



Corporate Evaluation

Evaluation of the Independent Consultation and Investigation Mechanism (MICI)

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Response by IDB and IDB Invest Management

MICI Response

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Acronyms and Abbreviations

ADB	Asian Development Bank
AfDB	African Development Bank
CAO	Compliance Advisor Ombudsman for the International Finance Corporation (World Bank Group)
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
ESG	Environmental and Social Safeguards Unit
GCE	External Consultative Group
IAMnet	Independent Accountability Mechanisms Network
IFC	International Finance Corporation
IIC	Inter-American Investment Corporation (now IDB Invest)
IPAM	Independent Project Accountability Mechanism
MDB	Multilateral development bank
MICI	Independent Consultation and Investigation Mechanism
MICI-IDB	MICI policy governing the functioning of the Mechanism for requests related to IDB- or MIF-financed operations
MICI-IDB Invest	MICI policy governing the functioning of the Mechanism for requests related to IDB Invest-financed operations
MIF	Multilateral Investment Fund
MIGA	Multilateral Investment Guarantee Agency
NSG	Non-sovereign guaranteed
OMJ	Opportunities for the Majority
OVE	Office of Evaluation and Oversight
SCF	Structured and Corporate Financing Department
SG	Sovereign-guaranteed

Executive Summary

The IDB Group is committed to the environmental and social sustainability of the projects it finances. Accordingly, it has developed a set of policies aimed at strengthening the sustainability of projects through the implementation of solid environmental and social risk management standards. The Independent Consultation and Investigation Mechanism (MICI) was established in 2010 as a last-resort mechanism enabling parties potentially affected by IDB Group-financed operations to file complaints regarding the Group's alleged noncompliance with its environmental and social safeguards policies and standards. The MICI has two functions which such parties can opt for: a dispute resolution function ("consultation phase") and an investigation function ("compliance review phase").¹

The MICI is part of a series of nonjudicial accountability mechanisms created by the multilateral development banks (MDBs) in the 1990s to address grievances regarding the potential negative consequences of their projects for towns and communities. In 2012, OVE conducted an evaluation of the MICI which identified significant problems in terms of its policy, structure, and functioning and recommended putting an end to the MICI pilot phase and reformulating its policy and structure. In December 2014, the Bank's Board of Executive Directors approved a new policy and structure for the mechanism (MICI-IDB Policy). Since early 2016, the MICI has also been responsible for handling requests concerning IDB Invest operations under a policy approved in December 2015 (MICI-IDB Invest Policy).

This evaluation is in response to a request from the Boards of Executive Directors of the IDB and IDB Invest for OVE to independently examine the MICI policy and its implementation pursuant to the requirement established in the respective policies of each institution.² The aim of

1 The consultation phase is a dispute resolution process that provides an opportunity for the parties to address the issues raised in the request in a voluntary, flexible, and collaborative manner. In this phase, the MICI acts as a mediator in the search for an agreement that will be satisfactory to the parties. The compliance review phase is an investigative process related to the issues raised in the request, aimed at establishing whether the IDB Group has failed to comply with any of its relevant Operational Policies and whether any such noncompliance has caused harm to the requesters. In this process, the MICI acts as an investigator and is subject to approval of the investigation by the Board of Executive Directors. The main output of an investigation is a report, which is generally accompanied by recommendations for consideration by the Board of Executive Directors.

2 The MICI-IDB Invest policy mirrors the MICI-IDB policy in terms of content and structure. The two policies diverge primarily on matters such as the relevant operational and access to information policies of each institution that define the scope of the mechanism,

this evaluation is to inform the Boards of Executive Directors of the IDB and IDB Invest on the extent to which, under its current policy framework, the MICI has been effective and efficient in (i) resolving the complaints it receives concerning environmental and social impacts of projects due to alleged noncompliance with the IDB Group’s environmental and social safeguards policies and standards; and (ii) promoting institutional learning with regard to environmental and social safeguards and standards and their implementation in IDB Group projects. In addition, the evaluation is aimed at reporting on the mechanism’s accessibility to requesters and the extent to which the MICI has performed its duties independently, objectively, impartially, and transparently. OVE employed a combination of complementary methods to conduct this evaluation, including in-depth analyses of the MICI’s policy documents and guidelines, the requests handled by the MICI between December 2014 and June 2020, and the request management processes. OVE supplemented its analysis through visits to five countries and semistructured interviews with key stakeholders, including requesters and/or their representatives, IDB Group operational staff and managers, executive directors of the IDB Group, governmental agencies, private sector clients, and civil society organizations.

MICI Policy for the IDB Group

The current policy corrected important issues identified by OVE in its 2012 evaluation which impeded the MICI from functioning properly. Worth mentioning are the solution to the accountability and conflicts of interest problems associated with the previous organizational structure as well as the problems associated with the sequence of phases and duplicate eligibility verification; the establishment of time frames for handling requests; and the creation of procedures for Management participation. Moreover, there is now greater consistency between the policy, guidelines, and associated processes.

However, one key issue that remained pending is the legal exclusion that continues to be grounds for differing interpretations and a major factor limiting the effective, efficient operation of the MICI. This provision, which already existed in the previous policy, was identified by OVE in 2012 as a significant obstacle to the MICI’s effectiveness. Nonetheless, at the request of some Executive Directors, the exclusion was maintained in the reformulated policy in 2014, although slightly circumscribed. Even so, neither its purpose nor its scope were clarified. The majority of mechanisms in other MDBs do not include an exclusion of this type.

and the lines of reporting to the institutions’ respective Boards of Executive Directors. Unless otherwise indicated, this evaluation refers to the two policies as the MICI policy for the IDB Group.

Other limitations have arisen in the implementation of the policy over the last five years, but they have largely been resolved by the MICI in a manner consistent with the intervention logic of the accountability mechanisms. This is evidence that there is sufficient room for the MICI to manage the limitations of the current policy, provided it is done within the parameters of the intervention logic for this type of mechanism. Accordingly, a new comprehensive policy review is not required.

Access to the MICI

Between December 2014 and June 2020, the MICI received a total of 72 complaints or requests originating in 17 countries in the region. Of these, 57 (79%) were related to sovereign guaranteed (SG) operations, and 13 (18%) to non-sovereign guaranteed (NSG) operations.³ For the most part, the requests were filed by individuals and reached the MICI through some type of representation. The main issues raised by requesters in their complaints have to do with potential impacts on their living conditions or property, often concerning involuntary resettlement, economic displacement, and compensation. Other issues were related to potential environmental impacts, as well as shortcomings in certain aspects of the preparation and implementation of operations, such as the information disclosure and public consultation and community participation processes. The requests were primarily associated with projects in the transportation, energy, and water and sanitation sectors, and were categorized as having high and medium environmental and social impacts.

Once received, requests go through a series of stages aimed at determining their eligibility before they can be considered under the consultation phase and/or the compliance review phase. This determination is based on a series of eligibility criteria and exclusions established in the policy. Of the total of 72 requests received, 15 (21%) requests originating in 10 countries were declared eligible. Eleven of the eligible requests were associated with public sector operations. The remaining four requests were associated with NSG operations, three of which had been approved by IDB Invest. In 12 of the 15 eligible requests, the requesters initially opted for the consultation phase, and in the remaining three requests the requesters opted outright for the compliance review phase. In four of the 12 eligible cases processed in the consultation phase, the MICI found that the conditions were not present for a dispute resolution process and therefore transferred them to the compliance review phase based on the preference stated by the requesters at the start of the process. Three eligible requests handled in the compliance review phase did

3 Two other requests received did not refer to specific IDB Group operations. Of the requests associated with NSG operations, five were handled under the MICI-IDB Invest policy since they were related to operations approved by IDB Invest. The other eight were related to operations originated by the Bank's former private windows (SCF-six; OMJ-one) and the Multilateral Investment Fund (MIF) (one), and were therefore handled under the MICI-IDB policy.

not advance to an investigation process, by decision of the Board of Executive Directors in one case and at the recommendation of the MICI in the other two.

Access to the MICI requires knowing that the mechanism exists. OVE found that the mechanism is not very well known despite the MICI's significant efforts in this regard. The MICI has also sought to facilitate access to the mechanism through various means, including important work in the area of reprisal risk, which has significant implications for safe access to the mechanism. Despite the MICI's efforts in promoting and facilitating access, the integration of these efforts at the institutional level remains a major challenge. Publicizing the mechanism is a task not only for the MICI but also for IDB Group Management. However, a consensus at the institutional level on the importance of making the mechanism known and how to accomplish this remains unclear.

Some requirements are difficult for requesters to meet, including the need for them to raise their concerns with Management before reaching out to the MICI. Aside from the raising of issues beyond the purview of the MICI, failure to meet the requirement of prior contact with Management became the main reason for not admitting a request. During the period under evaluation, the difficulty of meeting this requirement was largely due to the lack of a grievance management system within the IDB Group. An analysis of requests that reached the eligibility examination stage, coupled with field visits, shows major inconsistencies in the way in which Management addressed contacts initiated by requesters before they turned to the MICI. The new environmental and social policies of the IDB Group seek to remedy this shortcoming by laying the groundwork for a complaint management system. IDB Group Management has begun to take measures in this direction. However, the processes that can facilitate requester access need to be defined, as well as the way in which these systems will be coordinated with the MICI as a mechanism of last resort.

The legal exclusion is another factor that has limited access to the mechanism. The judicial proceedings that ultimately triggered the exclusion removed from consideration core issues raised in the complaints, such as concerns regarding resettlement, economic displacement, and public consultations, which are of great importance for the IDB Group in terms of implementing its environmental and social safeguards policies and standards. The exclusion of these issues eliminates the possibility of addressing cases of noncompliance and adverse impacts on the requesters, leaving potential environmental and social liabilities unaddressed, possibly resulting in a reputational risk for the IDB Group. The experience of the Reventazón project case, in which the Office of the Compliance Advisor Ombudsman of the International Finance Corporation (CAO/IFC) analyzed the

issues that were excluded from the MICI case due to the triggering of the legal exclusion, shows that the national judicial proceedings followed their course without interfering in the CAO's process, and each was focused on its respective area of competence: the CAO on the application of the IFC's Performance Standards, and the national court case on the enforcement of the country's laws and regulations. Moreover, as described in the report, the legal exclusion was invoked on multiple occasions regarding eligibility, primarily by Management, generating inefficiencies in the process.

Management of cases

OVE analyzed a portfolio of 19 cases handled by the MICI between December 2014 and June 2020, finding that the MICI generally operates in accordance with the principles set forth in its policy: independence, objectivity, impartiality, transparency, and efficiency.

In the consultation phase, the MICI has had the space needed to manage its cases independently and has acted objectively. It has considered the viewpoint of the various parties to the process, and the mechanism is generally perceived as being impartial. Recognizing the uncertainties inherently associated with the dispute resolution processes and related time frames and unlike the MICI's practice in the past, the cases in the consultation phase have been handled with flexibility, with consideration for the specific context of each case, and with a view to achieving a timely resolution, either moving forward with the process or transferring the case to the compliance review phase if the conditions for mediation are not present.

In the compliance review phase, the handling of cases highlights the more formidable challenges involved in a process that is by nature contentious and has been subject to practices compromising the independence of the MICI. The MICI has been subject to decisions by the Board of Executive Directors on issues that have affected its ability to act independently. Under the current policy framework, the Board of Executive Directors controls the option of initiating an investigation in the compliance review phase and decides whether or not to approve the recommendations of a MICI investigation. OVE found that, in both phases, there have been situations that compromise the independence of the mechanism and are indicative of pressure exerted on the MICI. These have resulted in material changes to its documents. In addition, despite improvements in the relationship between Management and the MICI, which is contentious by nature, OVE identified certain practices by Management, such as repeatedly raising legal proceedings that the MICI had already disallowed in the eligibility stage, transferring to the Board the decision on eligibility that under the policy is the responsibility of the MICI Director, thus hindering the MICI's work and restricting its ability

to act independently. At the same time, in certain specific situations, OVE found that the MICI also acted in a way that undermined its own independence.

On the basis of the available evidence, the MICI has carried out its duties in the compliance review phase with a reasonable degree of objectivity and in line with the letter of the policy, even though there is room to strengthen certain analyses and documents. In addition, OVE found that the MICI has acted with impartiality in seeking out the viewpoints of both the requesters and Management. However, the absence of a clear communication strategy, particularly important when the conflict level between the parties is high, has given rise to perceptions that the mechanism is not impartial. The MICI exhibits greater speed than in the past in handling cases in the compliance review phase. Nonetheless, in a context of more complex cases, there have been frequent delays and extensions of the time frames established in the policy. In general, major strides have also been made in terms of transparency in the handling of cases.

Results

In recent years, the MICI has facilitated several agreements in the consultation phase, while also demonstrating an ability to facilitate more complex agreements than in the past. Between 2017 and 2019, agreements were reached in six of the seven cases in which the MICI judged that favorable conditions were in place for a process of dispute resolution between the parties. Moreover, these cases have involved a larger number of individuals or community groups and, in some instances, a complex context. In addition to the flexible approach in managing cases with a view to their timely resolution, other factors account for the above-described achievements, chief among them the consolidation of a capacity for dispute resolution within the MICI. Management participation has also been important in the search for technical solutions and, more generally, as an effort to add credibility and legitimacy to the process. The agreements facilitated by the MICI have encompassed measures aimed at addressing problems raised by the requesters, including the availability of environmental and social information on the projects, and at improving the implementation of the questioned operations. Furthermore, the MICI has taken on an active role in supporting the process of monitoring the agreements reached. In this regard, while the pace of progress on the agreements has been slower than planned, requesters have in some cases already obtained concrete results.

The cases analyzed by OVE in the compliance review phase have not yet yielded concrete results for the requesters, despite the findings of noncompliance and associated harm established by the MICI. In five of six investigations it completed, the MICI found noncompliance

with several of the relevant IDB Group Operational Policies⁴ and associated negative impacts for the requesters. In two cases, none of the MICI recommendations was aimed at addressing the situation of the requesters. In one case, the MICI's recommendation that could have yielded some result for the requesters was not approved by the Board. Thus, only two recently completed cases ultimately led to recommendations that could result in corrective action for the requesters, although it is still too early to tell how effective they will be. In these two cases, the MICI recommended, with subsequent Board approval, that Management prepare action plans in consultation with the MICI in response to the approved recommendations and that the MICI monitor Management's commitments.

There are key factors that have limited the IDB Group's effectiveness in ensuring that any adverse impacts of its projects that stem from noncompliance with its policies are remedied. On one hand, the MICI recommendations in cases in which it has established noncompliance with the relevant Operational Policies and associated harm have not always been formulated so as to require the IDB Group to adopt the necessary measures to ensure the project's compliance with those policies. On the other hand, the Board has not always exercised its prerogative under the MICI policy to ask Management to develop action plans in response to MICI recommendations approved by the Board. The same is true of action plan monitoring, as the Board has also not systematically requested verification of progress in implementing corrective measures and whether the harm has been mitigated and/or appropriately compensated.

In addition to these factors specific to the IDB Group, there are other systemic factors that affect all multilateral development bank (MDB) accountability mechanisms and that have also limited their capacity to ensure the adoption of corrective measures when noncompliance with the policies and associated harm have been identified. For example, the investigations focus on the performance of the MDB financing the projects rather than on the borrowers or clients that implement them. Yet it is precisely the borrowers or clients that have to implement and finance the corrective measures. This creates difficulties when the borrower or client is not willing to implement these measures due to their cost or because it considers that the adverse impact is the result of failures in the supervisory duty of the MDB. Another example is when the project ends up not being financed by the MDB or the client makes early repayment of the loan, thereby limiting the ability of the mechanisms to make substantive

4 The relevant Operational Policies within the MICI's purview are the IDB Group's environmental and social policies and standards and the access to information policies, included because they list the requirements for the disclosure of environmental and social information on the projects.

and enforceable recommendations, despite the environmental and social liabilities that may be left unaddressed and the reputational risk this entails for the MDB.

At the institutional level, the MICI has helped to extract relevant lessons from the cases it handles regarding important issues for the environmental and social sustainability of the projects financed by the IDB Group. The most frequently recurring issues brought up by the MICI include the shortcomings found in the public consultation processes in terms of timely and accessible disclosure of environmental and social information on the projects, as well as the normative gap at the policy level in terms of how economic displacement is treated. Management has taken corrective steps on these issues and has incorporated lessons learned into the development of the new environmental and social policy framework. Nevertheless, there is room for the MICI to further analyze recurrent and systemic issues based on its 10 years of experience, reaching beyond the scope of individual cases, with a view to maximizing their contribution to the IDB Group's environmental and social safeguards and standards system.

Considerations on the internal functioning of the MICI

The evaluation found major progress in the MICI's functioning as a result of the restructuring of the mechanism and the MICI's process of institutional learning and consolidation since the approval of its policy in late 2014. Albeit with some delay, the basic structure of the MICI as established in its policy was completed in early 2016. This basic structure is supplemented by operational and administrative staff as well as by external experts to support the management of cases. The MICI has acted independently from IDB Group Management in being able to define its work plan and manage its human and budgetary resources. Furthermore, there has been a significant change in its operations regarding the monitoring and observance of the Bank's procedures and regulations in these areas.

There are major opportunities for continuing to strengthen the internal capacities of the mechanism. To date, there is no plan for continuous training of MICI staff. While the MICI has built significant capacities in recent years, in a context of more complex cases compared to the past, the MICI does not have staff with experience in the practical implementation of the environmental and social safeguards policies and standards.

Recommendations

OVE's recommendations arising from this evaluation were prepared while considering that, while the MICI is functionally independent from Management, it is part of an IDB Group system that seeks to strengthen the environmental and social sustainability of Bank-

financed projects by managing their adverse environmental and social impacts on the communities. As such, the MICI needs to be part of the IDB Group's efforts and be able to rely on the effective participation of all interested parties, including the IDB and IDB Invest Boards of Executive Directors and Management. Accordingly, OVE's recommendations are directed both at the MICI and at IDB Group Management and Boards of Executive Directors.

In view of the foregoing and based on the findings of this evaluation, OVE makes the following recommendations:

1. For IDB and IDB Invest Management: Implement the IDB Group Management system for managing environmental and social grievances so that it is coordinated with the MICI, entailing the following:

- (i) Establish, as soon as possible, processes that (a) facilitate access by potential requesters to Management's grievance management system; (b) ensure an expedited, transparent, and secure response to these grievances; (c) incorporate how the public will be made aware of the various grievance management bodies, including the MICI; and (d) define the manner in which the management system will be coordinated with the MICI so it can act as a mechanism of last resort under the terms set forth in the MICI policy in order to address requesters' concerns after they have made reasonable attempts to address their complaints with Management.
- (ii) Involve the MICI in the work of defining the system and its processes, in order to ensure smooth coordination among the various bodies responding to the requesters and consideration of the lessons learned by the MICI in managing the complaints.

The IDB Group's new environmental and social safeguards policies and standards provide the foundations for a grievance system at the project level and the Management level. Management has begun to work on implementation thereof, although the operational aspects of the system still need to be developed, and consistent coordination with the MICI needs to be ensured so it can act as a mechanism of last resort.

2. Repeal the legal exclusion, entailing the following:

- (i) **For the IDB Board of Executive Directors:** Declare that clause 19(d) of the MICI-IDB policy related to the legal exclusion is rendered without effect as of 1 July 2021.

(ii) For the IDB Invest Board of Executive Directors:

Declare that clause 19(d) of the MICI-IDB Invest policy related to the legal exclusion is rendered without effect as of 1 July 2021.

This evaluation has found that, despite the changes introduced in the MICI policy framework in 2014, the legal exclusion remains an obstacle to the mechanism's effective operation. Beyond the fact that the interpretation of its scope is unclear, and it is the root of countless disputes between Management and the MICI, its application over the last five years has generated inefficiencies in the MICI process and the exclusion of important issues in the proper application of the IDB Group's environmental and social safeguards policies and standards, leaving it exposed to a reputational risk due to potential unaddressed environmental and social liabilities associated with grievances. Moreover, most of the mechanisms at other MDBs do not include an exclusion of this type.

3. Reinforce the independence of the MICI, entailing the following:

(i) For the Boards of Executive Directors of the IDB and IDB Invest:

(a) respect the integrity of the MICI's reports and recommendations, considering them as final, not subject to modification; and (b) in exercising their duties as Boards, safeguard the independence of the MICI from all types of interference in order to promote a culture of accountability in the IDB Group.

(ii) For IDB and IDB Invest Management:

(a) adhere to the forums for participation as applicable under the MICI policy; (b) provide unrestricted, timely access to all documentation that the MICI requires associated with the cases, with an indication of their level of confidentiality that should be maintained by the MICI; (c) refrain from raising issues that have already been disallowed by the MICI in the eligibility process, once this stage is complete; and (d) respect and support the independent work of the MICI in order to promote a culture of accountability in the IDB Group.

(iii) For the MICI:

(a) submit final reports to the Board in which changes are only introduced in order to correct factual errors; (b) develop guidelines with measures and practices adopted to address the limitations of the current policy framework and its proper application, including issues such as the consequences of a determination of noncompliance with the policies and associated harm; the link between noncompliance and the alleged harm; the monitoring of action plans; the application of the eligibility criteria, including the time limit in the case

of guarantees based on the existing proposal; practical and general considerations for the process of engaging with IDB Group borrowers and clients; and other issues as needed, in accordance with its independent technical judgment, ensuring that they are framed within the mechanism's intervention logic.

The credibility of the mechanism hinges on its capacity to work independently. This evaluation has identified practices, particularly in the compliance review phase, that are inconsistent with the independence of the MICI, stemming from an often adversarial relationship between the MICI and Management that goes beyond the natural tension expected to exist in these types of situations. The MICI is an arm of the Board of Executive Directors; its value added depends on the extent to which it can submit frank and honest reports to the Board regarding complaints associated with IDB Group projects.

4. Ensure that corrective action is taken when there are findings of noncompliance with the policies and associated harm, entailing the following:

- (i) For the MICI:** When finding noncompliance with the operational policies and associated harm, consistently issue recommendations aimed at ensuring that the IDB Group comes into compliance with its operational policies, so that the projects meet the policy requirements for the identification, mitigation, and/or compensation of the adverse environmental and social impacts associated with this noncompliance.
- (ii) For the Boards of Executive Directors of the IDB and IDB Invest:** (a) Consider the recommendations issued by the MICI and consistently require Management to prepare action plans providing for corrective action to address any noncompliance and associated harm; (b) consistently verify that the action plans substantially respond to the recommendations and problems identified by the MICI; (c) require the MICI to monitor implementation of such action plans; and (d) ask IDB Group Management, in consultation with the MICI, to analyze the obstacles identified by OVE for the implementation of corrective measures in situations where it is difficult to redirect the project toward compliance with the operational policies (paragraph 5.10) and present options for addressing them.

(iii) For IDB and IDB Invest Management: (a) prepare action plans for approval by their respective Boards establishing corrective action for each instance of noncompliance and associated harm identified by the MICI; (b) implement these action plans as provided.

