MICI REFLECTIONS

Access to Remedy and Dispute Resolution

Contributions to the Conversation based on MICI's Experience

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This document was prepared by Martin Packmann, MICI Consultation Phase Specialist.

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Contents

Acronyms and Abbreviations

CAO
Compliance Advisor Ombudsman

CIEL
Center for International Environmental Law

CNEL EP
Corporación Nacional de Electricidad Empresa Pública (National Public Electric Company)

CP
Consultation Phase of MICI (The Mechanism's dispute resolution function)

CRP
Compliance Review Phase of MICI (The Mechanism's investigation function)

CSO
Civil Society Organizations

DBSA
Dutch Banking Sector Agreement

DFIs
Development Financial Institutions

Executing agency/ executor/client
The entity designated in the relevant legal agreements to execute all or part of the IDB Group-financed operation

GRM
Grievance Redress Mechanism

IAMs
Independent Accountability Mechanisms

IDB Invest
Commercial name of the Inter-American Investment Corporation (Private sector agency of the IDB Group)

IDB, IDB Group, or Management
Inter-American Development Bank (Public sector agency of the IDB group)

IFC
International Finance Corporation

ISUWM
Integrated Urban Solid Waste Management

MICI or Mechanism
Independent Consultation and Investigation Mechanism

MIGA
Multilateral Investment Guarantee Agency

NCP
OECD National Contact Point

OECD
Organization for Economic Cooperation and Development

OHCHR
Office of the United Nations High Commissioner for Human Rights

Parties or Stakeholders
The requesters, Management, the borrower, the executing agency, or the client, if applicable

Policy or MICI Policy
The Policy of the Independent Consultation and Investigation Mechanism of the IDB Group

PRIZA
Proyecto de Reconstrucción Integral de las Zonas Afectadas (Comprehensive Reconstruction Project for Affected Zones)

Request or Complaint
A communication submitted by the requesters or their representative that alleges that they have suffered or may suffer harm due to the Bank's failure to comply with one or more of its Relevant Operational Policies within the context of a Bank-financed operation.

Requesters or Complainants
Two or more people residing in the country where a Bank-financed operation is implemented and who submit a request to MICI considering that they have been or may be affected or harmed by the Bank's failure to comply with one or more of its Relevant Operational Policies within the context of that operation.

STL
Sub-transmission line

UNGPs
United Nations Guiding Principles on Business and Human Rights

Executive Summary

Accountability mechanisms have emerged as a way to channel and respond to community and civil society complaints related to the impacts of development projects. As the conceptual understanding of business and human rights as well as the environmental and social standards of international financial institutions have advanced, the notion of remedy has gained importance and become a central issue on the international development agenda. Nonetheless, according to the publication of the United Nations High Commissioner for Human Rights, Remedy in Development Finance (2022), access to remedy continues to be treated by many development finance institutions as something new.

Accountability mechanisms and financial institutions have been subject to continued criticism in terms of their ability to provide effective remedy for communities claiming to be affected by development projects. In recent years, various stakeholders have sought to deepen the discussion to encourage development finance institutions and their accountability mechanisms to adopt frameworks and strategies to improve access to remedy. However, that discussion has centered almost entirely around the compliance or investigative functions of grievance mechanisms. This note aims to explore the role of alternative dispute resolution in access to remedy, and to specifically examine the contributions that MICI's Consultation Phase has made in providing solutions to communities that believe they have been adversely affected by IDB Group-financed development projects between 2017 and 2022.

As for the forms that remedy may take, the first point of consideration is that the redress of negative impacts has two broad dimensions: substantive and procedural. The literature also identifies a varied set of actions or forms in which remedy can occur. Based on the different normative instruments, at least five main forms of remedy can be identified: (i) restitution; (ii) compensation; (iii) rehabilitation; (iv) satisfaction; and (v) guarantees of non-repetition. In turn, there are three ways in which an entity or institution may be associated with an alleged harm: causing the harm, contributing to the harm, or having a direct link to the harm. It's important to highlight that a core element of this conceptual framework is the establishment of harm and, in the world of development finance institutions, the association of such harm with a failure to comply with environmental and social policies. Such a relationship would determine the degree or level of responsibility of each entity associated with the occurrence of the harm and, therefore, responsibility for its remedy. As stated earlier, this process (establishing harm, noncompliance, and degree of responsibility) is oriented more toward the compliance function—which analyzes policy compliance in light of the alleged harm—than toward the dispute resolution function, which does not establish policy noncompliance

or address the issue of responsibility but rather seeks consensual solutions to address the harms alleged by the communities.

Based on MICI Policy, we can highlight a few key aspects of the Mechanism's mandate: (a) the MICI Consultation Phase is a flexible process that seeks to address the parties' concerns; (b) the functions of the MICI Consultation Phase do not include determining noncompliance with Bank policies or whether such noncompliance is related to the alleged harm; (c) agreements facilitated by MICI must not contravene national legislation, international law, or safeguards policies; (d) the Consultation Phase does not award compensation, but the parties may voluntarily agree on such a resolution alternative; and (e) MICI may monitor the agreements reached in the Consultation Phase for up to five years.

Between 2017 and 2022 the Consultation Phase handled 21 cases and of these 13 initiated a process of dialogue. By the end of 2022, 11 cases had completed this process, and agreements had been reached in 8 of them. This means that agreements have been reached in 72.27% of the cases in which MICI-facilitated dispute resolution has been undertaken and concluded. In four of them, all agreed commitments have been implemented and the case has been closed. The remaining four cases continue to be monitored. All the agreements MICI facilitated in the last five years have involved public sector projects.

