

**ELIGIBILITY DETERMINATION MEMORANDUM  
CONSULTATION PHASE**

**TO:** Requester, Board of Executive Directors, President, Country Office,  
Project Team, Borrower and Executing Agency

**FROM:** Consultation Phase Eligibility Committee

**VIA:** Victoria Márquez-Mees, Executive Secretary

**CC:** Independent Consultation and Investigation Mechanism

**REFERENCE:** **MICI-SU-2013-068** The Suriname Land Management Program (SU-  
L1001) and Support for the Sustainable Development of the Interior (SU-  
T1026)

**COUNTRY:** Suriname

**DATE:** December 26, 2013

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**I. Executive Summary**

- 1.1 On October 15, 2013 a Request<sup>1</sup> was directed to the Suriname Country Office Representative, Mr. Marco Carlo Nicola and copied to the ICIM by Dr. Daniel Peplow, Co- Director of the Suriname Indigenous Health Fund (SIHF) on behalf of the Wayana people of Suriname. The Request presents a list of threats the Wayana community of Apetina are facing due to socio-economic and governance conditions in Suriname generated by development investment, and highlights the negative impacts on health due to gold-mining operations in the Interior region of Suriname. As an overall issue, the Requester mentions the improvements needed at policy-level to address some of these issues and to improve the current situation of the Wayana people. According to the Requester, IADB financed programs would have contributed to the challenges the Wayana people are facing. Additionally, the Request asks for support to engage in dialogue with high-level stakeholders to promote structural adjustments of Surinamese policies and programs to address the economic and health challenges encountered in Suriname's Interior region.

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<sup>1</sup> The terms: Mechanism, Management, Executive Secretary, Eligibility, Consultation Phase, Executing Agency, Relevant Operational Policies, and any other relevant term in this report shall have the meaning assigned to them in the Independent Consultation and Investigation Mechanism (ICIM) Policy, approved on 17 February 2010 and available at: [www.iadb.org/icim](http://www.iadb.org/icim).

- 1.2 The Request cites two Bank-financed Operations: the Suriname Land Management Program (SU-L1001) and Support for the Sustainable Development of the Interior (SU-T1026).
- 1.3 The **Suriname Land Management Program** (SU-L1001) would support four components: (i) Land policy development; (ii) Legislative drafting; (iii) Pilot experience on integrated cadastral and land tenure, and State land divestment; (iv) Land tenure security for the Interior<sup>2</sup>. According to Bank records, this operation was never submitted for Board approval and taken out of the Bank pipeline during the second semester of 2007 and;
- 1.4 **Support for the Sustainable Development of the Interior** (SU-T1026) is a technical cooperation operation that on April 9, 2007 approved the use in non-reimbursable resources for a total of US\$720,000 from the Japanese Special Fund. Its objective was to provide the foundation for the Government of Suriname (GoS) to develop a sustainable development program for the Interior that would benefit all residents by improving their standards of living and increasing opportunities for economic, social and cultural development<sup>3</sup>.
- 1.5 This technical cooperation was closed before completion on October 7, 2011 as per agreement with the GoS and representatives of the Maroon and Indigenous communities due to lack of consensus amongst Indigenous and Maroon stakeholders on the participatory approach used for the data gathering as input to the reports and the training activities<sup>4</sup>. As per the operation's Transactions History Report<sup>5</sup>, the Bank disbursed US\$630,484.87 with a last disbursement made on September 28, 2011, before closing the operation on October 7, 2011 with the cancellation of the outstanding amount of US\$89,515.13.
- 1.6 The Eligibility Committee responsible for the determination of eligibility of the Consultation Phase in compliance the ICIM Policy (GN-1830-49) and the transitional scheme approved by the Board of Executive Directors<sup>6</sup> (See Section II) has analyzed the documents received as well as the information provided by the project team and concludes after said analysis that this **Request is not eligible for the Consultation Phase as it does not comply with the requirements described in subsections (b), (e), and (g) of paragraph 40 of the ICIM Policy.**<sup>7</sup>

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<sup>2</sup> Cfr. Project Outline, Suriname, SU-L1001, Land management Program, May 30, 2006.