5. For the MICI: strengthen its internal capacity, entailing the following:

- (i) Reinforce its technical capacity in terms of environmental and social safeguards by: (a) hiring technical specialists with experience in the practical implementation of environmental and social safeguards policies and standards as part of its team; (b) expanding staff training through a structured and ongoing program to ensure consistent implementation of the policy.
- (ii) Redouble its efforts to analyze recurrent and systemic issues, reaching beyond the scope of individual cases, based on the experience it has accumulated in managing cases and requests over the years.
- (iii) Prepare a communication strategy to support the management of cases in high-conflict situations with a view to strengthening the integrity of the process and reducing the reputational risk for the mechanism and the IDB Group.

Although the MICI has built significant capacity in recent years, in a context of more complex cases in comparison to the past, training efforts have been limited, and the MICI does not have staff with experience in the practical application of environmental and social safeguards policies and standards. Moreover, although the MICI has helped generate relevant lessons learned on issues of importance for the environmental and social sustainability of IDB Group-financed projects from the cases it has handled, the more regular, systematic analysis of lessons learned and recurring issues through its experience in the management of cases and request is still incipient. While OVE found that the MICI acted impartially, the lack of proactive communication management, particularly important in high-conflict situations between the parties to a case, has impacted the perception of the mechanism's impartiality based on certain interactions between the MICI and requesters.



01

Introduction

1.1 This report presents the results of the evaluation regarding the Independent Consultation and Investigation Mechanism (MICI) conducted by the Office of Evaluation and Oversight (OVE). The MICI was created in 2010 as an independent mechanism to handle complaints from parties who consider themselves adversely affected by Inter-American Development Bank (IDB) financed projects due to alleged IDB noncompliance with its environmental and social safeguards policies and standards. Following the consolidation of the private sector windows in 2016, the MICI is also responsible for managing complaints associated with IDB Invest projects. Thus, this evaluation covers the work of the MICI with respect to both institutions, which together comprise the IDB Group.

A. Conceptual framework

1.2 The IDB Group is committed to the environmental and social sustainability of the projects it finances. Accordingly, it has developed a set of policies aimed at strengthening the sustainability of projects through the implementation of sound environmental and social risk management standards. Thus, pursuant to the principle to “do no harm” to individuals or the environment, a core element of these policies is to ensure that the environmental and social risks and impacts of the projects are identified in timely fashion so as to avoid or, where avoidance is not feasible, minimize them, and where residual impacts remain, offset or repair them.¹ Furthermore, the IDB Group seeks, to the extent possible, to strengthen the environmental and social sustainability of its projects beyond mitigating adverse risks and impacts and to maximize the benefits of sustainable development.²

1.3 In tandem with its environmental and social safeguards policies and standards, the Bank created an accountability mechanism at the project level that has evolved over time. In 1994, in the context of the IDB’s Eighth Capital Increase and at the request of the Board of Governors, the Bank established an initial Independent Investigation Mechanism (IIM) as part of IDB Management, with the objective of helping to increase the transparency, accountability, and effectiveness of the Bank. The IIM was tasked with investigating allegations of noncompliance with the Bank’s operational policies in response to complaints by affected parties. The IIM handled five cases over the course of its 15 years of existence. In 2010, in the context of the IDB’s Ninth Capital

1 This mitigation hierarchy originates in the policies that preceded the new IDB Environmental and Social Policy Framework approved in September 2020 and the new IDB Invest Sustainability Policy approved in April 2020. The new policies adopted the same mitigation hierarchy.

2 IDB Environmental and Social Policy Framework, section 1.4, September 2020. IDB Invest Sustainability Policy, section 1.2, April 2020.

Increase and on the instructions of the Board of Governors, the Board of Executive Directors of the IDB approved a new policy to establish the MICI (document [GN-1830-49](#)), replacing the IIM. The new mechanism would be functionally independent from the Bank's Management and would report to the Board of Executive Directors. Its investigative ("compliance review") function was supplemented by a dispute-resolution ("consultation") function.³ Subsequently, in December 2014, as a result of the OVE evaluation (document [RE-416-1](#)) which recommended restructuring the mechanism, the Bank's Board approved a new MICI policy that reformulated the structure of the mechanism and how it was to function (document [MI-47-3](#)). Lastly, in 2015, the Bank updated the MICI policy for IDB operations (document [MI-47-6](#)) in view of the approval of the MICI policy for IDB Invest operations (document [CII/MI-1-1](#)) and the need to define the handling of cases associated with private-sector projects originated by the Bank prior to the merge-out of the private sector windows into IDB Invest.⁴

- 1.4 The MICI is part of the so-called nonjudicial accountability mechanisms in existence at the project level at the multilateral development banks (MDBs). Mechanisms of this type began to be developed in the 1990s as the MDBs sought to address grievances regarding the potential negative consequences of their projects for towns and communities. Since MDBs generally have immunity from litigation in national courts and tribunals, the mechanisms were framed as a nonjudicial option providing a recourse for those potentially affected by projects financed by these institutions. The first mechanism was the World Bank's Inspection Panel, created in 1993 and tasked with investigating potential noncompliance with the institution's environmental and social policies and addressing complaints from affected communities through a nonjudicial, objective, and independent process. The World Bank was followed by the IDB and all other MDBs.⁵ Over time, several of these mechanisms, including the MICI, introduced a second, dispute-resolution function offering the parties to a complaint (complainants, borrowers, and MDBs) an opportunity to reach a consensus solution on the subject matter of the complaint by means of a dialogue process facilitated by experts. More recently, the MDBs have explicitly included an

3 At the request of the Bank's Board of Governors, actions to implement the MICI were also established as part of the Ninth Capital Increase in 2010 (document [AB-2764](#)), including institutional arrangements and staffing.

4 The modification provided that requests arising from operations approved by the Bank's private-sector windows (Structured and Corporate Financing Department (SCF) and Opportunities for the Majority (OMJ)) prior to 2016, supervision of which was transferred to the Inter-American Investment Corporation (IIC), would be managed under the MICI-IDB policy (document [MI-47-3](#) and its updated version, document [MI-47-6](#)).

5 There is currently a network comprising 20 mechanisms (not only at MDBs) and known as IAMnet. The MICI served as the network's secretariat for the 2017-2019 period.

advisory function aimed at ensuring that the mechanisms can distill the lessons arising from the cases they handle with a view to helping to promote institutional learning.

- 1.5 Despite some differences, the MDB mechanisms are based on the same intervention logic or theory of change. Figure 1.1 shows the theory of change according to which the mechanisms use their three functions (review of compliance with the environmental and social safeguards policies and standards, dispute resolution, and advisory support) to attempt to resolve environmental and social complaints associated with the MDB-financed projects and promote institutional learning. Thus, they seek to help strengthen the environmental and social sustainability of the projects.

Figure 1.1
Theory of change
in mechanisms
for nonjudicial
accountability of
projects

Source: OVE.



B. Objective and scope of the evaluation

- 1.6 This evaluation is in response to a request from the Boards of Executive Directors of the IDB and IDB Invest for OVE to independently examine the MICI policy and its implementation pursuant to the requirement established in the respective policies of each institution.⁶ As indicated in the Approach Paper and as explained in greater detail in Chapter II, the objectives established in the current MICI policy are mainly focused on the process level. Consequently, OVE used the theory of change described in Figure 1.1 as a frame of reference to guide the evaluation, in particular, its intermediate outcomes: (i) resolving

⁶ The MICI-IDB Invest policy (document [CII/MI-1-1](#)) mirrors the MICI-IDB policy (document [MI-47-6](#)) in terms of content and structure. The two policies diverge primarily on matters such as the relevant operational and access to information policies of each institution that define the scope of the mechanism, and the lines of reporting to the institutions' respective Boards of Executive Directors. Unless otherwise indicated, this evaluation refers to the two policies as the MICI policy for the IDB Group.

the environmental and social grievances associated with Group-financed projects; and (ii) institutional learning. In addition, OVE used the guiding principles of the MICI's current policy for the IDB Group (independence, effectiveness, efficiency, objectivity, impartiality, transparency, and accessibility) as evaluation criteria. Thus, the aim of this evaluation is to report to the Boards of Executive Directors of the IDB and IDB Invest on the extent to which, in the framework of its policy, the MICI has been effective and efficient in (i) resolving the complaints it receives concerning environmental and social impacts of projects due to alleged noncompliance with the IDB Group's environmental and social safeguards policies and standards; and (ii) promoting institutional learning with regard to environmental and social safeguards and standards and their application in IDB Group projects. In addition, the evaluation is aimed at reporting on the mechanism's accessibility to requesters and the extent to which the MICI has performed its duties independently, objectively, impartially, and transparently. The evaluation takes the 2012 OVE evaluation of the MICI as its point of departure. It covers the period spanning from December 2014, when the MICI policy was approved, to June 2020.

C. Questions and methodology of the evaluation

- 1.7 The overall question the evaluation seeks to answer is: To what extent do the current policy, organizational structure, processes, and functioning of the MICI enable it to fulfill its mandate? To answer this question, OVE developed a series of specific questions aimed at guiding the evaluation (Annex I, evaluation matrix), namely: (i) to what extent does the MICI policy for the IDB Group provide a solid basis for the mechanism to function effectively and what are the main policy challenges; (ii) to what extent is the MICI accessible to parties potentially affected by IDB Group projects and what factors facilitate or limit such access; (iii) to what extent has the MICI handled complaints in an independent, objective, impartial, and transparent manner; (iv) what results have the MICI's actions produced for requesters and for the IDB Group; and (v) to what extent has the MICI's functioning, in terms of management of its resources, been independent from IDB Group Management.
- 1.8 OVE used a combination of complementary methods to conduct this evaluation. Box 1.1 describes the methods used by OVE for the various components of the evaluation, which include: an in-depth analysis of the MICI's policy documents and the documents prepared by the MICI with regard to requests and cases; an analysis of all requests received between December 2014 and

June 2020 and their passage through the MICI from beginning to end. OVE supplemented its analysis with visits to five countries and semistructured interviews with key stakeholders, including requesters and/or their representatives, operational staff and senior management of the IDB Group, Executive Directors of the IDB Group, government agencies, private sector clients, and civil society organizations. For obvious reasons, OVE was unable to identify any parties who may have wished to lodge a complaint but never contacted the MICI due to unawareness of its existence, fear of reprisals, lack of access to means of communication (Internet, telephone, etc.), or some other reason. Thus, the access-related data obtained by OVE only reflect those who somehow contacted the MICI and lodged a complaint. Lastly, the analysis conducted by OVE was not aimed at validating the findings of the investigations or establishing whether or not the IDB Group complied with its relevant Operational Policies or whether the requesters suffered or might suffer harm as a result.

Box 1.1. Methods used by OVE for the various components of the evaluation

1. Analysis of the MICI policy for the IDB Group. With a view to establishing whether the policy provides a sound foundation, OVE analyzed its content and that of the associated guidelines to identify their main strengths and limitations. The starting point for this analysis was the evaluation conducted by OVE in 2012 (document [RE-416-1](#)) as well as the findings of the evaluation of the IDB Group's system of environmental and social safeguards, which analyzed the MICI's contribution to this system (document [RE-521-1](#)).

2. Comparative analysis. With a view to providing a comparative perspective, OVE examined the policies of the mechanisms at six MDBs: (i) the Independent Review Mechanism of the African Development Bank (IRM/AfDB); (ii) the Accountability Mechanism of the Asian Development Bank (AM/ADB); (iii) the Complaints Mechanism of the European Investment Bank (CM/EIB); (iv) the Independent Project Accountability Mechanism of the European Bank for Reconstruction and Development (IPAM/EBRD); (v) the Office of the Compliance Advisor Ombudsman of the International Finance Corporation (CAO/IFC); and (vi) the Inspection Panel of the World Bank (IP/WB).

3. Documentary analysis of requests. OVE conducted a documentary analysis of all requests received by the MICI between December 2014 and June 2020, and of the cases processed primarily under the current MICI policy, to determine whether they were handled in independent, objective, impartial, transparent, and efficient fashion and whether they have produced results or effects either for the requesters or for the IDB Group at the institutional level.

4. Analysis of processes for the handling of requests and associated time frames. In order to understand to what extent the processes established in the policy for handling requests support the functioning of the MICI, OVE analyzed the suitability of these processes, including whether the activities, roles, and responsibilities of the various participants are clearly defined.

5. Analysis of the MICI's organizational arrangements. In order to understand to what extent the MICI has sufficient internal capacity to effectively perform its duties, OVE analyzed the current governance and organizational structure of the MICI as well as the budgetary and human resources allocated to the mechanism.

6. Field studies of eligible cases and requests. OVE visited five countries (Ecuador, Chile, Argentina, Brazil, and Costa Rica) to take a closer look at how cases have been managed, including access to the mechanism and the process of handling of requests by the various stakeholders (requesters and/or representatives, IDB Group staff, execution unit staff, and IDB Group clients), as well as the possible effects or results for requesters. In selecting the countries, OVE considered a varied set of cases: (i) open and closed; (ii) cases in the consultation phase and in the compliance review phase; and (iii) those associated with public and private sector projects. In the course of these visits, OVE also interviewed requesters associated with ineligible or unregistered requests to inquire about their experience.

7. Interviews and survey. OVE conducted semistructured interviews in order to get the perspective of key stakeholders on the MICI cases and on the internal functioning of the mechanism, including: MICI staff; staff from the IDB Group safeguards units (ESG and SEG); IDB Group managers and project team leaders; IDB Group Executive Directors; IDB Invest clients; staff of executing agencies for IDB operations; staff of other mechanisms; requesters and/or representatives; civil society organizations; and members of the MICI's External Consultative Group (GCE). In addition, OVE conducted a survey of the civil society organizations that participated in the consultation process for the current MICI policy or have interacted with the MICI, primarily in the context of a case, to obtain their viewpoint on the functioning of the mechanism, including issues relating to the MICI's accessibility, transparency, independence, and effectiveness. The response rate was 26%.

1.9 This document is divided into seven chapters. Following this introduction, Chapter II presents an analysis of the MICI policy for the IDB Group and compares it with the policy framework of other MDB mechanisms. Chapter III examines issues related to access to the MICI, while Chapter IV analyzes how cases have been handled. Chapter V discusses the results for requesters and for the IDB Group, and Chapter VI deals with the internal functioning of the MICI. Lastly, Chapter VII presents OVE's conclusions and recommendations to enable the IDB Group to reap the full benefits of the mechanism.



02

The MICI
Policy for the
IDB Group

- 2.1 This chapter analyzes the extent to which the existing policy provides a sound basis for the functioning of the MICI. It answers the following questions: (i) To what extent does the current MICI policy facilitate fulfillment of its mandate and what are the main challenges regarding its implementation? (ii) How does the current MICI policy compare with that of other independent accountability mechanisms at other MDBs?⁷
- 2.2 The MICI policy, as reformulated in 2014, defines the institutional position, scope, functions, and operating structure of the mechanism. The MICI was created as an office reporting directly to the Boards of Executive Directors of the IDB and IDB Invest so as to act independently from IDB Group Management. In addition, the policy establishes the main characteristics of the MICI, which are summarized in Table 2.1.

Table 2.1. Main characteristics of the MICI according to its policy

1. The MICI is a mechanism of last resort.	The requesters are required to show that they have made reasonable efforts to raise their complaints with Management prior to contacting the MICI.
2. The MICI acts with regard to approved operations and does not accept complaints lodged more than 24 months after the operation's last disbursement.	Complaints associated with operations in design are not within the scope of action of the MICI, nor are complaints filed more than 24 months after the operation's last disbursement.
3. The MICI analyzes compliance with respect to the "relevant Operational Policies."	The relevant Operational Policies are the IDB Group's environmental and social safeguards policies and standards* as well as the access to information policies, included because they set out the requirements for disclosure of project-related environmental and social information. Relevant Operational Policies also include policies approved after the MICI policy entered into force and any policies that the Board has expressly stated are included within the MICI's scope of action.
4. The MICI performs three different functions.	(i) Resolution of environmental and social disputes associated with projects financed by the IDB Group; (ii) Investigation of reports of potential IDB Group noncompliance with its relevant Operational Policies; (iii) Generation and dissemination of lessons learned.
5. The MICI is divided into two formal phases.	The consultation phase is an opportunity for the parties to "address the issues raised in the Request in a voluntary, flexible, and collaborative manner." The MICI acts as a mediator in search of a satisfactory agreement between the parties. The compliance review phase is an investigative process related to the issues raised in a request "to establish whether the Bank has failed to comply with any of its Relevant Operational Policies and whether that has caused Harm to the Requesters." The MICI acts as an investigator subject to approval of the investigation by the Board of Executive Directors.
6. The requesters decide which phase to choose.	The requesters have the option of choosing the consultation phase, the compliance review phase, or both, in which case the processing will begin with the consultation phase.

Source: OVE, based on the MICI policy.

* Environment and Safeguards Compliance Policy ([OP-703](#)); Disaster Risk Management Policy ([OP-704](#)); Involuntary Resettlement Policy ([OP-710](#)); Policy on Gender Equality in Development ([OP-761](#)); and Indigenous Peoples Policy

⁷ See Annex III for a comparative analysis of the mechanisms of other MDBs.

(OP-765). In September 2020, the IDB Board approved a new Environmental and Social Policy Framework that will supersede the above-listed policies upon the entry into force of the new Policy Framework in September 2021. Under the MICI-IDB Invest policy, it covers the Environmental and Social Sustainability Policy. In April 2020, the IDB Invest Board approved a new Environmental and Social Sustainability Policy, which entered into force in December 2020.

2.3 The current MICI policy corrected important issues identified by OVE in its 2012 evaluation as limiting the proper functioning of the mechanism. Worth noting is the solution to the problems of accountability and conflicts of interest associated with the previous organizational structure, as well as the problems of sequential phases and duplicate eligibility determination; the establishment of time frames for processing requests; and the creation of opportunities for Management to participate. In addition, there is greater consistency between the policy, guidelines, and associated processes. Table 2.2 summarizes the main findings of the 2012 OVE evaluation and how they were addressed in the current policy.

Table 2.2. Most of the limitations identified in 2012 were corrected in the MICI's current policy

OVE findings in 2012	Current MICI policy:
<p>Accountability. The MICI's structure comprised three "principals:" (i) a project ombudsperson in charge of the consultation phase; (ii) the chair of the compliance review panel; and (iii) an executive secretary, but lacked an overall manager. Each of these three principals reported separately to the Board, and there were no mechanisms or areas for coordination.</p>	<p>Defines clear lines of accountability. The MICI Director is accountable to the Boards of Executive Directors; the phase coordinators, as well as the support staff, report to the MICI director.</p>
<p>Conflict of interest in the compliance review phase. The panel chair was a consultant who was paid a daily fee; thus, there were no incentives to process cases expeditiously and efficiently.</p>	<p>Establishes that the MICI director and the compliance review phase coordinator are salaried Bank employees (the consultation phase coordinator is, as well), thus eliminating any incentive to extend the duration of cases. The MICI director is responsible for the work of the mechanism.</p>
<p>Sequence of phases. The consultation phase necessarily had to precede the compliance review phase, whether or not the parties involved were interested in a dispute-resolution process. This arrangement reflected an inadequate understanding of the two functions, in which the consultation phase was conceived as a filter to avoid investigations.</p>	<p>Establishes that requesters may now opt for the consultation phase, the compliance review phase, or both. When requesters choose both phases, the request is processed sequentially, starting with the consultation phase.</p>
<p>Duplication of the eligibility determination process for the consultation phase and the compliance review phase. The same set of eligibility criteria was applied at the start of each of the phases and not always consistently, creating major inefficiencies in the process and frustration on the part of requesters.</p>	<p>Provides for a single eligibility process for both phases, for which the MICI director is responsible in consultation with the phase coordinators.</p>
<p>Management response. The previous policy did not provide procedures for Management to present its perspective during the process; in some cases, information related to the requests was even withheld from Management.</p>	<p>Defines the procedures for Management to formally present its perspective in response to (i) requests that have been registered; (ii) the draft investigation recommendations; and (iii) the draft investigation reports. Management's responses are published in the MICI Public Registry and are attached to the compliance review phase reports.</p>

<p>Time frames for processing requests. The policy established time frames only for some steps in the processing of requests, and extensions were left to the discretion of those responsible for each phase.</p>	<p>Provides time frames for the various stages of the process in pursuit of greater predictability. Extensions are subject to the Board's no objection.</p>
<p>Absence of objectives. The policy lacked a clear statement of objectives and, more generally, of what was expected of the mechanism and its functions at the institutional level.</p>	<p>Did not resolve this issue. The policy continues to fail to set results-oriented objectives for the mechanism overall and for its two functions.</p>
<p>Legal exclusion. It was defined very broadly; it created an incentive to initiate legal proceedings; and full compliance was almost impossible since it applied in all 48 IDB Group member countries.</p>	<p>Did not resolve this issue. The exclusion remains in place, although now more narrowly circumscribed to the existence of legal proceedings dealing with specific issues raised in the request. As discussed further below in this evaluation, the interpretation of this exclusion continues to be a source of disagreement between the MICI and Management, and is an important limiting factor for the effectiveness and efficiency of the mechanism.</p>

Source: OVE.

2.4 However, a key issue that remained pending after the policy reformulation was the one concerning the legal exclusion. Though the issue of the MICI's objectives also remained pending under the current policy (Box 2.1), the legal exclusion has had the greatest impact on the mechanism's ability to function properly and on whether the MICI can address requesters' complaints. The MICI policy excludes from eligibility consideration "[p]articular issues or matters raised in a Request that are under arbitral or judicial review in an IDB member country."⁸ This provision, which was in the previous policy, was identified by OVE in 2012 as a significant obstacle for the MICI's effectiveness.⁹ However, at the request of some Executive Directors, the exclusion was kept in the reformulated policy in 2014, although slightly circumscribed. Yet its purpose and scope have not been clarified. OVE's interviews revealed myriad opinions on the purpose of this provision, which ranged from ensuring that the MICI does not interfere with the sovereignty of national courts to avoiding an overlapping of efforts and contradictory decisions. With regard to the provision's scope, there are various opinions on the scope of the MICI's activities and the scope of the actions of national courts and tribunals, despite the fact that national legal bodies seek to govern the enforcement of national rules and laws, while the MICI assesses the IDB Group's compliance with its relevant Operational Policies. In 2018, the MICI proposed

⁸ The MICI policy also states that "if, after determination of eligibility, the MICI becomes aware of the existence of arbitral or judicial proceedings, the MICI Director will be responsible for assessing the implications and submitting a recommendation on whether or not to move forward with the process to the Board for consideration by Short Procedure.

⁹ OVE found that the definition of the exclusion was too broad (any issue under litigation had to be ruled out); it created an incentive for someone to initiate legal proceedings to prevent access to the MICI, and full compliance with the provision in all 48 member countries of the IDB Group was virtually impossible. Evaluation of the Independent Consultation and Investigation Mechanism, OVE 2012, paragraph 5.16 (document [RE-416-1](#)).

an interpretation of the exclusion (document MI-72)¹⁰ that was presented to the Board at a technical briefing (non-deliberative session) without leading to any conclusion, and its application was subsequently refuted by Management. As discussed in Chapters III and IV, the legal exclusion is a constraint on the MICI's scope of action since it excludes from the mechanism's consideration important issues for the IDB Group raised by the requesters. It also creates inefficiencies in the process and sows discord between Management and the MICI, which affects the mechanism's accountability work as it requires significant collaboration with Management. Lastly, application of the legal exclusion could potentially leave the IDB Group exposed to the reputational risk associated with not addressing potential social and environmental impacts associated with its projects. The majority of mechanisms in other MDBs (AM/ADB, CAO/IFC, IP/WB) do not provide an exclusion of this type. The exceptions are the IRM/AfDB, which was designed on the basis of the MICI, and the CM/EIB, which provides a narrower version requiring that the parties to the legal proceedings and the complaint be the same. The IPAM/EBRD refers to the need to "take into account" existing judicial proceedings but does not exclude issues or requests from being considered by the mechanism.

