and through communications with the Representative, the Panel Chairperson has determined that the Requesters have reasonably asserted that they have been or could be directly, materially adversely affected by an action or omission of the Bank in violation of one or more ROPs in the context of the Project.²³ Such is the case because the alleged concerns and harms detailed in this memorandum appear to be related to Bank compliance with OP-703.
- 6.3 Further, the Panel Chairperson views that the principle harms alleged by the Requesters have to do with their fear that the Project already has, and may continue to in the future, exacerbate negative effects associated with noise for Fontibón community members. In considering how such allegations may relate to responsibilities of the Bank in light of ROP's, the Chairperson views that the harms alleged by the Requesters related to noise can be considered as two distinct possible impact types:
 - i. Possible short-medium term impacts related to the carrying out of Project works while concurrently operating the Airport, especially if a modification to the permitted schedule for flights on the Second Runway might be (or have been) required; and

²³ ICIM Policy Eligibility Criteria, Section 56 (f).

- ii. Long-term potential impacts related to effects that could be brought about if the Project increases the operational capacity of the Airport, positioning the Airport to receive more passenger and cargo flights, which could result in increased noise.

6.4 Finally, the Panel Chairperson has determined that the Request meets the eligibility criteria established in Section 56 of ICIM Policy and that no exclusions apply. As such, the Panel Chairperson determines that the **Request is ELIGIBLE for the purposes of a Compliance Review**. Analysis of each eligibility criteria and exclusion can be found in the table in Annex 1 of this document.

ANNEX 1: COMPLIANCE REVIEW PHASE ELIGIBILITY ANALYSIS TABLE

Eligibility Criteria	Determination by the Chairperson
<p>56 a. The names and contact information for the Requester are available</p>	<p>Meets criteria: The contact information of the Requesters is on file.</p>
<p>56 b. Names and contact information of the Representative, if any, and proof of the authorization are available</p>	<p>Meets criteria: The contact information of the Representative is on file, as is the evidence that she represents the Requesters.</p>
<p>56 c. The Bank-Financed Operation(s) at issue has been identified</p>	<p>Meets criteria: The Project has been identified as El Dorado International Airport (CO-L1029).</p>
<p>56 d. The Requester resides in the country where the relevant Bank-Financed Operation is or will be implemented (or a qualified Representative has been appointed)</p>	<p>Meets criteria: The Requesters reside in Colombia according to information provided to ICIM staff.</p>
<p>56 e. None of the exclusions set forth in Section 37 applies</p>	<p>Meets criteria: See below.</p>
<p>37 (a) actions that are the responsibility of parties other than the Bank, such as a borrower/recipient, technical cooperation beneficiary, or Executing Agency, and that do not involve any action or omission on the part of the Bank</p>	<p>Exclusion does not apply: The Request makes mention of actions of the Executing Agency with respect to the Project and of Aerocivil. However, as noted in paragraph 3.4, the Requesters have questioned whether the IDB sufficiently assessed risks associated with the Project and required adequate mitigation measures be implemented by the Executing Agency. As for references to Aerocivil, they have raised the issue of whether Aerocivil is a “Third Party” as defined in OP-703. These allegations could thus relate to the Bank’s responsibilities according to OP-703, as discussed in Section VI.</p>
<p>37 (b) Requests related exclusively to the laws, policies or regulations of the host country(ies), borrower/recipient or the Executing Agency</p>	<p>Exclusion does not apply: The Request does not relate exclusively to these elements. The Requesters have made mention of the legal limitations on noise in Colombia, but the Request focuses on how the Bank assessed and planned mitigation measures for Project</p>

Eligibility Criteria	Determination by the Chairperson
	risks associated with noise.
<p>37 (c) actions or activities that do not relate to a Bank-Financed Operation or that are not subject to the Bank's Relevant Operational Policies</p>	<p>Exclusion does not apply: The Requesters describe harms that they allege have arisen from a Bank-Financed Operation to which ROPs apply.</p>
<p>37 (d) procurement decisions or processes (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank)</p>	<p>Exclusion does not apply: The Request does not make reference to procurement decisions or processes.</p>
<p>37 (e) a particular matter or matters that have already been reviewed pursuant to the Mechanism, or its predecessor, unless justified by new evidence or circumstances not available at the time of the initial Request</p>	<p>Exclusion does not apply: The Request does not raise issues that have been previously reviewed by the ICIM nor its predecessor.</p>
<p>37 (f) Requests dealing with a Bank-Financed Operation that are filed after twenty-four (24) months of the last disbursement</p>	<p>Exclusion does not apply: The Loan is still not fully disbursed. According to the Bank's records, the first and largest tranche of funding has been fully disbursed (US\$ 115,500,000 as of October 2012) but only approximately 8% of the remaining tranche of funding has been disbursed.</p>
<p>37 (g) ethics or fraud questions, specific actions of Bank employees, non-operational matters such as internal finance or administration, allegations of corrupt practices, or other matters subject to review by other bodies established by the Bank (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank)</p>	<p>Exclusion does not apply: The Request does not make reference to these elements.</p>
<p>37 (h) any Request that on its face (i) is without substance, or (ii) has been submitted to gain a competitive business advantage</p>	<p>Exclusion does not apply: The Chairperson's prima facie review has revealed that the Requesters have made allegations that appear to assert plausible substantive harm and that these do not appear to be alleged for purposes of gaining a competitive business advantage.</p>

Eligibility Criteria	Determination by the Chairperson
<p>37 (i) Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies</p>	<p>Exclusion does not apply: The Panel Chairperson is not aware of any arbitral or judicial review related to the concerns raised in the Request.</p>
<p>56 f. The Requester has reasonably asserted that it has been or could be expected to be directly, materially adversely affected by an action or omission of the IDB in violation of a Relevant Operational Policy in a Bank-Financed Operation and has described in at least general terms the direct and material harm caused or likely to be caused by such action or omission in the Bank-Financed Operation</p>	<p>Meets criteria: The Requesters have reasonably asserted harms associated with the Project and potential non-compliance by the Bank with ROPs, as described in paragraphs 3.4 and 3.5. A prima facie review of the Request, Project documents and ROPs suggests that the alleged harm could be related to potential violations of OP-703.</p>
<p>56 g. With respect to an issue raised in the Request, a Compliance Review may assist in determining whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non-compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requester</p>	<p>Meets criteria: It is the Panel Chairperson’s view that a Compliance Review of the issues raised in this Request could establish whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non-compliance with one or more ROPs and direct, material adverse effects (potential or actual) to the Requesters.</p>
<p>56 h. The Requester has taken steps to bring the issue to the attention of Management</p>	<p>Meets criteria: The Requesters contacted the IDB Country Office in Colombia and the Project Team. Management has met at least twice with the Requesters.</p>