



Mid-term Evaluation of IDB-9 Commitments

Evaluation of the Independent Consultation and Investigation Mechanism

Background Paper

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TABLE OF CONTENTS

[ABBREVIATIONS AND ACRONYMS](#)

[EXECUTIVE SUMMARY](#)

| | | |
|-------|---|----|
| I. | INTRODUCTION | 1 |
| II. | INDEPENDENT ACCOUNTABILITY MECHANISMS | 2 |
| III. | MICI'S POLICY, STRUCTURE AND CASES: AN OVERVIEW | 4 |
| | A. Policy | 4 |
| | B. Structure | 5 |
| | C. Cases | 6 |
| IV. | RELEVANCE OF MICI'S POLICY, STRUCTURE AND ACCOUNTABILITIES..... | 9 |
| | A. Clarity of objectives | 9 |
| | B. Accountability | 11 |
| | C. Panel remuneration | 12 |
| | D. Panel members' roles and accountabilities..... | 13 |
| V. | ACCEPTANCE OF CASES | 14 |
| | A. Criteria | 14 |
| | B. Registration process..... | 14 |
| | C. Eligibility determinations | 17 |
| | D. Duplicate eligibility assessment | 18 |
| | E. Handling of cases under judicial review | 19 |
| VI. | HANDLING OF CASES | 21 |
| | A. Consultation cases | 21 |
| | 1. Efficacy | 21 |
| | 2. Efficiency | 21 |
| | 3. Impartiality | 23 |
| | B. Compliance cases | 24 |
| | 1. Efficacy | 24 |
| | 2. Efficiency | 25 |
| | 3. Impartiality | 26 |
| VII. | COMMUNICATION | 27 |
| | A. Public reporting on cases | 27 |
| | B. Communicating with potential requesters | 28 |
| | C. Communication within the Bank | 28 |
| VIII. | CONCLUSION AND RECOMMENDATIONS | 30 |
| | A. Termination of MICI pilot phase and transition plan | 30 |
| | B. Independent Accountability Office | 31 |

[ELECTRONIC LINKS, COMPLEMENTARY REPORT:](#)

- ANNEX 1: REFERENCE LIST OF PROJECTS AND SHORT DESCRIPTIONS
- ANNEX 2: PERSONS INTERVIEWED
- ANNEX 3: NON-REGISTERED CASES ANALYSIS
- ANNEX 4: MICI ELIGIBILITY AND EXCLUSION CRITERIA ANALYSIS AND COMPARISON
WITH OTHER IAMs
- ANNEX 5: CASES WHERE 37(I) IS A FACTOR
- ANNEX 6: CHRONOLOGY OF MICI PRINCIPALS
- ANNEX 7: REFERENCES

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ABBREVIATIONS AND ACRONYMS

| | |
|-------|--|
| ADB | Asian Development Bank |
| AfDB | African Development Bank |
| CAO | Compliance Adviser Ombudsman (IFC) |
| EBRD | European Bank for Reconstruction and Development |
| IAM | Independent Accountability Mechanism |
| IAO | Independent Accountability Office |
| ICIM | Independent Consultation and Investigation Mechanism (IDB) |
| IDB | Inter-American Development Bank |
| IDB-9 | Ninth Capital Increase of the IDB |
| IFC | International Finance Corporation |
| IIM | Independent Investigation Mechanism (predecessor of MICI) (IDB) |
| MDB | Multilateral Development Bank |
| MICI | Mecanismo Independiente de Consulta e Investigación (IDB) |
| NGO | Nongovernmental organization |
| ORA | Organization, Human Resources, and Board Matters Committee (IDB) |
| OII | Office of Institutional Integrity (IDB) |
| OVE | Office of Evaluation and Oversight (IDB) |
| TOR | Terms of reference |

EXECUTIVE SUMMARY

Background

Since the early 1990s, the multilateral development banks (MDBs) have established independent accountability mechanisms (IAMs) as a way for people affected by projects to lodge complaints. In 1994 the IDB established the Independent Investigation Mechanism (IIM); it was not independent of Management and moved slowly and non-transparently on the few cases it handled. In 2010, the Bank replaced it with a new mechanism that would be independent of Management and would include a problem-solving as well as a compliance review function. This mechanism is called the Independent Consultation and Investigation Mechanism (ICIM, more commonly known by its Spanish acronym, MICI).

This evaluation of MICI responds to two mandates. First, the policy establishing MICI stipulates that “two years after the effective date of the Mechanism, the Board shall request an independent evaluation of the mechanism.” The Board requested that the Office of Evaluation and Oversight (OVE) undertake that evaluation. Second, in the context of the evaluation of IDB’s Ninth Capital Increase (IDB-9), OVE was asked to review the implementation of the IDB-9 mandates. One of these mandates pertains to the establishment and effective implementation of MICI, including its staffing and the phasing in of all operational policies contemplated in the approved ICIM policy.

MICI’s mandate

MICI provides a “consultation” function conducted by the project ombudsperson and a compliance review function conducted by a panel. It currently considers complaints from the public that are related to the Bank’s six main safeguard and information disclosure policies. Its purview is to extend to all of the Bank’s operational policies by 2013.

MICI’s policy

MICI’s policy was the product of trade-offs agreed to on a compressed schedule within the Executive Board. It does not articulate a positive mission statement for an effective mechanism to help improve the quality of the Bank’s work. It lacks a clear statement of MICI’s objectives and of expectations of Management’s role in dealing with complaints about projects. It embodies some confusion about the respective roles of compliance review and problem-solving.

Structure

MICI’s three-part structure consists of a project ombudsperson, an external panel of five members including a chair, and an executive secretary. Each reports separately to the Board, and there is no overall manager. This structure has prevented MICI from working effectively because it provides no accountability for results. The incumbent principals do not work as a team with the common goal of improving the Bank’s work. The panel chair and the ombudsperson invoke a misconstrued interpretation of MICI’s independence to justify uncooperative behavior. The remuneration of panel members lacks proper controls and accountabilities, and the panel chair position entails a conflict of interest.

Handling of Cases

MICI has handled a total of 19 cases since its inception. It has not addressed requesters' complaints promptly, because it has spent too long assessing the numerous, ambiguous, and overlapping eligibility criteria provided under the policy; the duplicate eligibility determination for the two functions adds no value. MICI does not publicly disclose all incoming requests, as its policy requires.

MICI's few completed cases have generated modest impact for the requesters and minimal learning for the Bank. MICI has taken so long to complete cases that requesters have been denied meaningful recourse. Its work has at times lacked the impartiality and transparency that are essential for oversight mechanisms to be credible and effective.

MICI has made little effort to communicate with Bank staff or to prepare learning materials. The content of its external website is incomplete and out of date. MICI does not have a strategy for informing project-affected people about its existence.

Conclusion

MDBs have recognized that independent recourse and compliance mechanisms can help improve the quality of their operations. In creating the MICI in 2010, the Board attempted to place IDB in the mainstream of current practice. This effort has failed. MICI has provided almost no meaningful recourse to individual complainants, nor has it generated systemic lessons to help the institution improve.

The situation is unlikely to improve with the passage of time or with the appointment of different principals, because the root of the failure lies mainly in the MICI policy. The policy reflects ambivalence about the extent to which the Bank wants to receive complaints and learn from them, as well as confusion about the respective roles of problem-solving and compliance. Moreover, the policy creates a structure in which MICI is not accountable for delivering results efficiently. A new policy is needed, which must be anchored in an unambiguous commitment to creating an effective and accountable mechanism.

The weaknesses in MICI's policy have been exacerbated by actions of the incumbent MICI principals. They have conducted MICI operations without achieving timely results, with insufficient transparency, and in persistent and open disagreement among themselves. This has prevented MICI from earning the trust and credibility it needs if its findings and recommendations are to be taken seriously by Bank Management and outside observers. The mechanism in its present form will not be able to overcome this handicap.

Recommendation

OVE recommends that the Board terminate the MICI pilot phase with a decision to suspend the office in its current form with effect from end-January 2013, implement a transition period of up to one year, and launch a policy reformulation process that would create an Independent Accountability Office (IAO). In launching the transition phase, the

Board should reiterate the Bank's strong commitment to putting in place an effective mechanism for investigating complaints with a view to improving performance, notably compliance with safeguards.

The IAO's purpose would be to improve the development effectiveness of Bank operations by identifying gaps in compliance with policy and recommending remedial actions as appropriate. The Office would be headed by an Independent Accountability Officer selected by and reporting to the Board. In reformulating the policy, the Board should consider issues such as whether to retain problem-solving as part of the independent office, whether the Office should have a standing panel, and whether to take a broad or restrictive approach to eligibility of complaints.

I. INTRODUCTION

- 1.1 This evaluation of the Inter-American Development Bank's (IDB's, or Bank's) Independent Consultation and Investigation Mechanism (ICIM, more commonly known by its Spanish acronym MICI) responds to two separate mandates. First, the policy establishing MICI stipulates that "two years after the effective date of the Mechanism, the Board shall request an independent evaluation of the mechanism." The Board requested that the Office of Evaluation and Oversight (OVE) undertake that evaluation. Second, in the context of the evaluation of IDB's Ninth Capital Increase (IDB-9), OVE was asked to review the implementation of the IDB-9 mandates. One of these mandates pertains to the establishment and effective implementation of MICI, including its staffing and the phasing in of all operational policies contemplated in the approved ICIM policy. The approach paper for the evaluation (RE-416) was discussed by the Board on July 31, 2012. The evaluation covers all requests that MICI had received as of June 30, 2012, and follows their status up to October 22, 2012.
- 1.2 The evaluation's three purposes, as stated in the approach paper, are:
 - i. To determine the extent to which MICI's policy, structure and processes are consistent with its objectives.
 - ii. To assess the extent to which implementation to date is transparent, efficient and effective; and to identify areas of strength, weakness and risk.
 - iii. To make recommendations to Executive Directors, MICI and IDB management, as appropriate.
- 1.3 The evaluation was carried out by an OVE team between July and November 2012. In Washington D.C., the team reviewed documents and conducted 84 interviews. Team members visited Bolivia, Brazil, and Paraguay and interviewed 55 requesters and other stakeholders, covering all the MICI cases and nonregistered requests from those countries. Annex 2 contains a list of all those interviewed. OVE solicited inputs from 100 nongovernmental organizations (NGOs) that had been involved in the 2009 consultations on MICI's design, and received three replies. OVE appreciates the cooperation tendered by all those interviewed, especially the MICI principals and staff.

II. INDEPENDENT ACCOUNTABILITY MECHANISMS

- 2.1 Multilateral development banks (MDBs) have unique features when it comes to accountability. They are formally accountable only to their member governments, which are represented on their Executive Boards. Their operations are governed primarily by their own policies, not international law. They provide finance to governments that are accountable to their citizens for the activities the MDBs support. And they also finance private sector projects. Their operations are large and highly visible, and are expected to set high standards for environmental stewardship and social responsibility. These unique features have led most MDBs to establish a special type of entity known as independent accountability mechanisms (IAMs). This chapter reviews the role that IAMs play, and compares MICI to other IAMs along selected dimensions.
- 2.2 Before the 1990s, MDBs relied on borrowing governments to deal with concerns and complaints from communities in project areas. Following the 1992 Rio Summit and critical assessments of the World Bank's adherence to its safeguard policies, environmental and other NGOs began to press for MDBs to be transparent and directly accountable for their actions, especially actions with the potential to harm the environment or to affect powerless or marginalized communities. "The traditional view that an MDB is formally accountable only to its member governments was getting eroded with increasing public accountability to, and participation from, civil society in both donor and developing countries."¹
- 2.3 This emerging pressure for external accountability entailed the establishment of a "legally relevant" relationship between an international organization and individuals that are in a noncontractual relationship with it. By establishing its Inspection Panel in 1993, the World Bank was the first MDB to give formal recognition to this "legally relevant" relationship between the Bank and affected individuals. It was followed closely by the IDB, with its establishment of the Independent Investigation Mechanism (IIM—ICIM's predecessor) in 1994.²
- 2.4 Although accountability mechanisms arose mainly in response to a drive for *external* accountability, they also aim to enhance the MDBs' *internal* accountability. MDBs had already established channels for internal accountability, such as project supervision and completion reporting, operations evaluation, and internal and external audit. IAMs add a new dimension by assessing an MDB's compliance with its own policies, especially safeguards. Routine project supervision reports are supposed to report on such compliance, but do not always do so effectively. IAMs provide an independent view.
- 2.5 The early IAMs assessed only compliance with policy. The purpose of compliance review is to inform both an MDB's Board and its external stakeholders about whether the Bank is in compliance with its own safeguard or other policies. The process need not involve the complainant to any great extent. In fact, in the World Bank and the International Finance Corporation (IFC), the

¹ Bissell and Nanwani (2009), p. 5.

² See Bradlow (2005), p. 420; and Bissel and Nanwani (2009), p. 12.

Board or management may request a compliance review even when there has been no complaint. The compliance review model pioneered by the World Bank's Inspection Panel (and largely emulated by the MICI policy) is adversarial and centers on strict interpretations of the bank's policies and of the IAM's policy. It typically involves a sequence of findings by the IAM and rejoinders from management, ending with action plans monitored by the Bank's Board. All IAMs are empowered only to make recommendations to the MDB's Board and/or management to take corrective or compensatory actions. No IAM has the power to impose remedies.

- 2.6 Starting with the Asian Development Bank (ADB) in 2003, MDBs have extended their mandates to also allow affected people to seek remedies through a problem-solving function. As Table 2.1 shows, the World Bank Inspection Panel is now the only IAM without a problem-solving function.³ The purpose of problem-solving as practiced in IAMs is to hear complaints from project-affected persons and to try to create a process for reaching a solution. The IAM's main role is to identify the stakeholders, bring them to the table, and guide the discussion in an organized way. The process does not assign blame or advocate for any one party. Any solution reached may require the implementing or government agency (or private sector client) to alter a project design, pay compensation, or take other costly steps, and these costs are not necessarily financed by the Bank loan. The problem-solving process may be arduous, because by the time problems reach an accountability mechanism, relations are usually already tense and the stakes high. Cases in some IAMs have lasted up to four years. And in the end, the process may not result in a solution that all parties can agree to and may have to be abandoned even after considerable effort.

Table 2.1
Major MDBs and their accountability mechanisms

| MDB | Independent Accountability Mechanism | Compliance or problem-solving | Year Est'd | Number of Cases |
|-----------------------------------|---|--------------------------------------|-------------------|------------------------|
| African DB | Independent Review Mechanism | Both | 2006 | 8 |
| Asian DB | Accountability Mechanism | Both | 2003 | 41 |
| European BRD | Project Complaint Mechanism | Both | 2009 | 16 |
| European Investment Bank | Complaint Mechanism (part of the EIB) European Ombudsman (outside the EIB) | Both | 2010 | na. |
| Inter-American DB | MICI | Both | 2010 | 19 |
| International Finance Corporation | Office of the Compliance Advisor Ombudsman | Both | 1999 | 100 |
| World Bank | Inspection Panel | compliance | 1993 | 76 |

- 2.7 Some borrowing countries have expressed concern that IAMs could infringe on their national sovereignty and the primacy of their domestic legal systems. This concern may be overstated. Compliance review is designed to test MDBs' actions against their own policies, which borrowing countries as members of the MDB have endorsed and presumably wish to see upheld. As noted above, experience

³ The World Bank has been criticized for lacking an ombudsperson service and is currently working to develop problem-solving capacity as a management, not independent, function.

over 20 years has validated the idea that multilateral institutions can have a legally relevant relationship with individual citizens. As for problem-solving, MDBs' mechanisms are not empowered to impose solutions or override domestic legal processes. IAMs play the role of ombudsperson, not mediators (see Box 2.1).

Box 2.1
IAMs have ombudspersons, not mediators

- A mediator is authorized to make fully enforceable agreements; ombudspersons are not.
- Ombudspersons are always associated within an organization, while mediators normally belong to neutral third parties.
- Ombudspersons are allowed to act on a request even if the complainant chooses to remain anonymous.

- 2.8 Compliance review and problem-solving functions make uneasy bedfellows because they require different skills and approaches. Problem-solving is feasible only when the key stakeholders are willing to participate in good faith, and if the parties have resources or power to effect a solution. If problem-solving in a particular case is to be attempted, it must precede any review of compliance. This is only logical: if a finding of failure to comply were to occur first, it would preclude any subsequent good-faith problem-solving. But problem-solving and compliance review are two different functions, not two phases in a sequential process.

III. MICI'S POLICY, STRUCTURE AND CASES: AN OVERVIEW

A. Policy

- 3.1 The IDB Board approved the MICI policy⁴ on February 17, 2010. The policy was to have become effective on May 18, 2010 (90 calendar days after approval), but more time was needed to complete MICI's staffing. The first executive secretary was appointed in May 2010, the project ombudsperson in July 2010, and the panel members' contracts started in October 2010. MICI became effective on September 9, 2010. The first executive secretary left the IDB shortly thereafter, on September 20, 2010, and the position was filled on an acting basis until the incumbent executive secretary joined MICI in April 2011. A complete chronology is shown in Annex 6.
- 3.2 The MICI policy is an 18-page document whose key features are summarized in Box 3.1. The policy states that for the first three years of MICI's operations, its purview is limited to the six policies on safeguards and information disclosure.⁵

⁴ IDB document GN-1830-49.