Box 2.1. Lack of results-oriented objectives

The MICI policy still does not set out results-oriented objectives for the MICI or, more generally, the IDB Group's expectations for the mechanism at the institutional level. The description of the MICI's objectives included in its current policy is a list of actions without any definition of the results the mechanism hopes to achieve. Similarly, the objectives of the consultation phase and the compliance review phase are defined as processes, without indicating what those processes expect to achieve. This lack of results-oriented objectives, combined with the highly procedural approach, focuses the mechanism's attention on individual management of each case, without a broader, unified vision of what a mechanism like the MICI is expected to achieve and what it is expected to contribute at the IDB Group level. Other mechanisms define their objectives in terms of results and their contribution to the objectives of the institution of which they are part.

Source: OVE, based on the MICI policy.

2.5 OVE identified other constraints that have arisen from application of the policy in the last five years. By and large, these constraints have been managed and remedied in practice by

¹⁰ The MICI's interpretation included five criteria of analysis for application of the legal exclusion: (i) subject matter: whether the same issues or matters are addressed; (ii) parties to the proceedings: whether the respondents/claimants are the same as the MICI requesters; (iii) mode: whether the proceedings are arbitral or judicial; (iv) time: whether the proceedings are active or not at the time of the MICI's eligibility determination and, if inactive, whether there is any possibility of appeal and who is entitled to the right to appeal; and (v) place: whether there are active proceedings in one of the member countries of the IDB Group (IDB: 48 countries; IDB Invest: 45 countries).

the MICI in a manner consistent with the intervention logic by which accountability mechanisms operate. These constraints concern the determination of harm due to noncompliance with the IDB Group’s environmental and social safeguards policies and standards; the consequences of a determination of noncompliance with the policies and associated harm; and monitoring Management’s commitments in response to the MICI’s recommendations. Most of these issues have been problematic because they have given rise to a variety of interpretations, partly due to a lack of clarity in the MICI policy. However, as the MICI has become more experienced, it has found ways of managing these issues in practice, in a manner consistent with the intervention logic of accountability mechanisms.

a. Determination of harm due to noncompliance with the policy.

The MICI policy establishes that the purpose of the compliance review phase is to impartially and objectively investigate allegations by requesters that the Bank or IDB Invest has failed to comply with its Relevant Operational Policies and “has caused Harm to the Requesters.” However, since this is not a judicial proceeding, the MICI lacks the necessary evidentiary tools to establish with certainty whether the harm in question has been or might be a direct result of noncompliance with the environmental and social safeguards policies and standards of the IDB Group, except in the simplest cases and projects. This requirement raises concern in Management, particularly in the case of private-sector projects, in view of its potential implications for clients.¹¹ In practice, in the most recent cases associated with larger and more complex projects, the MICI has sought to deal with this situation by establishing how noncompliance with the environmental and social safeguards policies and standards may potentially have contributed to the alleged harm. In doing so, the MICI has followed the intervention logic of other mechanisms, which describes the link between noncompliance and harm without the need to determine direct causality. For example, the CAO/IFC policy states that “[...] the CAO process provides communities and individuals with access to a grievance mechanism that offers remedies for negative environmental and/or social impacts associated with IFC/MIGA projects.”¹²

b. Consequences of a determination of noncompliance with the policies and associated harm. The policy states that “the MICI does not award compensation, damages, or similar benefits.” However, it also states that the MICI’s Compliance Review report

¹¹ In fact, in a recently completed investigation for a case on an NSG project, IDB Invest Management accepted the recommendations of the MICI while stating its disagreement with the findings on harm resulting from noncompliance with the IDB Group’s environmental and social safeguards policies and standards.

¹² Chapter V discusses the effectiveness of implementing these policy provisions.

“should be designed to provide the factual and technical basis for a decision by the Board on preventative or corrective action.” Yet the policy is silent as to the consequences of a determination of noncompliance and associated harm, leading to various interpretations on the possibility of corrective or compensatory action¹³ for those affected by the projects. Nevertheless, the possibility of redress stems from a correct application of the IDB Group’s environmental and social safeguards policies and standards, which pursuant to the principle to “do no harm,” require adopting measures to avoid, minimize, and/or compensate for the potential adverse environmental and social impacts of IDB Group-financed projects. This is consistent with the provisions of the MICI’s policy that state that the mechanism does not award compensation for noncompliance; the correction or remediation of the harm, under the policy framework, is not equivalent to compensation for noncompliance, but rather an option within the correct application of those policies.¹⁴ All mechanisms analyzed by OVE provide for the possibility of remedies for parties affected by projects as a result of bringing the project into compliance with their environmental and social policies. In practice, the MICI recently addressed this situation by following the intervention logic of mechanisms of this type. In the most recent investigations that determined noncompliance with the environmental and social safeguards policies and standards, the MICI’s recommendations have included actions to bring the project into compliance with those policies and apply the mitigation hierarchy set out in these policies (avoid – minimize – compensate) to address the potential environmental and social impacts and risks of the project, possibly including, based on the extent of progress of the project, remedial action for the requesters (see Chapter V).

- c. Monitoring of Management’s commitments in response to the MICI’s recommendations.** Under the current policy, monitoring is not mandatory. The policy states that Management should develop an action plan to address the recommendations of the compliance review phase approved by the Board if deemed “appropriate,” but the Board does not always require

13 For purposes of this evaluation, remedial or corrective measures are those that offer compensation to requesters for residual environmental or social harm (which cannot be mitigated) within the IDB Group’s environmental and social safeguards standards and policy framework in application of the hierarchy of activities to address the environmental and social impacts of the projects, whether financial or in the form of actions to rectify or repair the harm.

14 Mechanisms such as the AM/ADB, IRM/AfDB, and IPAM/EBRD explicitly provide for the possibility of remedies under their respective environmental and social policies upon a determination of noncompliance with such policies. The CAO/IFC, IP/WB, and CM/EIB implicitly provide for the possibility of remedies by establishing that, once noncompliance has been identified, remedial action should be taken to “bring the project into compliance” with the respective environmental and social standards and policies, which include the need to compensate for impacts that cannot be avoided or mitigated.

it to do so. Meanwhile, the policy calls for the monitoring of the agreements reached in the consultation phase and the action plans prepared in the compliance review phase, when “applicable,” for a period not to exceed five years. To ensure proper implementation of the recommendations, the equivalent mechanisms in other MDBs that were analyzed have an express mandate to monitor management actions¹⁵; in some cases (CAO/IFC, IPAM/EBRD), the monitoring is continued until the plan has been fully implemented or the noncompliance has been resolved. In addition, there are mechanisms (IP/WB) that attach management’s action plan to the final report of an investigation, thereby facilitating a discussion of the complete package by the Board. In practice, the MICI has taken reasonable steps to address this limitation in the compliance review phase by including a recommendation at the conclusion of investigations that requires Management to develop an action plan for implementing the recommendations approved by the Board and the MICI to monitor those commitments (see Chapter V).

¹⁵ The sole exception was the IP/WB, but a reform of the mechanism approved in 2020 added monitoring responsibility to its mandate.



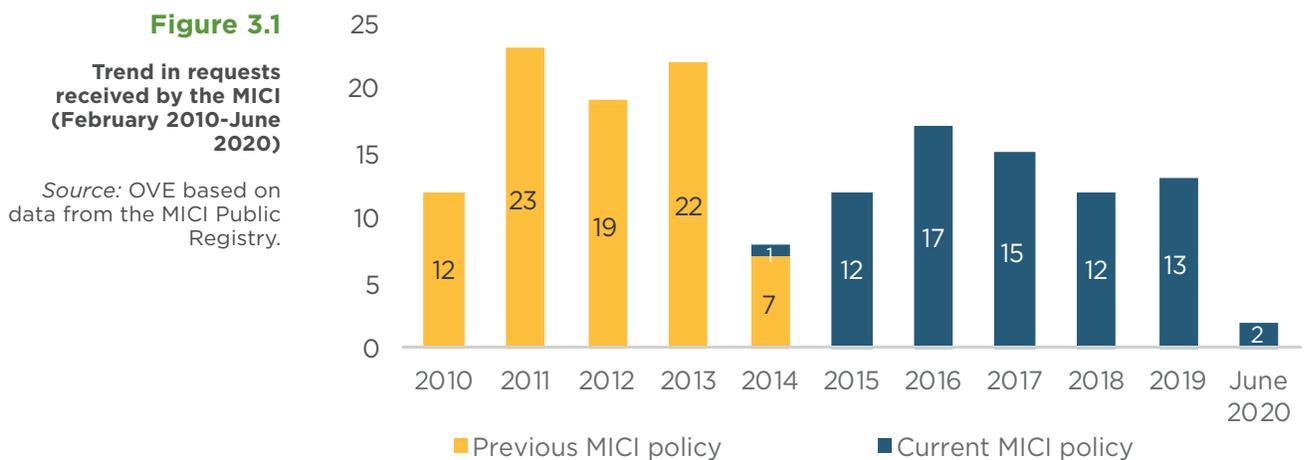
03

Access to the MICI

3.1 This chapter examines the extent to which people have had access to the MICI and the factors that have facilitated or limited such access. The vision laid out regarding access is partial and possibly exaggerated since it only captures the information on those who actually succeeded in filing a request. This chapter examines the entirety of the requests received by the MICI to understand where the complaints originate; reviews the IDB Group activities aimed at disseminating awareness of the mechanism and facilitating access; and analyzes the MICI’s application of criteria and conditions to decide whether a request may be accepted and will be eligible for one of the mechanism’s substantive stages, whether the consultation phase (dispute resolution – consultation) or the compliance review phase (investigation).

A. Requests received between December 2014 and June 2020

3.2 Between December 2014 and June 2020, the MICI received a total of 72 complaints or requests, 12% fewer than under the previous policy (Figure 3.1). The requests originated in 17 countries in the region, with Brazil (19), Argentina (9), and Colombia (9) accounting for the highest number of received requests (Figure 3.2). A total of 57 requests (79%) were related to sovereign guaranteed (SG) operations. Meanwhile, 13 requests (18%) were related to non-sovereign guaranteed (NSG) operations, and five of these were handled under the MICI-IDB Invest policy (approved in late 2015) since the underlying operations had been approved by IDB Invest.¹⁶ Two other requests received did not refer to specific IDB Group operations. A total of 83 requests were received over the period the previous policy was in force (Figure II.2, Annex II).¹⁷

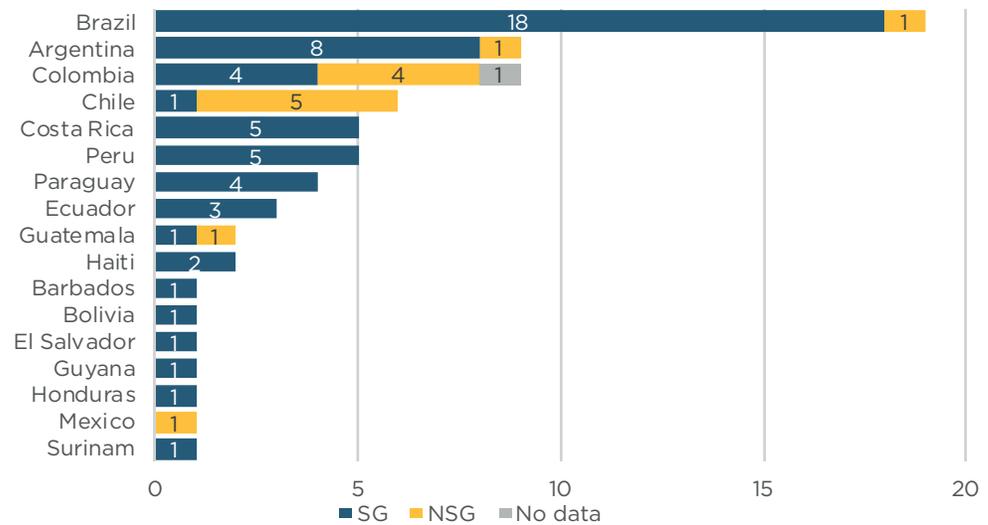


¹⁶ The other eight requests were related to operations originated by the Bank’s former private windows (SCF-six; OMJ-one) and the Multilateral Investment Fund (MIF) (one), and were therefore handled under the MICI-IDB policy.

¹⁷ Of those 83 requests, 61 (73.4%) were associated with public sector operations and 17 (20.4%) were associated with private sector operations. There were another five requests that did not specify any IDB Group operation in particular.

Figure 3.2
Breakdown of requests received by the MICI by country and type of borrower (December 2014 - June 2020)

Source: OVE, based on data from the MICI Public Registry.



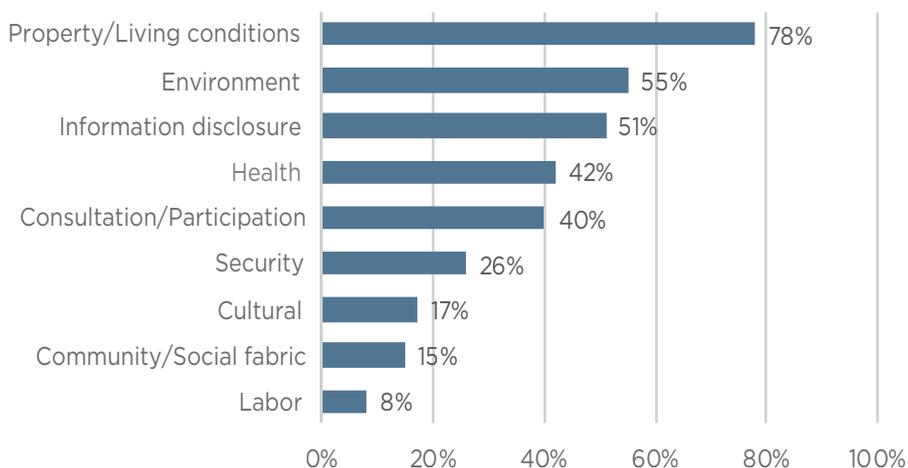
3.3 Most of the requests were filed by individuals and reached the MICI through some type of representation. The concerns raised by requesters have been motivated mainly by social issues (Figure 3.3). Of the 55 requests received by the MICI,¹⁸ 58% were submitted by individuals on a personal basis and 42% were filed by community groups, including groups of residents, merchant groups, and indigenous communities. The vast majority of requests provided for a designated representative to the MICI, in most cases one or more individuals who were members of the affected community or group. Under the current policy, civil society organizations may not act as direct requesters, although they are permitted to advise and represent requesters in their dealings with the mechanism. Given this context, approximately one fifth of the requests received (11) had support from a civil society organization, just over half of which (six) were exclusively local or national organizations. Five requests were also supported by one or more international organizations. The main issues raised by requesters had to do with potential impacts on their living conditions or property, often concerning involuntary resettlement, economic displacement, and/or compensation. Other issues were related to potential environmental impacts or shortcomings in certain aspects of the preparation and implementation of operations, such as information disclosure and the public consultation, and community participation processes.

¹⁸ Of the 72 requests received, 17 dealt with issues beyond the scope of the MICI, such as corruption, ethics, and procurement (see section on acceptance of requests), and have therefore been excluded from analysis under this section.

Figure 3.3

Concerns/problems raised in the requests (% of requests)

Source: OVE, based on the documentation of the requests.



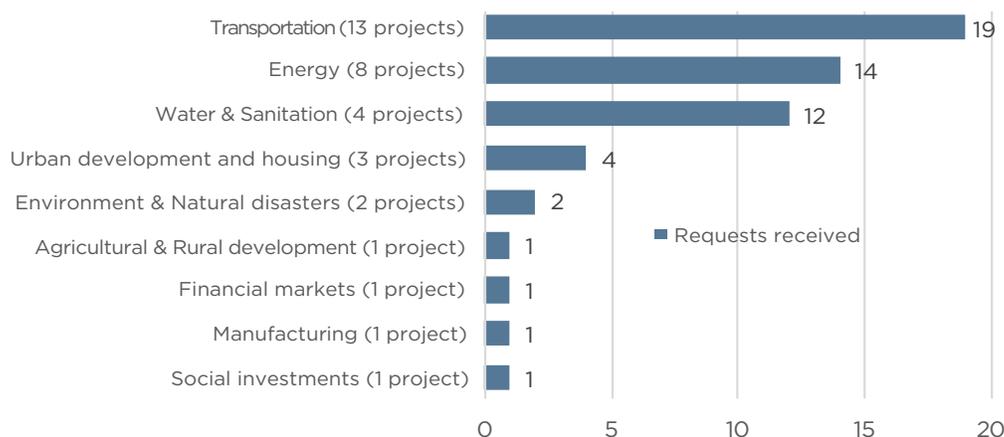
Note: Does not include requests that only raise issues outside the scope of the MICI.

3.4 The requests were primarily associated with projects in the transportation, energy, and water and sanitation sectors, and categorized as involving potential high and medium environmental and social impacts. The requests received by the MICI were associated with 34 projects.¹⁹ Transportation (34%), energy (27%), and water and sanitation (20%) accounted for the vast majority of the requests received (Figure 3.4). The complaints were primarily related to hydroelectric projects (six projects, 11 complaints), road projects (six projects, nine complaints), and urban transportation projects (five projects, eight complaints). In terms of environmental and social classification, the vast majority concerned projects with high (category A, 56%) and medium (category B, 40%) potential impacts.

Figure 3.4

Sector breakdown of requests received (December 2014-June 2020)

Source: OVE, based on the documentation of the requests.



Note: Does not include requests that only raise issues outside the scope of the MICI.

¹⁹ A group of 11 projects gave rise to more than one request each, accounting for 58% of the requests (Figure II.3, Annex II).

B. Promotion and facilitation of access to the MICI

3.5 Access to the MICI requires knowing that the mechanism exists. OVE found that the mechanism is not very well known despite the MICI's significant efforts in this regard. With the exception of requests supported by civil society organizations that were familiar either with the MICI or with another MDB's mechanism, the vast majority of requesters reported not having prior awareness of the MICI's existence.²⁰ In the course of field visits and interviews conducted by OVE, most requesters indicated that reaching out to the MICI had not been easy for them. Despite divergent opinions on the degree of difficulty associated with the experience of submitting a request, there was broad consensus that the process of submitting a request requires time and resources as well as access to means of communication such as the Internet. For most requesters it was essential either to have had someone within the group of complainants focused on understanding and conducting the process or to have received assistance from a civil society organization.²¹ In the case of executing agencies or IDB Group clients, prior knowledge of the MICI was limited. About one third reported having had some degree of awareness of the MICI before the process was activated. This limited knowledge of the mechanism stands in contrast to the MICI's efforts to publicize its existence. Unlike what OVE found in 2012, between 2015 and June 2020 the MICI carried out or participated in close to 100 dissemination activities (either in-person or virtual) aimed at making its mandate, functions, and processes externally known. In addition to the work with civil society organizations, the MICI has sought to identify new forms of making itself known in the region, for example through institutions and professionals in the field of mediation and the environment.

3.6 Publicizing the mechanism is a task not only for the MICI but also for IDB Group Management, although in the latter case the efforts have been more limited. The challenge of continuing to explore alternative ways and means of reaching out to affected parties and assessing the effectiveness of these efforts is compounded both by the importance of making other key stakeholders (such as executing agencies and IDB Group clients) aware that this mechanism exists and, especially, by the need to integrate these efforts into the institution as a whole. The MICI policy calls for

20 There were also requesters who reported having had difficulty in identifying whether the project was being financed by the IDB Group, since this was neither visible nor apparent.

21 Ninety-two percent of the civil society organizations surveyed by OVE that participated in the consultation on the MICI's current policy or have interacted with the MICI in the context of a case reported being familiar with the MICI's functions as well as with the procedures for lodging a complaint. In addition, 72% reported knowing where to find information on the MICI. However, little more than half (54%) considered that it was easy for parties affected by IDB Group projects to gain access to the MICI.

Management to support efforts to publicize the mechanism and for the MICI to coordinate with other offices and units to ensure that information about the mechanism is integrated into IDB Group activities and publications. While OVE identified some instances of cooperation, there is no evidence that the policy provisions have been operationalized or that there is institutional consensus on the importance of publicizing the mechanism and how to go about it.²² The new environmental and social policies of the IDB Group for the first time include references to the MICI and its purpose. Both policies also include the requirement for borrowers to establish grievance mechanisms at the project level and inform project-affected people of their existence. In the case of the Bank, the policy also explicitly requires publicizing the existence of the MICI. At the project level, IDB Invest has made strides by including references to the MICI on the web pages of its projects and environmental and social review summaries (ESRS). In the case of the Bank, there is no evidence of similar efforts despite the fact that this issue was raised by the MICI in the specific context of an investigation.²³

- 3.7 The MICI has sought to facilitate access to the mechanism through various means, including important work in the area of reprisal risk. In terms of measures to facilitate access, the MICI has provided information on its website in the Bank's four official languages, including brochures and a model letter aimed at guiding the complaint submission process (which is part of the MICI policy). In addition, there is a request registration officer at the MICI who is responsible for addressing the requesters' questions regarding the process. Worth noting is the MICI's work in addressing the risk of reprisals, which has significant implications for safe access to the mechanism. This risk, in addition to being a powerful constraint on access for affected parties, poses significant challenges for the handling of requests and has been identified by mechanisms at other MDBs as one of the greatest impediments to their effective functioning. In view of this, in its capacity as secretariat of the network of independent accountability mechanisms (IAMnet), the MICI played an important role leading the development of a practical guide for the mechanisms to address the risk of reprisals. In the case of the

22 This is a common challenge identified by several mechanisms at other MDBs. Other MDBs include references to the mechanisms and their objectives in their operational policies and, in some cases, in project documents (e.g., approval documents, environmental and social documents and/or plans, loan contracts).

23 A MICI recommendation in the compliance review for the La Paz Storm Drainage Program, completed in 2018, was to include information on the MICI at the project level to enable both the executing agencies and the population in the project's area of influence to gain awareness of the MICI's existence and its processes. In its final report on the measures adopted, Management indicated that in addition to informing the various parties during project preparation on the available grievance mechanisms, including the MICI, it was working to provide information on the MICI on each project's web page. However, there is no evidence to date that this information has in fact been included.

MICI, approximately one third of the complaints received include a request for confidentiality in handling the complaint out of fear of potential reprisals or intimidation, with such concerns exhibiting an upward trend in recent years (Figure II.4, Annex II). OVE interviewed requesters who had asked for confidentiality and all of them indicated that the MICI had generally taken the appropriate precautions when handling their complaints. In 2019, recognizing the importance of this issue and the need to have a broad and systematic approach, the MICI developed guidelines to address the risk of reprisals in the handling of requests (document MI-90 / CII/MI-24).