<sup>3</sup> Cfr. Suriname. Support for the Development of the Interior (SU-T026), Plan of Operations, April, 2007.

<sup>4</sup> Information provided by Management during meetings with ICIM.

<sup>5</sup> Transactions History Report for ATN/JF-10343-SU dated December 9, 2013.

<sup>6</sup> Meeting Minutes of June 24, 2013, Organization, Human Resources and Board Matters Committee, approved on July 10, 2013 by the Board of Executive Directors.

<sup>7</sup> The Committee has been unable to reach a consensus on criterion 40 (f) and exclusion 37 (c).

## **II. The Consultation Phase Transition Scheme and its implications for the eligibility determination process.**

- 2.1 The eligibility determination process for the Consultation Phase is performed in compliance with the current ICIM Policy (GN-1830-49) in its paragraphs 37 and 40.
- 2.2 However, in January 2013, as a result of the findings and recommendations of the review report made by the Office of Evaluation and Oversight (OVE), the Board of Executive Directors of the IDB decided to initiate a process of revision of the ICIM Policy and its structure of operation in order to strengthen the Mechanism and ensure a more effective and efficient management.
- 2.3 Moreover, due to changes in human resources, from September 1, 2013 until the Revised ICIM Policy comes into effect, the Board instructed the entry into effect of a transitional operation scheme in which the eligibility determination of Requests for the Consultation Phase is undertaken by an Eligibility Committee (“the Committee”) constituted by the Executive Secretary and the two case officers that are part of the Consultation Phase team. This determination of eligibility is undertaken in line with the transitional scheme and in compliance with the process established for this stage in the current ICIM Policy.

## **III. The Bank Operations**

- 3.1 The Request makes reference to two Bank-financed Operations: The Suriname Land Management Program (SU-L1001) and Support for the Sustainable Development of the Interior (SU-T1026).
- 3.2 The **Suriname Land Management Program** (SU-L1001), as per the Project Outline dated May 30, 2006 would support four components: (i) Land policy development; (ii) Legislative drafting; (iii) Pilot experience on integrated cadastral and land tenure, and State Land Divestment; (iv) Land tenure security for the Interior<sup>8</sup>. This operation was cancelled during the second semester of 2007<sup>9</sup>.
- 3.3 **Support for the Sustainable Development of the Interior** (SU-T1026) is a technical cooperation operation that on April 9, 2007 approved the use in non-reimbursable resources for a total of US\$720,000 from the Japanese Special Fund. Its objective was to provide the foundation for the GoS to develop a sustainable development program for the Interior that would benefit all residents by improving their standards of living and increasing opportunities for economic, social and cultural development. Target beneficiaries were the Indigenous and Maroon residents of the Interior, as well as all relevant line ministries within the GoS.<sup>10</sup>

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<sup>8</sup> *Cfr.* Project Outline, Suriname, SU-L1001, Land management Program, May 30, 2006.

<sup>9</sup> Information extracted from the Bank’s IT operation tracking system OPS.

<sup>10</sup> *Cfr.* Suriname. Support for the Development of the Interior (SU-T026), Plan of Operations, April, 2007.