⁵ Disclosure of Information OP-102, Environmental and Safeguards Compliance OP-703, Disaster Risk Management OP-704, Gender Equality OP-761, Indigenous People OP-765, and Involuntary Resettlement OP-710.

Three years after MICI's effectiveness, MICI's purview is to extend to all "relevant operational policies," a large set that is defined in the policy.

Box 3.1
Key Features of MICI Policy

- MICI has a consultation phase, conducted by the Project Ombudsperson, and a compliance review phase, conducted by the Panel.
- Any resident of the country where a project is located may present a request in any form.
- A requester may request both a consultation and a compliance review, but the consultation request is processed first. Requesters must "reasonably assert that they have been or could be expected to be directly, materially adversely affected by an action or omission of the IDB in violation of a policy."
- Requesters must have "taken steps to bring the issue to the attention of management."
- The objective of a consultation phase exercise is to "address issues raised by the requesters." Parties may opt out of a consultation process at any time. There are no standard rules, timeframes, or procedures once consultation begins. The Project Ombudsperson prepares a final report on the exercise and its results.
- The objective of a compliance review is to "establish a process that enables a requester to request an investigation by a panel if the requester reasonably asserts that its rights or interests have been or could be expected to be directly, materially adversely affected by the failure of the IDB to follow its relevant operational policies." The panel prepares a final report that includes findings about any noncompliance with policy and may also include recommendations and observations.

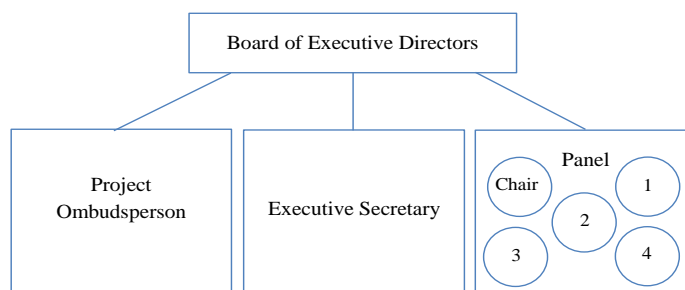
B. Structure

3.3 MICI has a three-part structure:

- The project ombudsperson, a Bank staff member, who conducts the consultation process.
- A compliance review panel of five members, all consultants, one of whom is the chair.
- The executive secretary, a Bank staff member.

The project ombudsperson, the panel chair, and the executive secretary are known as the "MICI principals." No principal reports to any other, and MICI has no overall manager. The policy specifies that the panel reports to the Board, but does not state to whom the project ombudsperson and the executive secretary report. The panel members do not report to the panel chair. MICI does not have an official organizational chart, but its structure is illustrated in Figure 3.1.

Figure 3.1
MICI structure



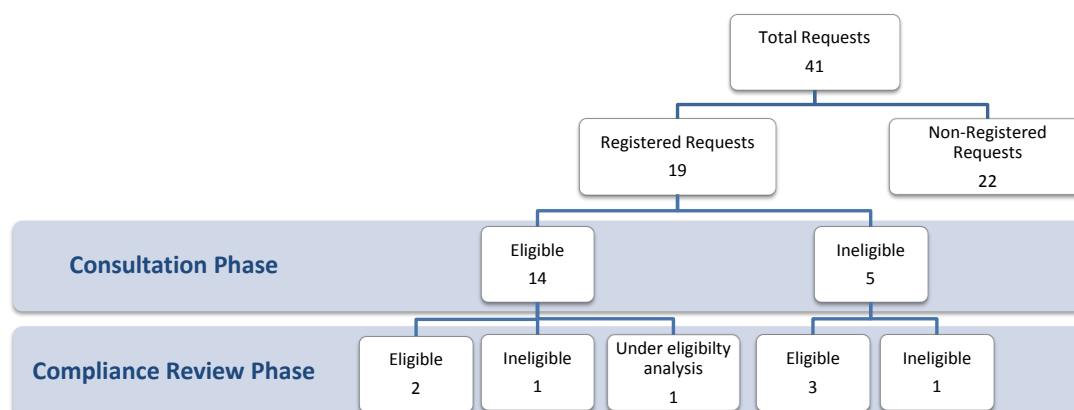
- 3.4 Terms of reference (TOR) for the principals and panel members were approved by the Board in May 2010⁶. The TOR closed a gap in the policy by specifying that the project ombudsperson and the executive secretary report to the Board. They also introduced an inconsistency with the policy by endowing the executive secretary position with a leadership role. They state, for example, that the executive secretary is to “lead the planning, implementation, and supervision of the ICIM office,” and “lead ICIM’s stakeholder engagement, outreach, communications and knowledge strategies.” Neither the policy nor the TOR provides for performance review for the project ombudsperson, the executive secretary, or the panel members.
- 3.5 MICI has two staff members who support the unit as a whole, and the project ombudsperson and panel have each been supported by one or two case officers and some administrative assistance. The project ombudsperson, executive secretary, and panel chair maintain offices in the MICI suite.

C. Cases

- 3.6 Between September 2010 and June 30, 2012, MICI received 41 requests. As Figure 3.1 illustrates, 19 of these requests were “registered”—that is, they met the criteria for inclusion, and thereby became “cases.” (Chapter V provides a full assessment of MICI’s registration and eligibility processes and Annex 3 an analysis on the non-registered cases.) Although the policy permits requesters to specify whether they seek a consultation or a compliance review, all cases are given first to the project ombudsperson to determine their eligibility for the consultation process based on criteria in the policy. The project ombudsperson has declared 14 cases eligible for consultation and 5 ineligible. Once the consultation phase is closed, regardless of the reason, a requester may ask that the case also go to compliance review. A total of 8 cases have gone to compliance review.

⁶ IDB document GN-1830-55.

Figure 3.1
Overview of MICI requests



Source: MICI Register provided by the Executive Secretary on June 2012. This figure includes all requests received as of June 30, 2012, and depicts their status as of October 22, 2012.

3.7 The 19 MICI cases have involved a wide range of issues. As Box 3.2 shows, seven involved an individual property or business affected by a Bank project. These requesters have typically objected to planned roads or power lines near their properties, or to the compensation offered for expropriation; and one requester sought protection from construction activity for an archeological site. Eight cases involved projects' impacts on a community, town, or group of people. Requesters' complaints include noise, pollution, and congestion from roads; resettlement of urban or rural communities; and, in Paraguay Highway Corridors, titling of land for indigenous people. The remaining four cases involved issues with a national or regional scope. The Panama Pando-Monte Lirio case, for example, concerned two hydroelectric installations forming part of a larger scheme affecting an entire watershed.

Box 3.2
Scope of issues addressed by MICI cases

| Individual property or locality | Community or town | Regional or national |
|---------------------------------|--------------------------------|-----------------------------|
| Paraguay -- Vegetable Sponge | Brazil -- Serra do Mar | Panama -- Pando-Monte Lirio |
| Argentina -- Entre Rios | Paraguay -- Highway Corridors | Mexico -- Termoelectrico |
| Brazil -- PROMABEN | Bolivia -- Rurrenabaque Bridge | Panama -- Canal Expansion |
| Argentina -- PROSAP | Brazil -- Rodoanel I | Argentina -- Agrochemicals |
| Argentina -- PROMEBA | Brazil -- Habitar | |
| Costa Rica -- SIEPAC | Brazil -- São Jose dos Campos | |
| Brazil -- Rodoanel II | Colombia -- Mocoa | |
| | Colombia -- El Dorado Airport | |

Note: Shaded cases indicate private sector projects.

3.8 Most cases have involved alleged violations of multiple Bank policies. The Environmental and Safeguards Compliance Policy (OP-703) has been cited in 13 cases, the Access to Information Policy (OP-102) in 11 cases, and Involuntary Resettlement (OP-710) in 7 cases. Other policies have each been cited in 3 or fewer cases. Since consultation cases do not render judgment on policy violations, it is not possible to count the policies that have actually been breached.

- 3.9 The compliance panel has completed two cases. The case of Panama Pando-Monte Lirio hydroelectric power was discussed by the Board on October 24, 2012.⁷ For Paraguay Highway Corridors, the panel has prepared a final report that has not yet⁸ been distributed to the Board. The panel spent an average of 1.6 years between eligibility and completion on these two completed cases. The panel currently has three open cases.
- 3.10 The project ombudsperson has closed a total of four cases⁹ after a consultation process. These four cases took an average of 0.7 years between eligibility and completion. There are six ongoing consultation cases that (as of October 22, 2012) have been under way for an average of 1.4 years. Chapter VI discusses MICI's efficacy and efficiency in more detail.
- 3.11 MICI spent US\$3.130 million to September 30, 2012 (see Table 3.1):

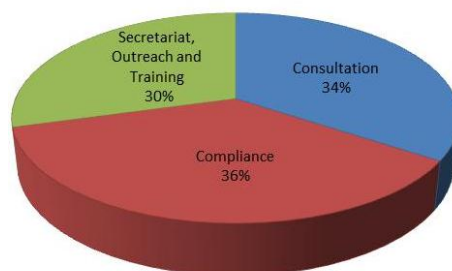
Table 3.1
MICI expenditures

| Year | Amount |
|------------------|----------------------|
| 2010 | US\$233,252 |
| 2011 | US\$1,651,081 |
| 2012 to Sept. 30 | US\$1,245,916 |
| Total | US\$3,130,249 |

Source: MICI data.

- 3.12 The consultation and compliance functions have each accounted for about one-third of total spending, as Figure 3.2 illustrates.

Figure 3.2
Distribution of MICI expenditures



Source: MICI Annual, Activity and Financial Reports, and data provided by the Executive Secretary.

Note: Graph includes 2011 and 2012 expenditures.

⁷ IDB document MI-12-8.

⁸ As of October 22, 2012.

⁹ Paraguay Vegetable Sponge, Brazil PROMABEN, Argentina PROSAP, and Argentina Agrochemicals.

IV. RELEVANCE OF MICI’S POLICY, STRUCTURE AND ACCOUNTABILITIES

- 4.1 In creating MICI, the IDB Board intended to create a mechanism that was more responsive and independent than its predecessor, the IIM.¹⁰ The new mechanism was championed within the Bank by a staff member who prepared the draft policy and consulted extensively in 2009 with NGOs and others throughout the Region. The Organization, Human Resources, and Board Matters (ORA) committee reviewed the draft policy four times between December 2009 and February 4, 2010. Chairs expressed a wide range of views about the mechanism’s scope and powers. The adopted policy represents trade-offs among these views and was agreed to on a compressed schedule — according to OVE interviews—because of the time constraint imposed by the IDB-9 Agreement.
- 4.2 This chapter assesses the extent to which MICI’s policy, structure and accountabilities are relevant and fit for the purpose intended. It identifies four shortcomings in this regard: ambivalence about MICI’s value, inadequate accountability, conflicts of interest in panel remuneration, and misguided roles and accountabilities of panel members.
- A. Clarity of objectives**
- 4.3 The policy reflects a degree of ambivalence about whether the Bank wants or needs an effective MICI. Four aspects demonstrate this ambivalence.
- 4.4 First, the policy does not articulate a positive mission statement for MICI. Although it states that MICI will “provide a forum and process to address complaints from parties that allege that they are or might be adversely affected by IDB operations,” it does not indicate what benefit is expected to come from this process. The policy lacks both a statement of objectives and a picture of the benefits expected to result from MICI’s operations. Other IAMs’ more positively framed statements are shown in Box 4.1.

¹⁰ The IIM was part of the Office of the Secretary. It handled only five complaints out of the 15 it received during its 15-year existence (1994-2009) and was widely seen as lacking credibility.

Box 4.1
Mission statements of other mechanisms

The IFC Office of the Compliance Advisor/Ombudsman “is committed to enhancing the development impact and sustainability of International Finance Corporation and Multilateral Investment Guarantee Agency projects by responding quickly and effectively to complaints from affected communities and by supporting the IFC and MIGA in improving the social and environmental outcomes of their work, thereby fostering a higher level of accountability.”

The EIB Complaints Mechanism “is a vital tool of horizontal accountability of the EIB Group vis-à-vis its stakeholders as regards the handling of complaints concerning its activities. It aims at providing the public with procedures enabling the alternative and pre-emptive resolution of disputes between the latter and the EIB Group.”

- 4.5 Second, the MICI policy does not explain what the problem-solving and compliance review are each expected to achieve, how the two functions relate to each other, and why they are housed in the same mechanism. There is no provision for MICI to establish a unified view of the compliance and/or problem-solving dimensions that a case entails. A consultation case that is resolved may leave unanswered questions about compliance, as illustrated in Box 4.2, but MICI’s phases are separate and sequential, linked only by rules for handing over files. According to reports OVE received in interviews, some Board members and Bank Management told MICI principals that they expected the consultation phase to serve as a “gatekeeper” to limit—and, if possible, prevent—cases going to compliance review. This view reflects an inadequate understanding of how the different functions can help the Bank improve its performance.

Box 4.2
Unanswered questions about compliance in two MICI consultation cases

- A homeowner was dissatisfied with the compensation he received for a house expropriated by a Bank-financed sewer project. After a MICI consultation, the implementing agency increased his compensation. But the question remains: Did the Bank comply with its policy on resettlement, which requires an open process for determining compensation?
- Community members are protesting because the planned access road to a river bridge would bring heavy truck traffic through the middle of town. Through a MICI-sponsored consultation process, the implementing agency has agreed to explore and cost out an alternative site for the road. But the question will remain: Did the Bank comply with its policy on environmental and social assessment?

- 4.6 Third, the policy does not articulate how Management is expected to address project-related complaints and at what point MICI is supposed to step in. The policy requires a requester to have raised his/her issue with Bank Management, but it does not require MICI to seek Management’s perspective, as other MDBs do (see Box 4.3). The policy also does not state how Management should be informed about a request and how MICI intends to handle it. Management thus has no opportunity to place its perspectives on the record before MICI decides to proceed with a case. Project teams interviewed by OVE expressed frustration with not being able to give their perspectives before MICI undertook cases.

Box 4.3
Management response to complaints in other MDBs

European Bank for Reconstruction and Development (EBRD): If the Project Complaint Mechanism decides to register a complaint, management is given 15 business days to provide its written response to the complaint.

World Bank: Before an inspection is granted, Bank management must have had an opportunity to respond and failed to respond in a satisfactory manner.

ADB: Management can object to the Compliance Review Office's decision about, where to forward the complaint (problem-solving or compliance review) within 3 days of the decision.

- 4.7 Finally, the MICI policy's provisions are framed mainly in procedural terms, without articulating their overarching intent. For example, the policy establishes 17 detailed criteria for a request's eligibility, without stating a general principle about the types of requests MICI is intended to consider. The policy requires an individual requester to demonstrate s/he is "directly, materially adversely affected by an action", seemingly precluding MICI from considering cases of general environmental harm to a natural resource or a community. In cases of dispute or ambiguity, therefore, the principals have had to resort to interpreting the letter of the policy rather than being able to anchor their decisions in its intent. While the behavior of the incumbent principals has not been helpful, as will be documented in later sections, the narrow and legalistic framing of the MICI policy lies at the heart of MICI's weak performance.

B. Accountability

- 4.8 MICI is independent in that it reports to the Bank's Board, not to Management. But the MICI structure reflects misunderstandings about the nature of independence, which have compromised MICI's accountability. As noted in para. 3.3, the three principals report individually to the Board and none reports to any other. The policy's failure to specify any reporting relationships or an overall "boss" has left the principals unaccountable for the timely delivery of work outputs. Combined with the incumbent principals' frequent disagreements, this has meant that routine issues around work planning, budget allocation, staff work assignments, and fiduciary control have become prolonged and recurring problems.
- 4.9 Although the executive secretary's TOR set out expansive leadership responsibilities, these responsibilities had not been specified in the policy.¹¹ The other two principals therefore do not consider themselves accountable to the executive secretary. The executive secretary's "power of the purse" through budget management does not give this position any managerial weight, since s/he cannot guide the scope, quality, or pace of the others' work except through the rudimentary tactic of withholding funds. The striking inconsistency between the policy and the executive secretary's TOR arose, according to OVE interviews, because the TOR was crafted to suit the individual selected for that position in

¹¹ The TOR does not contain any statement that the TOR supersedes the policy.

May 2010. This individual had designed and championed the new mechanism and was, according to all those interviewed by OVE, forceful and passionate about making it a success. Directors expected that these personal qualities—enhanced by the TOR—would make the executive secretary the *de facto* manager of MICI. Her unexpected departure from the Bank in September 2010 exposed the mechanism’s structural weaknesses.

- 4.10 The project ombudsperson and panel chair have taken the view that their actions are independent, not only from Management, but also from each other and from the executive secretary. As a result, MICI operates as three separate offices. There has been virtually no sharing of information or development of practice across the mechanism or over time. The principals have spent considerable effort drafting procedural guidelines but have not so far agreed on and issued a unified final set of guidelines. No unified filing system has been created. The project ombudsperson and the panel chair have expressed the concern that IDBDocs would not keep their work sufficiently private.
- 4.11 In the past some MICI principals incorrectly interpreted MICI’s independence as exempting them from Bank procedures for time recording, travel, contracting, remuneration, and budget management. The recent report of the Office of the Executive Auditor pointed out several such deviations from Bank procedure. The Board recently clarified to MICI principals that they must follow all Bank procedures.