C. Acceptance of requests received between December 2014 and June 2020

3.8 The requests that reach the MICI go through several stages before being considered in one of the substantive (consultation or compliance review) phases (Figure 3.5). In the registration stage, the MICI verifies that the request includes all required information (Box II.1, Annex II) and is not clearly linked to any of the exclusions set forth in the policy (Box II.2, Annex II). In the eligibility determination stage, the MICI reviews fulfillment of the eligibility criteria (Box II.3, Annex II), including confirmation on whether any of the exclusions is applicable.²⁴ In this stage, the MICI receives a written response from Management, which may include a request to temporarily suspend the eligibility process to allow corrective action to be implemented.²⁵ Once a request is declared eligible, it becomes a “case” and is subjected to a preliminary analysis based on which phase has been chosen by the requesters. Through this analysis, the MICI establishes whether the appropriate conditions are present for a dispute resolution process under the consultation phase (assessment stage), or whether the case merits an investigation under the compliance review phase (recommendation for investigation and terms of reference subject to approval by the Board of Executive Directors).

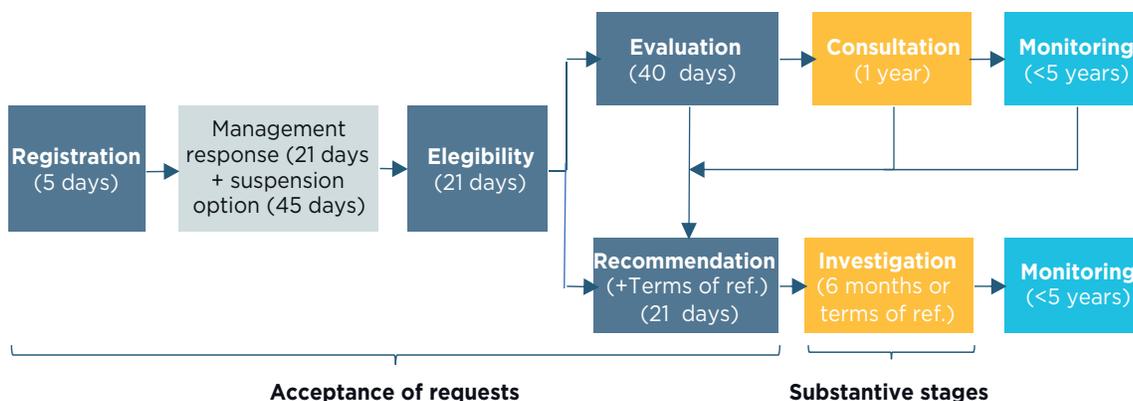
24 The fifth eligibility criterion (22(e)) is that none of the exclusions applies. This is also checked during registration but is analyzed in greater depth in the eligibility stage since, at that time, the MICI already has information provided by Management and gathered in the eligibility mission. In addition, certain exclusions, such as the legal exclusion, cannot be analyzed in the five business days provided for registration under the policy.

25 The MICI policy establishes that the MICI director is authorized to approve a temporary suspension of the process for up to 45 days in cases in which there is a specific plan and timetable for performing the corrective action. Other mechanisms provide similar options, but there is still limited experience in this regard. The IP/WB has the option of temporarily suspending the process during the recommendation to investigate, and in 2013 approved a pilot that allows it to postpone the decision on registration; this option has seldom been used. The new policy of the IPAM/EBRD similarly grants the head of the mechanism discretion to suspend the registration process for 45 days to allow management to address the issues raised in the complaint.

Figure 3.5

Request acceptance process

Source: OVE

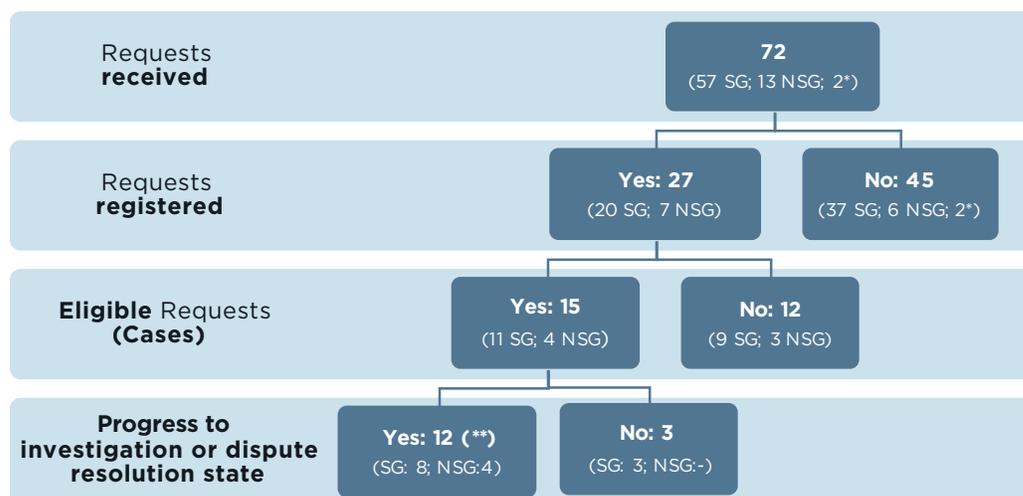


3.9 Of a total of 72 requests received, 12 (16%) were ultimately dealt with in one of the substantive phases of the MICI process (Figure 3.6). Of the requests received, 57 (79%) were not registered or were declared ineligible. Accordingly, 15 requests (21%) became “cases” under the consultation phase and/or the compliance review phase. By way of reference, under the previous MICI policy 23% of requests became cases (Figure II.5, Annex II), although any comparison should be made with caution in view of the different eligibility criteria and processes set forth in the two policies. The 15 cases are associated with requests originating in 10 countries (Figure 3.7). Eleven of these stem from public sector operations. The remaining four cases stem from NSG operations, three of which were approved by IDB Invest. In 12 of the 15 eligible cases, the requesters initially opted for the consultation phase, while in the remaining three cases they opted directly for the compliance review phase. Three cases that were declared eligible and went on to the compliance review phase were never investigated, by decision of the Board in one case and by MICI recommendation in the other two (see preliminary analysis section in the consultation and compliance review phases).

Figure 3.6

Acceptance of requests received

Source: OVE, based on data from the MICI Public Registry of requests.

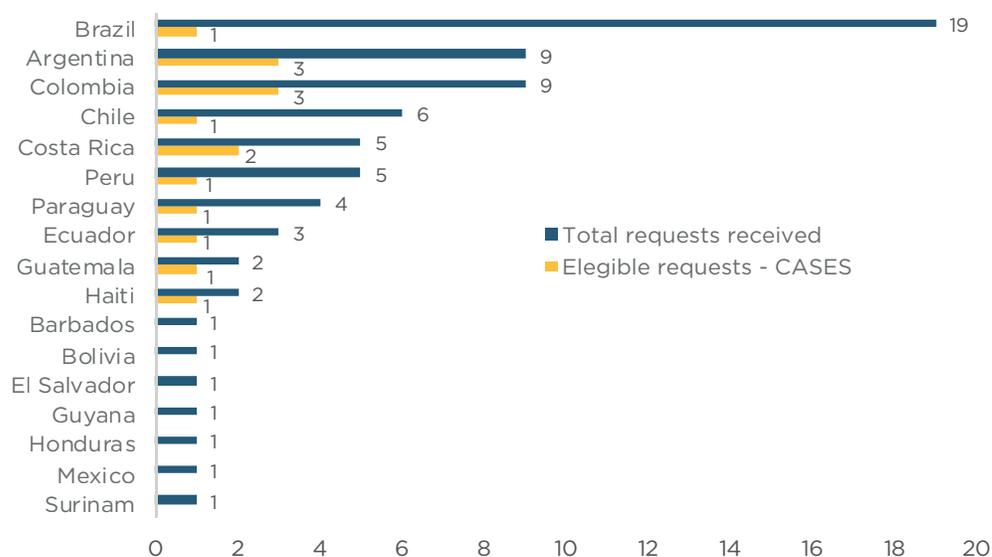


Notes: (*)Two requests received and subsequently not registered were not associated with any IDB Group operation (MICI-AU 2015 0095 and MICI-BID-CO 2016 0103). (**) Includes one request that was under preliminary analysis (assessment stage) for the consultation phase in June 2020 but in August 2020 advanced to the consultation phase.

Figure 3.7

Received and eligible requests, by country

Source: OVE, based on data from the MICI Public Registry of requests.



Note: A request received in relation to the Ituango Hydroelectric Project in Colombia raised allegations about a corporate loan approved by IDB Invest in 2016 as well as about a technical cooperation operation approved by the Bank in 2012. For this reason and since the MICI-IDB and MICI-IDB Invest policies did not envisage a situation such as this, the complaint was registered as two separate requests and cases: MICI-IIC-CO 2018 0133 and MICI-IDB-CO 2018 0133.

1. Registration and eligibility

3.10 The main factor for nonregistration, not including requests that raised issues beyond the scope of the MICI,²⁶ was the submittal of incomplete information by requesters (Figure 3.8). On 23 occasions the MICI granted a 10-day extension, as provided in the policy, to allow the requesters to provide the missing information. However, the requesters returned with the complete information for registration of the request on slightly less than half of these occasions (10). The missing information that was most difficult for requesters to submit in requests that ended up not being registered following the extension included a description of prior efforts to address the issues with Management and the outcomes of these efforts.²⁷ In view of the requesters' difficulty in meeting this requirement within the 10 days of the extended time frame, many times due to not knowing whom to contact, the MICI has opted to provide requesters the contact information for the team leaders without registering the request for the first five days (Figure 3.8). In addition, it informs the requesters that they may resubmit the

26 These requests were properly transferred to the Bank offices responsible for these other issues (such as the Office of Institutional Integrity, Office of Ethics, Operations Financial Management and Procurement Services Office) pursuant to a uniform process, although coordination was rather ad hoc since until recently there was no common system for these offices to receive and handle complaints.

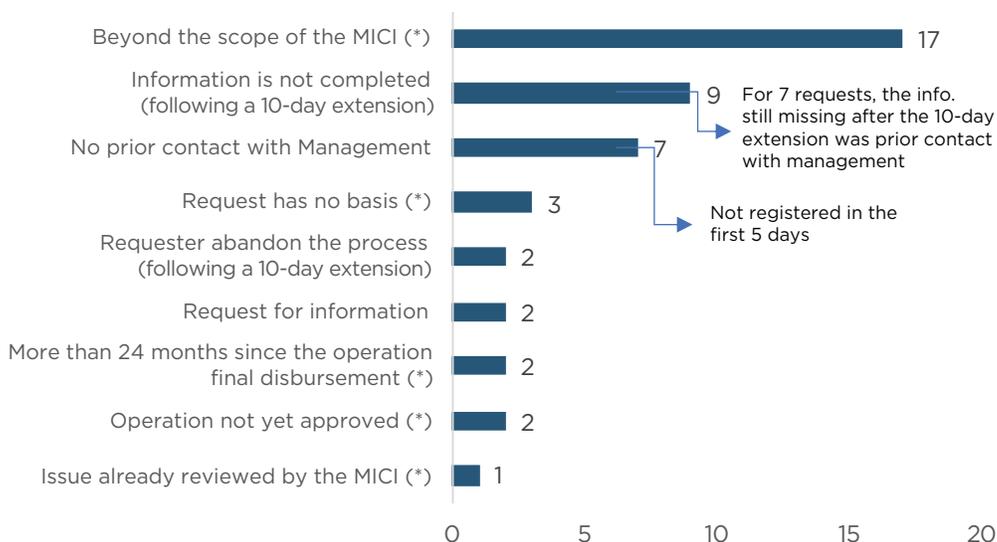
27 Other missing information included the need to provide written evidence of a representative's power and authority to act on behalf of the requesters, and a description of the alleged harm and its link to noncompliance with the relevant Operational Policies.

complaint if their concerns have not been properly addressed.²⁸ In general, OVE found that the MICI was consistent in applying the criteria for registration.²⁹

Figure 3.8

Criteria for nonregistration of requests (number of requests)

Source: OVE, based on data from the MICI Public Registry and request documents.



Note: (*) Relate to one or more of the exclusions set forth in the policy framework (Box II.2, Annex II), which the MICI reviews during registration. The rest of the reasons of for nonregistration had to do with issues related to the information content required of a request under the policy framework (e.g., description of prior contact with Management, description of the Bank-financed operation, and country in which it is being executed) Box II.1, Annex II).

3.11 The most common factor for ineligibility of previously registered requests was the absence of a link between the alleged harm and potential IDB Group noncompliance with its operational policies (Table 3.1). This requirement is reviewed at both the registration stage (as part of the content of the request) and the eligibility stage (in greater depth). In three or four cases, the ineligibility of the request was primarily due to the fact that the works or activities specifically questioned by the requesters were no longer part of the Bank-financed operation, either because the executing agency had decided not to carry out the works in question or because the Bank had decided that the works did not meet the technical requirements of the operation. In one case (Alto Maipo, Request III), the MICI deemed that, at that time, the alleged harm was not “reasonably likely to occur” in light of the level of completion of the project, the planned mitigation measures, and Management’s monitoring of the commitments.

28 A total of seven requests were managed this way. The requesters returned to the MICI in two of these.

29 OVE found only one request that was not registered in which the reasons for not registering were unclear. This was a confidential request that raised important gender safeguard issues but was not registered because the MICI considered that it dealt with administrative issues.

Table 3.1. Reasons for the ineligibility of 12 previously registered requests

Operation (request)	The request was not filed by two or more persons	Not related to an IDB Group Operation	No link between the harm and potential non-compliance with operational policies	No prior contact with Manag.	Aplica una exclusión		Otra
					Legal exclusion	24 onths after the final disbursement	Requesters decision not to continue with the process
1. Bayport-Colombia							
2. Urban Mobility, Blumenau-Brazil							
3. Regularization Reservations Isolated Communities-Perú							
4. Alto Maipo (III)-Chile							
5. Santiago-Valparaíso-Viña Road Guarantee-Chile							
6. Reventazón (II)-Costa Rica							
7. Porce III-Colombia							
8. Norte Grande Development (I)-Argentina							
9. Norte Grande Development (II)-Argentina							
10. Varzeas del Tieté (III)-Brasil							
11. Rodonael, North Section (v)-Brazil							
12. Prosaimaues-Brazil							
Total	1	1	4	3	2	1	2

Note: Considers situations in which the eligibility or exclusion criterion applies in its entirety. One or more eligibility or exclusion criteria may apply to a single request.

Source: OVE, based on the memorandum of eligibility of the requests.

3.12 Prior contact with Management arises again as an important factor in the eligibility stage, thus becoming one of the main reasons for nonacceptance of requests during registration and eligibility. Prior efforts at contacting Management, which are part of the information content of a request that the MICI reviews during the registration stage, are reviewed in greater depth during the eligibility stage, when the MICI also has Management’s perspective available. Thus, during the eligibility stage, the MICI declared a request ineligible after finding that the requesters had had no contact with Management. Similarly, it declared two other requests ineligible after concluding that Management had not had sufficient opportunity to address the underlying concerns. Accordingly, excluding requests that raised issues beyond the scope of the MICI, the requirement of prior contact with Management became the main factor for not admitting requests during the registration and eligibility

processes.³⁰ Pursuant to the MICI Policy, in addition to being part of the required content of a request and a criterion for eligibility, prior contact with Management is explicitly included as one of the MICI's stated objectives: to "be a last-resort mechanism for addressing the concerns of requesters, after reasonable attempts to bring such allegations to the attention of Management have been made."³¹

3.13 The difficulty in meeting the requirement of prior contact with Management was largely due to the absence of a complaint handling system within the IDB Group during the period under evaluation. The MICI was designed to be a last-resort mechanism for addressing concerns, but the Management departments that should be contacted first and the way those departments should coordinate with the MICI are not defined in the MICI policy or at the institutional level of the IDB Group. The lack of a registry of the complaints received by Management during the period under evaluation makes it impossible to establish with any certainty the volume of concerns received by Management and the fate of those complaints. An analysis of the complaints that were examined in the eligibility stage shows significant inconsistencies in the way Management addressed the contacts made by requesters before reaching out to the MICI: (i) one fourth of the analyzed requests³² was either not met with any response from Management or was given an acknowledgment of receipt followed by a forwarding of the complaint to the execution unit, usually indicating that the latter was the party responsible for execution of the works; (ii) in another fourth of the requests, there were initial contacts or exchanges with the requesters but no significant follow-up or subsequent response on the issues raised or involved; (iii) in one request, Management advised the requesters to contact the MICI; (iv) in the remaining requests, there was greater interaction with the requesters (e.g., letters, emails, meetings), although the requesters decided in the end to turn to the MICI anyway, indicating dissatisfaction with the responses received or failure to solve their problems. In the course of its field visits, OVE learned more details on

30 A total of 10 requests were either not registered (seven) or declared ineligible (three) for this reason. This is equivalent to 18% of nonregistered or ineligible requests. Added to this total are the requests not registered due to incomplete information, where one of the most recurrent missing items was a description of the requesters' efforts to contact Management (seven).

31 The vast majority of the mechanisms at other MDBs include a similar requirement or indication. The exception is the CAO/IFC, which to date reports to the president of the World Bank and operates as one of several options available to complainants for submitting their concerns and therefore does not require that requesters have had prior contact with management. It is worth noting that the CAO/IFC may forward a complaint to the IFC if it considers that, in view of its nature, it can be better addressed by management.

32 Excluding complaints in which the requesters refrained from contacting Management for fear of reprisals (two) or in which the MICI verified that no prior contact had been made (one).

some of these inconsistencies or shortcomings, such as the delay of several months in responding to a complaint filed by requesters, or the case of requesters who were not received at the Bank's offices after having traveled from a province to file their complaint. In the latter case, the complaint was forwarded directly to the execution unit without taking into consideration the potential reprisal risks raised by the requesters. The new IDB and IDB Invest environmental and social policy frameworks seek to establish a foundation for developing an IDB Group complaint management system. Management has begun to implement actions to this end.³³ However, these measures are still at an early stage, and there is a need to define the processes that will facilitate access for the requesters and the manner in which these systems will coordinate with the MICI, as the last-resort mechanism.

3.14 The legal exclusion has been another limiting factor on the mechanism's activities in the eligibility phase. The determination of eligibility, which is the responsibility of the MICI Director,³⁴ requires verification that the request does not fall into one of the exceptions under the policy, one of which is the legal exclusion. The legal exclusion was cited in more than half (15) of the 27 requests that were registered³⁵ and affected the eligibility determination in six cases, limiting the MICI's ability to serve as a resource for requesters. In two requests, the legal exclusion was a deciding factor in declaring the cases ineligible;³⁶ another four requests were declared eligible, but the legal exclusion prevented one or more issues

33 The IDB is considering developing a protocol to respond to the complaints received as part of its plan for implementing the new environmental and social policy framework. As for IDB Invest, one of the community engagement measures under the new Environmental and Social Sustainability Policy that entered into force in December 2020 is the process of developing a complaint management mechanism at the Management level. In anticipation of the implementation of this mechanism, an IDB Invest Access to Information platform has included an option by which requesters can lodge a complaint. As of October 2020, two complaints have been recorded through this channel.

34 The MICI policy states that the MICI Director, in consultation with the consultation phase coordinator and the compliance review phase coordinator, "will determine the eligibility of the Requests based on the eligibility criteria established in this policy. In the eligibility determination process, the MICI will consider all relevant information available at that time, including Management's response, project documentation, and the information provided by the Requesters." The eligibility memorandum is distributed to the Board of Executive Directors for information.

35 Not included in these 15 is the request related to the Porcè III Hydroelectric Project (Colombia) that was declared ineligible due to late filing; therefore, the MICI did not decide on the legal exclusion.

36 For the request related to the Maués Integrated Sanitation Program (Brazil), the issues raised by the request (resettlement) were the same issues addressed in ongoing legal proceedings with the State Housing Agency. In those proceedings, the requesters were sued so the expropriation and compensation calculation process could continue. As a result, the entire request was declared ineligible. The request related to the Alto Maipo Hydroelectric Power Project (III) was declared ineligible because the legal exclusion was triggered and because the MICI determined that the alleged harm was not "reasonably likely to occur" at that time.

from being considered by the MICI. The legal exclusion was triggered and would have led to issues being removed from consideration in another three requests, but those were declared ineligible because they did not meet other eligibility criteria. In one additional case, Management invoked the legal exclusion after the eligibility stage had concluded, when the MICI submitted to the Board its recommendation to proceed with an investigation, precluding the MICI from considering certain issues (see Chapter IV on case management).

- 3.15 The judicial proceedings that ultimately triggered the exclusion removed from consideration core issues raised in the requests which are of great importance for the IDB Group in terms of implementing its environmental and social safeguards policies and standards. Most of the issues affected by the exclusion were related to involuntary resettlement or economic displacement. Other issues excluded concerned environmental issues or the public consultation process, as the communities had initiated proceedings in the national or international judicial system claiming that they had not been consulted on the projects in question (Table 3.2). The exclusion of these issues eliminates the possibility of addressing cases of noncompliance and harm to the requesters, leaving potential environmental and social liabilities unaddressed, which could result in a reputational risk for the IDB Group. Meanwhile, in a MICI case related to a project financed by another MDB, the issue eliminated by the legal exclusion was considered by that MDB's mechanism as the core issue of the complaint. This was the case with Reventazón, which was managed by the CAO/IFC, whose policy does not include a legal exclusion but instead explicitly states that the mechanism's activities cannot overlap or interfere with the activities of national courts.³⁷ The CAO analyzed the request related to the expropriation of land, even though there were judicial proceedings under way to establish the compensation amount. The CAO's determination had to do with noncompliance with the IFC Performance Standards³⁸ and had no influence on the national court proceedings that concluded with a valuation based on the national legislative provisions in effect at the time.

37 In its operating guidelines, the CAO indicates that it has no authority with respect to judicial proceedings under way, is neither an appeals body nor a mechanism for enforcing compliance with local legal provisions, and does not replace either international courts or the judicial systems of the host countries.

38 The CAO investigation concluded that the IFC had failed fully to comply with its Performance Standard 5 regarding land acquisition and involuntary resettlement in terms of its requirement that compensation should cover full replacement cost both for those classified as vulnerable and for those not vulnerable.

Table 3.2. Issues excluded from requests where the legal exclusion applied

Issue excluded	Legal proceedings	Requests
Involuntary resettlement / Expropriation / Economic displacement	8	3
Public consultation process	4	2
Environmental	4	3
Others	2	2

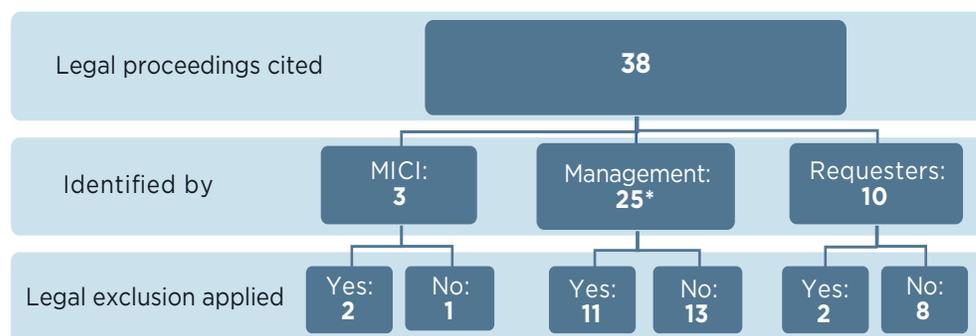
Source: OVE, based on eligibility memoranda and other request documents.

