



Transparency at BNDES

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The Brazilian Development Bank (BNDES) is a state-owned bank,³ founded in 1952, that operates under the direction of the Minister of Development, Industry and Foreign Trade.⁴ The bank finances public and private projects, both domestically and internationally. The mission of BNDES is “[t]o foster sustainable and competitive development in the Brazilian economy, generating employment while reducing social and regional inequalities.”⁵

- **Fundamental Right to Access to Information**

As a public entity, BNDES must comply with the Brazilian Constitution, which guarantees the fundamental right of access to information.⁶ This right is given effect through the Access to Information Law, Law No. 12.527/2011,⁷ and implementing regulations found in Decree No. 7.724 of 2012.⁸ The Decree stipulates that it is the duty of government entities to publish information of general interest produced by them or held in their custody on their websites.⁹ The Decree specifies certain information that *must* be published including, among other things, the agency’s organizational structure, applicable legislation, programs, projects, transfers of financial resources, detailed budgets, bidding procedures, pay and other financial information related to employees, answers to frequently asked questions, and contact information.¹⁰

BNDES has made at least some of this information available on its website, including general information about the agency and some details about its operations.¹¹ However, the bank’s website

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³ Lei No. 5.662, de 21 de Junho de 1971, available at: http://www.planalto.gov.br/ccivil_03/leis/L5662.htm.

⁴ Estatuto Social do Banco Nacional de Desenvolvimento Econômico e Social – BNDES, available at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/O_BNDES/Legislacao/estatuto_bndes.html.

⁵ BNDES website, http://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/The_BNDES/mission.html.

⁶ Brazilian Constitution, Article 5 (XIV) (1988).

⁷ Lei da Acesso à Informação, No. 12.527/2011, available at: http://www.planalto.gov.br/ccivil_03/ato2011-2014/2011/lei/12527.htm.

⁸ Decreto No. 7.724 de 16 de Maio de 2012, available at: http://www.planalto.gov.br/ccivil_03/ato2011-2014/2012/Decreto/D7724.htm.

⁹ Decreto No. 7.724 (2012), Art. 7, sec. 1.

¹⁰ Decreto No. 7.724 (2012), Art. 7, sec. 3 (I-VIII).

¹¹ See for example:

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/BNDES_Transparente/Consulta_as_operacoes_do_BNDES/.

provides different information for domestic projects compared with international operations. For example, unlike domestic projects, we could not find information related to the value of an international project. Unlike the World Bank or similar multilateral banks financing infrastructure and development projects, we could not find information about any *proposed* projects (either domestic or international) on the BNDES website.

- **Citizen Information Service and the BNDES Ombudsman**

In addition to information that must be published proactively, the law requires BNDES and other public entities to provide information when requested by any person. The Access to Information Law requires each government entity to create a Citizen Information Service (Serviço de Informação do Cidadão) (SIC) to carry out much of the entity's responsibilities under the law. Individuals may request information through the SIC at BNDES.¹²

The bank must immediately produce requested information or, when that is not possible, the bank must respond within twenty days describing when the information will be provided, denying the request with reasons, or explaining that the bank does not have the information.¹³ The law specifies that information necessary for the judicial or administrative protection of fundamental rights shall not be denied.¹⁴

If a public entity such as BNDES denies access to information, the requester may appeal the decision within ten days after the communication of the refusal.¹⁵ Brazilian law on access to information exempts required disclosure of information that is deemed essential to the security of society or the state. The Decree also states that the law does not extend access to information that is protected as confidential under other laws such as tax law, banking law, or commercial law.¹⁶

BNDES has created an ombudsman (Ouvidoria) to mediate conflicts between citizens and BNDES.¹⁷

- **Green Protocol**

BNDES has made commitments to transparency under the Green Protocol, originally signed in 1995, and revised in 2008.¹⁸ For example, the Green Protocol calls for informing interested parties about the sustainability policies and practices of the institution.¹⁹

¹² The BNDES SIC may be reached in person at the BNDES office in Rio de Janeiro, by phone (21 2172-7000), or e-mail (sic@bndes.gov.br). For more information visit the BNDES website at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/acesso_a_informacao/SIC/ (last visited October 21, 2013).

¹³ Lei da Acesso á Informação, No. 12.527/2011, Art. 11.

¹⁴ Lei da Acesso á Informação, No. 12.527/2011, Art. 21.

¹⁵ Lei da Acesso á Informação, No. 12.527/2011, Art. 15.

¹⁶ Decreto No. 7.724 (2012), Art. 6, sec. 1 (I-VIII).

¹⁷ More information about the BNDES Ouvidoria, including contact information, can be found on the BNDES website at: http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Navegacao_Suplementar/Ouvidoria/ (last visited October 21, 2013)

- **Environmental and Social Assessments**

Projects financed by BNDES must comply with the national laws in the country where they are carried out. This includes compliance with any environmental or social impact assessment requirements. These laws are important for transparency because people who may be impacted by a project often first learn about the project and possible consequences through the environmental and social impact assessment process.

A well-designed assessment process will require developers or the government to study the likely impacts of a proposed project, and inform the public about those impacts, before decisions have been made and before investing substantial resources in the project. A critical part of making such an assessment process successful is releasing the assessment to the public early enough so members of civil society can express their views and participate effectively in decisions about the proposed project.