Another important point to note is that the requesters received assistance from a CSO during the dispute resolution stage in only 1 of the 13 cases that started a process under the Consultation Phase between 2017 and 2022. In 87.5% of the cases in which agreements were reached in the Consultation Phase (7/8), a combination of remedy measures was used to address the issues raised. The most salient measures adopted can be understood as restitution, prevention,[1] and compensation (none of which included a cash payment as a core component). This reflects the importance of approaching the issue of access to remedy from a holistic perspective as opposed to focusing exclusively on compensation.

Some actions or solutions achieved through a MICI-facilitated dispute resolution process are beyond the scope of this analysis. These include issues of access to information and transparency, the production and dissemination of technical studies, the promotion of active citizen participation, as well as measures aimed at respecting or recuperating the value of historical, cultural, or identity-related issues. These aspects, although they may not fall into the category of "substantive" remedy, address other aspects of the harm alleged by the complainants. Such measures, aimed at recuperating the value of local communities' voices,

1 In addition to the forms of remedy identified in Chapter 2, a sixth category was added for this document, called "preventive measures," which is intended to include those solutions or actions that seek to prevent harm. This category seeks to reflect the work that MICI's dispute resolution function performs in addressing "potential harm."

or promoting access to information as a human right, should be understood within the broad framework of providing solutions to environmental and social disputes, and are fundamental to ensuring the legitimacy of dispute resolution processes.

To more clearly understand the results of the MICI-facilitated agreements geared to providing solutions to community concerns, this note takes a more in-depth look at the details of four requests in which agreements have been implemented and the cases closed: the San Vicente-Jama STL (Ecuador), Reventazón (Costa Rica), Calle Mitre Bariloche (Argentina) and the Bogotá Metro (Colombia). To carry out this analysis we used public documents, confidential information, and interviews with requesters and IDB staff. Below are the key considerations arising from the analysis of these cases, arranged according to the two dimensions of remedy: procedural and substantive.

The following five key elements were identified in relation to the procedural dimension:

A. **The co-design of dispute resolution processes** focuses on the importance of actively including the perspectives of different stakeholders on how the dialogue process should be designed and implemented. According to the requesters, they were able to establish a process for active listening which was quite valuable not only in the search for solutions, but also in demonstrating the commitment of the other parties to respect their perspectives and interests. They also stated that the dynamics of the jointly designed dialogue and MICI's facilitation role allowed people to participate actively and safely. Along the same lines, interviews with IDB staff members showed the importance of being sensitive to the complainants' concerns and understanding the human dimension of their complaints.

B. **Technical information** is needed in order to design processes that are fair, transparent, and legitimate, just as it's necessary to determine the manner in which information is identified and analyzed. In three of the four cases analyzed, the consensus achieved on how to use or create technical information allowed it to be used constructively to address requesters' concerns, reduce information gaps, and outline solutions to the problems presented.

C. **In order to reduce asymmetries,** MICI carried out numerous activities aimed at supporting the parties and strengthening their dialogue and negotiation capabilities. Four of the five requesters interviewed indicated that the support, advice, and guidance provided throughout the process was quite valuable.

D. **The involvement of third parties** has been instrumental in reaching consensual solutions in at least two of the four cases analyzed, as well as ensuring that these solutions are implemented appropriately.

E. **Time needed to reach solutions**. To be effective, remedy must be timely. The requesters interviewed pointed out that the processes leading up to the MICI Consultation Phase sometimes led to frustration, fatigue, and attrition, thus reducing their expectations of being able to reach an agreement. In three of the cases, the assessment and dispute resolution stages were carried out simultaneously, significantly reducing processing times. This made it easier to take advantage of the windows of opportunity for negotiation and there was a greater choice of alternative solutions available.

With respect to the substantive dimension, five main aspects were identified:

A. **Initial expectations** are usually low at the beginning of a MICI process due to distrust between stakeholders, frustration with earlier dispute resolution processes, and a lack of knowledge about MICI and its processes. Low levels of appreciation, respect, and trust in institutions also affects the requesters' expectations since their counterparts in a potential MICI-facilitated dispute resolution are public and private institutions. Regarding expected solutions, requesters were generally clear about their preferred solutions. At the same time, interaction with the Mechanism and with other stakeholders allows them to have more information and a more detailed analysis of the viability of some of their initial demands. This allows them to more accurately adjust their expectations for a solution.

B. **The types of remedial measures** included in the agreements facilitated by MICI are varied. In the 4 cases examined, there are at least 15 actions that could be categorized under the previously identified "forms of remedy," broken down as follows: (i) 33.33% can be understood as solutions that seek compensation; (ii) 26.67% are intended to make restitution for an alleged negative impact; (iii) 26.67% are solutions that seek to prevent harm; and (iv) in 13.33% of the cases, the measures are intended to provide satisfaction. In addition to the above, the cases analyzed included at least 13 measures related to access to information, production of technical information, and citizen participation.

   None of the measures analyzed under the category of compensation included a cash payment. Instead, they refer to inclusion in training plans, technical and legal support to identify new properties for restitution, and tax exemptions, among others. Measures that could be considered restitution include, for example, providing resources for the replacement or restitution of properties used for housing or commercial use. An important aspect that connects the parties' expectations with the type of measures agreed upon, is defining which solutions are feasible within a MICI process. In discussions with Bank staff, they raised a very important point in this regard. The types of possible remedial measures and their scope are heavily influenced by the Bank's environmental

and social policy framework which provides an initial roadmap of where to seek solutions. Thus, solutions that can be reached through the MICI process are feasible as long as they comply with (or do not violate) the Bank's policy framework.