C. Panel remuneration

- 4.12 MICI’s compliance review work is performed by a panel of five members who are not Bank staff but rather consultants paid a daily fee. The Selection Committee established by the Board of Executive Directors selected one of them to be the panel chair for MICI’s first three years, ending in October 2013.
- 4.13 The MICI policy calls for the panel chair to determine the eligibility of each request and to select two other members, based on their expertise and availability, to compose a three-person “investigative team” to conduct a compliance review¹² on each eligible case. At the time of MICI’s launch, according to OVE interviews, it had been anticipated that in practice it would be the executive secretary who would plan and allocate work among the various panel members, with the panel chair simply signing off. The first executive secretary left the Bank, and that assumption did not materialize. Instead, the panel chair determines how much work the panel will undertake and distributes assignments among himself and the other four members. Since panel members are paid by the day, the policy entails an inherent conflict of interest. That is, the position of chair has incentives to increase both the amount of panel work and the chair’s share of it, which conflicts with the obligation to conduct business efficiently. As chapter VI indicates, panel cases are lengthy: the two completed cases averaged 596 days in elapsed time.

¹² MICI policy, paras. 55 and 58. This is the only occurrence of the undefined term *investigative team*.

- 4.14 Overall the panel chair has billed for 43%¹³ of the total days billed by all five panel members. The chair has billed for 160 days of “non-case work”¹⁴ for which OVE did not identify any output, as well as for 78 days of work on one case that has not been declared eligible and another not yet approved by the Board for investigation.¹⁵
- 4.15 The issue of accountability for panel members’ remuneration is exacerbated by the unusual terms of their contracts, which were prepared by Bank Management in 2010. They specify end dates¹⁶ but not the total number of days to be worked, nor a total dollar value. OVE interviewees could not explain how the Bank approved these extraordinary open-ended contracts, nor why panel members agreed to indeterminate work commitments. A purchase order corresponding to each contract was subsequently established. The purchase order created a ceiling on each panel member’s working days. The ceiling established for the chair is 390 days (apportioned as 130 days per year) and the other members’ allocations are about 70 days per year. The chair worked more days than the annual ceiling in both 2011 and 2012. Executive Directors have had several meetings to consider whether and how the chair’s excess time charges should be remunerated.

D. Panel members’ roles and accountabilities

- 4.16 According to OVE interviews, the Board selected the panel members so that the panel would have a mix of professional expertise. This mix, it was thought, would enable the panel to review different types of cases without having to rely on a standing staff or technical consultants. This is the reason the panel has five standing members compared to some other IAMs’ three. This approach is based on a misguided view of a panel’s proper function, which is to provide an independent assessment of the Bank’s compliance with its own policies, not a technical analysis on the merits of projects. No group of individuals could possess technical expertise in the full scope of Bank operations. Panel members should be selected on the basis of integrity and judgment, with any technical expertise required for a case hired in on a consulting basis.
- 4.17 The panel chair signs off on panel members’ fee invoices. The panel members’ work contributions are not maintained on file, and there is no process for monitoring the quality or quantity of their work. One panel member has billed more than 40 days for “non-case” work, primarily the writing of procedural guidelines, which remain in draft.

¹³ As of September 2012, 368 of a total 846 days.

¹⁴ IDB document MI-30-3 of 17 October 2012, table 1, updated by MICI data.

¹⁵ Ibid. The cases are Brazil Serra do Mar and Brazil Rodoanel I.

¹⁶ September 2013 and October 2013 for two members and September 2014 for three members.

V. ACCEPTANCE OF CASES

- 5.1 All IAMs establish criteria for deciding whether to accept a complaint for further review. Such eligibility criteria balance the desire to welcome legitimate complaints with the need to exclude those that are irrelevant to the work of the institution or outside the IAM’s mandate. For an IAM to be credible, its eligibility criteria should be transparent and consistently applied. IAMs regularly review and adjust their criteria in an effort to achieve the right balance. After assessing the relevance and effectiveness of MICI’s practices for taking on cases, OVE finds five issues.

A. Criteria

- 5.2 MICI’s eligibility criteria are numerous and heterogeneous, and they require more subjective judgment than those of most other IAMs. MICI policy specifies a total of 17 criteria to be met before a request is eligible for review. They are listed in two separate groups: 8 “exclusion” and 9 “eligibility” criteria (see Annex 4). Using the 17 criteria, the project ombudsperson determines the eligibility of every case for a consultation process. Then, for the subset of cases that also go to the compliance panel, the policy requires the panel chair to again review their eligibility against the same set of criteria¹⁷. This evaluation refers to this process as “duplicate eligibility determination”.
- 5.3 The 8 “exclusion” criteria include some matters that can be determined *prima facie*—for example, whether a request concerns an alleged fraud, ethics, or procurement problem. Other matters require research or judgment—for example, whether a request relates to actions that are the responsibility of parties other than the Bank. Likewise, the 9 “eligibility” criteria include some matters that are purely factual—such as the requester’s contact information—and others that are difficult to assess, like whether the requester is “materially adversely affected” by the project, and whether there is an ongoing legal proceeding concerning the issue. MICI assesses all exclusion and eligibility criteria without visiting the site or even necessarily contacting all the parties, even though the more complex and nuanced issues would be better determined on the basis of on-site discussion and fact-finding. This arms-length approach has contributed to prolonged elapsed times and questionable determinations.

B. Registration process

- 5.4 The executive secretary logs and acknowledges all incoming requests and determines whether a communication to MICI is simply seeking information or lodging a complaint. In addition, the executive secretary checks certain of the exclusion and eligibility criteria. This latter responsibility is not provided for in the policy, but rather has been decided upon by the principals to more evenly distribute the workload. The set of criteria checked by the executive secretary has

¹⁷ The compliance phase assesses 16 of the same 17 criteria as the consultation phase and adds one (rather circular) criterion, viz. whether a compliance review would be helpful in assessing the Bank’s compliance with policy.

varied over time, but has generally included the requester's name, the Bank project involved, and whether the request concerns fraud, ethics, or procurement and should therefore be transferred to another central unit.

- 5.5 The executive secretary also attempts to establish whether, as required by the policy's eligibility criteria, the requester has taken steps to bring the problem to Management's attention. If not, the executive secretary has sometimes told the requester whom to contact, while at other times has passed the request directly to the relevant staff. Because this procedure has not been consistent or transparent, outside observers and the other principals have raised questions about how some requests were handled.

Table 5.1
Elapsed time with executive secretary (calendar days)

| Case | Acknowledge receipt | Transfer to the Ombuds. |
|---|--|--------------------------------|
| <i>Rule established by MICI policy</i> | <i>5 business days (7 calendar days) for both steps combined</i> | |
| Paraguay -- Vegetable Sponge | 1 | 222 |
| Panama -- Pando-Monte Lirio | 0 | 192 |
| Brazil -- Serra do Mar | 106 | 112 |
| Argentina -- Entre Rios | 9 | 84 |
| Brazil -- PROMABEN | 2 | 26 |
| Argentina -- PROSAP | 2 | 36 |
| Paraguay -- Highway Corridors | 12 | 5 |
| Argentina -- PROMEBA | 8 | 8 |
| Costa Rica -- SIEPAC | 1 | 44 |
| Bolivia -- Rurrenabaque Bridge | 15 | 15 |
| Brazil -- Rodoanel I | 10 | 10 |
| Brazil -- Habitar | 6 | 6 |
| Brazil -- Sao Jose dos Campos | 6 | 6 |
| Mexico -- Thermoelectric | 18 | 31 |
| Colombia -- Mocoa | 1 | 14 |
| Brazil -- Rodoanel II | 5 | 24 |
| Colombia -- El Dorado Airport | 0 | 42 |
| Panama -- Canal Expansion | 8 | 161 |
| Argentina -- Agrochemicals | 8 | 11 |
| Average number of calendar days | 11 | 55 |
| Average number of calendar days excluding legacy cases | 7 | 29 |

Elapsed time is deemed to start from the day MICI received the first communication from the requester.

Grey = Legacy cases, which were transferred to the project ombudsperson on Sept. 20, 2010 by the first executive secretary.

- 5.6 On the basis of the executive secretary's review, 19 requests were classed as "registered" and the other 22 as "non-registered." The registered/non-registered classification is not prescribed in MICI policy; rather, it is an operating procedure adopted by the incumbent principals. MICI policy calls for requests to be acknowledged and passed to the project ombudsperson within 5 business days. In fact it has taken four times as long—an average of 29 calendar days (21 business days equivalent) from the receipt of the requester's first communication (see

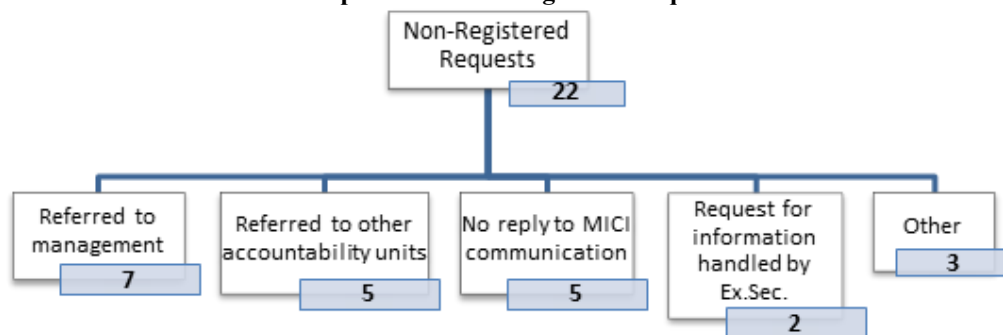
Table 5.1). In some cases, notably Panama Canal Expansion, these elapsed times include intervals during which the requester has been advised to get in touch with management.

- 5.7 MICI does not comply with the requirement in its policy “to establish a public registry to provide information on the status of request [which] will be accessible ...electronically.”¹⁸ It discloses only the roughly half of requests that are registered. The project ombudsperson has heretofore insisted that incoming requests not be disclosed, in case doing so would reveal some that are vaguely or poorly expressed. The lack of transparency of the request log has generated three issues. First, external critics allege that MICI may be “pushing away” legitimate cases; OVE does not find evidence of this, as explained in para. 5.8. Second, some Bank staff allege that MICI is helping requesters mold their requests to fit MICI’s mandate; OVE found evidence of such molding in the Panama Canal Expansion and Serra do Mar cases. Finally, the MICI principals have engaged in unproductive disagreements about when a request was received, whether a request is truly new or the same as an earlier one, and similar matters that could be resolved with fully transparent registration.
- 5.8 The 22 non-registered requests met a variety of fates (see Figure 5.1 and Annex 3). The executive secretary passed 5 of them to other central and accountability units (Ethics, Procurement, Office of Institutional Integrity (OII), and the Public Information Center). In OVE’s judgment, these dispositions were appropriate given the subject of the request, although one requester complained that he had been referred to the very unit about which he was complaining. For the other 17 requests, OVE found that a consistent and transparent method had not been applied. In some cases, for example, the requester was asked to provide more information, and in others not. While inconsistent, the treatment of these requests appears impartial insofar as it does not embody any particular pattern of acceptance or rejection.

¹⁸

Para. 95.

Figure 5.1
Disposition of non-registered requests



- 5.9 OVE was able to interview 9 of the 17 non-registered requesters.¹⁹ Four considered that their request had been correctly handled by MICI; most of them had gotten in touch with project staff. The other five said they were dissatisfied—mostly because, they claimed, neither MICI nor any other Bank unit had gotten back to them. Once MICI passes a request to another unit, it is no longer MICI’s responsibility; but if that other unit fails to respond, the Bank as a whole appears not to take complaints seriously. This introduces a reputational risk for the Bank.

C. Eligibility determinations

- 5.10 Eligibility determination for the consultation phase took on average 55 calendar days (39 business days equivalent) — more than twice as long as the 15 business days prescribed in MICI policy. The elapsed time was about the same whether the cases turned out to be eligible or ineligible. This prolonged average elapsed time reflects two main factors. First, MICI policy permits the project ombudsperson to allow time for Management and the requester to try to resolve the problem. These intervals have in some cases been lengthy. Second, the narrow and legalistic approach of the MICI policy with its 17 eligibility criteria makes it difficult to obtain reliable information without visiting the site, including, in some cases, identifying the official requesters. Considering also the time elapsed in the registration process (see Table 5.1), the average requester waited almost three months (84 calendar days) before learning whether his or her case would proceed.
- 5.11 The project ombudsperson determined that 14 cases were eligible for a consultation process and 5 ineligible.²⁰ The eligibility determinations were consistent with MICI policy in three-quarters of cases, but five cases were declared eligible that should, in OVE’s judgment, have been found ineligible (see Table 5.2). The case of Brazil Habitar was declared eligible even though the request had been filed more than 24 months after the last disbursement, a fact recorded in the eligibility memo itself. In Panama Canal Expansion evidence was not obtained —as required by the policy—that the requester resides in Panama

¹⁹ Six were interviewed by telephone from Washington and three in the field case studies.

²⁰ This is a higher eligibility rate than those of the CAO of the IFC (61% of its complaints eligible since 2000), and the SPF of the African Development Bank or ADB (33% eligible since 2004), but comparisons are not exact because scope and definitions vary across the MDBs.

and that she was duly authorized to act on behalf of others; OVE interviews revealed that both are doubtful.

Table 5.2
Problematic determinations of eligibility for consultation

| Case | MICI issue | Policy | Reason |
|----------------------------|--|-------------|--|
| Costa Rica SIEPAC | Environmental risks of transmission line site | 37(i) | Raises issue currently under judicial review by national body |
| Brazil Habitar | Resettlement | 37(f) | Request submitted 24 months after date of last disbursement |
| Colombia Mocoa | Socioeconomic risks of road construction project to indigenous communities | 37(i) | Raises issue currently under judicial review by national body |
| Panama Canal Expansion | Seismic and saline intrusion risks | 40(d) | Evidence not provided that requester lives in Panama or is authorized to represent organizations named |
| Argentina Agrochemicals | Future regulations' compliance with international standards | 37(a) & (b) | Complains of actions within mandate of government authorities |

- 5.12 The compliance panel has received eight cases for which consultation had closed. The chair assessed each case's eligibility for compliance, as mandated by the policy, and determined that four were eligible and two ineligible for a compliance review, with two still undetermined. It took the panel chair an average of 44 calendar days (32 business days equivalent) to determine the eligibility of these cases—double the 15 business days prescribed in MICI policy. According to interviewees, the panel chair's view that other panel members may not work on eligibility assessments creates a significant bottleneck. OVE finds the panel chair's eligibility determinations inconsistent with MICI policy in just one case – Panama Canal Expansion – because, as noted in Table 5.2, of lack of evidence about the requester's residency and authorization to represent others. The panel is still considering the eligibility of the Rodoanel II case. The eligibility of Brazil Serra do Mar is classified as undetermined because although the panel declared it eligible in late 2010, the Executive Board in March 2011 raised questions to which the panel has not yet responded. To date US\$140,000 has been charged in panel fees on the Serra do Mar case.

D. Duplicate eligibility assessment

- 5.13 Assessing eligibility twice for the same case—for consultation and for compliance review—is costly and adds no value. Table 5.3 shows that, in the first two cases listed, the panel chair reached the same eligibility determination as the ombudsperson had previously reached and took an average of 54 days to do so. This is costly: for example, about US\$100,000 in staff and consultant time was spent to reach the conclusion that Mexico Termoelectrico del Golfo was ineligible for either MICI process. In the third and fourth cases in Table 5.3, the requesters had insisted on only a compliance review from the start, yet the project ombudsperson took an average of 61 days to rule them ineligible for consultation. In Brazil Rodoanel I, the project ombudsperson tried to persuade the requesters to engage in a consultation process they said they did not want.

- 5.14 In the last two cases listed in Table 5.3, the panel and the ombudsperson reached opposite eligibility determinations, both centering on the problematic clause concerning issues under judicial review. In Costa Rica SIEPAC, the project ombudsperson was unaware of an ongoing legal process that ultimately rendered the case ineligible for compliance review. In Brazil Serra do Mar, the project ombudsperson had correctly noted the existence of ongoing legal cases, but the panel chair found it eligible, stating that these legal cases were no longer active.

Table 5.3
Time taken for duplicate eligibility determinations (calendar days)

| Case | Ombudsperson determination | Days elapsed | Panel determination | Days elapsed | Aggregate calendar days for both eligibility determinations |
|---------------------------------|---|--------------|--|--------------|---|
| Panama Pando-Monte Lirio | Eligible | 18 | Eligible | 25 | 43 |
| Mexico Termoelectrico del Golfo | Ineligible | 21 | Ineligible | 83 | 103 |
| Brazil Rodoanel 1 | Ineligible because requesters wanted only compliance review | 91 | Eligible | 120 | 210 |
| Paraguay Highway Corridors | Ineligible because requesters wanted only compliance review | 31 | Eligible | 21 | 52 |
| Costa Rica SIEPAC | Eligible | 65 | Ineligible because raises issues under judicial review | 47 | 112 |
| Brazil Serra do Mar | Ineligible because raises issues that are responsibility of parties other than the Bank and actions taken by requester are under judicial review by national body | 21 | Eligible | 18 | 39 |
| Average | | 41 | | 52 | 93 |

E. Handling of cases under judicial review

- 5.15 MICI's policy (section 37 (i)) requires it to exclude "requests that raise issues under arbitral or judicial review by national, supranational or similar bodies." This provision was included to respond to the concerns of some Board chairs that the MICI process might interfere with—or its findings be invoked to influence—an ongoing court case. The clause is framed as a blanket prohibition and allows for no judgment about the relevance or possible harm of a particular court case. It has, or might have, been a factor in five MICI cases (see Annex 5). It has arguably prevented MICI from dealing with one case—Brazil Serra do Mar—that might otherwise have been eligible. Paraguay Highway Corridors and Argentina PROMEBA could have also been declared ineligible on the basis of this provision but were declared ineligible for other reasons. In two cases, Costa Rica SIEPAC

and Colombia Mocoa, the provision arguably could have been applied to exclude the cases, but was not.