3.16 Lastly, the legal exclusion has been invoked several times without grounds in the eligibility process, mainly by Management, creating inefficiencies in the process. All told, during the period under evaluation, the MICI learned of 38 legal proceedings (Figure 3.9) that it analyzed, with just one exception.³⁹ Two thirds of these proceedings were invoked by Management, seeking to apply the legal exclusion to all or part of the request.⁴⁰ In more than half (13/25), the MICI concluded that the legal exclusion did not apply. The MICI correctly disregarded 12 legal proceedings because it established that they lacked legal grounds: four proceedings had concluded and were dismissed; six had nothing to do with the issues raised in the request; one was repeated; and one was administrative, not judicial. Another proceeding was disregarded because the MICI determined that the parties to the proceeding were not the same parties involved in the MICI request,⁴¹ and so the exclusion did not apply. When Management presents a significant number of legal proceedings that lack legal grounds in hopes that the legal exclusion will apply, it generates inefficiencies in the process.

Figure 3.9

Use of the exclusion due to judicial proceedings

Source: OVE, based on the memorandum of eligibility of the requests.



Note: *One of the judicial proceedings cited by Management was not analyzed by the MICI.

39 Request related to the Porce III Hydroelectric Project.

40 The requesters also identified legal proceedings, but in general, they referred to proceedings filed by an executing agency against the requesters, so that the courts would determine the fair price to pay for lands expropriated in the context of an IDB Group project, when the requesters were not in agreement on the price offered by the agency.

41 The MICI considered that, for the legal exclusion to be applicable, not only did the legal proceedings and the request to the MICI have to deal with the same specific issue, but the parties to the proceedings and to the request had to be the same. Subsequently, the Board overturned this interpretation, admitting the opposing argument raised by Management when the MICI submitted its recommendation to proceed with an investigation.

3.17 Another exclusion that was the subject of differences between the MICI and Management is the one related to the time limit for accepting requests in the specific context of eligibility of a guarantee. All mechanisms provide a time limit for accepting a request. Most mechanisms establish a deadline of two years following the close of the project or disbursements, or the date on which the financial interest or involvement with the client comes to an end, depending on the nature of the operations. In the case of the MICI, while a deadline associated with disbursements can be easily applied to traditional investment operations,⁴² it can be problematic in the case of other, generally private-sector, instruments. This is true, for example, for guarantees, which can remain active for long periods without disbursements, even if the project has long been completed. Applying this criterion was particularly problematic during the eligibility stage of a request concerning a guarantee. The request was ultimately declared ineligible for a different reason (prior contact with Management) and the differences between the MICI and Management remained unresolved (Box 3.1). At the same time, instruments that typically provide for a single initial transaction (e.g., equity) could also be problematic by potentially limiting the acceptance of requests in situations in which it takes much longer for the project to be implemented and its impacts to materialize.

Box 3.1. Application of the exclusion related to the time limit for accepting a request in the context of a guarantee

The way this exclusion is to be applied was interpreted differently by the MICI and Management during the eligibility stage of a request concerning a guarantee approved by the Bank in December 2000 for building and operating a private-sector highway project in Chile, in which the requesters were alleging a series of damages caused by the project. Management called for considering the base financing that was being guaranteed, whether a loan or a bond issue, and using the date of disbursement or issuance of bonds under this financing to determine whether the 24-month time limit established in this clause had already elapsed. Under this interpretation, the time limit had been reached in April 2004. For the MICI, however, the request could be eligible as long as the guarantee was still valid.

Against this backdrop, a work group consisting of MICI, IDB, and IDB Invest representatives was assembled to reach a common understanding on how to interpret the exclusion in the specific case of guarantees. Based on these discussions, the MICI prepared an interpretation proposal (document [MI-73 / CII/MI-11](#)) that included a test period of two years to determine whether or not to include specific language in the policy. The proposal was discussed at a technical briefing of the Board of Executive Directors, and while there was a general consensus on the proposal, there has been no opportunity to put it in practice as no new guarantee-related requests have been received since then.

Source: OVE, based on documents from the eligibility stage of the request and the exclusion interpretation proposal.

⁴² Another mechanism that provides for a time limit based on disbursements is the IP/WB. One of the measures included in the recently approved reforms extends the period for acceptance of complaints from 95% of disbursements to 15 months following project closure.

- 3.18 Overall, the MICI has made significant strides in terms of transparency in the registration and eligibility processes. Unlike what OVE found in 2012, information on both registered and nonregistered requests is now available in the MICI's Public Registry. There is a consensus among the interviewed requesters on the quick initial response they received from the MICI and the mechanism's willingness to answer any questions on the process. An important factor in this regard is that, since 2016, a MICI officer has been assigned to be in charge of the registration process, including contact with the requesters. Furthermore, all documents generated during the eligibility process are also available in the Public Registry, along with notices on extension requests to the Board of Executive Directors. The eligibility memorandum includes a project summary as well as a summary of the request and Management's response, a chronology of the actions taken by the MICI to date, and whether or not the eligibility criteria were met.
- 3.19 In addition, there is greater predictability in the time frames associated with the registration and eligibility determination of requests. Registration has been useful for early rejection of requests that are clearly linked to one or more criteria for nonadmissibility. For most requests, registration (or nonregistration) has been completed within the time frames set forth in the policy.⁴³ In the eligibility process, extensions have been more limited than in the past and time frames have similarly been more in keeping with the provisions of the policy. One third of the 27 requests analyzed in the eligibility stage required some type of extension. The major extensions concerned four requests in which Management asked for a suspension of the process (65 business days on average). In two other requests, Management asked for extensions in issuing a response. In addition, the MICI asked for extensions in issuing an eligibility memorandum for three requests, mainly in order to conduct eligibility missions. The most significant of these extensions (two months) was requested to coordinate a mission to a hard-to-reach area in circumstances that were not very safe.
- 3.20 On the four occasions when the eligibility process was suspended at the request of Management to attempt to resolve the concerns, the results were mixed. In a request related to a project in Brazil, Management coordinated a mediation process between the three requesters and the execution unit with the help of a facilitator, and agreements in terms of housing solutions were achieved for two of the requesters following an extension of the suspension period. The third individual's request was ultimately declared

⁴³ On average, notification took 15.2 business days for requests that required a 10-day extension and 5.1 business days for requests that did not require any extension. In addition, the MICI aims to acknowledge receipt within the first 24 hours of receiving a request. The time frames are based on when the MICI receives the request, whether it is received directly from the requesters or is forwarded from another IDB Group unit/office.

ineligible under the eligibility criterion requiring that a request be filed by two or more persons, despite the MICI's indication that the lack of a housing solution for the person in question would have merited a MICI process had the eligibility criteria been met. In three other requests associated with projects in Ecuador, Costa Rica,⁴⁴ and Peru, progress was made during Management's intervention process, primarily in the form of studies, but these took longer to conduct than expected. Thus, following some additional extensions and at the requesters' initiative, the MICI continued with the process. The three requests were declared eligible and were transferred to the consultation phase, where agreements were reached with MICI facilitation.

2. Preliminary analysis in the consultation phase and compliance review phase

3.21 Some cases declared eligible do not head to one of the substantive phases of the MICI process. The eligible requests are required to go through a preliminary analysis before entering the substantive stage of the consultation or compliance review processes.⁴⁵ In five of the 12 eligible cases in which the requesters opted for the consultation phase, no headway could be made on a dialogue between the parties. In four of these cases (Ituango IDB and Ituango IDB Invest, Colombia; São José dos Campos III, Brazil; and Metrobus, Paraguay), the MICI found that the conditions for a dispute resolution process were not present, and the cases were transferred to the compliance review phase in keeping with the requesters' preference at the start of the process. In a fifth case (General Roca, Argentina), which had entered the consultation phase and resulted in some partial agreements, the requesters decided to abandon the MICI process. In all these cases, the high level of mistrust between the parties was identified by the MICI as the main factor for not having moved forward on a dialogue process.⁴⁶ Other identified factors included the time constraints on the development of agreements and potential solutions due to early completion of the works underlying the complaints (Brazil, Argentina), as well as the interest of the requesters in addressing

44 In one request (Reventazón, request II), the MICI did not approve Management's request to suspend the process since it had not submitted, as of the issuance of its written response, a plan and timetable to address the requesters' concerns, as required under the policy. However, due to the subsequent exchanges between Management and the requesters to arrive at a possible agreement, the MICI requested two extensions for issuing its final eligibility determination.

45 In the consultation phase, the MICI analyzes and determines whether conditions are present for a dispute resolution process. In the compliance review phase, the MICI analyzes whether there are grounds for initiating an investigation, but it is the Board that decides whether to launch an investigation, based on a MICI report that contains its recommendation to investigate and the terms of reference of the investigation.

46 In the vast majority of cases handled, initial mistrust between the parties has been a major challenge. The MICI generally comes into play late in the dispute resolution process, once the operation underlying the request has been approved and, given its nature as a last-resort mechanism, after attempts have been made to resolve the

project issues beyond the scope of the MICI (Brazil, Argentina) or the requesters' preference for addressing their concerns through the compliance review phase (Brazil, Paraguay).⁴⁷ In the compliance review phase, three cases failed to advance to an investigation. In two of these cases, the MICI recommended not going forward with the investigation, either because it considered that an investigation would not yield any additional information since the Bank had decided not to finance the questioned work (São José dos Campos III, Brazil)⁴⁸ or because the request made reference to an IDB technical cooperation operation and an IDB Invest loan for the same project and therefore the MICI decided to investigate only the case associated with the loan, including analyses of the studies funded by the technical cooperation operation (Ituango, Colombia). In a third case (Reventazón, Costa Rica), the Board decided not to authorize the investigation recommended by the MICI in view of a dispute between the MICI and Management in which the two parties had staked out highly divergent positions.

dispute by other means (at the project level and/or through Management). This is compounded by the MICI process itself, which involves a series of requirements and steps before the dispute resolution stage (consultation phase) can be reached.

47 Lastly, there are factors related to specific situations and the specific context of the projects, such as the challenges to a dialogue between the parties posed by changes in the local authorities in the case of Argentina, or the existence of parallel processes with national entities in the case of Colombia.

48 Although the Bank had made one contractual amendment to include the work in the program, it ultimately decided not to finance it since the executing agency had failed to comply with certain requirements under the operational policies.



04

Management of Cases

4.1 This chapter analyzes how the MICI has managed cases in the consultation and compliance review phases and is aimed at establishing to what extent it has acted independently, objectively, impartially, transparently, and efficiently.

A. Portfolio of cases

4.2 OVE analyzed a portfolio of 19 cases handled by the MICI between December 2014 and June 2020. Fifteen of these are cases that were declared eligible during the period under evaluation. An additional four cases were declared eligible prior to December 2014 and were beginning their compliance review phase (legacy cases), but were included in OVE’s analysis inasmuch as the substantive work on them was done primarily under the current policy. Three other cases declared eligible before December 2014 were not included in the analyzed portfolio either because the consultation stage in the consultation phase had concluded, and the agreements achieved were being monitored (two cases) or because the investigation in the compliance review process was being completed (one case).⁴⁹ The portfolio includes 12 cases in the consultation phase coming from 10 countries and for the most part associated with public-sector operations approved prior to 2018. The portfolio in the compliance review phase comprises 11 cases (six of them associated with SG operations and five with NSG operations) in eight countries. As of June 2020, the four legacy cases included in the analyzed portfolio were closed. In six of the 15 eligible cases in the period under evaluation, agreements were reached in the consultation phase (one of these cases is already closed), while in two others investigations were completed in the compliance review phase (Table 4.1).

Table 4.1. Analyzed portfolio of cases

Phases	Country	Borrower	Short name (Request)	Operat. year	E&S classific.	Request year	Case status (June 2020)
Consultation	Argentina	SG	Río Negro-Bariloche	2010	B	2019	Monitoring of agreements
	Argentina	SG	Reconquista (III)	2014	A	2019	Monitoring of agreements
	Argentina	SG	General Roca	2013	B	2019	Closed (requesters abandon process)
	Colombia	NSG (IDB Invest)	Ruta del Cacao	2018	A	2019	Evaluation
	Ecuador	SG	Earthquake-affected electricity infrastruct.	2017	B	2018	Monitoring of agreements
	Costa Rica	SG-NSC-(SCF)	Reventazón (IV)	2012	A	2017	Closed
	Haiti	SG	Caracol Industr. Park	2012	A	2017	Monitoring of agreements
	Perú	SG	Titling & Registering of rural land-PRT3	2014	A**	2015	Monitoring of agreements

⁴⁹ According to the Approach Paper for the evaluation, for legacy cases, OVE’s analysis would consider cases that: (i) were at the start of the consultation or compliance review phase and therefore were mainly handled under the current policies; or (ii) are associated with projects for which new requests were received under the current policy.

Consultation => Compliance review	Paraguay	SG	Metrobus (II)	2010	B	2016	Preparation of Action Plan***
	Brazil	SG	Sao José dos Campos (III)	2010	B	2019	Closed (recommendation not to investigate)
	Colombia	SG	Ituango-BID	2012	B	2018	Closed (recommendation not to investigate)
	Colombia	NSG (IDB Invest)	Ituango-BID Invest	2016	A	2018	Under investigation
Compliance review	Bolivia	SG	La Paz Drainage Program	2011	B	2014*	Closed
	Brazil	SG	Sao José dos Campos (I)	2010	B	2011*	Closed
	Chile	NSG (SCF)	Alto Maipo	2017	A	2017	Preparation of Action Plan***
	Colombia	NSG (SCF)	El Dorado	2011	B	2011*	Closed
	Costa Rica	SG-NSC-(SCF)	Reventazón (II)	2012	A	2016	Closed (not approved by the Board)
	Guatemala	NSG (IDB Invest)	San Mateo/San Andrés	2018	B	2013	Under investigation
	Mexico	NSG (SCF)	Mareña	2012	B	2012*	Closed

Notes: (*) Legacy cases. (**) Project classified as category B at the time of approval and reclassified as category A during implementation. (.) Status as of June 2020 as indicated in the table. Both plans were approved in the second half of 2020 and are being monitored by the MICI.

Source: OVE, based on the case documents.

B. Independence

4.3 Independence is at the root of the MICI's functioning. Its purpose is to ensure the credibility of the reports that the IDB Group Boards receive from the MICI regarding complaints associated with IDB Group-financed projects. Independence is also essential for the proper implementation of the other governing principles set forth in the MICI policy: objectivity, impartiality, and transparency. Independence comprises four dimensions:⁵⁰ organizational independence; absence of conflicts of interest; behavioral independence (ability to produce frank and uncompromising reports); and protection against outside interference (ability to decide the design, scope, and content of outputs). This section focuses on the last two dimensions, while the first two are discussed in Chapter VI.

4.4 OVE found that the MICI has had the space needed to manage its cases independently in the consultation phase. The handling of cases in this phase requires voluntary participation of, and collaboration among, the requesters, the borrower, and IDB Group Management with a view to reaching consensus solutions. To build trust and ensure the credibility of the process, it is essential for the MICI to act independently from the parties involved. Both

⁵⁰ These dimensions have been defined in the context of the independent evaluation offices. Evaluation Cooperation Group, Good Practice Standards on Independence of International Financial Institutions' Central Evaluation Departments, June 2010.

the interviewed requesters and the borrowers and clients in cases processed in the consultation phase agree that the MICI has acted as an independent third party. To this end, the MICI employs the dispute resolution methodology and guidelines it designed on the basis of good practices and which it has made public so as to ensure clear expectations from the parties. Lastly, the Boards of Executive Directors have had minimal participation in the consultation phase. The Boards receive the report that concludes a consultation phase, describing the agreements reached by the parties and the agreed-upon monitoring plan, for consideration by short procedure.⁵¹ In practice, the Board has not brought up any of these reports for discussion.⁵²

- 4.5 In the compliance review phase, the MICI is subject to the decisions of the Board in ways that have affected the mechanism's ability to act independently. According to the current policy, the Board decides whether or not to initiate an investigation in the compliance review phase and decides whether or not to approve the recommendations resulting from the MICI investigation. OVE found that these two circumstances have given rise to situations that compromise the independence of the mechanism. Board approval to proceed with an investigation⁵³ was originally envisaged as an expeditious process (short procedure),⁵⁴ but has on occasion become a contentious process between the MICI and Management, with outcomes that call into question the MICI's independence. For example, in one case, the MICI submitted its recommendation to proceed with an investigation twice before it was approved. The different versions of the recommendation were driven by changes requested by the Board in view of Management's request to exclude issues based on judicial proceedings the MICI had disallowed in its determination of eligibility. One highly technical issue ended up being determined by the Board of Executive Directors in plenary session following Management's position. The pressure placed on the MICI in other cases in which it had recommended proceeding with a compliance review was also corroborated by various parties in interviews. Regarding approval of the recommendations issued by the MICI at the conclusion of an investigation, all except one have

51 The short procedure does not require Board discussion, unless a director brings the issue up for discussion.

52 The consultation phase guidelines also clarify that an objection to the agreed-upon monitoring plan will not invalidate the agreements reached but could prevent the MICI from participating in the monitoring in whole or in part.

53 Other mechanisms, such as the IP/WB, AM/ADB, and IRM/AfDB, also require the approval of their respective boards in order to initiate an investigation, while the CAO/IFC, CM/EIB, and IPAM/EBRD do not require such approval.

54 Of the five recommendations submitted by the MICI to proceed with an investigation for requests handled exclusively during the period under evaluation, only two were approved by short procedure.

been approved by the Board. However, on one occasion, the MICI substantially modified a recommendation in response to comments made on its presentation to the Board.

- 4.6 A positive trend was observed during the period in the relationship between the MICI and Management, particularly IDB Management, which is contentious by nature. Nonetheless, OVE identified three Management practices that obstruct the MICI's work and restrict the mechanism's ability to act independently. First, while the policy dictates that the MICI should have access to all "relevant" information on the case, OVE found that the information requested of Management often arrives in dribs and drabs⁵⁵ and in one case the information was delivered only after the MICI had shared the draft investigation report with Management. Second, while under the provisions of its policy the MICI shares the draft terms of reference with both Management and the requesters to elicit comments, Management not only provides comments but has sought to directly participate in the final drafting of the investigation's questions, which impinges on the MICI's independence. This situation is possible because the terms of reference are submitted to the Board for approval together with the recommendation document in addition to being inconsistent with the MICI's independence as regards its authority to determine the design, scope, and content of its investigation.⁵⁶ Lastly, when the Board is considering a MICI recommendation to investigate, Management has brought up judicial proceedings that the MICI had already disregarded in its determination of eligibility, causing inefficiencies and transferring to the Board the decision on eligibility which, under the policy, is the purview of the MICI Director. Thus, Management raised two judicial proceedings that were disallowed when determining eligibility that ended up triggering the exclusion at the Board's decision, limiting the scope of the compliance review. Management has also raised new judicial proceedings, in exercise of the provisions of the policy,⁵⁷ the majority of which lacked justification. Thus, Management raised six new judicial proceedings when the MICI

55 In practice, this has meant that the MICI identifies the documents it requests from Management as it moves forward on its process, resulting in multiple requests for a single case. At the same time, Management often questions the "relevance" of the request, particularly in cases involving private-sector clients. This process creates friction between Management and the MICI and is inefficient. In addition, lack of information has been one of the reasons to justify an investigation, as in the case on the Metrobus, where the MICI recommended investigating inasmuch as it lacked information on the actions of the IDB Group.

56 In the mechanisms of other MDBs, the document justifying an investigation is set apart from the terms of reference and contains only general questions outlining the scope of the investigation, rather than every specific question (IP/WB, CAO/IFC). Even in the mechanisms that require Board approval before an investigation is initiated, the terms of reference are presented to the Board once the investigation has been authorized, and they are submitted separately and for information only (AM/ADB).

57 The MICI policy provides for the possibility that new judicial proceedings may arise after the eligibility phase.

recommended proceeding with a compliance review. Of these, four were disallowed—two because they did not exist at the time they were invoked⁵⁸ and two because they were unrelated to the issues in the request. Lastly, two proceedings triggered the exclusion. The unjustified judicial proceedings call into question why Management invoked them, creating additional inefficiencies and adversely impacting the MICI’s capacity to address cases that have been declared eligible in a timely manner.

- 4.7 In some specific situations, the MICI has also acted to undermine its own independence. In one case, following the presentation to the Board of the closing document for an investigation that generated strong debate, the MICI substantially modified one of its recommendations, which was ultimately approved. Amending documents after they have been submitted to the Board for consideration on substantive matters, not just to correct factual errors, is inconsistent with the independence of the Mechanism, whose documents must be final. In addition, OVE identified one case in which, faced with Management’s diverging opinion on the interpretation of the judicial clause, the MICI changed its determination of eligibility, and issues initially included ended up being excluded from the recommendation presented to the Board to proceed with an investigation. The case in question was a highly controversial one that the MICI handled just a few months after the Board did not approve the only investigation it has denied.
- 4.8 OVE found that the MICI has acted independently of the requesters. Some of those interviewed expressed their concern that the MICI might be co-opted and used to further the political agendas of the requesters and/or their representatives, considering that several cases handled by the MICI have developed in highly politicized contexts. Political agendas may be present in many cases, which does not mean that complaints cannot be legitimate. In fact, OVE found that the MICI has followed the rules set forth in its policy for accepting requests and handling cases. Similarly, OVE found no evidence that the MICI’s independent action or judgment have been affected by pressure from requesters.

C. Objectivity

- 4.9 Objectivity means the extent to which the MICI’s actions have been evidence-based and framed in its policies. The principle of objectivity seeks to ensure that the MICI conducts the case management process free of prejudice or bias. For the consultation phase and in view of the oral nature of the process, OVE primarily examined

⁵⁸ With respect to these two proceedings, the MICI determined that they were “potential cases that had not yet been filed with a court, and therefore were not judicial proceedings at that time.”

to what extent the MICI promoted the resolution of disputes in accordance with the policy and guidelines. For the compliance review phase and in view of the written nature of the process, OVE examined the documents prepared by the MICI at the various stages (recommendation to proceed with an investigation, terms of reference of the investigation, and final report in the compliance review phase) to determine to what extent the MICI's actions were consistent with the policy and based on the available evidence.

4.10 OVE found that the consultation phase operates in accordance with the policy provisions as well as with the guidelines issued by the MICI to steer the process. In terms of the scope and procedures of the consultation phase, the policy provisions are of a general nature.⁵⁹ In view of this, in 2018 the MICI established specific guidelines for the consultation phase (document MI-74 /CII/MI-13) designed to facilitate implementation of the policy.⁶⁰ These guidelines have been useful for the MICI staff in fleshing out the policy provisions, including through the establishment of guiding principles, methodological considerations, practical matters regarding the processing of requests (e.g., missions, considerations on engagement between the parties during the process, information management), and explanations on grounds for the closure of cases. Considering the flexibility of the dispute resolution processes, the guidelines have supported a more objective management of the process and the MICI has implemented them in keeping with the needs and context of each case.