C. **Requesters' perception of the outcomes obtained.** 80% percent of the requesters interviewed indicated that they were satisfied with the outcomes achieved through the agreements facilitated by MICI, and that the Mechanism's presence and the mutual listening it fostered made it possible to find a middle ground between the parties and thus reach consensus. For most complainants, the key was to be clear about what aspects could not be conceded on and then be flexible in how to reach a reasonable solution that would satisfy the core interests of their complaint.

D. **Financing of remedial measures** sometimes comes from the project's own budget, while in other cases the executing agencies may contribute to the proposed remedy. The IDB has also, at times, contributed its own resources for the implementation of specific measures. The type of remedial measures or actions to be financed and the cost of such measures are two central elements to be considered. Regarding the former, some interviewees felt that the Bank should support the executing agency to evaluate alternatives, carry out studies, and develop proposals. It would then be the client's responsibility to implement the agreed solutions. With respect to the latter, several IDB staff members stated that, in their view, the higher the cost of the corrective measures the more difficult it is to reach an agreement. In some cases, the high cost of a remedial action could pose challenges for the officials in charge of approving and implementing such an expenditure. Hence, the attempts to "justify" considerable and unforeseen expenses could pose a barrier to reaching consensual solutions in a voluntary manner

E. **Monitoring of agreements** is essential to ensuring that the agreed measures are effectively implemented, and to ensuring the effectiveness of a dispute resolution process. In real terms, monitoring functions as the "dispute resolution 2.0" phase. It is expected that challenges will arise in the implementation of agreements. The keys to overcoming these setbacks are: (a) the adaptability to understand that the context and other issues may affect what was originally agreed to; (b) the flexibility to seek appropriate solutions; and (c) not losing sight of the fact that the objective of the agreements is not so much to implement the actions set out in them but rather to respond to the concerns raised in the complaint.

Our analysis allows us to conclude that the MICI Consultation Phase provides an effective and structured institutional channel for reaching consensus-based solutions that address the concerns of communities. Agreements were reached in 72.27% of the cases where dispute resolution processes were initiated and completed between 2017 and 2022. Four of those agreements have been implemented thus making it possible to address the requesters' concerns.

In order to reach this outcome, there are several key elements of MICI's Consultation Phase practice that improve the chances of generating processes that deliver effective solutions. At least five elements can be identified:

i. **Tangible and comprehensive solutions.** The dispute resolution processes facilitated by the MICI Consultation Phase consider both the procedural and substantive dimensions, and various types of proposed solutions are combined to address the diversity of complaints presented. The active participation of local communities as well as listening to and addressing their concerns, helps to restore a sense of dignity to the complainants. In addition, the dialogue process also made it possible to include measures to compensate the requesters, restore their living conditions, and prevent the re-occurrence of potential harm. Furthermore, it was possible to address the demands associated with the lack of information and participation.

ii. **Enhancing the value of an impartial third party.** Building institutional containers that can generate basic trust is essential in contexts which are highly emotional, beset by extreme polarization and post-truth, where trust in institutions and fellow citizens is historically low. This often requires an impartial third party with expertise and experience in the subject matter. Involving impartial third parties early in the conflict cycle is key to ensuring that their inclusion is more likely to lead to satisfactory solutions. As time passes, conditions may give rise to new tensions that can erode trust and opportunities for a solution may be lost. The role of an impartial third party will be more effective if it is viewed as being impartial, and it will have more opportunities to propose solutions the earlier it gets involved in the dispute resolution process.

iii. **Flexibility and haste in case management.** Co-designing dispute resolution processes allows for the inclusion of stakeholder perspectives, and ensures that processes are designed in a flexible, appropriate, and culturally relevant manner. Since the provision of solutions must be timely, another key aspect is to expedite case management when necessary. The MICI Consultation Phase helped the parties reach agreements through expedited dialogue and negotiation processes in the four cases analyzed, merging the assessment and dispute resolution stages in three of them to reduce processing times significantly.

iv. **Human approach to conflict.** In contexts characterized by high levels of conflict, distrust, and polarization, the aim of MICI's Consultation Phase is to forge relationships with stakeholders, provide a process to listen to communities' voices, and ensure a safe and trustworthy space for all. The human approach of social conflicts also entails recognizing that filing complaints is neither a simple process nor a pleasant one. In many cases, local communities come to compliance mechanisms such as MICI after making enormous efforts to seek solutions and being frustrated by the lack of response. This

takes a high emotional toll and requires a great deal of time from themselves, their families, and livelihood activities. Most of the complaints MICI receives seek to remedy not only material harm, but also aspects of identity, dignity, and self-value that local communities feel have been undermined. Accordingly, the MICI Consultation Phase manages the complaints in a manner that is sensitive to the many factors at play in social conflicts and that focuses on human interactions.

v. **Reducing asymmetries.** The requesters interviewed expressed appreciation for the Mechanism's ongoing support and the training provided during the dispute resolution process. Regarding support from CSOs, they suggested that a possible strategy for lessening asymmetries would be for MICI to inform requesters of the existence of CSOs that can assist communities to submit and handle their complaints with the IAMs. They also suggested that MICI could put requesters in contact with those organizations. This would help reduce asymmetries, especially in the case of vulnerable communities. It is also important to consider the executing agencies and even the Bank when analyzing how to reduce asymmetries. While project executors and IDB staff may have some advantages due to their higher level of organizational experience, it should not be assumed that they and other stakeholders have the necessary tools to effectively engage in a facilitated dialogue process.