- 3.4 The project was comprised of four components: (i) Development planning for the Interior; (ii) Collective rights; (iii) Institutional strengthening; and (iv) Project administration and supervision<sup>11</sup>.
- 3.5 The first component would involve assessments of the effectiveness and potential replicability of recent public investments and projects in the Interior including public sector activities, -such as social services and infrastructure (including drinking water)-, environmental regulation, land tenure and management, community development, as well as private sector activities such as ecotourism. It would also support three activities to promote full participation by Indigenous peoples and Maroons in developing a sustainable development plan for the Interior and to increase the availability of information regarding the needs, interests and constraints of these communities<sup>12</sup>.
- 3.6 The second component focused on two areas, land rights and tenure, and support for the traditional authorities. It would comprise a study to identify and document land tenure regimes and land use by the Interior communities; a community land use map for the whole Interior would be developed as requested by Indigenous and Maroon communities during a public consultation process held in 2005; and planning support for the implementation of the Moiwana decision in accordance with the judgment of the Inter-American Court of Human Rights. Finally, as a critical step for formalizing the relationship between traditional authorities and GOS, this component would provide support to develop recommendations for the legal framework that would require to formally recognize the rights, duties and responsibilities of Indigenous and Maroon traditional authorities. This activity could include adjustments to existing legislation and/or the development of new legislation.
- 3.7 A third component would seek to increase the capacity of the Ministry of Regional Development; the traditional Indigenous and Maroon authorities and local organizations and NGOs in strategic planning, coordination and project management<sup>13</sup>.
- 3.8 Due to lack of consensus amongst Indigenous and Maroon stakeholders on the participatory approach used for the data gathering as input to the reports and the training activities, the Bank agreed with the GoS and representatives of the Maroon and Indigenous communities to close the project before its completion<sup>14</sup>.
- 3.9 As per the operation's Transactions History Report<sup>15</sup>, the Bank disbursed US\$630,484.87 with a last disbursement made on September 28, 2011 before closing the operation on

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<sup>11</sup> *Idem*.

<sup>12</sup> The three activities are: i) a community consultation process to identify the development priorities and perspectives of Indigenous and Maroons communities; ii) Community development assessments, among other things, to address current gaps and opportunities in critical sectors including education, health, economic development, land use...; iii) a modified household survey of Interior communities, and iv) stakeholder coordination through different workshops. *Cfr. supra* note 10.

<sup>13</sup> *Idem*.

<sup>14</sup> *Supra* note 4

<sup>15</sup> Transactions History Report for ATN/JF-10343-SU dated December 9, 2013.

October 7, 2011 with the cancellation of the outstanding amount of US\$89,515.13. The disbursed amount covered activities related to all four Components.

#### **IV. The Request and the concerns raised<sup>16</sup>**

- 4.1 On October 15, 2013 a Request was directed to the Suriname Country Office Representative, Mr. Marco Carlo Nicola and copied to the ICIM by Dr. Daniel Peplow, Co- Director of the Suriname Indigenous Health Fund (SIHF) on behalf of the Wayana people of Suriname. After a series of communications<sup>17</sup> between the ICIM and Dr. Peplow, on November 8, 2013 the latter confirmed his interest to have his Request considered under the Mechanism.
- 4.2 The Request stated objective was for the IDB to address “the very difficult situation of the indigenous people who live in the villages of Puleowine (Apetina) as well as the inter-riverine ‘no-contact people’ living traditional lives in the forested regions of southeast Suriname”<sup>18</sup>, as they are “being forced to abandon their minority cultural traits and merge with mainstream society”. The racial hostility they suffer and the lack of opportunity to participate in the central government or benefit adequately from resource distribution prevents the “Wayana communities from becoming permanent and legitimate components of the society.” It is the stated purpose of the Requester to address the structural impediments to public consultations of indigenous peoples.
- 4.3 The Request further states that SIHF have performed health studies to the population in Apetina that have “conclusively shown neurologic dysfunction consistent with mercury poisoning among residents in Puleowine (Apetina) in Southeast Suriname”<sup>19</sup>. In this context, it refers to the importance of “overcoming the social, political, economic and ethical determinants of health that are responsible for the public health crisis facing the Wayana in Suriname.”
- 4.4 The Request argues that from 1982 to date, the IDB has “worked to reform the land tenure system and promote resource development in Suriname’s Interior region”<sup>20</sup> and that the IDB sought “to replace the traditional land tenure system of the Wayana People in Suriname’s Interior where the village of Puleowime (Apetina) is located with a market

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<sup>16</sup> See Annex 2 for the original Request.