4.11 In the compliance review phase, there are no guidelines for implementing the policy. With regard to the documents prepared by the MICI, OVE found that they are generally evidence-based and consistent with its policy, despite certain limitations:

a. Documents that recommend initiating an investigation. Based on an examination of all documents in which the MICI recommended proceeding with an investigation,⁶¹ OVE found that the subject matter of the investigation was not always clearly defined. While the MICI identified in all cases the Operational Policies relevant to the complaints, the recommendations to investigate generally failed to state specifically what aspects of the policy and what IDB Group

59 In addition to stating the purpose of the consultation phase with the above-described limitations, the policy makes a general reference to the modalities, methods, and stages comprising the consultation phase, with their respective processes and associated time frames.

60 The MICI policy authorized the MICI director to establish guidelines and adopt internal administrative procedures that are consistent with the policy and the Bank's policies and procedures.

61 There were five such cases: Metrobus (Paraguay); Reventazón (Costa Rica); Alto Maipo (Chile); Ituango-IDB Invest (Colombia); and San Mateo/San Andrés (Guatemala).

obligations were involved,⁶² which it is important to make clear in order to avoid confusion as to the subject matter of the investigation. At the same time, the recommendations to investigate arise from the existence of indications of potential IDB Group noncompliance with its environmental and social safeguards policies and standards. OVE found cases in which there was a lack of rigor in this regard, and others in which the recommendation to investigate was based on doubts as to the technical soundness of the actions taken by the IDB Group to mitigate potential environmental and social impacts and risks rather than on questions as to compliance with the relevant policies.⁶³

- b. Terms of reference of an investigation.** The terms of reference serve to define the questions that should guide the investigation, as well as the estimated budget and time required to complete it. In terms of content, OVE found that the vast majority of the questions were properly based on compliance with the requirements of the relevant policies. Similarly, most were framed as yes-or-no questions with a view to determining with the highest possible degree of certainty whether or not there was compliance with the environmental and social safeguards policies and standards.
- c. Final reports at the conclusion of an investigation.** After examining the investigations completed during the evaluation period,⁶⁴ OVE found that the analyses conducted systematically respond to the questions in the terms of reference on the basis of generally robust evidence gathered during the process, although on occasion there are answers that fail to account for developments in the projects or the actions taken by Management in the course of its supervisory activities. In addition, the conclusions and recommendations consistently flow from the findings of the investigations. Several

⁶² The obligations of the IDB Group may be summarized as ensuring the borrower's compliance with the IDB Group's environmental and social safeguards policies and standards. This means that, in designing an operation, the IDB Group conducts a review/due diligence process to require that the borrower or client identify the operation's potential environmental and social impacts and risks and design the appropriate measures to manage them. During execution, the IDB Group supervises and requires proper implementation of the environmental and social impact and risk management measures by the borrower or client. In the event the borrower or client does not meet the policy requirements despite the IDB Group's requirement, the latter has at its disposal other measure that it must use to require compliance with its environmental and social safeguards policies and standards (for example, accelerate repayment of the loan in NSG projects), or it can decide to not finance the investment.

⁶³ For example, in the case of Alto Maipo, the MICI considered that experts were needed to analyze the performance of the IDB Group on issues of high technical complexity. In Reventazón, the MICI indicated that it would be useful to corroborate the implementation of certain activities and pointed out the need to settle differences of opinion between the consultants hired by the MICI and those hired by Management to review the same issue or determine whether there are studies presenting technical alternatives other than those selected by the project team.

⁶⁴ Six investigations were completed during the period. Four of these were from legacy cases (declared eligible prior to December 2014), and two were from cases managed from beginning to end under the current policy.

reports reflect the difficulty of establishing with certainty whether the harm was a direct result of IDB Group noncompliance with its policies, as required under the policy framework (Chapter I). In practice, in the most complex cases, the MICI has sought to establish a link between the identified noncompliance and the harm alleged by the requesters on the basis of an analysis of the confluence of various investigation components (technical findings, testimonies) to conclude on a potential contribution to the alleged harm.

- d. Documents and reports in general.** OVE found that the compliance review phase documents are generally not businesslike, due to their length and repetitive description of the facts and arguments of the parties. While it is important for the documents to be complete and well grounded, the persons interviewed by OVE, several requesters, executing agencies, and IDB Group staff and directors remarked that they were unnecessarily complex and difficult to process and understand.

D. Impartiality

- 4.12 Impartiality means the extent to which the MICI seeks out and takes into account the perspective of the various parties to a complaint, and acts without preference for any. In its analysis, OVE considered various actions that denote impartiality: (i) take the needs of the parties into account; (ii) treat each party with fairness, which does not mean treating everyone equally; (iii) offer all parties the same opportunity to be heard; and (iv) maintain communication with all parties so that the most important messages are received by everyone.
- 4.13 The MICI has considered the perspective of the various parties involved in the consultation phase, and the mechanism is generally perceived as impartial. The MICI has sought to create an environment of impartiality, primarily through a design of the mediation process that explicitly incorporates the preferences of the various parties to the process (e.g., methodology, format), while also taking into account the existence of asymmetries in terms of information and ability of these various stakeholders to participate effectively. Against this background, and unlike the case in 2012, OVE found that the MICI's actions have been aimed at creating a process that is accepted by all parties rather than favoring or backing the requesters. There is a broad consensus among requesters and Bank staff who have participated in processes facilitated by the MICI as to the importance of the MICI's actions as an impartial third party. In the case of executing agencies, the perceptions are a bit more divergent. The vast majority indicated that their opinions and perspective were taken into account during the process. However, some stated that by taking requesters seriously, the MICI reinforces

and legitimizes their positions and that, in some specific cases, the MICI should have placed more limits on the introduction of new demands by the requesters during the mediation process but that ultimately gained the consensus of all parties. There is also a broad consensus on the MICI's capacity to bring different stakeholders to the table in a search for solutions to problems that in many cases had dragged on for years. In addition, OVE found no evidence that the MICI has encouraged requesters to choose or proceed with the compliance review phase, and requesters have consistently reported having been informed by the MICI as to the purpose and scope of each phase.

- 4.14 In the compliance review phase, OVE found that the MICI acted impartially in terms of considering the perspective of the requesters and of Management. Under the policy, Management and the requesters are the parties involved in the compliance review phase of a case. The MICI has unfailingly contacted both parties, despite the difficulty often involved in reaching the place where the requesters are located.⁶⁵ In the course of the investigation missions, the MICI has also sought out the opinion of the borrowers, executing agencies, and clients. However, it did not always keep them informed after the mission, as borrowers, executing agencies, and clients are not considered “parties” to an investigation. Thus, these stakeholders are not informed on the progress of the investigation despite being the ones in charge of the day-to-day implementation of the project. This has given rise to perceptions that the mechanism is not impartial.⁶⁶ Another issue affecting perceptions of the mechanism's impartiality is the absence of a clear communication strategy, particularly important when the conflict level between the parties is high. OVE found that, due to the absence of proactive communications management, certain situations involving interaction with the requesters (e.g., participation in open events on cases under way) have been interpreted as examples of a lack of impartiality on the part of the MICI. However, unlike the case in 2012, OVE found no evidence of any MICI actions deliberately aimed at favoring or unduly siding with the requesters.

E. Transparency

- 4.15 Transparency means seeking to ensure that the parties involved in a case are acquainted with and updated on the MICI's actions and that the information related to the case and its status is made available to the public in a timely manner. In its analysis, OVE considered several

⁶⁵ For example, there has been a case in which the project is located in remote and hard-to-reach areas where only the MICI (not Management) has gone.

⁶⁶ In practice, in some cases Management takes on direct interlocutorship with the borrower, executing agency, or clients. In others, Management has opted to give that role to the MICI during the compliance review phase.

dimensions: (i) the reports generated during the consultation and compliance review processes in order to determine to what extent they are being disclosed; (ii) the availability of information in the MICI's Public Registry; (iii) the availability of documents in the requesters' languages; and (iv) whether their content is clear and easy to understand.

4.16 Overall, significant strides have been made in terms of transparency in the handling of cases. Unlike what OVE found in 2012, the availability of public information on the developments in each case has improved significantly.⁶⁷ The MICI's Public Registry was established in accordance with the provisions of the policy. It is generally kept up-to-date and allows every request and published report to be tracked. The MICI has also made significant efforts to make the reports generated during the MICI process available in the language of the requesters.⁶⁸ The reports generated at the conclusion of each stage of the consultation and compliance review phases provide a detailed account of the process to date and the outcomes achieved, and are also available in the Public Registry. Furthermore, the vast majority of requesters interviewed by OVE report having been continually updated on the status of the process. Despite these strides in disseminating information and communicating with the parties involved, OVE heard several grievances from those interviewed because of what they perceive as a lack of transparency in the MICI in the compliance review phase. Specifically, the reports generated as part of the process (such as terms of reference and investigation reports), mainly for private-sector cases, have a great deal of redacted content, making their arguments difficult to understand and follow.⁶⁹ Lastly, pursuant to its policy, the MICI shares draft documents with Management and the requesters for comments, while this is not the case with mechanisms in other MDBs. Keeping the relevant stakeholders informed on the status of the process is important for transparency purposes and for creating trust during the process. However, there is a risk of the documents being leaked, as has already occurred in the past, which could interfere with the integrity of the process. Other mechanisms, such as the IP/WB and CAO/IFC, maintain a continuous dialogue with the parties but only share the final version of the documents with the requesters once the documents have been sent to the respective Board.

67 In 2012 OVE found that the MICI, citing confidentiality, was not issuing periodic reports on the developments in each case, and when it did issue them, it would do so belatedly, thereby creating mistrust among the parties to the process.

68 For example, in the context of a case associated with the Caracol Industrial Park in Haiti, the reports generated through the process are also available in French and Haitian Creole (the requesters' language).

69 The reports generated by the MICI and published in the Public Registry are subject to the IDB Group disclosure and access to information policies. Consequently, information falling within any of the disclosure exceptions is redacted. The MICI identifies the portions to be redacted in consultation with Management, particularly at IDB Invest.

F. Efficiency

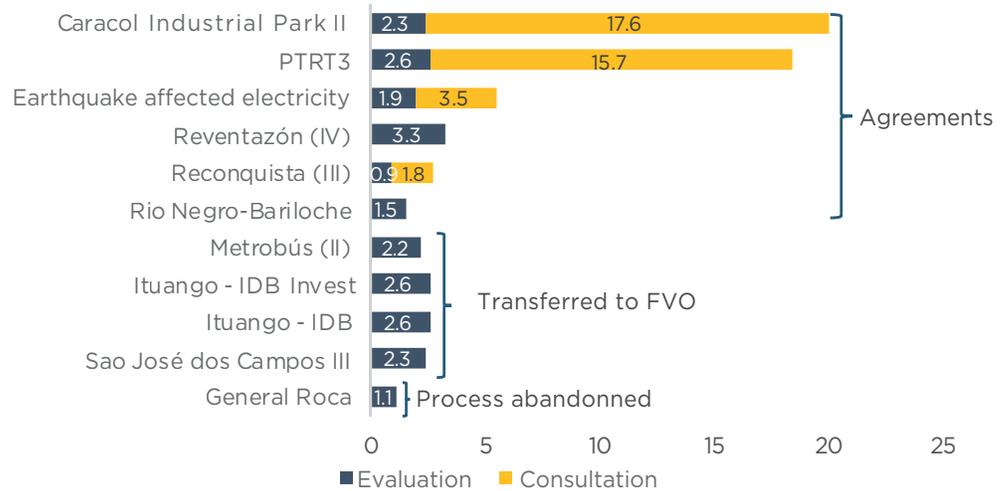
- 4.17 In terms of efficiency, OVE examined the time frames associated with the handling of cases, the reasons for time limit extensions, and the costs associated with this process.
- 4.18 Cases in the consultation phase have been managed with flexibility and with a view to timely resolution, taking the specific context of each case into account. Recognizing the uncertainties inherent in the dispute resolution processes and associated time frames,⁷⁰ and unlike what OVE found in 2012, cases in the consultation phase have been managed with a focus on a timely resolution aimed at either moving forward with the mediation process or transferring the case to the compliance review phase when the conditions for mediation are not present.⁷¹ In addition, while the processing of a request involves a series of steps from the time it is received to the time it reaches the consultation stage, the MICI has sought to make the process more flexible. The format and methodology used have depended on the context of each case (e.g., urgency, harm) as well as on the preferences of the stakeholders. In cases in which the parties had prior exchanges, such as during the eligibility and evaluation stages, and exhibited a willingness to search for expeditious solutions, the MICI proposed intensive methodologies which led to agreements during the evaluation stage (Reventazón (IV), Río Negro-Bariloche). For cases transferred from the consultation phase to the compliance review phase, the average time elapsed in the evaluation stage was 2.4 months. For cases in which the MICI found that conditions were present for moving forward with a dispute resolution process, the average time elapsed in the evaluation stage was two months, and 7.2 months to reach agreements. The cases in Peru and Haiti, which were the most complex due to the issues and number of stakeholders involved (see Chapter V), were the only ones to require an extension of the time limits provided under the policy. These extensions were requested in order to close agreements that were already at an advanced stage at the time of the extension approval request (Figure 4.1).

⁷⁰ For example, these processes avoid setting very strict deadlines because doing so could create pressure for one of the parties to make concessions. This is compounded by the nature of the cases, some of which involve multiple stakeholders and complex issues.

⁷¹ In 2012, OVE found that cases in the consultation phase were being handled without a focus on timely resolution or closure and, as a result, there were cases that remained open for long periods of time despite a limited likelihood of progress.

Figure 4.1
Elapsed time for cases processed in the consultation phase (months)

Source: OVE, based on the request documents.



Note: In the Reventazón (IV) and Río Negro-Bariloche cases, the agreements were reached in the evaluation stage. One case (Ruta del Cacao) is excluded since its evaluation stage had not been concluded as of June 2020.

4.19 The MICI exhibited greater speed in cases processed in the compliance review phase, although the extensions of time limits in the MICI process are mainly concentrated in this phase. In 2012, OVE found that cases tended to stagnate unresolved due to problems largely associated with the internal functioning of the MICI. However, during this evaluation period, OVE found that the MICI has acted with an emphasis placed on timely resolution of the investigations. At the same time, OVE found no evidence of incentives on the part of the MICI to extend the length of the investigations as in the past. However, there have been frequent delays and extensions of the time limits provided in the policy (Figure 4.2),⁷² in a context of more complex cases than in the past and more active Board participation during the process than in the consultation phase. In the case of completed investigations, Alto Maipo took 3.1 years from being declared eligible and transferred to the compliance review phase until its investigation was approved by the Board. Meanwhile, Metrobus took 2.1 years from its transfer to the consultation

⁷² The policy establishes multiple steps for the compliance review process, some of which have time limits. Specifically, the MICI is given 21 business days to submit the compliance review recommendation and six months in principle to present the final investigation report to the Board of Executive Directors (the definitive time limit is set forth in the terms of reference for the investigation). Management and the requesters have deadlines for providing comments on the terms of reference (15 business days) and the investigation report (21 business days). Meanwhile, there are no benchmark time frames for other steps in the compliance review process (e.g., distribution of terms of reference and investigation reports once comments from Management and the requesters have been received, formation of the panel of experts, Board consideration of the terms of reference and investigation reports). For a detailed analysis of the time limits for each step in the compliance review process, see Table II.2, Annex II.

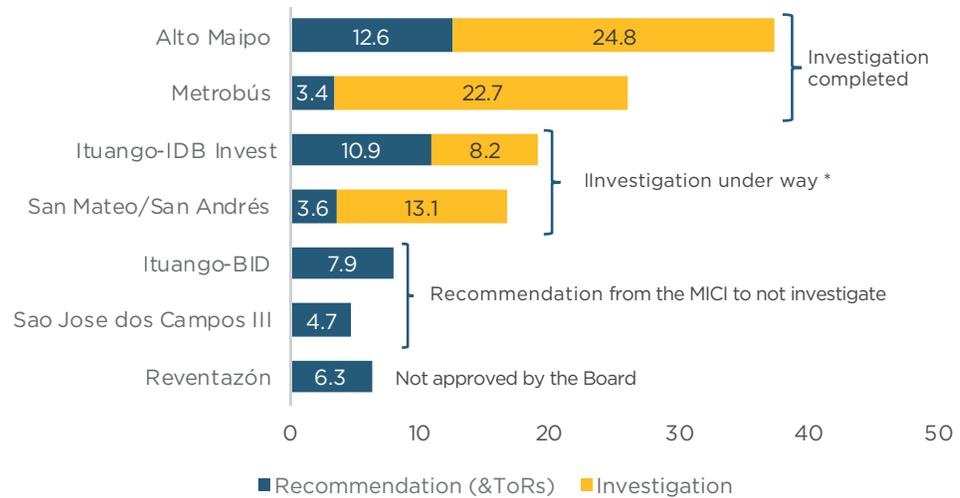
phase.⁷³ In Alto Maipo, the various extensions requested by the MICI to prepare its investigation recommendation and terms of reference in view of the technical difficulties encountered by the project, the complexity of the project, and the issues raised in the request were compounded by the time it took for the Board to approve the recommendation due to various discussions mainly dealing with the applicability of the legal exclusion. The investigation process also required multiple time limit extensions, primarily because of delays in the delivery of technical inputs from the experts. In Metrobus, where the recommendation to investigate was approved by short procedure, there were some extensions during the investigation. In addition, the distribution of the report coincided with the change of Executive Director for Paraguay at the Bank, delaying the discussion. Cases with investigations under way (Ituango-IDB Invest, San Mateo/San Andrés) have also undergone delays, largely stemming from the complexity of the projects and associated issues, and more recently from the challenges posed by the COVID 19 health crisis in the case of Colombia. The four legacy cases analyzed by OVE spent an average of 2.8 years in the compliance review phase (Figure II.6, Annex II), primarily due to the transition period to the new policy framework, which delayed the start of preparation of several sets of terms of reference. Once the terms of reference were approved, it took an average of 1.2 years to secure the approval of investigations. This made it possible to finally conclude cases declared eligible under the previous policy that had spent several years in the MICI process,⁷⁴ although the results for the requesters were limited, as discussed in Chapter V. Depending on the degree of implementation of the operations and on the contractual relationship with the borrowers or clients upon the conclusion of an investigation, the delays in the compliance review process can have significant implications in terms of the available options for corrective action in response to findings of noncompliance and associated harm. The requesters interviewed by OVE repeatedly complained that the compliance review processes were too long and slow, ultimately limiting the possibility of effective reparation.

73 If the time from receipt of the request is taken into account, these time frames increase to 3.4 and 2.6 years (for Alto Maipo and Metrobus, respectively).

74 This is the case of the request related to São José dos Campos I, which was received in October 2011 and took six years to fully go through a substantive stage in the MICI process. Something similar happened in the context of the El Dorado case (5.8 years). Meanwhile, Mareña and La Paz Storm Drainage took 3.7 and 3.8 years, respectively.

Figure 4.2
Elapsed time for cases processed in the compliance review phase (months)

Source: OVE, based on the request documents.



Note: (*) Status as of 30 June 2020.

4.20 Overall, while the cases processed by the MICI have increased in both number and complexity in recent years, the direct expenditures associated with this processing have risen at a slower pace. Once the basic structure of the MICI was established in 2016 (see Chapter VI), the number of cases handled annually by the MICI rose by 50%, from 10 in 2016 to 15 in 2019. Over the same period, the MICI’s estimated expenditure in cases increased by 12%. OVE estimated that total expenditure in cases during the 2016-2020 period amounted to approximately US\$10.7 million,⁷⁵ which is equivalent to an average of US\$510,000 per case handled during this period. However, these figures should be viewed with caution due to a series of considerations and limitations. At the case level both duration and complexity vary widely, based on factors that include the issues being raised, number of requesters involved, location of the projects, and associated logistics. The small number of closed cases handled entirely under the current policy, as well as certain practices, such as accounting for the time spent by MICI staff at the request level once a request is declared eligible, pose additional challenges.⁷⁶

75 Expenditure on cases includes the amount spent in handling requests (e.g., DTC consultants, experts supporting the consultation and compliance review phases, missions, translations) as well as the cost of the MICI staff engaged in the handling of cases. The hours report of the MICI staff in 2019 was used to calculate the percentage of staff time devoted to the processing of eligible cases. In the 2016-2016 period, the MICI handled a total of 21 cases.

76 Until very recently, generic codes that also included administrative issues were used for requests in the registration and eligibility stages.



05

Results

5.1 This chapter analyzes the results of the cases handled by the MICI as a measure of the mechanism's effectiveness. At the same time, it recognizes that the results depend not only on the MICI, since Management and the IDB Group Boards also take part in accountability. The analysis is divided into results for the requesters, in terms of a solution to their complaints, and results for the IDB Group, in terms of institutional learning on managing the potential environmental and social impacts and risks of the operations it finances.

A. Results for the requesters

1. Consultation phase

5.2 The MICI has facilitated several agreements in recent years, demonstrating a capacity to facilitate more complex agreements than in the past.⁷⁷ Between 2017 and 2019, agreements were reached in six of the seven cases in which the MICI found that favorable conditions were present for a dispute resolution process between the parties. In addition, cases have involved a larger number of individuals or community groups, and several of these cases have developed in complex contexts. For example, in Peru, the MICI facilitated an agreement involving more than 1,000 native communities in Amazonia, grouped into nine indigenous organizations, that alleged having suffered a series of impacts, including violation of property rights, use of indigenous territories, and a number of environmental, economic, and social harms. In Haiti, the agreement facilitated by the MICI involves more than 400 families engaged in agricultural activities who alleged that their displacement from their land to build the Caracol Industrial Park in the country's north adversely affected their means of livelihood. According to the requesters, this displacement, coupled with inadequate compensation, had a negative impact on their living conditions.

5.3 The agreements have encompassed measures directly aimed at addressing problems raised by the requesters, including the availability of environmental and social information on the projects, as well as at improving the implementation of the questioned operations. As of June 2020, most of the monitoring plans are in effect. While the pace of progress has been slower than planned, there already have been concrete

⁷⁷ In its 2012 evaluation, OVE found that the few agreements facilitated by the MICI until that date had been limited in scope since they all involved a single requester. Thus, the MICI had not yet shown that it was capable of fostering more complex agreements.

results in some cases, providing solutions to the requesters' problems. OVE has confirmed several of these results in its field visits (Costa Rica, Ecuador, Argentina) (Table 5.1).