The research has also identified two relevant issues that influence the likelihood of achieving remedy through consensual solutions, and which should be considered when carrying out a dispute resolution process. They are:

a) **Managing expectations.** Knowing and managing stakeholder expectations is essential, as they influence the parties' understanding of the remedy process as well as their analysis of what could be potential results. It also influences stakeholders' perceptions about the dispute resolution process and agreements reached. Unmet high expectations by the complainants can lead to the perception that the final outcome was not "satisfactory". Executing agencies, for their part, sometimes have an initial perception that "ceding ground" will be harmful to the project. It is therefore essential to be clear about how the Mechanism works and to clarify what kinds of measures and outcomes are possible in this process.

b) **Aligning incentives to resolve disputes** can be positive if MICI is understood as a tool for enhancing the relationship with local stakeholders, improving environmental and social management strategies, and preventing or mitigating potential impacts. Another core element is the discussion about harm and responsibility for providing remedy. The continuum that associates a harm with noncompliance of social and environmental policies and attempting to determine the degree of responsibility for

the harm is not part of MICI's dispute resolution role. The dispute resolution process is voluntary, it is based on the notion of "alleged harm" and its connection with "potential noncompliance", but it does not assign responsibility nor reaches any conclusions as to the compliance or noncompliance with operational policies. The challenge is how to improve stakeholders' understanding of what the MICI Consultation Phase is, how it works, and what can be achieved within its procedural framework. The greater the focus on determining responsibility (in a process that does not have that objective), the less incentive there will be to seek creative and consensual solutions. On the other hand, the greater the emphasis on defending the quality and sound implementation of a project (in a process that does not seek to analyze project design and implementation), the less incentive and willingness there will be to consider alternative environmental and social management practices to improve the project and address complaints.

Providing consensual solutions to social and environmental problems is at the heart of the dispute resolution processes provided by the IAMs. Therefore, the discussion on access to remedy in the framework of accountability mechanisms should include both the compliance and dispute resolution functions. Including both functions will enrich the ongoing debate on accountability since it has been largely focused on compliance alone. For this reason, approaching access to remedy from a holistic point of view and recognizing the central role of dispute resolution processes in delivering solutions provides greater clarity on the pathways to remedy available to local communities.

Meeting with complainants for the claim Integral Urban Solid Waste Management Program | Argentina

I. Introduction

The question of how-to bring attention to and address the impacts of development projects has been at the heart of the complaints brought by communities and civil society organizations. Accountability mechanisms, starting with the Inspection Panel in the 1990s, emerged as a response to these demands and seek to provide a process for channeling complaints. Beyond the conceptual development of the notion of access to remedy[2] in different institutional and academic settings, this discussion is not new to international development financing and its complaint mechanisms.

As the discussion on human rights and business, as well as on the environmental and social standards of development finance institutions has progressed, the issue of remedy has gained importance and has become central to the discussions between human rights bodies, civil society organizations, social movements, academia, governments, and development finance institutions as well as their accountability mechanisms. Nonetheless, according to the publication of the United Nations High Commissioner for Human Rights, Remedy in Development Finance (2022), the issue of access to remedy continues to be treated by many development finance institutions as something novel. This is due in part to a set of factors including conceptual confusion, risk aversion, and a perception that the issue of remedy opens the door to greater legal exposure for the banks.

In this context, various stakeholders have fostered an increasingly deeper discussion in recent years with the aim of highlighting the link between development financing and access to remedy, thus encouraging development financing institutions and their accountability mechanisms to adopt frameworks and strategies to promote access to remedy. One of the most important milestones in this process began in 2018, with the External Review of IFC's and MIGA's environmental and social accountability standards. As will be discussed in Chapter 2, this process has experienced several major developments, including the publication of a draft action framework for remedy and the updating of CAO's (IFC/MIGA's accountability mechanism) operational policy which incorporates, for the first time, the notion of access to remedy.

Now, beyond the evolution of the discussion on access to remedy it is important to highlight that, for a variety of reasons, the discussion has centered almost entirely around the compliance or investigative functions of the grievance mechanisms. However, the vast majority of IAMs (independent accountability mechanisms) that are part of the Development Finance Institutions (DFIs) have at least two functions: investigation and dispute resolution.

Mindful of the growing relevance of the debate, as well as the importance of considering the different aspects of the work of nonjudicial grievance mechanisms, the general objective

2 Both "repair" and "remediation" terms are used to refer to the concept of "remedy".

Dialogue session for the San Vicente-Jama Subtransmission Line case | Ecuador

of this Note is to reflect on the current discussion on access to remedy in the context of the IAMs. It will also analyze the contributions that MICI's Consultation Phase has made, from the experience of alternative dispute resolution, to providing remedy to communities that consider themselves affected by IDB Group-financed development projects.

To meet this objective, a literature review was conducted on the conceptual aspects of access to remedy, as well as on the cases managed by MICI's Consultation Phase. In-depth interviews were also conducted with requesters whose cases were handled by the dispute resolution function, as well as with Inter-American Development Bank staff. Cases and interviewees were selected based on three criteria: they were complaints in which agreements were reached in the Consultation Phase; agreements which have already been implemented; and the complaint case was opened and closed between 2017 and 2022.

Chapter 2 presents some key considerations on the notion of remedy, as well as a summary of the 'state of art' related to the current discussion on access to remedy in the context of development finance institutions and their accountability mechanisms. In addition, Chapter 2 succinctly addresses some of the main critiques of the IAMs and their limitations in providing access to remedy for affected communities and individuals.

Chapter 3 is devoted entirely to MICI. It begins with a review of the Mechanism's current Policy in order to provide an overview of the institution's mandate and objective. Next, it presents a detailed review of the cases that have reached the Mechanism to analyze the requests received and processed by MICI as well as better understand the alleged impacts. There is also information on who filed the complaints with the Mechanism, what the general outcomes of the requests have been, and how long it has taken to process these cases. In a second part, Chapter 3 includes a detailed analysis of four cases in which MICI's Consultation Phase facilitated agreements, monitored the implementation of the agreed actions to address the problems raised, and ultimately closed the case. This section also includes the views of those who were interviewed with a special focus on the complainants.