<sup>17</sup> As initially the Request was directed to the Suriname Country Representative, the ICIM communicated with Dr. Peplow on several occasions both via email and phone, to provide information on the ICIM process and have him identify if his interest was to have his concerns addressed by Management at that point or pursue the activation of the Mechanism after informing him of the ICIM mandate. The dates of said communications prior to confirmation of registration were: October 18, 22, 28 and 30 and November 5 and 8, 2013.

<sup>18</sup> Communication sent by Dr. Daniel Peplow to the Suriname Country on October 15, 2013 and copied to the ICIM institutional mail.

<sup>19</sup> *Idem.*

<sup>20</sup> *Idem.*

system” and that “as a consequence of these program activities”<sup>21</sup>, which have promoted gold mining, the Wayana people are being harmed by forcing men to look for alternative hunting grounds; polluting the water; women being sexually molested and, in general, Wayana people fearing for their lives. It specifies that they are suffering displacement, militarization of territories by mining interests, vulnerability to natural disasters, food insecurity, contaminated water and health effects.

- 4.5 The Request then asks for the assistance of the ICIM in determining whether “action can be taken in either of two ways to address the situation facing the Wayana in Suriname: (1) by providing immediate relief at the community level to stabilize the situation over the short-term and (2) reducing death, disease and disability over the long-term by addressing the situation (i.e. structural violence) at the policy level”<sup>22</sup>.
- 4.6 Furthermore, the Request recommends the introduction of “enhancements to current structural adjustment programs for Suriname that will address the economic and public health challenges encountered in Suriname’s Interior region” and “seeks to engage empowered stakeholders relevant to the Suriname case to determine what conditions are necessary to bridge the divide between economic development and public health. [They] specifically ask whether the IDB could host a meeting between the stakeholders identified (below) to discuss these matters further. Identified Stakeholders: (1) The Inter-American Development Bank; (2) Pan-American Health Organization, Regional Office in Suriname and the main office in Washington, D.C.; (3) World Health Organization, Geneva, Health in All Policies working group; (4) Suriname Indigenous Health Fund.”<sup>23</sup>
- 4.7 As a result of further communications<sup>24</sup>, Dr. Daniel Peplow stated that the Request was being filed on behalf of all of the Wayana indigenous people living in the villages of Puleowime (Apetina) and those “no-contact people” living in the forested regions of southeast Suriname. Additionally, although the ICIM was informed that given the nomadic lifestyle of the Wayana, it was difficult to provide a full list of all the members of the indigenous community the name of 14 Requesters (names to be treated as confidential as per Dr. Peplow’s request) of the Wayana Indigenous were provided,. Dr. Peplow also stated that he was their authorized representative, and did not require confidentiality for himself.
- 4.8 In said communications, Dr. Peplow first confirmed his interest to have ICIM assist him in facilitating a meeting between the IDB and the stakeholders identified (*supra* paragraph 4.6) as a preliminary step to fully activating the ICIM process. This was then followed a few days later with confirmation of his interest to activate the Mechanism.

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<sup>21</sup> The Request cites the following Bank-financed Operations: The Suriname Land Management Program (SU-L1001) and Support for the Sustainable Development of the Interior (SU-T1026)

<sup>22</sup> *Idem.*

<sup>23</sup> *Idem.*

<sup>24</sup> Communication from Dr. Peplow to ICIM dated Thursday October 30<sup>th</sup>, 2013 as response to email communication sent by Executive Secretary on Sunday October 27<sup>th</sup>, 2013.