5.16 This provision presents the following five obstacles to MICI's effectiveness:

- The prohibition applies not only to the request itself, but very broadly to requests that "raise issues" under litigation. This could be used to rule out virtually any case. For example, a request that "raised issues" about expropriation would have to be excluded since at any given moment expropriation is bound to be under litigation somewhere.
- It creates an incentive for someone to initiate legal proceedings to prevent MICI from accepting a case, or to derail a case already under way.
- It effectively obliges a requester to choose between pursuing legal recourse and seeking MICI's assistance, thereby giving the appearance that the Bank seeks to limit people's avenues for recourse.
- It requires the panel to conduct a costly second eligibility determination, because the legal situation may have changed since the eligibility for consultation was completed.
- Since most borrowing countries lack on-line databases of legal proceedings, MICI can never be absolutely sure that no court case has been launched. Laborious and inconclusive searches can thus lead to excessive delay.

VI. HANDLING OF CASES

6.1 This chapter reviews MICI's handling of eligible consultation and compliance cases against the three criteria of efficacy, efficiency, and impartiality.

A. Consultation cases

1. Efficacy

6.2 Four cases have been closed after a consultation process (see Table 6.1). Additional four cases were closed without a consultation process – three because a party opted out and one because it was discovered to be ineligible.²¹

Table 6.1
Outcomes of closed consultation cases

| Case | Elapsed time consultation phase (years) | Date of closing report | Outcome |
|-----------------------------|---|------------------------|---|
| Paraguay – Vegetable Sponge | 1.1 | Sept. 2011 | IDB disbursed some technical cooperation funds earlier denied to the requester. |
| Brazil – PROMABEN | 0.6 | May 2011 | Requester received additional compensation for expropriation of family home. |
| Argentina – PROSAP | 0.5 | May 2011 | An archaeological site in a project area was recognized, protected, and preserved. |
| Argentina – Agrochemicals | 0.5 | July 2012 | MICI helped the requester raise her concerns—which were outside the scope of the Bank project—with the appropriate officials. |

6.3 The closed consultation cases are narrow in scope; each involved just one requester. By contrast, many ongoing cases—for example, Bolivia Rurrenabaque and Brazil Habitar and São Jose dos Campos—are complex and politically sensitive and involve many stakeholders. MICI's ability to foster agreement in such complex cases has not been demonstrated to date.

6.4 The results of the four closed consultation cases have been modest. In Paraguay Vegetable Sponge, the requester informed OVE that MICI helped her obtain funds she was claiming from a project grant facility. In Brazil PROMABEN, the requester received additional compensation for his expropriated house (although he was dissatisfied with the amount, as often happens in compensation cases), and the project set up a grievance office that functioned briefly. In Argentina PROSAP, the requester stated that MICI's involvement helped precipitate an agreement with local authorities to protect an archeological site, even though MICI's intervention did not directly contribute to the solution. Most recently, in Argentina Agrochemicals, MICI helped the requester raise her concerns—which were outside the scope of the Bank project—with the appropriate officials.

2. Efficiency

6.5 Once a case is declared eligible for consultation (as described in Chapter IV), the project ombudsperson generally visits the project site one or more times, sometimes accompanied by another MICI staff member or a local consultant

²¹ Party opted out: Panama Pando-Monte Lirio, Panama Canal Expansion and Brazil Rodoanel II. Ineligible: Costa Rica SIEPAC.

mediator. The consultation process typically involves a series of structured meetings aimed at identifying the stakeholders, elucidating the parties' positions, eliminating extraneous issues, and fostering dialogue. The ombudsperson personally convenes and moderates every dialogue session and has conducted about 35 site visits in all. The most-visited project is Rurrenabaque Bridge in Bolivia, with six missions as of August 2012.

- 6.6 Table 6.2 shows how long each consultation case had taken (as of October 22, 2012). The four cases that were closed after consultation (see Table 6.1) took an average of 0.7 years²². The nine that closed without consultation took an average of 0.5 years. For the six ongoing cases, the elapsed times are twice as long, averaging 1.4 years so far, with the longest, Argentina Entre Rios, having taken 2.1 years.

Table 6.2
Elapsed times for consultation cases (calendar days)

| Case | Eligibility memo | Assessment report | Closing report | Total number of days | Total in years (+ indicates case is ongoing) |
|--|--|--|----------------------|----------------------|---|
| <i>Rule established by MICI policy</i> | 15 business days (21 calendar days) | 120 business days (168 calendar days) | Not specified | | |
| Paraguay -- Vegetable Sponge | 87 | 148 | 179 | 414 | 1.1 |
| Panama -- Pando-Monte Lirio | 18 | 207 | 2 | 227 | 0.6 |
| Brazil -- Serra do Mar | 18 | Not eligible | | 18 | 0.1 |
| Argentina -- Entre Rios | 18 | 217 | 528+ | 763+ | 2.1+ |
| Brazil -- PROMABEN | 50 | 174 | | 224 | 0.6 |
| Argentina -- PROSAP | 25 | 127 | 34 | 186 | 0.5 |
| Paraguay -- Highway Corridors | 31 | Not eligible | | 31 | 0.1 |
| Argentina -- PROMEBA | 98 | Not eligible | | 98 | 0.3 |
| Costa Rica -- SIEPAC | 65 | 179 | 113 | 357 | 1.0 |
| Bolivia -- Rurrenabaque Bridge | 29 | 152 | 406+ | 587+ | 1.6+ |
| Brazil -- Rodoanel I | 91 | Not eligible | | 91 | 0.2 |
| Brazil -- Habitar | 99 | 213 | 182+ | 494+ | 1.4+ |
| Brazil -- São Jose dos Campos | 99 | 159 | 236+ | 494+ | 1.4+ |
| Mexico -- Termoelectrico | 21 | Not eligible | | 21 | 0.1 |
| Colombia -- Mocoa | 20 | 164 | 269+ | 453+ | 1.2+ |
| Brazil -- Rodoanel II | 25 | 151 | 260 | 436 | 1.2 |
| Colombia -- El Dorado Airport | 52 | 160 | 194+ | 406+ | 1.1+ |
| Panama -- Canal Expansion | 115 | 162 | | 277 | 0.8 |
| Argentina -- Agrochemicals | 91 | 95 | | 186 | 0.5 |
| Average number of days | 55 | 165 | 172 | 303 | 0.8 |

Grey = Legacy cases, which were transferred to the project ombudsperson on Sept. 20, 2010.

- 6.7 Overall, MICI's consultation cases have taken almost as long, on average, as its compliance cases. This experience invalidates a critical assumption underlying MICI's policy: that problem-solving is faster and more efficient than compliance review. It is not surprising that problem-solving takes a long time, since it involves several parties, usually requires them to modify entrenched positions,

²²

Starting from the receipt of the case by the project ombudsperson.

and may involve financial costs to at least one party. Other mechanisms' ombudsperson services have handled highly complex cases lasting up to four years. Is MICI's consultation process "too long"? Ombuds processes in general avoid setting deadlines, because doing so can create pressure for the weaker side to "give in." Moreover, it is difficult to set standard time frames because cases can range from the simple, like Paraguay Vegetable Sponge, to the highly complex, involving many stakeholders and thorny issues, like Bolivia Rurrenabaque Bridge.

- 6.8 In spite of these inherent uncertainties, consultation cases could be managed with a view to reaching timely closure, but this has not been MICI's practice. It took, for example, 91 days to reach a determination of ineligibility in a case where the requesters had rejected a consultation process from the start. For cases undergoing consultation, MICI has not developed a consistent framework for planning or estimating how long the process might take, and has kept several cases open when further progress is unlikely. The longest-running consultation case, Argentina Entre Rios, was expected to culminate in agreement in June 2011 but remains open in November 2012. In Brazil Rodoanel II, the project ombudsperson first spent four months trying to establish which, if any, requesters were truly interested in consultation, then "declared a waiting period"²³ that lasted a further nine months, and in the end declared the request not eligible. MICI does not issue regular reports on each case's progress and prospects for resolution, citing a need for confidentiality. MICI's policy and structure offer no avenue to hold the project ombudsperson accountable for planning and achieving results in a timely way. For example, even though MICI has informed the Board that five consultation cases started in 2011 will be carried over into 2013, the Board lacks enough information to exercise meaningful oversight.

3. Impartiality

- 6.9 An ombudsperson's role is not to advocate for any one party, but rather to create an impartial and constructive environment for disputing parties to try to reach an agreement they can all live with. To what extent has MICI exhibited impartiality in practice?
- 6.10 Most requesters interviewed by OVE believe the consultation process does take into account the views of a variety of stakeholders. They noted that consultation teams interviewed IDB country office staff, government officials, executing agency personnel and NGOs that were involved in but not party to the request. But Bank staff and country officials do not all share this view. One country office appreciated MICI's work, but others stated their belief that by taking requesters seriously, MICI strengthens and legitimizes opposition and protest. Government officials and executing agency personnel interviewed by OVE consider that MICI pays too much attention to requesters and does not give government views sufficient weight. For one ongoing case, for example, officials stated their view that the MICI team arrived with preconceived opinions that were aggressively

²³

BR-MICI005-2011 Consultation Phase Report Rodoanel Mario Covas-Northern Section II, para. 3.3.

partial to the requesters' views. On a later mission, though, they said the MICI team helped quiet a hostile meeting and create a more congenial environment for negotiations. Both government and IDB country office staff questioned to what extent any agreements negotiated are binding on IDB, the government, or executing agencies.

- 6.11 Some aspects of MICI's consultation work have been inconsistent with impartiality, insofar as they appear aimed at supporting the requester rather than creating a process accepted by all parties. For example, the project ombudsperson has not disclosed (either to Bank staff or publicly) some original requests, in case they cast the requesters in a poor light. The handling of the Panama Canal Expansion case, in particular, raises three concerns about impartiality: (i) after finding the request eligible, the project ombudsperson discussed with the requester how to frame the request to meet MICI's mandate; (ii) the assessment report supported the substance of the requester's technical claims even though no consultation process had taken place to air her views and those of others; and (iii) after issuing the assessment report, the project ombudsperson maintained contact with the requester and encouraged the latter to request a compliance review.
- 6.12 It is understandable that Bank staff and borrower representatives mistrust or dislike an independent mechanism that may question their judgments. This is precisely why MICI should make strenuous efforts to treat all parties evenhandedly and transparently. Failure to consistently do so has impaired the credibility of the consultation function.

B. Compliance cases

1. Efficacy

- 6.13 This section examines the two cases the panel has investigated. The panel has declared a further two cases eligible but has not yet investigated them, and is still considering the eligibility of two more.
- 6.14 The **Panama Pando-Monte Lirio** case concerned a hydroelectric development that will significantly reduce the flow of a river. The panel undertook one mission to Panama. Panel members' fees totaled US\$118,492 through June 2012. The panel found that the Bank did not comply with its safeguards policies in considering and mitigating the environmental implications of the Bank-financed project and the larger program of which it is part.²⁴ During the 1.5 year gap between the panel's receipt of the request in March 2011 and the issuance of its report in October 2012, construction has proceeded and the engineering options for addressing problems have accordingly narrowed. It is too soon to tell whether the environmental outcomes can be improved, but faster action might well have allowed for a wider range of options.

²⁴ Independent Consultation and Investigation Mechanism. Compliance Review Report of loan 2266/OC-PN "Pando-Monte Lirio Hydroelectric Power Plant Project." Revised version. September 2012 (IDB document MI-12-8; PR-3502-10 28).

- 6.15 In the panel's other completed case, **Paraguay Highway Corridors**, the panel received the request for compliance review in December 2010 and conducted a mission in June 2011, but has not distributed a final report to the Board. The case concerns a long-standing and politically charged issue: the claim of the Ache Kuetuvy people to title to a parcel of forest land. The MICI panel's draft report faults the Bank for failing to include in the legal agreement for a roads project a requirement that the government give title to the Ache people. Confusingly, though, it also commends the Bank for its strenuous efforts over many years to help the Ache people to obtain this title. The Ache Kuetuvy were finally given title to the land in July 2012 by a newly elected national government. Did MICI's involvement contribute to this outcome? Views differ. The requesters, U.S.-based professors long associated with the Ache, declined to be interviewed by OVE, stating that MICI is totally ineffective and is designed to give the IDB the appearance of accountability when in fact there is none. Ache leaders interviewed by OVE, on the other hand, believe that they finally gained title to their land because of MICI's investigation visit. Local NGOs involved with indigenous land claims state that MICI had nothing to do with the eventual titling of the land, which resulted exclusively from national political developments.

2. Efficiency

- 6.16 The elapsed times for panel work are shown in Table 6.3. The two completed cases²⁵ took an average of 1.6 years.

Table 6.3
Elapsed times for compliance cases (calendar days)

| Case | Eligibility memo | Recommendation to conduct a compliance review | Final panel report | Total number of days | Total in years |
|--|-------------------------------------|---|--------------------|----------------------|----------------|
| <i>Rule established by MICI policy</i> | 15 business days (21 calendar days) | Not specified | Not specified | | |
| Panama -- Pando-Monte Lirio | 25 | 164 | 333 | 522 | 1.4 |
| Brazil -- Serra do Mar | 18 | 677+ | - | 695+ | 1.9+ |
| Paraguay --Highway Corridors | 21 | 146 | 504+ | 671+ | 1.8+ |
| Costa Rica -- SIEPAC | 47 | Not eligible | | 47 | 0.1 |
| Brazil -- Rodoanel I | 120 | 305+ | - | 425+ | 1.2+ |
| Mexico -- Termoelectrico | 83 | Not eligible | | 83 | 0.2 |
| Brazil -- Rodoanel II | 12+ | - | - | 12+ | 0.0+ |
| Panama -- Canal Expansion | 28 | 32+ | - | 60+ | 0.2+ |
| Average number of days | 44 | 265 | 419 | 314 | 0.9 |

- 6.17 The long elapsed times have several causes. First, the panel chair maintains control over report preparation. In the two completed cases, other panel members submitted their substantive inputs and then weeks or months passed without further progress. A further source of inefficiency is the chair's lack of command of Spanish. Finally, documents and communications are maintained in the chair's

²⁵ Excluding the ineligible cases. Paraguay Ruta 10 is counted as completed as of October 22, 2012 even though the final report had not been distributed.

personal files and e-mail account, making them unavailable to other panel members and principals. The panel has a full-time consultant researcher to search documents and perform other investigative work on cases. The panel chair considers this support insufficient, but does not draw on the services of other MICI staff, citing the need for confidentiality.

3. Impartiality

- 6.18 The panel's function is to make impartial assessments about the Bank's compliance with its own policies, and thereby improve the Bank's performance. The panel has, however, tended to ally itself with requesters and to correspond unnecessarily with some of them. In the Brazil Serra do Mar case, for example, the requester was invited to submit information that might help overcome obstacles to a compliance review, then was asked to "step back" in favor of a different group of requesters. In Brazil Rodoanel I, the panel wrote to the requester announcing a mission for which Board approval had not yet been sought in accordance with MICI policy, and has conducted further correspondence with the requester. While it is certainly appropriate for MICI to help requesters express their complaints effectively, unduly close involvement with requesters is likely to prevent panel findings from being considered even-handed and credible.

VII. COMMUNICATION

- 7.1 Communication is integral to MICI's effectiveness. If MICI is to help improve the quality of Bank operations, it needs to convince staff that its findings have value. And for MICI to make the Bank more accountable to its stakeholders, it must disseminate its findings. This chapter reviews the effectiveness of MICI's external and internal communications.

A. Public reporting on cases

- 7.2 Public reporting on cases is the main way MICI could make the Bank more accountable to its external stakeholders. As of October 22, 2012, MICI has completed and published seven²⁶ final case reports from the project ombudsperson and one from the panel. MICI's public reporting is not helping to enhance accountability because it is incomplete in five respects:

- MICI does not publish updates or progress reports on ongoing cases, and much of the website content is stale. There are seven ongoing cases for which the most recent report on the website is at least a year old. The website contains no information about the compliance case of Brazil Serra do Mar, which has been with the panel since November 2010. Incomplete and tardy disclosure may be fuelling some external observers' allegations that the panel is being thwarted from doing its work.
- As was noted in Chapter 4, MICI does not disclose or post any information about non-registered requests, thereby inviting allegations that it may be turning away valid cases.
- The website lacks a "what's new" feature to signal recent additions or changes to posted materials. To detect whether any new information has been added, the reader is obliged to go into each individual case and review the items posted.
- In some cases, such as Panama Canal Expansion (consultation phase) there have been long gaps between MICI's preparation of a report and its disclosure on the website. The existence of undisclosed final reports creates reputational risk by allowing critics to allege that MICI findings are being withheld.
- Eight consultation phase reports on the website appear to have been antedated, since they are dated more than a month earlier than the date the report was circulated internally.