Chapter 4 focuses on the conclusions of the study, outlining the main findings that emerged from the research, and highlighting the contributions that a dispute resolution process can make when it provides solutions that address the problems of the affected communities.

II.
An Overview of the Current Landscape:
Evolution of the Discussion on Access to Remedy, and the Growing Awareness within the DFIs and their IAMs

This chapter will analyze some key aspects of the concept of remedy in order to broaden the context in which the discussion about access to remedy is taking place, and to explore how this discussion is linked to the scope of work of the IAMs. This context will allow us to better frame the analysis of the cases managed by MICI's Consultation Phase, and to highlight what this experience can contribute to the broader discussion on offering solutions for communities that consider themselves adversely affected by development projects.

The Guiding Principles on Business and Human Rights ("Guiding Principles" or "UNGPs") are structured around three pillars: protect, respect, and remedy. Principle 11 establishes the responsibility of business enterprises to respect human rights and "address adverse human rights impacts with which they are involved" (UNGPs, 2011, p. 15). According to the UNGPs, addressing negative consequences includes remedying the impacts they may have caused. Specifically, Principle 22 states that "where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes" (UNGPs, 2011, p. 28). Principle 29 provides that "to make it possible for grievances to be addressed early and remediated directly" (p. 38) business enterprises should establish or participate in effective and accessible complaint handling mechanisms for communities that may be adversely affected.

As mentioned in the Introduction, different stakeholders have been working to position the issue of access to remedy in the context of development banks and their accountability mechanisms. In 2014, the United Nations High Commissioner for Human Rights (OHCHR) launched an initiative called "Accountability and Remedy Project" which was geared toward strengthening the implementation of Pillar 3 of the Guiding Principles on access to remedy. Part of this initiative has focused on improving the effectiveness of nonjudicial grievance mechanisms such as IAMs and MICI.

On the other hand, OECD Watch published in 2015 the study *Remedy Remains Rare*, which analyzed 15 years of case management outcomes of the OECD's National Contact Points (NCPs). OECD Watch has published annual reports (since 2018) titled *State of Remedy* that analyze progress in remediation through NCP compliance cases. Along the same lines, in January 2016, a group of 11 civil society organizations published the report *Glass Half Full? The State of Accountability in Development Finance*, which contends that "the failure to ensure redress for complainants is the result of the DFI's inability or unwillingness to commit to and implement measures that address complainants' grievances" (p. 70). The study indicates that "the authors have concluded that the current system is inadequate to consistently provide remedy to those affected by DFI-financed project activities" (p. 121). The "Dutch Banking Sector Agreement on International Responsible Business Conduct Regarding Human Rights," which was released in 2016 signed onto by different civil society organizations, governments,

and banking institutions, includes the issue of access to remedy among its main features, and a working group on the issue was formed as a result of this agreement.

In 2020, the OECD published a report entitled *National Contact Points for Responsible Business Conduct. Providing Access to Remedy: 20 years and the Road Ahead*, which states explicitly in relation to remedy that its nonjudicial grievance mechanisms seek to "ensure that a person(s) affected by negative corporate impacts can obtain some form of redress for their harm" (OECD, 2020, p. 7). Delving deeper into the issue of remediation from the perspective of development financing, the OHCHR issued a report in 2022 entitled *Remedy in Development Finance: Guidance and Practice* in which it stressed that unaddressed grievances can contribute to violent conflict and fragility (p. 9). In this regard, the High Commissioner emphasizes that IAMs play a vitally important role in promoting or enabling access to remedy, stating that the key objective of such mechanisms is to "promote accountability for the environmental and social performance of the parent DFI and thereby promote accountability for and provide remedy for project-related harms" (2022, p. 59).

To conclude the review of context and key background information, it is important to recall that 2018 saw the launch of the "External Review of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)'s Environmental and Social (E&S) Accountability, including the Compliance Advisor Ombudsman (CAO)'s Role and Effectiveness". Their findings were presented to the Committee on Development Effectiveness (CODE) and the Committee on Governance and Executive Directors' Administrative Matters (COGAM) of the Board of Directors of the World Bank in June 2020. Recommendation 10 of the External Review stipulated that IFC and MIGA should develop an action framework to provide remedy in cases where IFC's or MIGA's noncompliance with its own policies resulted in harm to communities. In response to the findings of the External Review, in October 2022 IFC and MIGA presented the document "IFC/MIGA Approach to Remedial Action" for public consultation with different stakeholders interested in the topic. At the end of the consultation process, in May 2023, they presented a summary of the actions taken and comments received. The final proposal is currently awaiting submission by IFC and MIGA Management to the World Bank Board of Directors.

The external review process also led to a modification of the CAO operational policy in 2021. One of the main elements of the policy change was the explicit inclusion of the issue of remedy. It states that the CAO "facilitates access to remedy for Project-affected people in a manner that is consistent with the international principles related to business and human rights included within the Sustainability Framework" (CAO, 2021, p. 1, para. 5).[3]

3 While the Spanish version of the CAO Policy refers to "*acceso a recursos*," the original English version refers to "access to remedy" and thus can be understood as access to remedy or remediation.