The Brazilian Constitution requires an environmental impact study be prepared for activities “which may potentially cause significant degradation of the environment” and that the study be made public.²⁰ The National Policy on the Environment Law²¹ establishes that government entities such as BNDES that provide funding or incentives for the development of a project must condition the approval of the project on obtaining a license under the law and complying with CONAMA (the National Council of Environment) regulations. CONAMA lists types of projects that require an environmental impact study. Individual Brazilian states have environmental impact assessment laws as well.

In addition to these laws, BNDES has adopted its own environmental and social policy that applies to projects it funds.²² This policy requires a social and environmental analysis of proposed projects that addresses a long list of issues, including applicable laws and rules governing the specific sector, the policy of social and environmental responsibility of the beneficiary, environmental compliance, and environmental risk of the project.

What is not clear is whether this analysis must be released to the public and, if so, at what point in the process it must be released. If this information is not proactively published by BNDES, then, in theory, people could request it under Brazil’s Access to Information Law. (However, because there is no information on the bank’s website about projects under consideration, people are unlikely to know that these documents exist or even that a project is being considered. That

¹⁸ Protocolo de Intenções Pela Responsabilidade Socioambiental (known as the Green Protocol) is available on the BNDES website at:

http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/Arquivos/empresa/download/ProtocoloVerde.pdf.

¹⁹ Green Protocol, principle IV.

²⁰ Brazilian Constitution, Article 225, para. 1(4)(1988).

²¹ Política Nacional do Meio Ambiente Lei 6.938, de 31 de Agosto de 1981, art 12, available at:

http://www.planalto.gov.br/ccivil_03/leis/l6938.htm, and other laws and decrees.

²² Política Socioambiental,

http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/Politicas_Transversais/Politica_Socioambiental/index.html.

is, of course, until the project has been approved for financing, public hearings have occurred in the process of environmental licensing, or the project has been reported in the press.)

- **Enforcement**

Unfortunately, it has proven difficult to enforce information disclosure laws and policies in relation to BNDES projects. We are unaware of any prosecutors bringing actions against BNDES for violating the Access to Information Law or any of the policies, protocols, or decrees related to transparency. Public prosecutors have investigated BNDES projects for violations of environmental protection laws and policies.²³

Civil society has had some success influencing BNDES financing of projects that are likely to have detrimental social and environmental impacts.²⁴

We could not find any court challenges to BNDES projects in other countries. Increased information disclosure about proposed projects outside of Brazil could generate more public participation in decisions about these projects and ensure they are designed more sustainably.

- **Conclusion**

There is no information published on the BNDES website about projects that are under consideration for financing. Furthermore, there is no clear opportunity for citizens to participate in the decision-making process related to projects that BNDES might finance. If people learn about a project that BNDES may be considering, they would have to send a request for information to the Citizen Information Service under the Access to Information Law. If BNDES acknowledges that it has information related to a proposed project, it may still attempt to

²³ For example, after studying one large-scale livestock production project, public prosecutors issued formal recommendations for reforms. (Recomendação expedida pela Procuradoria da República do Estado do Mato Grosso que integra o Inquérito Civil Público nº 1.20.0000391/2007-07. Expedida em 3 de maio de 2013.) Among other things, the prosecutors recommended adopting measures to enforce the bank's social and environmental guidelines that relate specifically to the sustainability of livestock projects (found in Resolution No. 1854/2009 of BNDES), and prohibiting financing livestock projects that do not take appropriate measures to meet the social and environmental standards. Prosecutors gave BNDES thirty days to comply. We are not aware of BNDES taking action in response to these recommendations.

Another case, which is perhaps the most controversial BNDES project with regard to impacts to the environment and human rights, is the financing of the Belo Monte hydroelectric facility in the state of Pará. BNDES attached conditions to the project financing – but the project developers have not complied with the conditions. The Public Prosecutor's Office (Minsitério Público) has filed several Ações Cíveis públicas (public civil actions) challenging the project. On October 25, 2013, as a result of one of the lawsuits filed by public prosecutors, a court suspended the environmental license for Belo Monte and ordered BNDES to refrain from providing any type of financial resources until the developers comply with the conditions. Read more about the decision at:

<http://www.xinguvivo.org.br/2013/10/26/justica-paraliza-obras-de-belo-monte/>

²⁴ For example, the Association Montanha Viva used administrative processes to ensure BNDES considered the environmental risks associated with a phosphate mine proposed for the state of Santa Catarina. See, Associação Montanha Viva website, <http://www.montanhaviva.blogspot.com.br/?view=snapshot#!http://montanhaviva.blogspot.com/2009/12/bndes-diz-que-nao-ha-contrato-de.html> (last visited October 21, 2013).

withhold the information by claiming that it meets an exemption to disclosure under Brazilian law.

The social and environmental policy BNDES adopted is a move in the right direction. Real implementation of the policy should lead to better decisions, but the policy does not go far enough to put necessary information in the hands of civil society. There is still a desperate lack of information about projects under consideration as well as critical details related to funded projects.