- 7.3 Issues concerning the disclosure of information have delayed publication of some MICI reports. MICI is subject to the Bank's Access to Information policy, which precludes the disclosure of information about the Bank's own internal deliberative processes, information provided in confidence, and intellectual property and

²⁶ Brazil Rodoanel II, Panama Pando-Monte Lirio, Brazil PROMABEN, Argentina PROSAP, Costa Rica SIEPAC, Argentina Agrochemicals, Paraguay Vegetable Sponge. On October 24, 2012, the compliance phase final report for Panama Pando-Monte Lirio was discussed by the Board and has since been posted on the MICI website.

financial, business, or proprietary information. Some of MICI’s draft reports have contained information that may fall into these categories, but the principals have disagreed about who is responsible for deciding what may be published. As an independent body, MICI cannot resort to Management’s review mechanism on access to information, yet it lacks clear procedures of its own.

B. Communicating with potential requesters

- 7.4 MICI’s website is a satisfactory point of entry for would-be requesters who read English or Spanish. An internet search for “IDB complaints” leads directly to MICI’s site, which provides MICI’s contact information and includes a large button labeled “How to file a complaint with MICI.”
- 7.5 Beyond the website, MICI has not developed a strategy or plan for making project-affected people aware of its services. MICI principals have focused on establishing MICI’s presence by attending large international events. The principals’ “outreach” work has consisted mainly of attending gatherings like the Bank’s annual meetings, Rio+20 and the annual meetings of IAMs. Such untargeted activities are unlikely to reach people living in Bank project areas who might potentially need to lodge a complaint. The Bank could perhaps include information about MICI in its standard project preparation and supervision processes, but MICI has not explored such measures.
- 7.6 MICI makes most of its key documents available in English and Spanish, though some are still under translation into Spanish. A few documents are available in Portuguese and none in French.

C. Communication within the Bank

- 7.7 MICI has made little effort to inform Bank staff about its purpose and working methods. During the two years between September 2010 and August 2012, it conducted 13 briefings for staff groups (see Table 7.1) but has not prepared a systematic program for explaining its work to staff. To explain this lacuna, the MICI principals cite their disagreements about the content of presentations and who should make them. MICI has also not prepared materials about lessons and issues arising from requests and cases, perhaps because it has completed few cases.

Table 7.1
MICI presentations to IDB staff through June 2012

| | |
|---|----|
| Presentations at new staff orientation sessions | 4 |
| Video presentations to country office staff | 7 |
| Presentation to EXR staff | 1 |
| Presentation to Senior Management on consultation phase | 1 |
| Total | 13 |

- 7.8 Reflecting MICI’s modest communications effort, only about one-third of staff surveyed by OVE in September 2012 said they had heard or read about MICI in a publication or briefing. A further third had heard of it from other people and one-third said they knew nothing about MICI. Two-thirds of respondents said they do not know to what extent MICI is helping to improve Bank operations.

- 7.9 On individual requests and cases, MICI has often behaved secretively. Most staff (in both field offices and Washington) whose projects have been the subject of cases stated in interviews with OVE that MICI had not explained the nature of the complaint nor the process MICI would be following. Some staff stated that MICI had refused to show them the requester's original complaint even when the requester had not asked for anonymity. Staff in country offices stated that consultation and compliance teams gave them very little opportunity to present their perspectives on the projects. The panel chair and the project ombudsperson have stated their view that MICI's independence requires them to withhold information from staff. This is erroneous; independence requires MICI to seek information from sources in addition to Management and reach its findings without influence by Management. Project staff will inevitably dislike being the subject of a MICI request; this makes it incumbent on MICI to fully explain every request and its plans for proceeding.

VIII. CONCLUSION AND RECOMMENDATIONS

- 8.1 MDBs have recognized that independent recourse and compliance mechanisms can help improve the quality of their operations. In creating the MICI in 2010, the Board attempted to place IDB in the mainstream of current practice. This effort has failed. MICI has provided almost no meaningful recourse to individual complainants, nor has it generated any systemic lessons to help the institution improve.
- 8.2 The situation is unlikely to improve with the passage of time or with the appointment of different principals, because the root of the failure lies mainly in the MICI policy. The policy reflects ambivalence about the extent to which the Bank wants to receive complaints and learn from them, as well as confusion about the respective roles of problem-solving and compliance. Moreover, it creates a structure in which MICI cannot be held accountable for delivering results with integrity and efficiency. A new policy is needed, which must be anchored in an unambiguous commitment to creating an effective and accountable mechanism.
- 8.3 The weaknesses in MICI's policy have been exacerbated by actions of the incumbent panel chair, project ombudsperson, and executive secretary. They have conducted MICI operations without achieving timely results, with insufficient transparency, and in persistent and open disagreement among themselves. This behavior has prevented MICI from earning the trust and credibility it needs if its findings and recommendations are to be taken seriously by Bank Management and outside observers. The mechanism in its present form will not be able to overcome this handicap.
- 8.4 OVE recommends that the Board terminate the MICI pilot phase, implement a transition plan along the lines sketched in part A below, and launch a process to create an Independent Accountability Office (IAO) as described in part B. Dates in *italics* are suggested for purposes of discussion.
- A. Termination of MICI pilot phase and transition plan**
- 8.5 In response to the Board's request that this evaluation include specific recommendations, OVE recommends that the Board take the following seven steps, which should be considered as a package:
1. **Terminate the pilot phase with a decision to suspend the MICI office in its current form**, with effect from *January 31, 2013*.
 2. **Launch a policy reformulation process** to be completed by *July 31, 2013*. The new policy will establish an Independent Accountability Office (described in part B).
 3. **Prepare a communications package** by *January 31, 2013*, anchored in a public statement that the Board is strongly committed to ensuring that the Bank has a transparent, effective, and efficient recourse mechanism and accordingly is acting promptly on the lessons from the pilot period and the findings from the OVE evaluation. The communications plan could also include, for instance, "Frequently asked questions" aimed at staff and

project entities, a live question-and-answer session for staff, and a briefing for interested NGOs.

4. **Set up a Board subcommittee** *by January 15, 2013*, to manage the process, with at least three members supported by one or more expert consultants.
5. **Establish interim arrangements.** *By February 15, 2013*, recruit a senior person with Region-wide recognition to serve as interim director until *December 31, 2013, at the latest*, reporting to the Board. This person should have had no previous employment with MICI or OVE, nor with the IDB since January 2008; should be fluent in Spanish and English; and should be barred from working in any other part of the Bank for five years after this assignment ends. The interim director should have the following six duties:
 - Receive new requests; log them on the public website; transfer any that belong to other central units; and engage independent consultants to conduct fact-finding on the remainder.
 - Review the status of existing MICI cases, conduct additional fact-finding if needed, and determine how each case should be handled, with notification to the Board and disclosure on the website.
 - Engage consultants as needed to carry forward existing MICI cases.
 - Engage qualified consultants or IDB units to create a unified filing system and archive for the future IAO and organize the existing MICI records.
 - Engage qualified consultants to design, test, and launch a website that allows users to track developments in a case.
 - Develop a roster of consultants who may be engaged by the future IAO.

The interim director should be supported by administrative staff, and the Board should approve a budget for this interim period.

6. **Conduct accelerated public consultations** on a draft revised policy for the IAO, considering the options sketched in part B. The public consultations should take place on-line, in a few borrower countries, and in Washington, and be completed by *end-May 2013*. The Board should create a special committee of Directors to lead this process and should engage the services of expert consultants to assist the committee.
7. **Recruit the permanent IAO director** *by October, 2013, at the latest*.

B. Independent Accountability Office

- 8.6 The new policy should aim to create an Independent Accountability Office that has three core characteristics:
 - Clear mandate: The IAO's purpose is to improve the development effectiveness of Bank operations by identifying gaps in compliance with

policies or shortcomings in the policies themselves, and recommending remedial actions as appropriate.

- **Accessible and transparent:** Members of the public in borrowing countries can submit complaints or requests in any form or language. The complaints are recorded on a public website as soon as received, the website contains regular updates on the handling of complaints, and reports are disclosed promptly.
- **Accountable:** The office is headed by an Independent Accountability Officer selected by and reporting to the Board (like the Director of OVE). This officer has a fixed tenure, renewable once, and may engage staff and consultants under the same terms and conditions as Bank staff.

8.7 OVE suggests the following three questions be considered in the policy reformulation process :

- **Whether to include problem-solving:** All MDBs except the World Bank have established a problem-solving or ombudsperson function to hear citizens' complaints; most report to management (see Box 8.1). The IDB could either keep problem-solving within the IAO or establish it as a management function.

Box 8.1

Independence of MDBs' problem-solving units

- **European Investment Bank:** Uses the European ombudsperson, which is entirely external to the Bank.
- **EBRD:** The Project Complaint Officer reports to the Chief Compliance Officer, who heads the Compliance Office, which reports to the President.
- **ADB:** The Office of the Special Project Facilitator reports to the President.
- **African Development Bank (AfDB):** The Unit of Compliance Review and Mediation is headed by a director, who serves also as the ombudsperson and reports to the President.
- **The IFC's Compliance Advisor Ombudsperson (CAO)** reports to the President.

- **Whether to create a standing panel, customized panels, or no panel.** External panels can help assure the independence, integrity, and credibility of compliance review. A standing panel can achieve this purpose provided technical expertise is furnished by others. If panels are expected to provide technical expertise, they need to be constituted individually for each case. Box 8.2 illustrates a variety of models used by MDBs.

Box 8.2
Use of panels in compliance review mechanisms

- European Investment Bank: No standing panel. A staff Complaints Officer manages the investigation/compliance review process under the supervision of Inspector General/Complaints Mechanism. For each case, the Head of IG/CM hires independent experts as consultants to assist the Complaints Officer.
- IFC: No standing panel. The IFC's CAO appoints a panel of three independent experts as consultants at the start of each case.
- EBRD: Employs a roster of 10 experts nominated by a committee of 5 members, both internal and external to the bank.
- ADB: Employs a full-time Panel Chair and two part time Panel members on its Compliance Review Panel.
- AfDB: Employs a roster of three experts on its Compliance Review panel. They are nominated by the President and ratified by the Board.
- World Bank: Employs a full-time Panel Chair and two Panel members who work as needed.

- **Whether to establish broad or restrictive eligibility.** A policy could start from a presumption of inclusion—that is, it entertains all legitimate complaints from project-affected people or communities, and establishes limited exclusion criteria. Alternatively, it could accept only cases that meet limited and well-defined eligibility parameters.

8.8 In planning and consulting on a future policy, the Board should seek the support and inputs of Bank Management, but the final design and staffing decisions must be the Board's alone.

Management Comments

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**ICIM's RESPONSE TO THE EVALUATION OF THE
INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM**

**This document was prepared by the Executive Secretary the Project Ombudsperson and
the Panel Chairperson.**

Evaluation of the Independent Consultation and Investigation Mechanism

Response of the ICIM

Contents

- I. Response of the Executive Secretary
- II. Response of the Project Ombudsperson
- III. Response of the Compliance Review Panel

I. RESPONSE OF THE EXECUTIVE SECRETARY

Evaluation of the Independent Consultation and Investigation Mechanism Response of the Executive Secretary

I. General Considerations

- 1.1 The present section has the following objectives: (a) to document the vision of the Executive Secretary regarding the degree in which the evaluation of the Independent Consultation and Investigation Mechanism (RE-) has complied with the three purposes proposed by OVE in its Approach Paper (RE-416) and listed in Box 1; (b) to provide updates and clarifications for those elements which the report has missed or not included due the coverage period set for the evaluation and, (c) propose to the Board of Executive Directors, in a proactive fashion, a viable alternative for the improvement of the Mechanism based on the aspirations and objectives that the afore-mentioned Board determined as fundamental during the creation process of the ICIM.

Box 1

Purposes of the Evaluation of the Independent Consultation and Investigation Mechanism

1. To determine the extent to which ICIM's policy, structure and processes allow it to meet the objectives set by the shareholders;
2. To assess the extent to which implementation to date is transparent, efficient and effective; and to identify areas of strength, weakness and risk.
3. To make recommendations to Executive Directors, ICIM and IDB Management, as appropriate.

- 1.2 In terms of purpose number 1, it is the opinion of the Executive Secretary that it has been achieved and that the evaluation has correctly concluded that the present policy and structure impede the accountable, transparent, efficient and efficacious operation of the Mechanism. It must be further underscored that the present policy and structure are the fundamental triggers of the present management problem and a series of procedural distortions also reported by OVE are a manifestation of those core issues. For this reason, any strengthening plan for the Bank's accountability function will require focusing on the root of the problem, tending solely the "malady" and avoid dedicating resources in the alleviation of symptoms. This means revising the Policy and structure, attentive to maintaining the strengths, eliminating the weaknesses and making a clear assessment of the potential risks.
- 1.3 In terms of purpose number 2, the evaluation has fallen short of its scope, because even though it offers information regarding the degree in which the execution has, or has not, been transparent, efficient and effective, it neglects to make an integral analysis of areas of strength, weakness and risk. This omission makes the decision making process more complex as it offers an incomplete landscape of the operation and thrusts forward a process

of complete overhaul of the Mechanism with high risks and costs and limited probability of success.

- 1.4 In terms of purpose number 3, the transition plan proposed seems to have very limited feasibility, not only because of the peremptory deadlines it sets, but also because of the considerable financial, reputational and success risks it entails. Unfortunately the report does not take into consideration these elements and therefore does not achieve purpose number 3 of the approach paper, i.e. of truly formulating a viable recommendation that will strengthen the accountability and effectiveness of the Bank.

II. Strengthening of the Mechanism: A proposal for moving forward

- 2.1 The reform process from which the new Mechanism originated was based on the experience and lessons learned from the prior Independent Investigation Mechanism (IIM) and sought to achieve the following objectives:

- To reinforce the Mechanism through the addition of a Consultation Phase to address the concerns of an affected party; avoid the costs and inconvenience of an in-depth investigation by a Panel, and strengthen the Bank's capacity of achieving its development outcomes.
- To strengthen the Mechanism's independence from the Bank Operational Units by reporting directly to the Board of Executive Directors, and establishing an office outside the Bank Secretariat.
- To use the Mechanism as an instrument of last resort, not meant to replace the responsibilities of project management or problem solving that the Operational Units have.
- To promote the efficiency of the Mechanism, by avoiding unpredictable deadlines, delays in Request processing, and unreasonably complex processes

- 2.2 These four objectives, as shown by the evaluation, have only been partially achieved, with outstanding opportunities to achieve them in full by retaking the original route map and profiting from the findings of the evaluation, the audit and lessons learned during the past 26 months of operation of the ICIM pilot phase.

- 2.3 The Executive Secretary and the Secretariat maintain their full commitment to the Mechanism and its transformation into a useful tool for the Board and as a generator of value to Bank operations in terms of improving its effectiveness. Our aim is, and has always been, to achieve the institutionalization of the ICIM under an efficient, effective, transparent and accountable scheme.

A. A few actions implemented to date that address the OVE recommendations

- 2.4 Several of the findings reported by the evaluation had already been identified internally and the Secretariat was in the process of developing, improving and implementing diverse components to improve the procedural framework of the ICIM. The evaluation coverage period has limited the reporting of these actions and their results, so they are listed here. They are particularly relevant as the action plan recommended by OVE is proposing them as actions to be initiated and implemented during a transition period which is in our consideration unnecessary and inefficient.
- 2.5 **Case filing system.** In 2011, a protocol was developed and implemented for the filing of cases in line with Bank Policies, designating co-responsibilities by stage within the request and case management structure. Given that before the arrival of the present Executive Secretary, no systematic filing process was followed, it became necessary to create paper and electronic (IDBDOCS) files for cases already in the portfolio and at the same time applying the protocol systematically to all incoming cases. In addition, it was decided that a tailored version of the case management system acquired by the Office of Institutional Integrity would be adopted given that the high investment cost of acquiring a system for the sole use of our office was not justified on the basis of the volume of cases (19 en 26 months) registered to date and the trends reported by other peer Accountability Mechanisms. The management system will make it easier to follow-up cases and its filing, but it is important to highlight that any system, be it manual or electronic, requires the acceptance by ICIM officials of the responsibility for feeding it and the elimination of proprietary behavior as all ICIM documents are Bank property. As part of the process of unification and compliance with the Audit recommendations, the implementation plan proposed by the ICIM includes actions for the inclusion of missing documentation in the case files within a reasonable deadline and for those members requiring it, training on the Bank's records system (IDBDOCS) is being provided.
- 2.6 **Web Site and Public Registry.** During the first semester of 2012, work was undertaken for the identification of the web site shortcomings, user needs and best practices of other Mechanism. With that information, an "identification of needs" document was produced in collaboration with EXR. After receiving proposals from different firms, a firm has been hired with the task of redesigning the web site so as to facilitate access and reduce the time spent searching for information. Simultaneously, new contents have been generated under the technical advice of EXR and translated to the four official Bank languages. By the end of the first quarter of 2013, there will be a revamped public registry that will allow users to follow up on cases at a glance. Once again, in this area, it is important to highlight that once the tool is in place, the joint challenge of the unit is to ensure that public registry and web site contents are updated periodically, a task that requires the collaboration of all officials responsible for the management of cases.
- 2.7 **Outreach and Training.** As regards communication with the Bank, in collaboration with KNL, a series of interviews with selected project leaders have taken place to determine the type of ICIM information that they require and the best way to present it, so as to produce an effective dissemination strategy for the Bank to get to know the ICIM. The results of these interviews coincide in the need to make processes more transparent and ensure that they are systematically applied, avoiding discretionary decisions and maintaining a

balanced approach. Once again the success of this initiative resides on teamwork as well as on having public procedural guidelines that reduce discretionary actions and that provide procedural certainty.