Understanding remedy: scope, forms of remedy, and responsibility

Based on the literature reviewed and the different ways of approaching the issue, remedy can be generally understood as a process whose objective is to restore, to the extent possible, the affected persons to their original situation before the alleged harm occurred. From the perspective of business and human rights, remedy involves addressing an adverse impact that arises from a business project or activity with the aim of restoring the initial situation.[4]

Thus, in defining its objectives and scope, the new Environmental and Social Policy Framework of the IDB makes explicit that borrowers will be required to apply the mitigation hierarchy, minimize adverse impacts, and "where residual impacts remain, borrowers must provide compensation/reparation as appropriate" (p. 8). Further, the OHCHR publication *Remedy in Development Finance* addresses the issue of remedy with "a focus on relatively serious environmental and social risks and impacts that are (or could be expected to be) handled by IAMs, project level GRMs, or local or national redress mechanisms, in cases with particular risks and impacts related to human rights implications" (p. 11).

Access to remedy can thus be framed as an important component of the environmental and social safeguards of DFIs, and therefore as a commitment by development financing for sustainability. In addition, the High Commissioner's approach invites us to think about the issue of access to remedy from the perspective of contingency planning (OHCHR *Remedy*, 2022) rather than from a strictly punitive point of view, understanding remedy as one more element of compliance with social and environmental standards, as well as within the human right's legal framework. Such an approach would make it possible to assess the costs of not addressing impacts as well as measure the benefits that remedy can bring to development. In other words, the possibility of remedy should no longer be understood as a burden, but rather as a commitment to the application of international standards on social, environmental, and human rights issues.

4 For a more detailed review of the core elements of the concept of remedy, see the following documents, listed in the bibliography: *Remedying Harm: Lessons from International Law for Development Finance* (Gómez Betancur, Dorman, & García Zendejas, 2022); Discussion paper of the Working Group enabling remediation (Dutch Banking Sector Agreement, 2019); *Beyond Effectiveness Criteria: The Possibilities and Limits of Transnational Non-Judicial Redress Mechanisms* (Miller-Dawkins, M., Macdonald, K., & Marshall, S., 2016); OHCHR response to a request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector (OHCHR. 2017); *Remedy in Development Finance: Guidance and Practice* (OHCHR, 2022); Judment of the Permanent Court of International Justice, Factory at Chorzów (PCIJ, 1927); *Injustice incorporated: Corporate Abuses and the Human Right to Remedy* (Amnesty International (2014); *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises* (Report A/72/162, 2017).

Meeting of the Phase with complainants on the Bogotá Metro project | Colombia

Regarding the rationale for why it would be important to advance in the design of access to remediation schemes in development projects, OHCHR (2022) has identified at least eight key reasons of which three are highlighted below:

a) The Sustainable Development Goals and the "do no harm" principle. These goals are at the core of DFI values and goals since the way to honor the "do no harm" principle, in cases where negative impact occurs, would be to advance the implementation of remedial measures as the last link in the application of this principle.

b) Increased community benefit. The report also indicates that access to remedy mechanisms would generate greater community benefit, shifting from a zero-sum discussion (remedy with winners and losers) to a rationale where contributions are made to advance development, thus creating "win-win" coalitions.

c) Legal liability. According to the High Commissioner, in the absence of clear channels and consolidated mechanisms to provide restorative or remedial action, communities have increasingly turned to the courts to present their demands. This legal exposure has been a concern for DFIs. Within the remedy debate, financial institutions have suggested that the increased use of judicial mechanisms could further increase their legal exposure. However, the OHCHR report notes that strengthening IAMs in line with the Guiding Principles could help allay this concern. According to this line of reasoning, if there was some assurance that the complaint mechanism processes would indeed

generate access to remedy, the win-win scenarios reflected above could be bolstered thus reducing concerns about the legal exposure of DFIs.[5]

As for the forms that remedy may take, the first point of consideration is that the remediation of negative impacts has two broad dimensions: substantive and procedural. With respect to the procedural dimension, it is critical that available complaint mechanisms be practical and meaningful in terms of stopping the harm and providing remedy (Gómez Betancur, Dorman, & García Zendejas, 2022; Dawkins, Macdonald, and Marshall, 2016). Ultimately, the process must be considered legitimate and fair to the stakeholders, especially those directly affected. The second dimension, the substantive one, refers to the outcome of the remedy process, i.e., the responses affected person(s) is/are entitled to receive in view of the harm they believe they have suffered (Gómez Betancur, Dorman, & García Zendejas, 2022; Dawkins, Macdonald, and Marshall, 2016). As reflected in the literature, mere access to an accountability mechanism is not enough rather the process carried out to obtain remedy must be centered on the perspectives and needs of the affected stakeholders for it to be considered legitimate and reliable. The process should also ensure that responses are obtained within a reasonable time frame, so that the impact of remediation can be effective and fair.

It's important to note when focusing on the substantive dimension, that the literature identifies a varied set of actions or means in which remedy can occur. Based on the Guiding Principles, United Nations resolutions, international conventions and treaties, as well as on literature related to civil law, human rights and business, and international law, there are at least five main forms of remedy: (i) restitution; (ii) compensation; (iii) rehabilitation; (iv) satisfaction; and (v) guarantees of non-repetition.[6] It also bears noting that the measure(s) intended to provide remedy will depend on the nature, particularity, and seriousness of the alleged harm, in order to ensure that the remedy is appropriate and proportional. The literature also stresses

5 In addition to the reasons mentioned in this note, the OHCHR points to: (i) supporting project development in fragile and conflict-affected areas; (ii) generating feedback to improve the performance of banks and projects; (iii) prevention of conflict and harm; and (iv) social expectations, as well as evolving legal frameworks and norms.