## V. Consultation Phase Eligibility Determination Analysis

- 5.1 During the eligibility stage undertaken during the period November 8 to December 26, 2013<sup>25</sup>, the Committee had several communication exchanges with Dr. Peplow including two phone conferences, as well as with Management including an in –person meeting and phone conversations with the Country Representative and other Senior Managers. The aim of these exchanges was to better understand the Request, its linkage with the cited operations and the status of the latter<sup>26</sup>.
- 5.2 The Consultation Phase eligibility analysis is undertaken as per the exclusions and eligibility criteria detailed in paragraphs 37 and 40 of the ICIM Policy, respectively. It is a *prima facie* analysis of the alleged issues in the Request as regards its eligibility to activate the ICIM as per its mandate. Neither the analysis nor the determination made seek to pass judgment on the validity of the issues and concerns raised in the Request.
- 5.3 As per the above, and so detailed in Annex 1 of this Memorandum, the Request complies with the criteria set in paragraph 40, subsection (a), (c), (d) and (h).
- 5.4 However, the Committee considers that the present Request does not comply with the criteria set in paragraph 40, subsection (b), or with some of the exclusions included in subsection (e). Neither does it comply with paragraph 40 subsection (g) as regards amenability for a Consultation Phase exercise
- 5.5 The Committee is unable to reach a consensus on the criteria set in paragraph 40, subsection (f) and (e) as relates to exclusion 37(c).
- 5.6 Paragraph 40 subsection (b) states that requests shall be deemed eligible for the Consultation Phase if it is determined that the name and contact information for the Representative and proof of the authorization are available. In the Request, Dr. Daniel Peplow states that he is the representative of the Wayana people, which is then later confirmed by him via e-mail to the Executive Secretary on October 30, 2013 along with contact information.
- 5.7 As proof of representation Dr. Peplow attached to the Request a copy of a letter signed by the Apetina tribal chief requesting assistance from the SIHF to file a petition with the Inter-American Commission on Human Rights (IACHR). Given that this letter did not include any language regarding representation to file a Request with the ICIM as relates to its mandate, the Committee asked Dr. Peplow for further documentation to be provided by December 26, 2013, stating that he is authorized to represent the Wayana people before the ICIM. At this point, Dr. Peplow informed about the difficulties to meet with the Requesters as “few travel to urbanized areas and they rarely travel to the capital

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<sup>25</sup> The Eligibility Committee required an extension of 5 business days from the original deadline in order to meet with Management and review additional documents.

<sup>26</sup> On October 22 and December 23, 2013, the Committee called Dr. Peplow and on December 4, 2013 met with Management. Additionally, several e-mail exchanges were held with both Parties.

Paranamibo” and “channels of communication are limited”. A direct communication with the Requesters would imply minimum 10-days travel and considerable expenses. Therefore, in its stead on December 22, 2013, Dr. Peplow sent the Committee a letter from the President of the Organization of Indigenous People in Suriname (OIS), stating that they were “informed about the [ICIM] and [...] aware of the mandate and eligibility process” and “authorize[d] Dr. Daniel Peplow to submit a request to the MICI on behalf of the Organization of Indigenous Peoples and in particular the Granman [of the Wayana people in the South of Suriname] and his people to address the health problem”.

- 5.8 The Committee understands the difficulties to identify and provide information of each member of an indigenous community, taking into account the special social, cultural and organizational characteristics of these communities. Furthermore, it understands that in many circumstances, indigenous communities’ authorities are the ones that represent the willingness of the community as a whole. However, neither document provided (a letter of the chief of the Wayana community asking to file a petition before the IACHR and a letter from the OIS without specifying the link and relationship of this organization with the Wayana community or its Chief) can be taken as a full proof of the authorization for representation. For this reason, the Committee considers that the Request does not meet the requirements set in paragraph 40 (b).
- 5.9 Paragraph 40 subsection (f) states “that 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”<sup>27</sup>. The Committee must then analyze the allegations of harm presented on the Request in the context of the Bank operation(s) and seek to establish a linkage between them without judging the merits of the concerns raised.
- 5.10 The present Request refers in general terms to the harm that IDB investment in development has caused to the traditional lifestyle of the Wayana indigenous community. It also addresses a series of negative effects the Wayana people face by virtue of i) the already vulnerable situation given the “pressures on their semi-nomadic lifestyle”, the risk of acculturation and no participation in the central government<sup>28</sup>, and ii) specific threats as consequences of the internal land regulation of Suriname. In regards to the latter, the Request alleges that the Wayana people are being harmed by displacement, vulnerability to natural disasters, food insecurity, contaminated water and health effects (e.g., mercury intoxication).
- 5.11 The Committee has studied numerous public documents related to the issues presented as well as Bank records related to the two cited operations in addition to holding meetings with both Dr. Peplow and Bank Management to clarify the issues and the scope of the operations and their status at the time the Request was filed. After the *prima facie* analysis, the Committee has found that there are two types of harm alleged: one related to