- 2.8 As part of the clarification of processes, an intake protocol has been produced that seeks to provide certainty and clarity of how Requests are handled during the intake stage and therefore reduce discretionary management. In these matters, it is important to highlight the quality of annex 3 of the OVE report that includes specific executable recommendations to improve the intake of Requests. Such recommendations are being incorporated to the Intake protocol and the final output will be distributed to relevant audiences at the beginning of 2013.
- 2.9 As regards Outreach for external audiences, the definition of actions that effectively reach those populations that are most vulnerable and that can potentially be affected by Bank operations is still pending. This challenge is not unique to the ICIM and constitutes one of the main items of discussion among Accountability Mechanisms in operation.
- 2.10 These actions, among others, constitute the strengths from which a reconstruction of the ICIM can be undertaken. They cover almost all the tasks that OVE proposes to be undertaken during the transition period as part of the responsibilities of an official to be hired on temporary basis. I do not miss the opportunity to comment that in the Executive Secretary's opinion, these actions have taken more time than would be desirable due to the adverse structural conditions. However, in spite of these adverse conditions, we have moved forward and said actions have been enriched by the experience gained. In the name of efficiency and logic, I would respectfully suggest using these products and work on their improvement as opposed to directing funds to the creation of similar products as proposed by the OVE recommendations.

B. A proposal to move forward

- 2.11 Moving forward, the findings of the evaluation coincide in several issues with an "efficiency identification" analysis that the Executive Secretary produced a few months ago and that was shared with OVE and AUG. In said document, an analysis is made of the main inefficiency generating areas, elaborating on the underlying reasons, establishing comparisons with other Accountability Mechanisms and making specific proposals for adjustment. The three core areas identified are: (a) Reporting and Accountability; (b) Mechanism Activation Process and (c) Determination of Deadlines. It is the opinion of the Executive Secretary that adjustments made in these three areas will promote the strengthening of the Mechanism under an efficiency, efficacy, transparency and accountability approach. In the case of other observed anomalies within the process, these could be solved as a result of the adjustments made on the core areas. The efficiency analysis, plus the implementation plan for the Audit recommendations, are core inputs for the strengthening process and are available for reading should the Executive Directors request them.
- 2.12 The Executive Secretary has no doubts regarding the feasibility of successfully restructuring the Mechanism ensuring its strengthening as regards transparency and credibility at the same time that effective controls are introduced to address the efficiency

and accountability principles. In contrast to the OVE proposal of getting rid of everything linked with the ICIM operation during its pilot phase, the Executive Secretary proposes the following plan of action which takes advantage of installed capacity, identified strengths and knowledge gained. It also reduces the risk of paralysis linked to the recruitment of temporary staff with no knowledge of the Bank and its processes.

First quarter: Revise and adjust the ICIM policy. This revision would be done by a working group (composition to be decided by the Board) and the Executive Secretary would be charged with the responsibility of reflecting the decisions of said group in the policy reformulation. For this exercise, use would be made of an external consultant with ample experience in Accountability Mechanisms, as well as of the AUG and OVE outputs, the Audit recommendations implementation plan outputs and the efficiency analysis. The experience obtained during the implementation of the current policy would serve to assess the implications of the new formulation on the daily operation in terms of efficiency, efficacy, transparency and accountability.

Second quarter: Undertake public consultations while the Executive Secretary assumes the responsibility of producing/adjusting guidelines and manuals to ensure that when the revised policy comes into effect, the Mechanism will have in place precise definitions of scope as well as clear and predictable processes known by all relevant stakeholders, both internal and external. During this period, definition of terms of reference would be initiated for the recruitment of the required officials in line with the adjustments made to the Policy and that would establish clearly the roles of those officials in relation to the normative framework of the Bank and the related scheme for reporting and evaluation of performance.

Third quarter: Approval of the final version of the revised Policy and its dissemination in conjunction with the related guidelines. The recruitment process for the new officials would be initiated in line with the revised Policy.

Fourth quarter: Final selection of officials to initiate functions during the first quarter of 2014.

- 2.13 In parallel to this process, management of cases in the portfolio would continue under the supervision of the Executive Secretary and who would be responsible of informing the Board periodically of the status of each one of the cases. Case management would be refocused towards a results-based approach and aimed at maintaining the credibility of the Bank.
- 2.14 Given that one of the main current anomalies is the absence of accountability by the ICIM officials, it is proposed that once that the Board approves an action plan, a performance evaluation scheme would be set up including process and achievement indicators within the time framework needed for the execution of said action plan. This would give way to a clarification of responsibilities and expected results of individuals and would ensure accountability from the outset mitigating the risk of non-performance.

II. RESPONSE OF THE PROJECT OMBUDSPERSON

Response from the Project Ombudsperson

1. Overall, the Ombudsperson commends OVE for having gathered data from different stakeholders and sources and to have produced this evaluation in a short period of time. This response will be divided in three sections, as follows.

SECTION A. Evaluation context and approach, considering that ICIM is not a standard Bank unit and is still in its building-up/pilot phase

2. The evaluation of the ICIM was already foreseen in its Policy¹ as a mandatory step right at the end of its pilot phase (September 2012). OVE's Approach Paper for this evaluation was approved by the Board in July 2012 and a first draft evaluation report was available at the end of November 2012. The Approach Paper centered its proposed "formative evaluation"² on: (a) the ICIM Policy, structure and processes; (b) implementation to date; (c) strengths, weaknesses and risks; and (d) recommendations to Executive Directors, ICIM and IDB Management. This exercise also proposed to answer fundamental questions such as "to what extent [...] ICIM's policy, structure and operations [are] appropriate and effective for meeting its objectives of increasing the transparency, accountability and effectiveness of Bank operations" and the "extent to which ICIM's investigations and consultations are free of influence from the Bank's Executive Board and Management".³ In the following sections the Project Ombudsperson ("Ombudsperson") argues that the methodology applied by OVE in this Evaluation and its end result constitute a departure from the Approach Paper in particular regarding the assessment of the following important aspects: (a) ICIM's strengths, weaknesses and risks; (b) regulatory and procedural analysis; (c) ICIM organizational, operational and support structures; (d) the Bank's operational response; and (e) the extent to which investigations and consultations are free from undue internal influences.

3. Given the tight schedule followed in this evaluation, OVE could not possibly review whatever outcomes and impacts have been achieved so far. Instead, OVE applied an approach appropriate for a mature, long-standing Bank unit. While OVE's Evaluation Report ("OER" or "Report") recognizes at a few points that the Mechanism is in a start-up phase, this is not taken into account in the overall presentation of issue; in the assessment of efficiency and results, nor actually, in the conclusions.

4. The OER did not consider that, as any new unit in its initial phase, the Mechanism demanded many basic activities during its first years. This is important for the overall report, and especially regarding the assessment of efficiency and efficacy, the policy and guidelines analyses; and the rationale for the conclusions and recommendations.

5. In September 2010, the ICIM had no staff other than the then Executive Secretary (ES), the newly recruited Ombudsperson and one administrative assistant. In those first months, the Ombudsperson had to work on the 4 (four) existing legacy requests and 4 (four) new requests that were submitted to the Mechanism by the end of 2010. In parallel, the Ombudsperson had to

¹ IDB, *Policy Establishing the Independent Consultation and Investigation Mechanism*, 17 February 2010, Paragraph 99: "Review of the Mechanism Policy. Two (2) years after the effective date of the Mechanism, the Board shall request an *independent* evaluation of the Mechanism. On the basis of such evaluation, and any comments thereon from Management, the Board will assess the experience with the Mechanism."

² According to OVE, "a formative evaluation reviews how an ongoing initiative is being implemented with a view to improving it." IDB, Office of Evaluation and Oversight (OVE), *Approach Paper – Evaluation of the Independent Consultation and Investigation Mechanism*, July 2012, Paragraph 3.1.

³ *Id.*, Paragraphs 4.1 and 4.6.

recruit personnel, establish routines, develop guidelines, and disseminate the Mechanism's existence and mandate across the Bank. She also acted temporally as the ES.

6. The OER includes some assertions of what seems to be a very superficial policy analysis, focusing on four aspects: a) the lack of mission statement; b) the lack of articulation as to how Management is expected to address project-related complaints; c) complicated procedural and eligibility criteria; and d) relations between consultation and compliance review phases.

7. In each of them, the OER offers very little analysis and mainly negative highlights. Neither consideration nor credit was given to the process that led to the Policy and its strengths, which actually have been recognized as positive innovations by our peers. Also absent from OVE's analysis are the ICIM Policy Implementation Guidelines ("ICIM Guidelines") which provide a consistent framework for the day-to-day work of the Mechanism and the application of its Policy.⁴

8. Given that at the core of OVE's findings is the "failure of the Policy", one would have expected a more thorough assessment, as proposed in the Approach Paper. The elements given in the OER are too scarce for the Bank to embark (again) on a reformulation process without the necessary clarity as to what worked, what did not and why. This is beyond and above the organizational issues that are more easily resolvable.

9. Therefore, it is not evident how the conclusions, and in particular, the recommendations of the OER follow its findings. It is not clear, for instance, how from these findings – and without further analysis – the OER recommends ending the pilot phase and suspending operations, instead of extending it with improvements and corrections.

SECTION B. OER's inconsistencies and misinterpretations regarding the Consultation Phase

10. In this section, the Ombudsperson evidently focuses on the Consultation Phase (CP) and leaves comments on other responsibilities to colleagues in the area of their respective competencies. However, Annex D provides some views on the intake process, since it affects all other operational activity in ICIM. Below, we discuss some of the OER's fundamental inconsistencies. More detailed information, including numbers and dates, is provided in Annexes A, B and C.

B.1 Acceptance of requests

a) Sharing and disclosure of original requests

11. The OER claims that the Ombudsperson has "insisted that incoming requests not be disclosed, in case doing so would reveal some that are vaguely or poorly expressed."⁵ As recognized in the OER, eligibility and exclusion criteria are quite complex. Requesters often have doubts about what to present in their complaints and what belongs to the Bank's sphere of intervention. Sometimes, they do not know how to express in writing or frame their legitimate concerns. Most requesters better explain the issues of their complaints verbally and/or by answering the questions posed by either the ES, the Ombudsperson or the Panel, as applicable.

⁴ ICIM, *ICIM Policy Implementation Guidelines*, February 2012. These Guidelines were submitted to the Board (OHRA Committee) in February 2012. Some Executive Directors requested clarifications and made suggestions to the ICIM in this regard. The ICIM Principals have worked on some adjustments and, in parallel, have applied the Guidelines' provisions taking into Board's suggestions.

⁵ IDB, Office of Evaluation and Oversight (OVE), *Evaluation of the Independent Consultation and Investigation Mechanism*, December 2012, Paragraph 5.7.

Thus, after some explanations about the ICIM mandate, requesters often adjust or complement their original request – a practice completely in line with the ICIM Policy.

12. For this reason and with regards to the CP, the Ombudsperson has insisted that: (a) complainants have a safe space to voice their concerns; and (b) project teams and executing agencies should not take advantage of the poor language used in a request or the requesters' lack of information about a particular issue or Bank policy to delegitimize and disregard the complaint. Any inference beyond this scope is misleading. The Ombudsperson has always advocated for an adequate and fully accessible public registry. At the beginning of the pilot phase, ICIM indeed had an internal discussion on whether or not all requests should be shared from the CP to the Compliance Review Phase. At that time, we analyzed whether, given the phase sequence established in the ICIM Policy, it would be advisable to share the new requests with the Panel before ending the CP process, and how to proceed when Paragraph 41 of the ICIM Policy allows the requester to change, complete or correct its complaint to avoid the risk of being declared ineligible. After these internal discussions, ICIM's current practice is to share all original requests and upload relevant requests in the public registry. All of this is well reflected in Paragraph 4.14 of the ICIM Guidelines.

b) Alleged molding of requests

13. In Paragraph 5.7, the OER concludes without a thorough Policy analysis that ICIM helps requesters mold their complaints. This shows that OVE failed to analyze the provisions of the aforementioned Paragraph 41 of the ICIM Policy, and other aspects of the Ombudsperson's mandate such as: (a) her obligation to the parties to clarify the ICIM and CP's mandate, including eligibility and exclusion criteria; and (b) her prerogative to determine the nature and extent of the assessment. Within this framework, the CP team's standard practice is to communicate with requesters before determining the request eligible or not for the CP, in order to better understand their concerns and clarify their doubts. This was no different for the Panama Canal or Serra do Mar cases. In the former, the original request submitted to the ICIM was mostly identical to those complaints filed before three other Independent Accountability Mechanisms (IAMs). However, the Requesters received new relevant information from Management and the Executing Agency during the 90-day period granted by the Ombudsperson. At the end of such period, the Requesters complemented and clarified the original complaint. After the Eligibility, the Ombudsperson talked with the Requesters and IDB's project team to explain the reduced scope of eligibility determination and the resulting nature of the assessment for this case,⁶ in line with Paragraphs 42 and 43 of the ICIM Policy.⁷

c) Eligibility determinations

14. As any new regulatory instrument, the ICIM Policy needs to be interpreted and applied in a comprehensive and holistic manner – and not only based on its literal text. Unfortunately, OVE

⁶ Through the IDB's Project Team, the Ombudsperson also proposed to hold a joint videoconference with the Executing Agency. This, however, never materialized because the latter never indicated a prospective date and time for such event. See: E-mails from IDB's Project Team to the CP team dated 21, 22, and 29 February 2012, and 8, 9 and 15 March 2012.

⁷ ICIM Policy, *supra* footnote 1, Paragraph 42. "Assessment. [...] The purpose of the assessment is to clarify the issues and concerns raised by the Request, identify and gather information from stakeholders, including potentially other parties similarly situated to the Requester, inquire as to the views and incentives of all stakeholders, and help determine whether a resolution to the issues raised can be reached and what is the best process for doing so [...];" and Paragraph 43. "Nature of assessment. The nature and extent of the assessment will be determined by the Project Ombudsperson, based on the issues raised by the Requester. [...]."

did not follow this notion throughout its assessment and claims that the Ombudsperson found 5 cases eligible that should have been ineligible.

15. The Eligibility Determination is a 15-day *prima facie* analysis by the Ombudsperson. This procedure is not meant to block requests, but to exercise measured scrutiny against the numerous and complicated eligibility and exclusion criteria set forth in the ICIM Policy. In case of doubt, the spirit of the ICIM Policy shall prevail: a) the requesters with legitimate concerns shall have access to an effective recourse, and b) the Bank and/or the Borrower shall have an opportunity to address the alleged issues and to improve the operation. Additional information and further analysis about the validity, legitimacy and/or levels of impact of such requests is gathered and examined during the Assessment stage.

16. Accordingly, to determine if Paragraph 37(i) of the ICIM Policy⁸ applies to a request, the Ombudsperson has interpreted the Policy by its intent and not solely by its letter. The Policy not only aims at preventing that ICIM's actions interfere with domestic ongoing disputes – and vice versa, but also at providing affected communities with effective and rapid access to the Mechanism. In her eligibility determinations, the Ombudsperson has tried to balance both objectives, ensuring that requesters are not unfairly or unduly prevented from a “meaningful recourse.” This requires flexibility because each case presents a differentiated challenge. After thorough internal discussions, this clause was interpreted in the ICIM Guidelines (Paragraph 4.25). Therefore, the Ombudsperson has consistently examined whether: a) the pending dispute and the request submitted to the Mechanism have identical objectives, issues, and parties performing similar roles; b) the Ombudsperson would actually interfere with the pending dispute; and (c) the pending dispute is active or not.

17. The Approach Paper states that OVE would examine to what extent “the basis for each action or decision [is] spelled out and grounded in Bank policy and the evidence gathered”.⁹ Unfortunately, the evaluation's scope was not limited to examining whether the Ombudsperson justified its decisions by the evidence gathered and by the ICIM Policy. OVE went far beyond this scope to question the Ombudsperson's interpretations of the Policy and her adherence to the Guidelines, without offering insights as to why OVE's interpretations would be the correct ones. Moreover, the OER's conclusions do not seem to emanate from a thorough case review, as demonstrated in the analysis of the eligibility determination of each of the observed cases in Annex A.

B.2 Handling of Cases

a) Efficiency

18. The Ombudsperson appreciates the discussion regarding efficiency in the CP. This includes the comparison with solution-seeking services in other IAMs and the correct statement that complex cases have taken up to four years in other mechanisms. Notwithstanding, OER observations are not sufficient for this type of assessment.

19. The OER did not clarify that the elapsed time for the eligibility determinations was also a result of the application of articles 40(h), 41, and 91 of the ICIM Policy.¹⁰ It neither explained

⁸ ICIM Policy, *supra* footnote 1, Paragraph 37(i). “Exclusions. Neither the Consultation Phase nor the Compliance Review Phase will be applied to: [...] i. Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies.”