6 For more information on types of remedy, their definitions and scope, please refer to the following documents, some of which can be found in the bibliography: Resolution adopted by the General Assembly 60/147. Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. (UN, 2006); *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises* (Report A/72/162, 2017); *Remedying Harm: Lessons from International Law for Development Finance* (Gómez Betancur, Dorman, & García Zendejas, 2022); Discussion paper: Working Group Enabling Remediation (Dutch Banking Sector Agreement, 2019); Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (UN, 2011); *Injustice incorporated. Corporate Abuses and the Human Right to Remedy* (Amnesty International, 2014); External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness. Report and Recommendations (Woicke, P., et al, 2020); American Convention on Human Rights "Pact of San José de Costa Rica" (OAS, 1969); Judgments of the Inter-American Court of Human Rights, including *Velásquez Rodriguez v. Honduras* (1989), *Blake v. Guatemala* (1999), and *Gelman v. Uruguay* (2011), among others.

the importance of addressing problems comprehensively, which is why a remedial process is likely to require a combination of measures to be adequate and effective.

There are two other elements on this matter which require a more in-depth discussion and which have been influential in the discussions and literature about access to remediation. The notion of "effectiveness" of remedial actions, and the idea of responsibility for the harm and, therefore, for the remedial action.

In terms of the issue of effectiveness, determining what qualifies as an *effective* remedy is not always straightforward. From the perspective of Dawkins, Macdonald, and Marshall (2016), the concept of effective remedy is not always clear in different contexts. For instance: sometimes the harm is not clearly defined since the very concept of "remedy" is subjective; the outcome of a dispute resolution process may include concessions that some complainants may consider inadequate; or the outcome may even be objectively less than what was originally sought. The authors also point out that the very analysis of the appropriateness of the concessions may differ among the members of a group of complainants, making it even more complicated to determine whether the remedy has been "effective" or not.

In relation to the idea of responsibility, as identified in the literature consulted, there are three ways in which an institution may be associated with an alleged harm: causing the harm, contributing to the harm, or having a direct link to the harm.[7] The OHCHR recognizes that, in practice, it is very rare for a development bank to cause harm, since banks are not responsible for implementing projects, so their connection to the harm will almost certainly be limited to a contribution or direct linkage (OHCHR *Remedy*, 2022, p. 83). This necessitates focusing on clearly differentiating the responsibilities of clients, executing agencies, and financiers. However, to understand the difference between cause, contribution, and direct linkage, the acts (and omissions) of a DFI, and in particular its due diligence and oversight processes, must be analyzed in depth. According to the Working Group on Enabling Remediation of the DBSA (2019), "The analysis of responsibility requires looking at the steps a business has taken (or failed to take) to assess and address risks, whether those steps were effective in actually mitigating risks or impacts, and the degree to which those actions or omissions increased the risk of the impact occurring" (p. 9). In this context, the literature clearly emphasizes that an in-depth and rigorous analysis of the responsibility of the DFI does not exempt from

7 For a more detailed review of the idea of responsibility, see the following documents, listed in the bibliography: OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector (OHCHR. 2017); *Remedy in Development Finance: Guidance and Practice* (OHCHR, 2022); Discussion Paper: Working Group on Enabling Remediation (Dutch Banking Sector Agreement, 2019); *Seven Questions to Help Determine When a Company Should Remedy Human Rights Harm under the UNGPs*. White Paper (Drimmer, J., & Nestor, P., 2021); OECD *Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD, 2023); *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN, 2011).

responsibility those who are actively implementing development projects. Rather, this process should be understood as one with separate avenues (the responsibility of the financier and of the executor) that should lead to the same destination, that of respecting human rights, ensuring the implementation of social and environmental frameworks, and providing remedy to the groups affected by such projects.

Remedy in practice: challenges and criticisms

There are numerous criticisms of the effectiveness of IAMs and financial institutions in terms of their ability to provide effective remedy for communities alleging to be affected by development projects. From this perspective, remedy has not been a consistent and concrete presence in the world of DFIs. According to García Zendejas, Gómez Betancur, and Dorman, "efforts to guarantee adequate remedy when harms occur have been insufficient to date" (2022, p.1). The members of the Working Group on Enabling Remediation of the DBSA (2019) acknowledged in their report that, up to that time, corporations were having impacts for which the affected parties were not receiving any remedy. Although a variety of avenues should be provided for those affected, in practice there are very few options available to seek remedy, and these options may not be easily accessible or effective (OHCHR, 2022; DBSA, 2019). According to Dawkins, Macdonald, and Marshall (2016), the activation of nonjudicial grievance mechanisms may have had minor positive impacts in some cases, but their weakness in terms of leverage has led them to play a limited role in facilitating access to remedy..

According to the literature consulted, one of the reasons for these criticisms and negative perceptions about the ability to facilitate access to remedy is linked to the IAMs' own mandates and available tools. According to some civil society organizations, these institutions are not necessarily equipped to deal with the issue of access to remedy. For example, the Center for International Environmental Law (CIEL), based on a paper published by García Zendejas, Gómez Betancur, and Dorman, points out that "While many DFIs have strengthened their IAMs over time, and even expanded their accountability systems to include grievance functions, few are explicitly mandated to go beyond documenting a DFI's failure to comply with its own policies [...] An IAM's mandate does not typically include the ability to compel the DFI to provide remedy for harms to affected communities, even when the DFI is non-compliant" (2022, p. 2). The CIEL authors maintain that even among those institutions that do have an explicit mandate to promote access to remedy, only some are able to ensure in practice that the financial institutions to which they belong actually do what is necessary to make remedy a concrete reality for the affected communities.

In its report *Remedy in Development Finance,* the OHCHR pointed out a set of factors to be considered in identifying challenges or limitations to the provision of remedy, two of which are especially salient for the purposes of this note. The inability of some mechanisms to address complaints made before projects are approved by the Board of Executive Directors, and limitations in the mandates of IAMs regarding their ability to follow-up or carry out monitoring of cases.

