

# Executive Summary: Challenging the Culture of Secrecy

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## A Status Report on the Freedom of Speech at the Inter-American Development Bank

By the Government Accountability Project

## The Need for this Report

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The Inter-American Development Bank (IDB) has a special obligation to its employees and to whistleblowers at large given the existence of the OAS Inter-American Convention Against Corruption and the American Convention on Human Rights. The former calls for legislation protecting whistleblowers, while the latter protects due process rights such as presumptions of innocence.

The IDB knows from bitter experience that it needs to address corruption. Investigative reporting into whistleblowing disclosures of alleged IDB corruption by *The Washington Times' Insight* magazine during 2002 and early 2003 provided additional momentum for congressional reforms. The outcome was a mandate for MDB whistleblower protection, independent audits and other transparency breakthroughs.

Consistent media reports outlining IDB corruption kept the pressure on during the period leading up to the 2003 IDB annual meeting in Italy. President Iglesias responded by delivering a stirring rhetorical commitment to protect and rely on whistleblowers. He noted that the IDB would prepare a whistleblower protection policy.<sup>1</sup>

The IDB's staff of economists and development experts exert considerable influence over the social and economic infrastructure of Latin America. This report examines whether the IDB has instituted a whistleblower program that is sufficient to reveal evidence of violations of law, gross waste, gross mismanagement, abuse of authority or serious risks to public health and safety in the use of IDB resources and to correct confirmed problems. The report was unable to measure the actual performance of the program since almost no empirical information was available.

## Moving Toward Greater Transparency: Congressional Mandate

Last year GAP and its allies educated Congress about the need for policies at the MDBs that protect the free speech rights of employees and improve accountability. The resulting law, known as the Leahy-McConnell Amendment, incorporated themes from the Sarbanes-Oxley Act dedicated to combating corruption and improving transparency and from a series of audits undertaken by the investigative arm of Congress—the General Accounting Office (GAO).

The Leahy-McConnell Amendment requires the U.S. Secretary of the Treasury to report to Congress on progress at the MDBs toward achieving a set of specific transparency and accountability goals, including whistleblower protection, by June 2005. Meeting these goals will create powerful tools for advancing the rule of law and meaningful development around the world.

In recent years, the world has increasingly embraced whistleblower protection. In late 2003, the United Nations Convention Against Corruption was signed in

Mexico. It establishes a detailed list of measures that are expected to set the minimum anti-corruption global standard, including whistleblower protection. GAP also co-authored a model law for the Organization of American States (OAS) to implement whistleblower provisions in the Inter-American Convention Against Corruption.

The mandate in Leahy-McConnell is either an opportunity or a threat, depending on the policies adopted by the MDBs. While whistleblower protection laws are increasingly popular, early largely symbolic versions actually discouraged potential whistleblowers from stepping forward. Employees risked retaliation thinking they had genuine protection, when in fact their careers were over. These early “Trojan horse” whistleblower laws usually resulted in a legal forum endorsing the retaliation, leaving the careers of reprisal victims worse off than if there had been no whistleblower protection law.

## Key Findings

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GAP found that the IDB's whistleblower protection policies consist of a mixture of positive and negative components. Highlights of the findings are summarized below.

### Strengths:

- President Iglesias has made a highly publicized commitment to develop a whistleblower protection system. The commitment covers all Bank-funded operations, consistent with standards of international and U.S. law such as Sarbanes-Oxley corporate accountability reforms. No other MDB leader has issued a broader, more ambitious rhetorical mandate.
- The Bank has an excellent policy to protect whistleblowers from the full scope of harassment. The staff rule on whistleblower protection lists a variety of actions that can be seen as reprisal and forbids them, along with a corresponding threat.
- There is a sweeping subject matter mandate to disclose anything or anyone connected with a Bank project that undermines the Bank's mission.
- There is a duty to report fraud and corruption and any other violations that could cause harm to the Bank's reputation or mission.
- There is an ambitious ombudsman or mediation system. The Bank has reduced the fear factor in proceeding with both no fault and adversarial options.

### Challenges:

- GAP spent the last year gathering and evaluating the IDB's whistleblower program. The result described in the report is an overall finding that the IDB failed to meet the necessary standards for a credible whistleblower protection program. For example, the IDB's program prohibits a whistleblower from disclosing information regarding fraud or corruption to outside parties. This policy prevents the public from learning about the corruption or fraud issue and leaves the response solely to IDB. One of the fundamental purposes of whistleblower policies is to expose fraud and corruption publicly and ensure that the institution's response is also subject to public scrutiny.
- A second key finding of the GAP report is that the IDB fails to provide an adjudication forum for the whistleblower that is free of institutional self-interest. The Bank's president controls the administrative due process system. Four of the seven members of the administrative tribunal are selected from a list provided by the Bank president. The result is a system that lacks credibility with respect to meaningful, unbiased due process.
- A final example is the Bank's failure to provide the most rudimentary guidelines on burden of proof. The IDB's approach institutionalizes the capacity for arbitrary rejection of a whistleblower's case. It also means the employee receives no guidance about what evidence is necessary to either win or avoid being punished for using the system. The result is that whistleblowers who use the system face a real risk of being accused of wrongdoing under the IDB's own guidelines.

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(Endnotes)







<sup>1</sup> Andersen, Martin Edwin. "IDB President Promises Reform." *Insight on the News*, April 16, 2003.

## GAP's Twenty-Four-Point Checklist

Review of the track record for whistleblower protection laws over the last twenty-seven years has revealed patterns of flaws that repeatedly have rendered free speech rights ineffective. Those lessons are a baseline to measure MDB compliance with the Leahy-McConnell standards for a credible program to protect whistleblowers.

An institution that adopts whistleblower provisions has a choice: make the provisions binding and effective or weak and illusory. The checklist of twenty-four requirements below reflects the difference between the two. The checklist is used to assess the status of current MDB whistleblower systems, defining the improvements necessary to comply with the Leahy-McConnell standards. All twenty-four of these minimum standards already exist in various employee protection statutes except for the last one, which measures institutional leadership.

## Inter-American Development Bank Report Card

#1 "No Loopholes" Context for Free Speech Rights	
#2 "No Loopholes" Subject Matter for Free Speech Rights	
#3 Duty to Disclose Illegality	
#4 Right to Refuse Violating the Law	
#5 Protection Against Spillover Retaliation	
#6 "No Loopholes" Protection for All Citizens With Disclosures Relevant to the Public Service Mission	
#7 Reliable Anonymity Protection	
#8 Protection Against Unconventional Harassment	
#9 Shielding Whistleblower Rights From Gag Orders	
#10 Providing Essential Support Services for Paper Rights	
#11 Right to a Genuine Day in Court	
#12 Option for Alternative Dispute Resolution With an Independent Party of Mutual Consent	
#13 Waiving Immunity From National Courts	
#14 Realistic Legal Standards to Prove Violation of Rights	
#15 Realistic Time Frame to Act on Rights	
#16 "No Loopholes" Compensation	
#17 Interim Relief	
#18 Coverage for Attorney Fees	
#19 Transfer Option	
#20 Personal Accountability for Reprisals	
#21 Credible Internal Corrective Action Process	
#22 Outside Oversight and Participation in Reform	
#23 Enfranchising Whistleblowers to Participate in Follow-Up	
#24 Committed Institutional Leadership	