Table 5.1. Progress on agreements facilitated by the MICI

Cases	Progress
Reventazón (IV) (Costa Rica)	The case has already been closed. Despite delays stemming from the need to clarify technical details on certain measures due to differences of interpretation between the parties, all commitments were implemented, resulting in restored access to water for production purposes and participation of the affected family in a sustainable farm management program.
Rebuilding earthquake-affected electricity infrastructure (Ecuador)	A series of pending technical studies were conducted during the mediation period, serving as a basis for the Bank and the executing agency to agree to keep the original layout of an electricity transmission line whose relocation as part of the program was being questioned by the requesters. These studies have already been disseminated and published. However, work has not yet begun on upgrading and maintenance of the line (the core commitment under the agreement).
Caracol Industrial Park (II) (Haiti)	The agreement provides for corrective measures to restore the means of livelihood of the affected households (such as access to land, employment, agricultural equipment and supplies, and vocational training), as well as other measures related to the availability of environmental and social information on the project. In the first year of monitoring, the reviews of compensation payments and distribution of school kits to the affected families were concluded. In view of the limited progress on other corrective actions, the parties agreed in early 2020 on a new implementation schedule.
PTRT 3 (Peru)	The agreement provides for greater participation by native communities in implementing the project. While native communities have already joined the field teams for notification and land demarcation, there has been no progress on the core component of the agreement, which is related to land titling for 403 native communities.
Río Negro-Bariloche (Argentina)	The agreement led to the modification of several work specifications questioned by the requesters (such as road width, space for passenger loading and unloading) due to the economic effects that would have resulted from the lengthy implementation of the works. It was agreed to conduct studies to address other concerns raised by the requesters, including studies on the operation of storm drains and a mobility plan which remains pending.
Reconquista (III) (Argentina)	The agreement includes a feasibility analysis and implementation of a solution to mitigate pollution from a drainage channel, measures to strengthen water quality and discharge monitoring, and cumulative impact evaluations for prioritized works under the Reconquista river basin comprehensive management plan.

Note: The Río Negro-Bariloche (Argentina) and Reconquista III (Argentina) cases are in their first year of monitoring, with some delays in the commitments (document [MI-94](#)). Status as of June 2020.

Source: OVE, based on request documents and field visits.

5.4 The MICI's flexibility in managing cases with a view to their timely resolution is complemented by other factors, including a consolidation of dispute resolution capacity within the mechanism. The dialogue and dispute resolution processes require specific knowledge and skills. In this regard, the consultation phase team has become consolidated in recent years. Among the interviewed parties that have participated in cases in the consultation phase, there is broad consensus on the quality of work of the MICI team and the external (mainly national) facilitators hired to support the processes, given their knowledge of the local context and dynamics. Management participation, primarily through the team leaders and ESG staff, has also been important in the search

for technical solutions and generally to lend greater credibility and legitimacy to the process. While there is ample room for Management to play a more active role in managing complaints and building internal capacities for dispute resolution, there is broad consensus among the parties that have taken part in the process (as reflected in the experience) on the importance of having a third party facilitate the mediation process.

- 5.5 The MICI has taken on an active role in supporting the process of monitoring agreements. In practice, whenever agreements have been reached, the parties have also agreed for the MICI to monitor them, and none of the plans has been met by objections from the Board. This being the case, the MICI has taken on various support tasks during the monitoring, including facilitation and coordination of monitoring bodies (such as monitoring committees) agreed-upon by the parties. There was also a broad consensus among the parties interviewed by OVE on the importance of having an external and independent participant in the agreement monitoring process and on the active role performed by the MICI.
- 5.6 Delays in the implementation of the agreements are the result of a series of factors, including institutional issues and, more recently, the challenges created by the COVID-19 health crisis. In the case of Peru, the agreement is linked to the project's progress on land titling for native communities. This is a complex process that involves various institutions and is made more difficult by constant changes of authorities and staff at the executing agency. In Haiti, the first year of monitoring was marked by a difficult political and social context in the country, changes at the executing agency, and weakening of security, impairing the coordination and implementation of commitments. In Ecuador, the delays in the work on the subtransmission line were associated with problems with the contractor for other necessary works. More recently, the health crisis caused by COVID-19 has had an impact on virtually all cases in terms of progress on the agreements and the planned supervisory activities.

2. Compliance review phase

- 5.7 The cases in the compliance review phase analyzed by OVE have not yet yielded concrete results for the requesters despite the MICI's findings of noncompliance and associated harm (Figure 5.1). The MICI completed six investigations, four of which arose from legacy cases (declared eligible prior to December 2014) and the other two from cases processed

from start to finish under the current MICI policy.⁷⁸ In five of these investigations, the MICI found noncompliance with several of the relevant Operational Policies of the IDB Group associated with adverse effects for the requesters.⁷⁹ In two cases, none of the MICI's recommendations was aimed at addressing the issues raised by the requesters; in another case, the recommendation issued by the MICI, which might have produced a result for the requesters, was not approved by the Board. Thus, only two cases ultimately gave rise to recommendations capable of resulting in corrective action in favor of the requesters. In those two cases (Alto Maipo and Metrobus), the Board approved the MICI's recommendations for Management to prepare action plans in consultation with the MICI to address the approved recommendations, and for the MICI to monitor these commitments. In Alto Maipo, the action plan was approved in September 2020 and is therefore still at an early stage of implementation. In Metrobus, the MICI's investigation ended in 2018 and the action plan was submitted for Board approval in September 2020. When it was submitted, Management reported that the Government of Paraguay, with the Bank's support, had already implemented one of the MICI's recommendations,⁸⁰ potentially yielding results for the requesters,⁸¹ although the MICI should still provide verification. Consequently, the cases in the compliance review phase analyzed by OVE have still not yielded concrete results for the requesters, which explains why, in its interviews with requesters, OVE was repeatedly told that the compliance review phase whitewashes the image of the IDB Group and is not a genuine attempt to resolve the problems that its projects might create for the communities.

78 The four legacy cases were: (i) La Paz Storm Drainage Program, Bolivia; (ii) São José dos Campos I, Brazil; (iii) El Dorado, Colombia; and (iv) Mareña, Mexico. The two cases handled under the MICI's current policy framework from beginning to end were: Alto Maipo, Chile; and Metrobus, Paraguay.

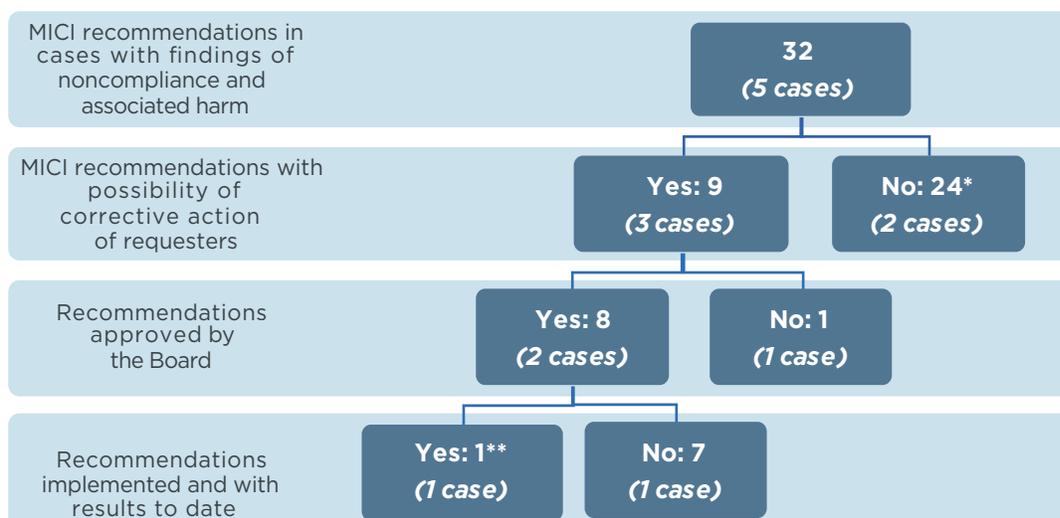
79 In one case (Mareña), the MICI found noncompliance with the relevant Operational Policies but did not identify any harm because the project in question was canceled before the start of execution.

80 The recommendation was to conduct an environmental and social audit to confirm whether the measures designed to address the impacts in the construction stage had actually been implemented and whether they were sufficient to address the impacts on the merchants in the area, and if not, to determine the adjustments or corrective measures required to effectively address these impacts, in accordance with the findings of noncompliance under section 3 of operational policy OP-710 (Involuntary Resettlement Policy).

81 As a result of an analysis of the economic impacts on formal and informal businesses, Management indicates in the action plan that was prepared and implemented between October 2018 and May 2019, a complementary compensation plan for affected street-front businesses, financed by the executing agency.

Figure 5.1**Corrective and compensatory action in the context of cases in the compliance review phase**

Source: OVE, based on request documents and field visits.



Note: (*) Recommendations aimed at institutional learning by the IDB Group and information disclosure. (**) Corresponds to a recommendation associated with the Metrobus case in Paraguay, as reported by Management at the time of submitting the action plan for approval by the Board of Executive Directors. The MICI will monitor this action plan and verify its implementation.

5.8 Three cases (El Dorado; São José dos Campos I; La Paz Storm Drainage) were left without any recommendation that could result in corrective action in favor of the requesters. In the case of El Dorado, the Board withheld approval of the MICI's recommendation on the basis that the proposed action fell within the purview of the national authorities. In the La Paz Storm Drainage case, the MICI submitted a recommendation focused on the IDB Group. In São José dos Campos I, the borrower asked the Bank to remove the specific works underlying the complaint from the program along with the resettlement of a community, reallocating the loan proceeds to other works within the same Bank program. Thus, despite the MICI's finding that the quality of life of more than 700 households that were to be resettled had declined over the nine years of Bank involvement in the resettlement preparation stage, the mechanism's recommendations regarding the requesters were limited to informing the community that neither the works nor the resettlement would be carried out.⁸²

5.9 There are key factors that have limited the IDB Group's effectiveness in ensuring that the adverse impacts of its operations arising from noncompliance with its policies are

⁸² In its compliance review report, the MICI describes activities performed as part of preparing the area for resettlement and before implementing the resettlement. These activities include deploying a strategy of "freezing" the area to prevent both an invasion and the building of new structures, and shutting down the social services and community facilities that comprise the social assistance network serving this community. Accordingly, the MICI determined that "the Bank failed to comply with OP-710 by not ensuring that the families in the Bahado would be treated adequately and equitably under the resettlement plan, in accordance with their vulnerable status, and that resettlement would proceed within a reasonably brief period. In this investigation, the MICI found that living conditions in the Bahado deteriorated over the course of the seven years of Bank involvement in the resettlement."

remedied. On one hand, the MICI's recommendations in cases in which it has established noncompliance with the relevant Operational Policies and associated harm have not always been formulated in terms of requiring the IDB Group to take the necessary measures for the operation to be brought into compliance with these policies.⁸³ It is important that the MICI's recommendations for the IDB Group systematically include actions to ensure that the projects be brought into compliance with the relevant Operational Policies in cases in which the MICI finds noncompliance, as it has done in the last two cases (Metrobus and Alto Maipo). Bringing them into compliance means the application of the hierarchy of actions considered in the IDB Group's environmental and social operational policies, starting with the identification and mitigation of the environmental and social risks and impacts on the projects. If they cannot be mitigated, either because the implementation of the project is quite advanced or for other reasons, compensation for the affected requesters is appropriate. Such compensation can take a number of forms—it need not be exclusively monetary—depending on the nature of the impact. On the other hand, Management has not always been asked to develop action plans in response to Board-approved MICI recommendations, with the Board choosing not to exercise its prerogative to do so under the MICI policy. In only three of the six completed MICI investigations analyzed by OVE was Management asked to develop an action plan, and then only once at the initiative of the Board.⁸⁴ In the other investigations, there were no formal action plans.⁸⁵ The same is true of the monitoring of the action plans' implementation, as the Board has also not systematically requested verification of progress in implementing the corrective measures and whether the harm has been adequately mitigated and/or compensated, even though the MICI has included this request in its recommendations in the last two cases.

5.10 The MICI is not the only mechanism that has difficulty generating effective corrective action.⁸⁶ Several characteristics inherent in nonjudicial accountability mechanisms, including

83 See the La Paz Storm Drainage case.

84 In Mareña, the Board instructed Management to submit a plan containing the measures it was proposing. In each of Metrobus and Alto Maipo, the MICI issued a recommendation, approved by the Board, for Management to develop an action plan in consultation with the MICI in response to the approved recommendations and for the MICI to monitor its implementation.

85 Management submitted progress reports to the Board of its own accord.

86 These issues are being discussed by the accountability mechanisms at other MDBs. In the case of the IFC, a recent external review of the institution's environmental and social accountability system includes specific recommendations for the institution to establish contingency mechanisms and other financial measures to make resources available to carry out corrective measures (See Report and Recommendations of the External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness, June 2020).

the MICI, pose major systemic challenges in this regard. For example, the investigations conducted by these mechanisms focus on the performance of the MDB financing the projects rather than on the borrowers or clients that implement them. Yet it is precisely the borrowers, clients, and executing agencies that both implement and finance any corrective measures. This creates difficulties when the borrower or client is not willing to implement these measures due to their cost or because it considers that the adverse impact on the requesters is the result of failures in the supervisory duty of the MDB. Another factor limiting the capacity of the mechanisms comes into play when the project underlying a complaint ends up not being financed by the MDB or when, in the case of private-sector projects, the client makes early repayment of the loan. In these situations, the mechanisms have limited ability to make substantive and enforceable recommendations, despite the potential responsibility and contribution of the MDB to the generation of environmental and social liabilities that are left unaddressed and the reputational risk this entails for the MDB. Lastly, in some mechanisms (including the MICI), the investigation function is limited to determining noncompliance with the MDB's policies and does not include looking into the possibility of adverse environmental and social impacts for the requesters despite compliance with the policies. This gap can result in unaddressed environmental and social liabilities and is a lost opportunity for the MDB to identify areas for improvement in its policies.

B. Results at the institutional level

5.11 The MICI has helped to generate relevant lessons on important issues for the environmental and social sustainability of IDB Group-financed projects. All cases with completed investigations included recommendations for the IDB Group, aimed at strengthening the framework of its operational policies or their implementation. The most commonly recurrent issues raised by the MICI in recommendations of this type include shortcomings in the public consultation processes, lack of timely and accessible disclosure of environmental and social information on the projects, and the absence of policy provisions regarding economic displacement (Table II.3, Annex II). Some of the problems identified by the MICI also reflect inconsistencies in the technical analyses, particularly in addressing social impacts and risks. In two of its completed investigations (São José dos Campos I, El Dorado), the MICI also found problems with the environmental and social classification of the projects, leading to shortcomings in identifying impacts from these projects and thus in implementing appropriate mitigation

measures.⁸⁷ Recently, the MICI has raised the issue of IDB Group supervision and what happens when, despite its requests, the borrower fails to take action to come into compliance with the IDB Group policies. While the IDB Group has options for requiring compliance with its environmental and social safeguards policies and standards by the borrower or client (suspending disbursements or accelerating the repayment of the loan, for example), it is not clear that it has any incentives to make use of them.

5.12 Management has adopted corrective measures on these issues and incorporated lessons learned into the new environmental and social policy framework. In 2017, in response to the findings of the completed MICI investigations, the Bank developed guidelines for meaningful consultation with stakeholders, which it has broadly disseminated. This concept and approach has been integrated into the Bank's new environmental and social policy framework. In addition, in 2018 the Bank developed guidelines for better identifying and addressing social impacts and risks during the project cycle. Similarly, the new environmental and social policy framework more explicitly incorporates the issue of economic displacement. With regard to information disclosure, since July 2017 the Bank has a new function on its project management platform (Convergence). This function, labeled "disclosure of environmental and/or social document," seeks to ensure timely disclosure of the required documents prior to project analysis missions. Along similar lines, in 2018, IDB Invest introduced an automated step on its project management platform (Maestro) to ensure that the relevant environmental and social documents are disclosed in accordance with its access to information policy.

5.13 The MICI has also encouraged greater attention to environmental and social issues. The interviewed ESG staff that participated in MICI cases generally agree that the existence of the MICI helps to focus the attention of project teams on environmental and social issues during the design and execution of projects, thereby making their work easier. While their relationship with the MICI has not been free of difficulties and differences in the context of discussion on investigations, they now recognize the mechanism's importance and contribution to the system of environmental and social safeguards and standards. In 2019, ESG prepared an internal document that consolidates the lessons learned from the various cases managed in the compliance review phase, with a view to improving the implementation of the environmental and social safeguards policies and standards. The positive and collaborative

⁸⁷ The MICI's action has also had other indirect effects on the way in which the Bank manages the environmental and social risks of its operations. For example, the Bank started to classify land titling projects as high environmental and social impact (category A) operations largely because of the difficulties experienced with PTRT3 in Peru, which led to a complaint handled by the MICI in the consultation phase.

experience with the MICI in recent years in several cases handled in the consultation phase is also a broadly noted factor. In IDB Invest the institutional impact is still small, possibly because the cases to date have been fewer and have mainly been processed in the compliance review phase. The interviewed IDB Invest staff, while valuing the existence and importance of the MICI as an institutional learning tool, to date is highly frustrated with the process. Unlike what OVE found in 2012, the MICI has undertaken a series of internal activities aimed at disseminating knowledge of its mandate and functions within the institution (Box 5.1).

5.14 However, there is room for the MICI to deepen the analytic

Box 5.1. The MICI's internal dissemination activities

Between 2015 and June 2020, the MICI conducted multiple sessions to publicize its work. These sessions were aimed at various internal audiences, including operating and nonoperating staff at Headquarters; country offices, primarily in the context of case-related visits; and executive directors. Recently, the MICI has also become more regularly involved in IDB Group activities, including introductory sessions for new staff and directors and workshops on operational foundations, and is part of the new mandatory course on environmental and social safeguards for Bank staff. Also worth noting are the more recent training efforts in dispute resolution directed at operating staff. Despite general knowledge about the mechanism, there is also a recurrent call by the interviewed Bank staff and Executive Directors to know more about its functions as well as about its lessons learned.^a

a. In the case of interviewed Executive Directors, there was a specific call to know more about the consultation phase.

Source: OVE

work derived from its experience with a view to raising recurrent and systemic issues that are important for the IDB Group, reaching beyond the scope of individual cases. The MICI has helped to generate relevant lessons on issues of importance for the environmental and social sustainability of IDB Group-financed operations. The experience accumulated over the course of 10 years of handling cases and requests provides a major opportunity for the MICI to redouble its efforts in analyzing systemic issues repeatedly arising in the design and implementation of operations, with a view to extracting lessons that can enable the IDB Group to prevent these problems from recurring in the future. In 2018, the MICI initiated a program (Reflections) aimed at extracting and sharing the MICI's experience through analytic outputs. However, despite requests since 2018 for targeted resources for the program, these efforts are still in the early stages.⁸⁸

⁸⁸ As of June 2020, two documents have been prepared analyzing the requests received and the experience in the consultation phase since the MICI's inception in 2010.



06

Aspects of the
MICI Internal
Functioning

6.1 This chapter analyzes aspects of the MICI's internal functioning, particularly the extent to which the MICI has acted independently from IDB Group Management in managing its human and financial resources without conflicts of interest.

A. The MICI's organizational structure and human resources

6.2 The MICI's basic structure, as established in its policy, was completed in early 2016 after some delay. The current structure of the MICI comprises a single office headed by a director with responsibility for all functions of the mechanism. This structure resolved major problems identified by OVE in 2012 regarding accountability and conflicts of interest associated with the previous structure (see Chapter I). The policy transition plan provided for an interim structure that would be removed when the new director would take office, which occurred in August 2015. In January 2016, the current compliance review phase coordinator took office along with the first consultation phase coordinator, who remained in office until January 2017. The current consultation phase coordinator took office in August 2017. The main responsibilities as well as the desired qualifications, experience, and skills for these positions are described in general terms of reference annexed to, and included as part of, the policy.⁸⁹ The positions have been filled through open processes in accordance with the provisions of the policy.⁹⁰ In practice, only the coordinators have been subject to the regular annual performance evaluation process for Bank employees.⁹¹ At the conclusion of her first five-year term, the director submitted her resignation effective July 2020. A new director will take office in the first quarter of 2021.

6.3 The MICI has acted independently from Management in managing its human resources. The mechanism's basic structure is supplemented by operating and administrative staff as well as by external experts to support the handling

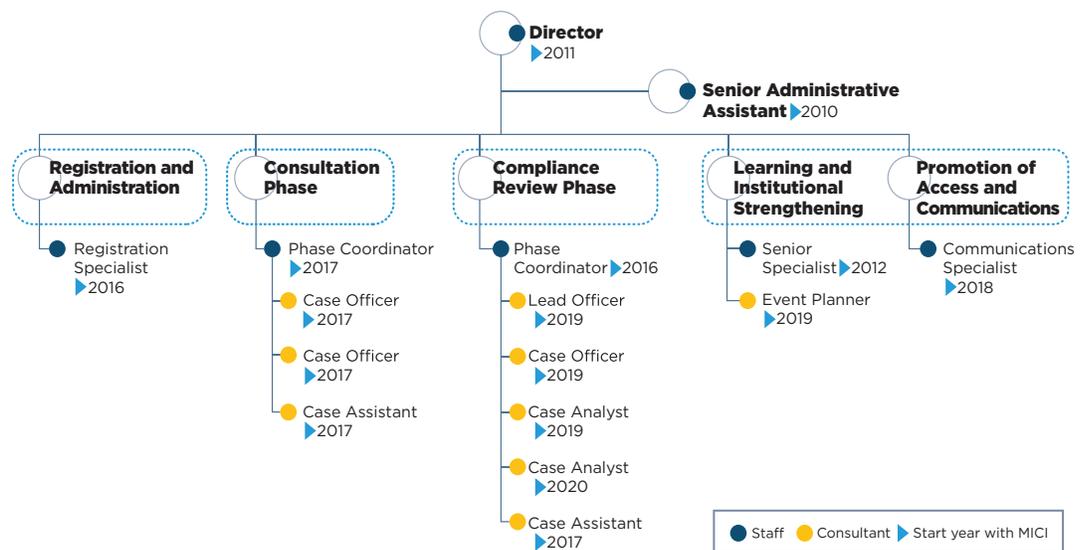
89 The policies of other mechanisms typically include general principles and/or conditions for eligibility, renewal, and post-employment restrictions for the top positions, but not the terms of reference.

90 In accordance with the Bank's policies and procedures and the terms of reference set forth in the MICI policy, the MICI director is nominated by the Board of Executive Directors and selected from a list of eligible candidates submitted by a selection panel appointed by the Board. The MICI director is responsible for the process of selecting and hiring the coordinators, similarly in accordance with the Bank's policies and procedures and the terms of reference set forth in the policy. The processes were conducted with the support of the Bank's Human Resources Department and, in the case of the selection process for coordinators, with the participation of external members in the selection panels.