⁹ OVE Approach Paper, *supra* footnote 2, Annex I, Item 3. Transparency.

¹⁰ ICIM Policy, *supra* footnote 1, Paragraph 40(h). “[T]he Project Ombudsperson shall consult with Management as to its response and if Management is involved in addressing the concerns raised, the Project Ombudsperson shall

the need to obtain relevant information to analyze the “numerous and heterogeneous” eligibility criteria. Excluding the time period granted to Management as per article 40(h); the days when the CP team was waiting for information from the parties or the Bank; and/or the extension period requested by one of the parties, the Ombudsperson took an average of **17** (seventeen) business days – not 39 as stated by OVE¹¹ – to determine the eligibility of requests, and this should be measured against the 15 (fifteen) business days stipulated in Paragraph 39 of the ICIM Policy.

20. The Ombudsperson’s responsibility of time used in eligibility determinations starts when she receives the request and ends when she submits the (in)eligibility memorandum to the Executive Secretary, who notifies the Parties as per ICIM Policy and Guidelines. This rationale also applies to other reports. Hence, the Ombudsperson is not responsible for time lapses between the submission of the reports and actual notifications to the parties. For detailed clarifications on the elapsed time per stage and per case, please see Annex B.

21. On the other hand, the OER builds a case for inefficiencies from an extremely narrow perspective, which solely looks at the number of days used to process a case. This approach encounters, at least, two methodological and analytical challenges posed by the nature of this type of processes and by the ICIM Policy itself. First, the intent of the CP is to address parties’ concerns and to do so in a flexible manner. The solution-seeking process is not time-bound and its pace cannot be solely controlled by the Ombudsperson, because the solution is provided by – and depends on – the parties. Second, the OER does not indicate the parameters against which the efficiency of the CP could and should have been measured. Third, efforts need to be matched with commensurate resources and adequate support structures. The OER offers very little information about resources and no analysis about *how and if* the current structure is conducive for achieving greater efficiencies. According to OVE’s recommendations, it could be asserted that the structure was, at the very least, not appropriate.

22. ***Financial and human resources availability.*** Solution-seeking is a labor and resource intensive process and, as such, needs to be adequately resourced. The OER offers very little information in this regard. Solution-seeking functions in other IAMs are carried out by larger and more experienced teams. The CP team has not had more than two research fellows (junior staff) working as case officers at a given time, and their experience is not (yet) comparable with a team of senior Ombudsman specialists. Also, the Ombudsperson has to supervise the performance and products of the whole team and to personally convene and moderate each and all dialogue sessions. Accordingly, the OER should have noted that one senior Ombudsperson (with one to two junior staff) has dealt with 19 requests/cases; issued 19 eligibility memoranda, 18 assessment and/or closing reports; and has brought 5 cases to agreements (Annex C).

23. Considering such staff limitations, the inordinate amount of work at start-up and the time needed to establish the Mechanism’s structure and procedures, one would assume that the OER would conclude that **the ICIM CP function has been operating at a high level of efficiency.** In fact, had this evaluation included an efficiency analysis *vis a vis* existing constraints for this function – as expected from the Approach Paper –, it would have provided guidance for future

allow forty-five (45) calendar days from the date of acknowledgment by the Executive Secretary of the Request before it is registered pursuant to Section 39;” Paragraph 41. “Requests ineligible for the Consultation Phase. Prior to making a determination of ineligibility, the Project Ombudsperson shall provide a Requester reasonable opportunity to complete or correct a Request [...]” and Paragraph 91 “Time periods. Any time period referred to in this Policy may be extended by the Project Ombudsperson or Panel Chairperson, as appropriate, for as long as is strictly necessary to ensure the full and proper processing of Requests [...]”

¹¹ OVE Report, *supra* footnote 5, Paragraph 5.10.

operations of this or any other similar problem-solving function in IDB. In this regard, it is not evident how the Report concludes, for example, that an average of **0.7 year** was too long for handling a case.¹² Given the infancy of the ICIM, the benchmark could only come from comparators, which demonstrates that such average timeframe is more than reasonable.¹³ Most IAMs would agree that any efficiency analysis should be done on a case by case basis and, for solution-seeking functions.

24. **Cost-benefit analysis.** Neither the OER's efficiency assessment, nor its overall evaluation offer to the Board or to the Bank a sense as to whether it is worth it to continue investing in a solution-seeking function, and whether it is cost-effective and reasonable in operational, financial and reputational terms. The absence of such analysis may be explained by the short life of the CP or the fact that this evaluation in its current form was way too early for this type of function.

25. Further, there is no indication as to how the CP's efficiency and efficacy have performed by accounting for the cost savings of operations that have been expedited or reactivated as a result of the CP's activities, with operational and financial benefits for projects and escalation risk management. Neither does OVE offer any discussion about how in some cases, projects have improved key design or implementation aspects as a result of the CP process for this matter. On the benefit side, the OER presents very thin feedback to justify its assertion that results of closed CP cases have been "modest".¹⁴ There is no data on how closing these cases might have helped the parties, the Bank, the concerned executing agency, their reputation, and/or the project overall.

b) Efficacy, Planning and Results

26. The OER attempts to measure the CP efficacy against ended cases and/or agreements reached. This is inadequate on both accounts. As already clarified by the CP team, when a case is closed, an agreement could be the immediate result of a dialogue process, but it is not the only one. The effectiveness of any consultation **process** should mainly be analyzed from the **process** perspective and not necessarily (and certainly not always) from the end result exclusively. As noted, even in those cases such as Brazil Habitar, where there is no end result as of yet, the gains and outputs achieved during the process thus far make this CP a very effective one. In the Argentina Entre Rios case, both the end result and the process are full of examples of how this process contributed to important achievements and results. With regards to agreements, the efficacy of such settlements is usually measured from two perspectives and at two different points in time: (i) whether it has served the purpose of the CP and has addressed the issues raised (short- term); and (ii) whether it is being implemented satisfactorily (usually in the mid to long-term). The OER overlooks both.

27. Although there are "inherent uncertainties" in solution-seeking processes, OVE asserts that "ICIM Principals have conducted ICIM operations without a commitment to achieving timely results"¹⁵. During this ICIM start-up phase, it was not yet possible to establish a consistent fully developed planning framework. The CP has developed a number of tools and elements of such framework and expects to gather initial medium-term data at the end of this year to

¹² OVE Report, *supra* footnote 5, Paragraphs 6.6 and 6.7.

¹³ For instance, the CAO/IFC's closed cases took an average of 2.7 years; those transferred to the Compliance Review phase accounted for 0.8 year and open cases for 1.01 year. See: Office of Compliance Advisor Ombudsman (CAO), *Annual Report 2012*, Summary of CAO Cases, FY2012, Trends and Themes in 2012 Cases, Pages 32- 67.

¹⁴ OVE Report, *supra* footnote 5, Paragraph 6.4.

¹⁵ *Id.*, Paragraph 8.3.

undertake a more structured planning framework. We had hoped that the OER would assist us by providing the analysis for setting up a baseline and some efficiency indicators.

28. The OER states that the Ombudsperson “has kept several cases open even when further progress is unlikely”.¹⁶ In this regard, the very nature of dynamic and multi-stakeholder solution-seeking processes does not lend itself to more rigid traditional planning methods. Neither does it lend itself to inaction and stranded processes. The parties themselves are the first ones to opt out when “progress is unlikely”, which is not under the control of the CP team. Consultations by definition are uncertain and take a long time and the CP, as any solution-seeking function, shall make all efforts to give the parties the opportunity to address and resolve their concerns. However, such process is not a one person credit or responsibility. **Results, in those terms, are the product of efforts made by teams** from the Bank, executing agencies, governments, requesters and other stakeholders. Thus, neither the Ombudsperson’s commitment to results, nor the integrity and responsibility with which this important function has been performed by the CP team can be questioned in light of “modest” results achieved thus far.

c) Impartiality and Independence

29. According to OVE’s Approach Paper, the evaluation had to examine to what extent ICIM’s Policy, structure and operations are “appropriate and effective for meeting its objectives of increasing transparency, accountability and effectiveness of the Bank’s operations.”¹⁷ This question would be analyzed based on the criteria listed in the Approach Paper.¹⁸ None of them referred to the *impartiality issue*. As a consequence, OVE did not provide the Ombudsperson with an opportunity to comment on the principle of impartiality and its particular features when applied to the CP process. Notwithstanding, the OER surprisingly presented a whole section on *impartiality* in the context of CP cases and, based on its own understanding of “impartiality”, claimed that the CP team has been partial with respect to requesters.¹⁹

30. The ICIM Policy does not explicitly refer to the principle of impartiality. However, a comprehensive interpretation of such instrument reveals its intent with regards to such principle, its links to the principle of independence, and the nature of the Ombudsperson’s role. As per the Policy, *impartiality* does not require the Ombudsperson to be passive; rather, such principle entails the obligation of the Ombudsperson to act in order to balance the relation between the parties and provide them equal opportunities and conditions – both formally and substantively – to engage in a meaningful solution-seeking process. This understanding is supported by vast literature and by several paragraphs of the Policy.²⁰ For instance, as per Paragraph 41, prior to declaring the request ineligible, the Ombudsperson shall provide the requesters with an opportunity to complete and correct the complaint. Such a provision, which clearly benefits the requesters, would have never been part of a norm that applies an *impartiality* principle so restrictive that it is contrary to the essence of the Ombudsman role. Accordingly, the Ombudsperson shall consider that the requesters usually have disproportionate and unequal access to information and resources in comparison to executing agencies and IDB’s Management. Thus, the Ombudsperson treats all parties evenhandedly and transparently, but makes sure that all parties have equal access to project-related information and that the playing

¹⁶ *Id.*, Paragraph 6.8

¹⁷ OVE, Approach Paper, *supra* footnote 2, Paragraph 4.1.

¹⁸ Such criteria are: i) policy coherence, ii) organizational effectiveness and efficiency, iii) transparency; iv) independence; v) accessibility and awareness, and vi) results and consequences. *Id.*, Paragraphs 4.1-4.8.

¹⁹ OVE Report, *supra* footnote 5, Paragraphs 6.9-6.12.

²⁰ For instance, Paragraphs 38, 41, 42, 46 and 50 of the ICIM Policy.

field is adequately leveled during the process. By these actions, instead of taking sides, the Ombudsperson is actually advocating for a fair and equitable process.

31. Hence, it seems that OVE is confusing inherent features of an Ombudsman function with erratically biased behavior. As a result of this misunderstanding, the OER presents examples of the CP team's actions, citing interviews and considerations by some country offices and some government officials, and concluded that those actions were inconsistent with impartiality. Just as OVE, MICI is functionally independent from Management and the Board. Its principals report to the Board and abide by all IDB policies, but in performing their duties, independence is paramount. Independence is assured not only by whom we report to, but also by being free of undue influence and by having the necessary resources and a say in deciding what is best for the relevant phase.

32. As part of an accountability mechanism, the CP team has and is mandated to take requesters *seriously*. Instead of legitimizing opposition and protest, the CP process seeks to rebuild the communication channels and trust among the parties. Some executing agencies or project teams might have felt that the Ombudsperson did too much for the requesters at the beginning of a given CP process. Nevertheless, most of them have come to realize the importance of such actions since, in most cases, providing information has (a) clarified a number of myths that were at the roots of the problem; and (b) and requesters now feel that IDB offers them a trustful, independent, fair and safe space to address their concerns. For example, in the Bolivia Rurrenabaque case, the social conflict culminated in civil unrest, violence and hostages in December 2010. As a result of the CP process, the Parties signed a Process Agreement in June 2012 and, since then, no protest against the project happened in the region. Without an independent, impartial, credible, transparent and fair process accepted by all parties this would have never happened. There are other factors that may impair or undermine the CP's credibility on the ground, but those are outside the Ombudsperson's control and lay mainly on how the Bank and the main stakeholders choose to engage or not in a solution-seeking process.

33. Similarly, the OER incorrectly states that "[t]he handling of the Panama Canal Expansion case raises [...] concerns about impartiality".²¹ Firstly, it should be clarified that there is no need to frame a request after it is declared eligible for the CP. Secondly, as per Paragraphs 42 and 43 of the ICIM Policy, the Ombudsperson does discuss with the parties extensively in order to decide how to determine the assessment's nature and extent. Thus, after declaring the eligibility of the Panama Canal request, the CP team contacted the Requesters and Project Team to explain how the Assessment would be framed in this specific case. Finally, the Ombudsperson, as any ICIM Principal, has the obligation to clarify the procedures that follow its decisions, especially if requesters have doubts about the consequences of the CP final report. As in any other case, the Ombudsperson limited her explanations to the contents and consequences of the closing report and recommended the Requesters to contact the Executive Secretary for any further questions or requests.

SECTION C. OVE's Evaluation Report conclusions and recommendations

C.1 ICIM's pilot, a failure?

34. The Board's attempt to set up an advanced accountability mechanism in IDB has not failed. In fact, had OVE assessed the operational response and the institutional mainstreaming of the Mechanism's influence on Bank operations so far – including the Board's response –, OVE's conclusions would have been more positive, forward looking, and balanced. It is evident that

²¹ OVE Report, *supra* footnote 5, Paragraph 6.11.

there are structural issues that need to be addressed and improved, in particular the ICIM's structure and some of its procedures. However, it is not clear from the findings of the evaluation how OVE arrived at its severe conclusions. There are currently five active ongoing dialogue processes related to very complex cases. None of them would have been possible if individuals and communities believed that the ICIM provides no "meaningful recourse" to address their concerns, or if the Mechanism had not earned some trust and credibility.

35. Blaming all the ICIM challenges on the Policy – which is the very same instrument used to evaluate efficiency, efficacy and performance – does not seem very sound or logical. Throughout the ICIM pilot phase it has become very clear that at issue is not solely the Policy itself but several other factors including: a) divergent **interpretations** of the ICIM Policy since its inception; b) the confusion created with the approval of inconsistent Terms of Reference after the Policy; c) differences in how the various constituencies inside the Bank (and the Mechanism) interpret the Policy and/or questioned its provisions; and d) the tendency to micro-manage the mechanism and its functions.

36. Not having systematized lessons thus far is an important handicap, but it should not be a reason to start it all over. Regarding the CP, it is worth noting that a modest effort to generate lessons has been made. Its results were presented to both, the Board and Management in two separate technical briefings. Much more needs to be done, it is true. At this moment, however, lessons learnt from the CP have been directly fed back into the project, and we made every effort to retrofit those operations to the extent feasible.

C2. Terminate ICIM's pilot phase?

37. The OER states that the Board requested OVE to present a concrete proposal. It seems that the evaluation team took a shortcut in order to get to only one "concrete" proposal rather than (i) providing lessons learnt, (ii) analyzing the pros and cons of alternative courses of action, and (iii) contributing with a well thought-out menu of options as to what and how to reformulate in the policy. Given that this is the evaluation of ICIM's pilot phase, one would have expected that the OER would include a section on what worked and what did not and some analysis of strengths and weaknesses of the Mechanism's early years, as per the Approach Paper.

38. The recommendation to suspend ICIM operations and to have an interim director deciding what to do with existing cases is fraught with difficulty. In fact, this recommendation is inconsistent with OVE's own views about the need for an effective and meaningful recourse, since what is being proposed works to the great disadvantage of the human side of the cases: the requesters. Following OVE's recommendations would demonstrate a serious lack of responsiveness towards those individuals and communities who have put their trust in this Mechanism. That would also demonstrate a top-down approach whereby the Bank's obligation to address complaints gets diluted while awaiting the perfect policy. Most well known and successful regulations and policies have been the result of an evolution and not of an evaluation. OVE's recommendation to suspend ICIM operations does not guarantee a better policy or an improved mechanism. To the contrary, such arrangements would unnecessarily increase the reputational risk for the Bank and the Board, and for the proposed accountability office – whatever shape or form it may take in the future.

39. How will the Bank know what an "effective" mechanism looks like if the lessons learned from this exercise are never extracted? Although OVE criticizes the lack of lessons thus far, it does not recommend their elaboration as a main task for the transition, prior to embarking the institution on a fruitless exercise. The arrangements seem superficial and unrealistic. For

example, the proposed work program for an interim director consists to a large degree of administrative tasks (log new requests, create a unified filing system and archive, etc.), all in addition to conduct fact-finding analysis (compliance review) to determine how each case should be handled. The OER is silent about ongoing CP dialogue processes.

40. Therefore, in practice, there is a high risk that, as a result of OVE's recommendations, ongoing requests/cases and new complaints would be left idle until the new policy is in effect and a new accountability office is established. The OER is not clear on what would be the instrument to deal with active cases, if the current ICIM Policy were to be declared voided. This self-generated situation would likely hurt any new mechanism, the Board and the Bank; more so, given the proposed accelerated public consultations and unrealistic timetable to prepare, consult and approve a new policy of this sort. This approach seems to completely disregard the process followed by IDB to approve the ICIM Policy, and the challenges faced internally then. OVE does not seem to have accurately analyzed the consequences of the "legacy cases" received during the transition from the old IIM, and the serious impact of leaving (again) a new "legacy" for a new mechanism. This is especially worrisome due to ongoing CP processes of high complexity and volatility. While from a bureaucratic point of view these processes can be put on ice, in practice, there are individuals and communities awaiting a resolution to their concerns who would continue to be affected, this time through inaction of the Mechanism they went to in the first place.