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<sup>27</sup> ICIM Policy, Section C, paragraph 40 (f)

<sup>28</sup> Original Request received via e-mail from Dr. Peplow on October 15, 2013



governance issues of Suriname, including the limited participation of the Wayana and risks arising from socio-economic trends, and one regarding the land planning and regulatory framework.

- 5.12 The activities planned in both IDB operations, “The Suriname Land Program” (SU-L1001) and “Support for the Sustainable Development of the Interior” (SU-T1026), but specifically those of SU-T1026, aimed to provide the foundation for the GoS to develop a sustainable development program in the fields of environment, land rights and tenure, and indigenous participation in economic, social and cultural development, could have an impact on the conditions of the Wayana people.
- 5.13 The Committee has been unable to reach a consensus on whether the Request complies with the eligibility criteria set in paragraph 40(f), in particular with respect to whether the Requester has reasonably asserted that the direct material harm cited has been or could be expected to be a result of an action or omission of the IDB in violation a Relevant Operational Policy in the context of the two operations cited in the Request. In order to conclusively determine whether this criterion is met or not, it would be necessary to perform an in-depth analysis of the alleged situation and the Bank operations which the Committee has determined not to be advisable at this point given that the Request fails to meet other eligibility criteria as well. Therefore compliance with paragraph 40(f) is declared inconclusive.
- 5.14 As regards paragraph 40 (g) which states that “the parties are amenable to a Consultation Phase exercise, and, with respect to an issue raised in the Request, a Consultation Phase exercise, may assist in addressing a concern or resolving a dispute or is likely to have a positive result”<sup>29</sup>, Dr. Peplow has stated that he welcomes a consultation phase exercise as he sees “the Mechanism as a positive process through which intergovernmental organizations and non-State actors can respond to health challenges and utilize health concepts in the policy shaping process to achieve other political, economic and social objectives”<sup>30</sup>. However, it would appear that the process for which Dr. Peplow shows amenability would in part fall outside the scope of the Consultation Phase which is “to provide an opportunity, applying consensual and flexible approaches, to address the concerns of a party that believes it has been or could be reasonably be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-financed Operation”<sup>31</sup>.
- 5.15 In further communications, when asked if he would be amenable to a Consultation Phase exercise in which the GoS and the Requesters participated, he confirmed amenability and recommended that “the UN Special Rapporteur on the Rights of Indigenous Peoples attend the meeting with officials of the Ministry of RPO to ensure that the implied covenant of good faith and fair dealing is protected and to also ensure that the parties will deal with each other honestly, fairly, and in good faith. Also, SIHF representatives to the

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<sup>29</sup> ICIM Policy, Section C, paragraph 40 (g)

<sup>30</sup> Communication from Dr Peplow to ICIM dated Friday, December 6, 2013.