91 The director did not undergo any formal annual performance evaluation. The terms of reference for selection of the new director indicated that the position holder would be subject to an annual performance evaluation.

of cases. As of June 2020, the MICI's office consists of 17 full-time employees organized into four functional groups, in addition to the mechanism's director (Figure 6.1). In terms of hiring modalities, seven of the 17 officers (41%) hold staff positions, while the other 10 (59%) are full-time consultants hired as complementary workforce (CWF), primarily to support the management of cases. The MICI policy authorizes the mechanism's director to hire experts, including by establishing lists of external consultants who are not from Management in order to avoid conflicts of interest. In view of this, registries of independent experts were established for the compliance review phase in 2016 (renewed in 2019) and for the consultation phase in 2018. The selection of staff and consultants has been carried out through open processes and in line with the Bank's procedures. OVE found no evidence of potential conflicts of interest. Also worth mentioning on the institutional side is the establishment of an External Consultative Group (GCE) in 2017, which follows a good practice initiated by other mechanisms.⁹²

Figure 6.1
Organizational chart of the MICI, arranged by functional units (June 2020)
Source: OVE



6.4 A lack of clarity regarding the conditions for renewal of the consultation phase and compliance review phase coordinators created uncertainty. The MICI policy sets forth eligibility and post-employment provisions for the director and coordinators (Table II.5, Annex II). However, with respect to contract renewals, it only establishes explicit provisions regarding the director. While the MICI's employees are governed by the human resource policies of the IDB Group,

⁹² The GCE is an external body comprised of experts from various areas who advise the MICI on a pro bono basis on its operational strengthening. During the 2017-2019 period, the work of the GCE for the mechanism focused on four areas: promoting access, learning, effectiveness, and transparency.

which should be applicable to the renewal of the coordinators' contracts, since the MICI policy was first implemented in early 2016, including with respect to the process of selecting and hiring coordinators, it was interpreted as establishing that coordinators had no renewal option following their five years of service. This was seen as a constraint on the continuity and consolidation of their functions.⁹³ In the course of more recent discussions on the implications of the expiration of the coordinators' contracts in 2021, other policy interpretations were put forth to the effect that, while coordinators were barred from subsequently working in the IDB Group, their contracts could be renewed. In April 2020, the Bank's Legal Department (LEG) confirmed this interpretation, which was adopted by the Board.

- 6.5 This newfound clarity is a positive development in terms of strengthening these functions, taking into account the high turnover of operational support personnel and the allocation of staff positions across the functional areas of the mechanism. As of June 2020, although the MICI had seven staff positions (43%), all case officers and assistants in the consultation and compliance review phases were full-time consultants subject to the contract limits that govern the complementary workforce (such as a three-year limit on working in the IDB Group). This situation remained unchanged during the evaluation period, despite having been identified by the MICI itself in 2016 as a critical factor impairing the continuity and consolidation of these functions. While three new staff positions were either created or adapted, they are allocated to functional areas other than the consultation and compliance review phases (see Figure 6.1).⁹⁴ This, coupled with the fact that coordinators were until recently assumed to be ineligible for contract renewal, put the consultation and compliance review functions in a vulnerable position, while also calling into question the allocation of staff to other functional areas. The consultation

⁹³ In other mechanisms, the main employability restrictions are applicable to "senior positions" reporting to the boards of executive directors/presidents and are designed to ensure that these positions are functionally independent from management. In the case of MICI coordinators, the positions are of a technical nature, equivalent to a senior specialist in the Bank, and their holders are hired by, and report directly to, the MICI director. In addition, while some mechanisms have some restrictions (generally post-employment, but limited in time) that apply to the technical staff, no mechanism reviewed by OVE has similar restrictions on contract renewals for the technical staff.

⁹⁴ In its 2017 Work Program and Proposed Budget (document [MI-60](#)), the MICI put forth a progressive plan to add two staff positions in 2017 and 2018 so that the consultation and compliance review phases would each have a case officer hired under this modality. The objective was to create a base to minimize any effects stemming from the changes of director and coordinators every five years, maintaining flexibility in line with the work load and budgetary constraints. The Board approved the additional position for 2017. The second position for 2018 was not approved at the time, awaiting greater clarity on the work load in the coming years (document [MI-60-1](#)). In 2019, the Board approved a new position (document [MI-80-1](#)). A third, administrative position became a technical-administrative position (2018), taking advantage of an officer's departure. The number of consultants has remained relatively stable between 2016 and June 2020.

phase team has been stable since early 2017 (after having been renewed in its entirety), and as indicated above, the consolidation of dispute resolution capacity within the team is an important factor in explaining the results achieved in recent years in terms of agreements. The compliance review team has experienced greater turnover during the evaluation period; thus, all current case officers joined the mechanism in 2019. This turnover poses challenges for the mechanism's capacity and institutional memory, as well as for a consistent implementation of the policy.

- 6.6 There are significant opportunities to continue to strengthen the MICI's internal capacity. In a context of turnover of operational support staff and handling of more complex cases than in the past, personnel training efforts have been limited. To date there is no plan for continuous training of MICI staff. While the MICI has built significant capacity in recent years, there is also a need for greater diversity in the staff profile, primarily in the compliance review phase. The MICI's team lacks specialists with experience in the practical implementation of environmental and social safeguards policies and standards and typically does not hire specialized technical advisors earlier in the process, but rather only after the terms of reference of an investigation have been approved. This has limited the possibility of conducting deeper preliminary analyses, particularly in large-scale and complex projects that take place in socially and politically volatile contexts. In addition, this is an issue that was repeatedly raised by the Management staff interviewed by OVE. Diversifying the MICI staff profile so as to include specialists in the implementation of the environmental and social safeguards policies and standards could facilitate the discussion of highly technical issues with the Management teams.

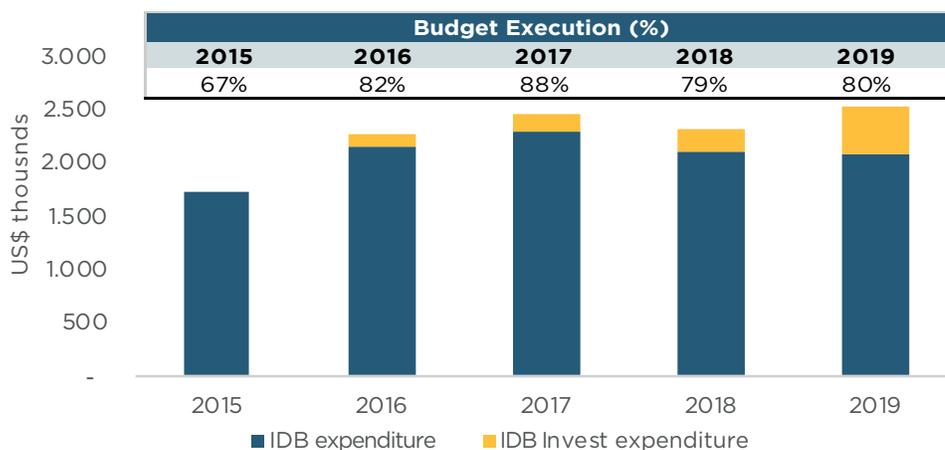
B. Administrative and budgetary processes

- 6.7 A significant change in the operations of the MICI has to do with the monitoring and observance of the Bank's administrative and budgetary processes and regulations. In accordance with the policy provisions, the MICI director has been responsible for annually preparing a request for budgetary resources to the Board of Executive Directors, managing this budget, and reporting quarterly to the Board on the budget status and progress of the work program. Since 2019, the work program has been public. In 2019, the Office of the Executive Auditor (AUG) conducted an audit of the MICI and, unlike what had been found in 2012, concluded that the MICI was operating in line with the Bank's administrative and budgetary policies and processes, including procedures, information systems, and associated controls.

6.8 In this context, the MICI has acted independently of Management in managing its budgetary resources. The MICI has access to IDB and IDB Invest resources approved by their respective Boards, including resources for a restricted contingency fund for handling requests, to be used on the basis of preestablished criteria. The IDB Invest resources are transferred under an annual service agreement.⁹⁵ Over the 2015-2020 period, the MICI's budget rose at an average annual (nominal) rate of 5%, reaching US\$3.21 million in 2020 (Figures II.7 and II.8, Annex II). With the exception of 2015, when budget execution was 67% due to the longer-than-expected time it took to complete the basic structure, execution averaged 82% over the 2016-2019 period (Figure 6.2). Over the same period, the MICI's expenditure increased at an average annual (nominal) rate of 4%, with staff expenses accounting for 44% of total expenditures and handling of requests accounting for a similar percentage.⁹⁶ In 2018, in the context of handling the first two requests declared eligible, which were related to highly complex IDB Invest projects, the MICI used contingency fund resources (US\$7,000, 35%) for the first time since its inception. In 2019, in view of the potential arrival of further requests due to the change in the profile of the operations portfolio and the institution's increased visibility in the region, the allocated IDB Invest budget was increased by 155%, including more resources for handling requests and for the contingency fund. In practice, it is difficult to establish parameters to predict the MICI's work load, since the number and type of requests received are beyond the mechanism's control.

Figure 6.2
Expenditure by source of funds and budget execution (2015-2019)

Source: OVE, based on the MICI's financial and quarterly activity reports.



Note: Budget execution as a percentage of the adjusted IDB budget and approved IDB Invest budget.

95 IDB Invest transfers the unrestricted resources approved by its Board and commits the resources for the contingency fund. At the end of each year, unused resources are refunded.

96 Staff expenses (SCL) include MICI staff salaries and benefits, which are determined at the institutional level by the Bank. Dissemination and learning accounted for 10% of total expenditures, while institutional strengthening accounted for 1.2% and the contingency fund for 0.1% (Figure II.9, Annex II).



07

Conclusions and Recommendations

- 7.1 The MICI was established as a mechanism of last resort to enable parties believing they have been affected by IDB Group-financed operations to raise grievances linked to an alleged failure by the IDB or IDB Invest to comply with their environmental and social safeguards policies and standards. The MDBs' nonjudicial accountability mechanisms, like the MICI, have the purpose of resolving complaints on environmental and social issues associated with MDB-financed projects and promoting institutional learning. In its 2012 evaluation, OVE identified major problems in the MICI's policy, structure, and functioning. In this evaluation, OVE has found that significant progress has been made in these areas, reflecting the restructuring of the MICI as well as the mechanism's consolidation and institutional learning since the approval of its policy in late 2014.
- 7.2 The current MICI policy is a major step forward with respect to the previous policy. The vast majority of the problems identified by OVE in 2012 were corrected, including those associated with the sequence of phases and the duplication of the eligibility process, and the accountability and conflicts of interest issues associated with the previous organizational structure. However, one key issue that remains outstanding is the legal exclusion, which continues to be subject to different interpretations and represents a significant factor limiting the effective and efficient functioning of the MICI. In this evaluation, OVE identified other limitations that have arisen in the five years of policy implementation, which have largely been managed and resolved in practice by the MICI in a manner consistent with the intervention logic of accountability mechanisms. These limitations have to do with: (i) the determination of harm in the event of noncompliance with the IDB Group's environmental and social operational policies and the contribution to the harm alleged by the requesters; (ii) the consequences of a determination of noncompliance with the policies and associated harm; and (iii) the monitoring of Management's commitments in response to the MICI's recommendations. OVE has concluded that, in general, that there is sufficient room for the MICI to manage the limitations of the current policy framework, provided it is done within the parameters of the intervention logic of this type of mechanism. Thus, a new comprehensive policy review is not required.
- 7.3 The legal exclusion remained unresolved with the reformulation of the mechanism and is an issue that continues to be subject to dispute and a major factor limiting the effective, efficient operation of the MICI. This provision, which already existed in the previous MICI policy, was identified by OVE in 2012 as a significant obstacle to the MICI's effectiveness. However, at the request of certain Executive Directors, the exclusion remained in the reformulated policy in 2014, although slightly circumscribed. Nevertheless, neither its purpose nor its scope were clarified. OVE found that this exclusion has impacted the determination of eligibility or the scope

of approximately one fourth of the requests registered by the MICI over the last five years, thus limiting the MICI's action and its ability to serve as a resource to requesters for a number of reasons. First, in the cases in which the exclusion was triggered, important issues were eliminated from the request such as those related to involuntary settlement, economic displacement, and public consultation, and in two cases, it was a key factor in determining the ineligibility of the entire request. Thus, environmental and social liabilities associated with noncompliance with the IDB Group's environmental and social safeguards policies and standards may have been generated and left unaddressed, potentially giving rise to a reputational risk for the Group. Second, the use of the legal exclusion by Management, both in the determination of eligibility and after that stage, has caused inefficiencies in the process, either because unfounded judicial proceedings are raised or because, after the eligibility stage, Management again raises proceedings that the MICI had already disallowed, transferring to the Board a decision that under the policy should be made by the MICI director. Third, most of the mechanisms at other MDBs do not include an exclusion of this type. The experience of the Reventazón project case, in which the CAO/IFC analyzed the issues that were excluded from the MICI case due to the triggering of the legal exclusion, shows that the national judicial process followed its course without interference from the CAO process, and each focused on its respective area of competence: the CAO on the application of the IFC's Performance Standards and the national legal proceedings on the enforcement of the country's laws and regulations.

7.4 **Access to the MICI** continues to be a major challenge for those who consider themselves affected by IDB Group-financed projects. Despite the MICI's efforts to promote and facilitate access, integrating these efforts into the institution as a whole remains a major challenge. Publicizing the mechanism is a task not only for the MICI but also for IDB Group Management, although in the latter case the efforts have been more limited. There is no evidence of a consensus at the institutional level on the importance of publicizing the mechanism and how to achieve this. The limited awareness of the existence of the MICI is coupled with certain requirements that are difficult for requesters to meet, particularly the need to show they have made reasonable efforts to bring their concerns to the attention of Management before reaching out to the MICI. This difficulty has been largely due to the lack of a grievance management system at the IDB Group Management level during the period under evaluation. The IDB Group's new environmental and social operational policies seek to remedy this gap. IDB Group Management has begun to take measures along these lines,

although the processes that can facilitate requester access still need to be defined, as well as the way in which these systems will be coordinated with the MICI as a mechanism of last resort.

- 7.5 Unlike what OVE found in 2012, the **handling of cases** has shown that the MICI generally operates in accordance with the principles set forth in its policy. The MICI has had the space needed to manage its cases independently in the consultation phase and has done so objectively and in accordance with the policy provisions and guidelines established to guide the process. The MICI has considered the viewpoint of the various parties, and the mechanism is generally perceived as impartial. Recognizing the uncertainties inherently associated with the dispute resolution processes and related time frames and unlike the MICI's practice in the past, the cases in the consultation phase have been handled with flexibility and with a view to achieving a timely resolution considering the specific context of each case.
- 7.6 The handling of cases in the compliance review phase highlights the more formidable challenges involved in a process that is by nature more contentious and has been subject to practices that compromise the independence of the MICI. The MICI has been subject to decisions by the Board of Executive Directors on issues that have affected its ability to act independently. Despite improvements in the relationship between Management and the MICI, which is contentious by nature, OVE identified certain practices by Management that hinder the work of the MICI and restrict its ability to act autonomously. At the same time, in some specific situations, the MICI has also acted to undermine its own independence. The MICI has carried out its duties in the compliance review phase with a reasonable degree of objectivity and in line with the letter of the policy, even though there is room to strengthen certain analyses and documents. In addition, OVE found that the MICI has acted with impartiality in seeking out the viewpoints of both the requesters and Management. However, the absence of a proactive communication strategy has given rise to perceptions that the mechanism is not impartial. The MICI exhibits greater speed than in the past in handling cases in the compliance review phase. Nonetheless, in a context of more complex cases, there have been frequent delays and extensions of the time limits established in the policy. In general, major strides have also been made in terms of transparency in the handling of cases.
- 7.7 In terms of **results**, the agreements facilitated by the MICI in the consultation phase have encompassed measures aimed at addressing problems raised by the requesters. While the agreements' pace of progress has been slower than planned, there have already been concrete results in some cases. The cases in the compliance review phase analyzed by OVE have not yet

produced concrete results for requesters, despite the findings of noncompliance and associated harm established by the MICI. Two recently completed investigations show a positive trend in terms of potentially addressing the requesters' complaints; however, it is still too early to establish their degree of effectiveness. At the institutional level, the MICI has helped to generate lessons based on the cases it handled and to focus attention on important environmental and social issues such as information disclosure, public consultations, and economic displacement. Management has taken corrective action and integrated lessons learned on these issues into the development of the new environmental and social policy frameworks. Nevertheless, there is room for the MICI to redouble its efforts to analyze recurrent and systemic issues based on 10 years of cumulative experience, reaching beyond the scope of individual cases, with a view to maximizing their potential contribution to the IDB Group's system of environmental and social safeguards and standards.

- 7.8 The MICI has acted independently from IDB Group Management in terms of defining its work program and managing its human and budgetary resources. Furthermore, there has been a significant change in its operations in terms of monitoring and observance of the Bank's procedures and regulations in these areas. The newfound clarity regarding the conditions for renewal of phase coordinators is a positive development in terms of strengthening these functions, taking into account the high turnover of operational support personnel and the allocation of staff positions across the functional areas of the mechanism. In a context of increasingly complex cases, staff training efforts have been limited. While the MICI has built significant capacity in recent years, it lacks staff with experience in the practical implementation of environmental and social operational policies, which limits its ability to conduct deeper preliminary analyses, particularly in large-scale and complex projects.
- 7.9 OVE's recommendations arising from this evaluation were prepared while considering that the MICI, while functionally independent from Management, is part of an IDB Group system that seeks to strengthen the environmental and social sustainability of Bank-financed projects by managing their adverse environmental and social impacts on communities. As such, the MICI needs to be part of the IDB Group's efforts and to be able to rely on the effective participation of all interested parties, including the Boards of Executive Directors and IDB Group Management. Accordingly, OVE's recommendations are directed both at the MICI and at the IDB Group's Management and Boards of Executive Directors.
- 7.10 In view of the foregoing and based on the findings of this evaluation, OVE makes the following recommendations:

1. For IDB and IDB Invest Management: Implement the IDB Group Management system for managing environmental and social grievances so that it is coordinated with the MICI, entailing the following:

- (i) Establish, as soon as possible, processes that (a) facilitate access by potential requesters to Management’s grievance management system; (b) ensure an expedited, transparent, and secure response to these grievances; (c) incorporate how the public will be made aware of the various grievance management bodies, including the MICI; and (d) define the manner in which the management system will be coordinated with the MICI so it can act as a mechanism of last resort under the terms set forth in the MICI policy in order to address requesters’ concerns after they have made reasonable attempts to address their complaints with Management.
- (ii) Involve the MICI in the work of defining the system and its processes, in order to ensure smooth coordination among the various bodies responding to the requesters and consideration of the lessons learned by the MICI in managing the complaints.

The IDB Group’s new environmental and social safeguards policies and standards provide the foundations for a grievance system at the project level and the Management level. Management has begun to work on implementation thereof, although the operational aspects of the system still need to be developed, and consistent coordination with the MICI needs to be ensured so it can act as a mechanism of last resort.

2. Repeal the legal exclusion, entailing the following:

- (i) **For the IDB Board of Executive Directors:** Declare that clause 19(d) of the MICI-IDB policy related to the legal exclusion is rendered without effect as of 1 July 2021.
- (ii) **For the IDB Invest Board of Executive Directors:** Declare that clause 19(d) of the MICI-IDB Invest policy related to the legal exclusion is rendered without effect as of 1 July 2021.

This evaluation has found that, despite the changes introduced in the MICI policy framework in 2014, the legal exclusion remains an obstacle to the mechanism’s effective operation. Beyond the fact that the interpretation of its scope is unclear, and it is the root of countless disputes between Management and the MICI, its application over the last five years has generated inefficiencies in the MICI process and the exclusion of important issues in the proper application of the IDB Group’s environmental and social safeguards policies and

standards, leaving it exposed to a reputational risk due to potential unaddressed environmental and social liabilities associated with grievances. Moreover, most of the mechanisms at other MDBs do not include an exclusion of this type.

3. Reinforce the independence of the MICI, entailing the following:

- (i) For the Boards of Executive Directors of the IDB and IDB Invest:** (a) respect the integrity of the MICI's reports and recommendations, considering them as final, not subject to modification; and (b) in exercising their duties as Boards, safeguard the independence of the MICI from all types of interference in order to promote a culture of accountability in the IDB Group.
- (ii) For IDB and IDB Invest Management:** (a) adhere to the forums for participation as applicable under the MICI policy; (b) provide unrestricted, timely access to all documentation that the MICI requires associated with the cases, with an indication of their level of confidentiality that should be maintained by the MICI; (c) refrain from raising issues that have already been disallowed by the MICI in the eligibility process, once this stage is complete; and (d) respect and support the independent work of the MICI in order to promote a culture of accountability in the IDB Group.
- (iii) For the MICI:** (a) submit final reports to the Board in which changes are only introduced in order to correct factual errors; (b) develop guidelines with measures and practices adopted to address the limitations of the current policy framework and its proper application, including issues such as the consequences of a determination of noncompliance with the policies and associated harm; the link between noncompliance and the alleged harm; the monitoring of action plans; the application of the eligibility criteria, including the time limit in the case of guarantees based on the existing proposal; practical and general considerations for the process of engaging with IDB Group borrowers and clients; and other issues as needed, in accordance with its independent technical judgment, ensuring that they are framed within the mechanism's intervention logic.

The credibility of the mechanism hinges on its capacity to work independently. This evaluation has identified practices, particularly in the compliance review phase, that are inconsistent with the independence of the MICI, stemming from an often adversarial relationship between the MICI and Management that goes beyond the natural tension expected to exist in these types of situations.

The MICI is an arm of the Board of Executive Directors; its value added depends on the extent to which it can submit frank and honest reports to the Board regarding complaints associated with IDB Group projects.

4. Ensure that corrective action is taken when there are findings of noncompliance with the policies and associated harm, entailing the following:

- (i) For the MICI:** When finding noncompliance with the operational policies and associated harm, consistently issue recommendations aimed at ensuring that the IDB Group comes into compliance with its operational policies, so that the projects meet the policy requirements for the identification, mitigation, and/or compensation of the adverse environmental and social impacts associated with this noncompliance.
- (ii) For the Boards of Executive Directors of the IDB and IDB Invest:** (a) Consider the recommendations issued by the MICI and consistently require Management to prepare action plans providing for corrective action to address any noncompliance and associated harm; (b) consistently verify that the action plans substantially respond to the recommendations and problems identified by the MICI; (c) require the MICI to monitor implementation of such action plans; and (d) ask IDB Group Management, in consultation with the MICI, to analyze the obstacles identified by OVE for the implementation of corrective measures in situations where it is difficult to redirect the project toward compliance with the operational policies (paragraph 5.10) and present options for addressing them.
- (iii) For IDB and IDB Invest Management:** (a) prepare action plans for approval by their respective Boards establishing corrective action for each instance of noncompliance and associated harm identified by the MICI; (b) implement these action plans as provided.

5. For the MICI: strengthen its internal capacity, entailing the following:

- (i)** Reinforce its technical capacity in terms of environmental and social safeguards by: (a) hiring technical specialists with experience in the practical implementation of environmental and social safeguards policies and standards as part of its team; (b) expanding staff training through a structured and ongoing program to ensure consistent implementation of the policy.

- (ii) Redouble its efforts to analyze recurrent and systemic issues, reaching beyond the scope of individual cases, based on the experience it has accumulated in managing cases and requests over the years.
- (iii) Prepare a communication strategy to support the management of cases in high-conflict situations with a view to strengthening the integrity of the process and reducing the reputational risk for the mechanism and the IDB Group.

Although the MICI has built significant capacity in recent years, in a context of more complex cases in comparison to the past, training efforts have been limited, and the MICI does not have staff with experience in the practical application of environmental and social safeguards policies and standards. Moreover, although the MICI has helped generate relevant lessons learned on issues of importance for the environmental and social sustainability of IDB Group-financed projects from the cases it has handled, the more regular, systematic analysis of lessons learned and recurring issues through its experience in the management of cases and request is still incipient. While OVE found that the MICI acted impartially, the lack of proactive communication management, particularly important in high-conflict situations between the parties to a case, has impacted the perception of the mechanism's impartiality based on certain interactions between the MICI and requesters.

Office of Evaluation and Oversight - OVE

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