41. Clearly, the report writers do see a benefit in their proposal, but neither the benefits nor the implications (including costs) are spelled out, raising serious concerns about the sense of realism in OVE's recommendations.

CONCLUDING REMARKS

42. We consider this evaluation as a first step and a useful exercise. However, we believe that it has not lived-up to the scope and breath set in the Approach Paper. It is incomplete and, in many regards, inadequate given the infancy of the Mechanism, the reduced sample of completed cases, the multiplicity of factual errors and misrepresentations and the superficial analysis of the MICI Policy. In this context, we believe that the OER conclusions are rushed and its recommendations constitute a risk to the Bank's reputation as well as to the hard-won gains and results so far achieved by the ICIM, and notably by the Consultation Phase.

Annexes Hyperlink

[IDBDOCS-#37321265-Annex A - Factual Corrections Table](#)

[IDBDOCS-#37321274-Annex B - Elapsed time per stage](#)

[IDBDOCS-#37321276-Annex C - CP achievements and main results](#)

[IDBDOCS-#37321277-Anex D - Views on OVE Annex 3](#)

III. RESPONSE OF THE COMPLIANCE REVIEW PANEL

COMMENTS OF THE MICI COMPLIANCE REVIEW PANEL
IN RESPONSE TO THE OVE REPORT ON THE
EVALUATION OF THE
INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

1. The following comments have been prepared by the Panel in response to the OVE Report (the “Report”). Our concern continues to be with the factual basis for some statements or conclusions. Due to time and space considerations, what follows is not a detailed analysis of the Report but rather some general considerations and comments about the Report’s contents and apparent intent, with specific examples to illustrate and demonstrate the Panel’s position. If the Board so desires, the Panel will be happy to provide a more detailed analysis of the Report, including the areas where there we agree with its findings.
2. We believe that making corrections to the current policy framework could be a more feasible course of action than the dismantling of MICI’s current configuration as proposed by the Report. In light of our experience, the OVE recommendations may not fully take into account the amount of work that proposing a “new” Policy would entail. It took years to pass the current MICI Policy. It took us two years to make progress and to understand areas that could be improved. We believe it is possible to protect the Bank’s investment in the Mechanism and the MICI policy and to improve the MICI Policy and MICI processes on the basis of the experience accumulated thus far.
3. We agree that MICI’s operational problems are rooted in the MICI Policy itself and in the inconsistencies between MICI Policy and the TOR of the Executive Secretary. This situation was aggravated – as the OVE Report states – by events beyond the control of the current Executive Secretary, the Project Ombudsperson, the Panel Chairperson and the other Panel Members. The OVE report cites some but not all of these external factors.
4. We also agree that there are a number of issues related to the “narrow and legalistic framing of the MICI Policy”. We are aware of numerous instances in which a literal or narrow reading of the MICI Policy has created issues for those charged with breathing life into the Mechanism. Indeed in some cases, due to the need to foresee challenges to determinations made under the MICI Policy, the Panel and MICI staff has spent what may appear to be “too much” time on backing up our determinations. We also agree with the OVE report that the “narrow and legalistic framing of the MICI Policy” (OVE paragraph 4.7) seems to preclude MICI from considering cases of general environmental harm to a natural resource or a community. There are other important examples of how this tendency hinders our effectiveness. Amendments to the MICI Policy might be helpful in this regard.

5. We have succeeded in overcoming some of its constitutional problems by developing detailed internal guidelines as required by MICI Policy.

A) COMMENTS

6. **Criticism about the Panel's commitment to accountability:** The Panel disagrees with language suggesting that the Panel is not committed to **“accountability for results”**. This is why Panel Members accepted their posts. However, in the context experienced by the Panel, it became clear that there existed considerable controversy on what is meant both by “results” and by “accountability”. Recently, the Panel met in order to prepare a document, which will be circulated that, clarifies all stages of our work and the many outputs that are produced. We believe this will assist the Board, Management and other players to better understand our processes.
7. Some think, and the evaluators seem to support this view, that speed of resolution of cases is an appropriate measure. However, while target dates and time budgets provide needed guidance, the effectiveness of IAMs is not so easily measured in accordance with simple metrics. The Panel has from the beginning been very conscious about setting realistic time frames and budgeting our time for our work. Concrete experiences with the time requirements for the Panel's tasks have been accumulated during the start-up phase and can be used now in future planning.
8. The statement in 4.17 (references are made to corresponding paragraphs of the Report) seems to imply that time was spent wastefully. The focus on and unsubstantiated critique of “non-case” work by Panel Members has been a distraction and is inconsistent with the Panel Members' contracts, ToR, the MICI Policy and reality. Panel Members needed to do a great deal of work on matters such as preparing MICI and Panel guidelines, participating in the OVE review process and the audit, participating in planning and budgeting, etc. This work supports the ability to work on cases. It seems inconsistent to expect the work to be done according to the given mandate and then criticize the Panel for doing this work as an integral part of their assignment.
9. During the first six months (i.e. 25 percent of the time since MICI had started its activities), the initial setting up of processes and procedures had to be handled by the Project Ombudsperson, the Panel Chair and the Panel Members. This had to be done in addition to dealing directly with the Requests that had accumulated before the mechanism formally started.
10. **Confusion about the Panel's motivations and its handling of independence:** There is a suggestion “Panelists” invoked independence to justify uncooperative behavior. While considering independence important, the Panel has consistently advocated cooperation and communication within MICI.
11. It is unfortunate that the OVE Report did not compare the remuneration of the Panel with the current rates at comparable accountability mechanisms. The daily rates

payable to Panel Members are considerably lower than at the World Bank's Inspection Panel and at other IAMs.

12. Panel Members joined the MICI because of their interest in promoting accountability and positive development outcomes. Three of the five Panel Members have regularly worked for the IDB before accepting the Panel position. At a possible loss of future contractual relationships with the IDB, all Panel Members have agreed to not work for the IDB in any capacity for five years after the expiry of their terms. In our view this restriction was a wise decision by the Bank's Board to ensure the Panel's independence.
13. The OVE report refers to a conflict of interest situation because Panel Members are paid a daily fee, alleging that there would be an inherent interest to prolong the Panel's work. Although in theory there could be a conflict of interest, in praxis Panel Members have provided evidence and testimony that they have routinely and considerably under-billed their time dedicated to MICI because they understood that much of their work was related to the start-up of the MICI. They wanted to demonstrate good will by not invoicing all the time that had to be unexpectedly devoted to internal MICI matters and that could have been avoided had a more effective MICI structure been in place from the beginning.
14. The amount of time and controversy related to the cost of the Panel seems to fly in the face of reality and fails to take into account the facts. For example, the annual budget for the honoraria of all five Panel Members in the MICI's Budget for 2013 is less than one year's salary package of either MICI's Project Ombudsperson or for its Executive Secretary.
15. Panel Members accepted their assignments on the basis of their TOR, which state that Panel Members are expected to work on a part-time basis or on a full-time basis when their workloads justify such an arrangement. That the limitations engendered by contradictions between the Policy and the subsequently drafted TOR of the Executive Secretary demanded more than the theoretically anticipated time from the Panel should not be a surprise and should not be made the responsibility of the Panel.
16. Panel Members were unaware of document MI-2 of September 1, 2010 on Panel remuneration guidelines until its existence was pointed out in the Audit Report of Budget Execution in the MICI of August 3, 2012. On the other hand, this document also recognizes the special nature of the Panel's work and points out that Panel Members may have to work uninterruptedly for periods longer than the normal 190 days per year for consultants and proposes that Panel Members not be subject to this rule.
17. **Assessing the Panel's role in outreach:** The Panel's TOR explicitly refer to the Panel's responsibility in conducting outreach activities. However, budget constraints have not permitted Panel Members to sufficiently participate in outreach activities. The focus on the Panel's "cost" has been a significant limiting factor that has

prevented Panel Members from fully carrying out their mandate in this area. To complain that the Panel costs too much and at the same time state that we need to do more is inconsistent. This highlights a theme that has been challenging for the Panel throughout the initial phase of MICI. We were hoping that the Evaluation would provide sufficient background on these issues, since they need to be addressed in the context of providing the Panel with the possibility to exercise its judgment vis-à-vis its work, subject, of course, to being responsible caretakers of the Bank's assets and thus with due regard to the budgets approved by the Board.

18. The Report contains references to “few” completed cases. What are the standards employed to make such judgments? Elsewhere, the Report itself states, “cases in some IAMs have lasted up to four years”. The MICI Policy itself recognizes that cases cannot be time-bound. The issues raised by Requests are not simple to define or deal with. Comparable data regarding how many days other IDB units spend on similar or related efforts should be provided so as to achieve a balanced view. For perspective sake, the estimated time that Management required to respond, using a large multi-disciplinary team, to the Panel's Compliance Review of the Paraguay Highway Corridors case amounted to 688 hours (i.e. approximately 80 days).
19. Recognizing achievements: We realize that “hard” data are difficult to come by after the short period examined by OVE (effectively, the evaluation concentrated on the 14 month period between the appointment of the Executive Secretary in 2011 and the mid-year point of 2012).
20. Paragraph 4.9 could have, but did not analyze how differences in interpreting the terminology of the MICI Policy may have contributed to confusing discrepancies between what the Board approved *de jure* and what some thought ought to be the *de facto* situation. A major source of confusion seems to have been in the usage of the term “Office”. Some see it as equivalent to the totality of MICI including the Panel and the Ombudsperson; in this case the Policy is clear that the Executive Secretary is not the supervisor of the two other principals. Some see the term “Office” as the support structure and the administrative staff of MICI; under this definition, the Policy gives the Executive Secretary a mandate to be in charge of an “office” that provides and consults with the other principals on the most effective use of support and administrative resources. This would be a fruitful area in which to review the MICI Policy.
21. There are some statements as to which we were unable to see how they were supported by the facts presented.
 - a. A case in point is the invocation of the recent **Audit Report (4.11)**. A circumspect reading of the Audit Report would have shown to the evaluation team that the principal observations of the Audit focus on the fact that MICI has been deficient in establishing administrative procedures. A lack of clarity between the MICI Policy and the ToRs also created this situation, and these were not the responsibility of any of the MICI principals.

22. The Report cites that the eligibility determination for the Panama Canal Expansion case was not in compliance with the MICI Policy. The Panel Chairperson made the eligibility determination based on available information. The Panel Chairperson had firm proof to back up his eligibility determination.
23. Under “Conclusion” the OVE Report states that the effort vis-à-vis creating MICI “has failed”. This is a broad and sweeping statement that seems to lack objectivity. It is true that there are important issues at MICI that need resolution. However, in terms of carrying out the mandate to do casework, it seems inaccurate to state that our work to date has not made significant contributions:
- a. The Board praised the Panel’s Compliance Review on the **Pando Monte Lirio Hydroelectric Project** and Management has agreed to an Action Plan to address the problems identified by the Review;
 - b. The Panel’s Compliance Review Report on the **Paraguay Highway Corridors Project** has helped focus the attention on the need to grant land rights to an indigenous group. Although we cannot establish a direct causal relationship, following our mission to the field this group received legal title to its traditional homeland after more than a decade of conflict. A potential and serious reputational problem for the Bank was avoided. Although we concluded our work on this case in early 2012, requests for extension by Bank Management for the preparation of its response, review of the final draft by the Executive Secretariat and translation needs have led to considerable delays in its publication.
 - c. In our first case, and perhaps the most complex to date, **Serra do Mar** in Brazil, budgetary constraints did not allow the Panel to carry out a pre-eligibility mission. A mission could have clarified conflicting assertions by the various stakeholders including Board Members, overlapping requests and the applicability of clause 37i). Sorting through the possibility of judicial proceedings at the local, state and federal levels in Brazil as well as Management’s own inconsistencies of obtaining in Brazil approval for a project component that lacked a sufficiently clear institutional foundation (deemed unconstitutional by some forces in Brazil), added time-consuming complexity to the case and to a temporary suspension of Panel work. However, and again we cannot establish a direct causal relationship, the Panel’s engagement in this project is associated with improved public consultation processes in the affected areas.
 - d. While some might consider the number of concluded cases as the only relevant output of the Panel’s work, it is considered a best practice in all IAMs to also attribute value to the panel’s careful work on eligibility determinations. This is clearly demonstrated in the case of the Request for a compliance review of the **Termoeléctrica Del Golfo Project**. A circumspect evaluation of the Panel’s eligibility determination would have shown that the Panel’s careful work was not only necessary in light of the Requesters’ claim of new evidence, but also ensured that the Bank would not be accused of reckless negligence in case the alleged serious health risks should materialize.

- e. We recognize that “hard” data are difficult to come by after the short period examined by OVE (it seems that the evaluation concentrated on the 14 month period between the appointment of the Executive Secretary in 2011 and the mid-year point of 2012). Evaluations of compliance work consistently point to the value of the “deterrent effect” of this type of work. Realizing that this can be reliably measured only over a longer time span.

B) ISSUES THAT SEEM TO BE MISSING FROM THE EVALUATION

24. The Panel would have been interested in the evaluators’ assessment of numerous additional issues. We wonder why they were not pursued. A few examples that justify our concern:
- a. We would have expected to see a more detailed analysis of how the intake process works, including issues of transparency and MICI Policy compliance.
 - b. We would have appreciated very much more comparative analysis based on data from other IAMS, as noted previously. We believe this would be very helpful for the Board and MICI in terms of the process of reviewing and potentially amending the MICI Policy. In fact, if the note in the Report regarding cases taking as much as four years is correct, then this would suggest that the performance of both the compliance review phase and the consultation phase is above average. To our knowledge, overall costs as well as unit costs--- particularly during the start-up phase of a mechanism--- of the MICI are below that of all other comparable mechanisms. This is an important data point for the Board.

C) ADDITIONAL NEEDS FOR CORRECTION OF FACTUAL ERRORS

25. In 4.10 and 4.17 there are some items that need to be corrected: The Panel has consistently been committed to sharing information within MICI and has requested the establishment of a unified filing plan and an efficient filing and communication system from the beginning. The decision during 2012 to use IDB Docs is not an optimal solution for the Panel Members who work from diverse remote locations and do not have easy access to IDB Docs. The Panel does not hire its own consultants and administrative assistants. All hiring is done by the Executive Secretary.
26. In 4.11, we note that Panel Members, including the Panel Chair have been meticulous in their recording of time spent on work for MICI. They have only invoiced a portion of their time devoted to MICI. All invoices are checked by at least two persons and all payments are made by the Executive Secretary. There is a need to support the statements on travel, contracting, remuneration and budget management with facts. The focus of the recent Audit was to examine the adequacy of procedures. The key findings and recommendations pointed to the absence of adequate administrative procedures, which situation is being remedied. But we do not believe that there have been any substantiated violations of Bank policies.

27. The statement in 4.17 that one Panel member billed more than 40 days for non-case work, primarily the writing of procedural guidelines, which do in fact remain in draft form, implies wastefulness and is profoundly misleading. The Board requested this project to be done. All MICI Principals requested that this Panel member carry out this work to help address some of the MICI Policy problems, many of which are correctly identified by the OVE Report. These guidelines have proved to be extremely useful. As per the Policy, they have been shared with the Board. There was all along an expectation that they would need further refinement based on the results of the reports from Audit and OVE and in line with recent experience.
28. In 5.5 it is stated that having the Executive Secretary establish whether Requesters have brought the problem to IDB Management's attention is consistent with the MICI Policy. That is not accurate. Eligibility determinations are to be made by the Project Ombudsperson or Panel Chairperson, as applicable.
29. In 5.12 as well as in 5.13, it is imperative, if such statements are made, to also explain the reasons for delays. For instance it would be instructive to analyze several Board discussions on the expectations of some Executive Directors, who were seeking considerable detail at the eligibility determination stage. Some suggested that a fully reasoned judgment as to Policy compliance is necessary before a Compliance Review is even authorized. There remains uncertainty about the level of work required at the eligibility determination phase. The Panel looks forward to working on this area with the Board so there can be shared understanding about use of resources and allocation of time at this early stage in the life of a case.
30. The Panel has acted in an impartial way. Statements in 6.18, alleging lack of impartiality, do not seem factual. Similarly, it must be understood that correspondence with Requesters to explore planning dates are not official announcements.

D) CONCLUSION

- a. All Panel Members have worked hard to realize the spirit and the letter of the MICI Policy. Realizing the difficulties embodied in any start-up phase, we have identified and tried to iron out inconsistencies in MICI's normative framework that have become evident as we have worked together with the Board, Management and other MICI principals. Progress has clearly been made: in addition to spearheading the development of the Policy Implementation Guidelines, procedures for the compliance review process were developed; above all, work on complex cases was initiated and cases were completed.
- b. As the evaluation points out, independent accountability at International Financial Institutions is a relatively new field. It was therefore with great hope and anticipation that an evaluation of MICI was commissioned to help iron out existing kinks in MICI's approach.

- c. **The Panel is prepared to work with the Board, Management and the other MICI principals to work on issues with the MICI Policy, many of which are identified in the Report and many others identified internally by the MICI, and to make the Mechanism better. Giving up on MICI would be a loss to IDB and to the citizens whose livelihoods the Bank wants to develop and protect.**

... And a final thought:

“Anyone who has never made a mistake has never tried anything new.”

— **Albert Einstein**