<sup>31</sup> ICIM Policy, Section C, paragraph 38.

meeting will need protection and assurance that they can enter and leave, and freely associate with counterparts in Suriname and not be subject to harassment or intimidation”<sup>32</sup>. Finally, on December 22, 2013, the Requester indicated that the Wayana people “are willing to meet with MICI, IDB, Government officials and other concerned authorities, NGOs and individuals in Apetina and other sites in the interior where the Wayanas have their homes.”<sup>33</sup>

- 5.16 Based on the original Request presented by Dr. Peplow, Management was consulted about amenability in addressing his petition, i.e. “Enhancements to current structural adjustment programs for Suriname that will address the economic and public health challenges encountered in Suriname’s Interior region....Engage empowered stakeholders relevant the Suriname case to determine what conditions are necessary to bridge the divide between economic development and public health [and] to host a meeting between the stakeholders identified [IADB, PAHO, WHO and SIHF] to discuss these matters further”<sup>34</sup>, they commented that, although they would be amenable to meeting with the Amerindian and Maroon communities of Suriname, a discussion of such matters would best be addressed by the primary stakeholders missing in Dr. Peplow’s proposal: the GoS and the Indigenous and Maroon communities of Suriname.
- 5.17 Given the above, the Committee considers that the Request does not fully meet the criteria set in paragraph 40 (g).
- 5.18 Finally, paragraph 40 (e) establishes that for a Request to be eligible none of exclusions set forth in paragraph 37 [(a) to (i)] applies. If after the eligibility analysis any one of them would apply, then neither the Consultation Phase nor the Compliance Review Phase will be applied.<sup>35</sup> In compliance with this, the Committee considers that exclusions (a), (b), (d), (e), (g), (h) and (i) do not apply. However, the Committee considers that exclusion (f) applies and is unable to reach a consensus on exclusion (c) and hereby follows the reasoning for said considerations:
- 5.19 As regards exclusion 37 (c) that states that the Consultation phase will not be applied to “actions or activities that do not related to a Bank-financed operation or that are not subject to the Bank’s Relevant Operational Policies, he Committee members have divergent visions directly linked to the compliance with the criterion set in paragraph 40 subsection (f) and have been unable to reach a consensus Therefore the memorandum is inconclusive as relates to the application of exclusion 37 (c)”<sup>36</sup>
- 5.20 Paragraph 37 (f) states that the Consultation phase will not be applied if a Request dealing with a Bank-financed Operation is filed after twenty-four (24) months of the last disbursement.<sup>37</sup> The Request cites two IDB operations: The Suriname Land Program”

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<sup>32</sup> Communication from Dr. Peplow to ICIM dated Thursday, December 12, 2013

<sup>33</sup> Communication from Dr. Peplow to ICIM dated Sunday, December 22, 2013.

<sup>34</sup> Original request received via e-mail from Dr. Peplow on October 15, 2013.

<sup>35</sup> ICIM Policy, Section C, paragraph 37 and 40 (e).

<sup>37</sup> ICIM Policy, Section C, paragraph 37 (f)

<sup>37</sup> ICIM Policy, Section C, paragraph 37 (f)

(SU-L1001) which was never approved nor implemented and was taken off the pipeline during the last semester of 2007 and “Support for the Sustainable Development of the Interior” (SU-T1026) which was approved in April 2007 and according to Bank records<sup>38</sup>, the Bank disbursed a total amount of US\$630,484.87 with a last disbursement made on September 28, 2011 before closing the operation on October 7, 2011 with the cancellation of the outstanding amount of US\$ 89,515.13. The Request was received on October 15, 2013, more than 24 months after the last disbursement. Therefore, the Committee finds that exclusion 37 (f) applies.

## **VI. Conclusion**

- 6.1 Although the Committee has failed to reach a consensus on whether the criterion in paragraph 40 subsection (f) has been complied with and in consequence whether exclusion 37 (c) in paragraph 40 (e) may apply, the Committee has been able to conclude, without making any judgments on its merits, that Request MICI-SU-2013-068 is not eligible for the Consultation Phase as it does not meet the criteria of paragraph 40 subsections (b), and (e) as relates to exclusion 37 (f).

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<sup>38</sup> Transactions History Report for ATN/JF-10343-SU dated December 9, 2013.

## Annex 1. Eligibility Analysis for the Consultation Phase

	Eligibility Criteria	Analysis
a.	Names and Contact information for the Requester are available	The Wayana Community in Apetina and the no-contact people in Southeast Suriname. Additionally the names of 14 Requesters that are members of the Wayana indigenous community in Apetina were provided and confidentiality of their identities was requested.
b.	The Names and Contact Information for the Representative are available, and proof of the authorization available	Dr. Daniel Peplow has provided his contact information.  As proof of authorization the following documents were provided:  1. A letter signed from the Tribal Chief of the Apetina requesting the assistance of the SIHF to file a petition with the Inter-American Commission of Human Rights.  2. A letter signed by the President of the Organization of Indigenous Peoples in Suriname authorizing Dr. Peplow to submit a request to the ICIM on behalf of the Granman of the Wayana people and the Wayana people.
c.	The Bank-Financed Operation(s) at issue have been identified	The Request cites two operations: A Sovereign-guaranteed loan “Land Management Program”(SU-L1001) and a technical cooperation “Support for the Sustainable Development of the Interior” (SU-T1026)
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)	The Requesters reside in Suriname <sup>39</sup> .
e.	None of the exclusions set forth in Section 37 applies	<b>One of the exclusions apply and determination of a second one remains inconclusive</b>
	37 a. actions that are the responsibility of parties other than the Bank, such as a borrower/recipient, technical	<b>Does not apply</b>

<sup>39</sup> Given that the Requesters are the members of the Wayana community in Suriname, at this stage and from the analyzed documentation, the Committee assumes that they are residents of Suriname. Further verification of this fact would require additional evidence.

	cooperation beneficiary, or executing agency, and that do not involve any action or omission on the part of the Bank;	
	37 b. Requests related exclusively to the laws, policies or regulations of the host country(ies), borrower/recipient or the executing agency;	<b>Does not apply</b>
	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;	<b>Inconclusive due to lack of consensus</b>
	37 d. Procurement decisions or processes (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank);	<b>Does not apply</b>
	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;	<b>Does not apply</b>
	37 f. Requests dealing with a Bank-financed Operation that are filed after twenty-four (24) months of the last disbursement;	<p><b>Applies</b></p> <p>The two operations cited are closed. In the case of the "Land Management Program", the operation which was never approved, was cancelled during the preparation stage (second semester of 2007) and no disbursements were made.</p> <p>In the case of the technical cooperation "Support for Sustainable Development" (SU-T1026) the last disbursement was made on September 28, 2011, more than 24 months before the Request was received by the ICIM.</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	<b>Does not apply</b>

	(in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank);	
	37 h. any Request that on its face (i) is without substance, or (ii) has been submitted to gain a competitive Business advantage; and	<b>Does not apply</b>
	37 i. Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies.	<b>Does not apply</b>  Although it was mentioned by Dr. Peplow that the case was brought before the Inter-American Commission for Human Rights, during the last communications on December 22 and 23, 2013 he confirmed that the process at the IACHR has not yet been activated, and that he is working with an NGO to prepare the petition.
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;	<b>Inconclusive – a determination would require further in-depth analysis</b>  The Committee has been unable to reach a consensus as there are conflicting views on whether the Requester has reasonably asserted that the alleged harm can be attributed to an action or omission of the IDB in violation of a Relevant Operational Policy.
g.	The Parties are amenable to a Consultation Phase exercise, and, with respect to an issue raised in the Request, a Consultation Phase exercise, may assist in addressing a concern or resolving a dispute or is likely to have a positive result; and	<b>Partially met</b> Dr. Peplow has indicated that the Requesters are amenable to a Consultation Phase exercise and some of the claims are in line with the Consultation Phase purpose. Management has responded that although they would be amenable to meeting with the Amerindian and Maroon communities of Suriname, they are not amenable to Dr. Peplow's request of organizing a meeting where none of the main stakeholders are present, i.e. the Indigenous Peoples and the Government of Suriname.
h.	The Requester has taken steps to bring the issue to the attention of Management.	Dr. Peplow has engaged with Management continuously from 1982 to date and has provided the ICIM with copies of said communications.