With respect to the prohibition of not being able to accept complaints related to projects which have not yet been approved by the board, the United Nations High Commissioner for Human Rights notes that this constraint may diminish the opportunity to adopt a preventive approach. The OHCHR report specifically states that "design changes are usually more feasible at earlier stages of projects, and mitigation actions less costly [...] early IAM access can help to signal potentially serious problems, provide a channel for early and effective resolution, and strengthen incentives for good project design at the outset" (2022, p. 63).

With regard to monitoring, the OHCHR identifies several potential challenges, including the following: (i) the scope of monitoring may be restricted to reviewing the implementation of the bank management's action plan, without considering whether the plan is adequate to address the identified harm, or whether the harm has been effectively remedied; (ii) IAMs may be limited to reviewing only reports produced by the financial institution, without being able to conduct independent travel and field interviews; (iii) the limited time frames allowed for monitoring may weaken incentives for compliance; (iv) IAMs may lack the ability to recommend necessary changes to the management action plans; and (v) IAMs may be authorized to report to the Board of Executive Directors on continuing noncompliance, but not to recommend appropriate remedial actions. In this regard, it is understood that these (and potentially other) limitations or challenges in monitoring may affect the ability of IAMs to provide an adequate response to the demands for remedy.

As this chapter makes clear, the subject of access to remedy has become increasingly important, and different stakeholders have taken steps to add to the discussion. Furthermore, based on the literature review and the current discussion on access to remedy, a core element of this conceptual framework is the establishment of harm and its association with policy noncompliance. This in turn, determines the degree or level of responsibility of each actor associated with the occurrence of such harm and, therefore, with responsibility for its remedy. In this regard, the logic of addressing the question of access to remedy would seem to be oriented toward the compliance function of accountability mechanisms..

However, as noted in the Introduction, the vast majority of these mechanisms have two complaint-handling functions: (a) compliance, which analyzes policy compliance in view of the alleged harm; and (b) dispute resolution, which neither establishes whether there

has been policy noncompliance nor addresses the issue of responsibility for the harm, but rather seeks consensual solutions to the alleged harm. In this way, dispute resolution functions allow communities' concerns to be addressed with greater flexibility. This marks a significant difference between the dispute resolution and compliance functions that is extremely important in framing the discussion on access to remedy. The vast majority of IAM dispute resolution functions do not require establishing noncompliance as a basis for reaching an agreement, nor do they have a mandate to investigate the relationship between the harm and potential noncompliance. Dispute resolution has a different focus than compliance, although the objective may be the same which is to address the concerns of communities that consider themselves adversely affected by development projects.

In this context, the next chapter will briefly review MICI's mandate according to its Policy, and then analyze in depth the outcomes obtained through the processing of complaints under MICI's Consultation Phase.

III.
Focusing on MICI: Policy and Practice.

The Mechanism's Experiences Facilitating Access to Remedy through Dispute Resolution

This section aims to show possible outcomes of a facilitated dispute resolution process, and to further enrich the discussion on access to remedy, which has so far been developed primarily through the lens of compliance. This allows the discussion on remedy to include a perspective associated with the methodologies, processes, and solutions that a dispute resolution process can generate for local communities experiencing alleged impacts from development projects.

To this end, this chapter focuses mainly on the way in which requests from local communities have been addressed within the framework of the MICI Consultation Phase, as well as the results obtained from these processes. This chapter will provide a general overview of the Mechanism's Policy, share information on the portfolio of complaint cases managed, and then an in-depth analysis of four cases where solutions were reached as part of the Mechanism's dispute resolution work .

Access to remedy: an overview based on MICI Policy

The Mechanism, its objectives, and phases

MICI Policy was amended in 2014, resulting in the Mechanism's current organizational structure, which comprises an overall Director's position and two case management functions: the Consultation Phase (CP) and the Compliance Review Phase (CRP). The Policy is the guiding instrument that formulates the Mechanism's objectives and defines the scope of its mandate. In this regard, a review of the Policy considering the discussion on access to remedy will provide an understanding of the tools the Mechanism has at its disposal to address this issue.

First, it is important to highlight what are the Mechanism's objectives according to the Policy: "Provide a mechanism and process independent of Management in order to investigate claims by Requesters in which they alleged having experienced harm due to noncompliance by the Bank of its own Relevant Operational Policies within operations financed by the institution" (MICI, 2021, p. 5, para. 5.a)[8], and "to serve as a mechanism of last resort for addressing the concerns of Requesters, after reasonable attempts to bring such allegations to the attention

8 Italics added for emphasis by author.

of Management have been made" (MICI, 2021, p. 6, para. 5.c),[9, 10] The first objective shows that the Policy places an initial emphasis on two aspects: investigation, and the idea of harm allegedly caused by noncompliance with policies. In its third stated objective, the Policy talks about "addressing the concerns of Requesters," which is understood as the opportunity to initiate a dispute resolution process where the discussion would no longer be about the alleged harm but rather about the concerns raised. In this sense, the Policy does not explicitly mention the intent to provide or facilitate access to remedy, but instead focuses on investigating the harm and addressing concerns.

A further analysis of the MICI Policy makes clear that the Mechanism's objectives are achieved through two phases of case management. By explaining that requesters can choose which of the two phases is most suitable for addressing their complaint, the Policy conveys that the Consultation Phase provides an opportunity to address the issues raised in the request in a voluntary, flexible, and collaborative manner. Regarding the Compliance Phase, the Policy indicates that this phase offers an investigative process to establish whether the Bank has failed to comply with any of its policies and whether such noncompliance has caused harm to the requesters (MICI, 2021, p. 6). Here again a distinction is made between the two phases, where dispute resolution focuses on addressing concerns and compliance focuses on investigating noncompliance, and if noncompliance is found determining whether it is linked to the alleged harm.

When the Policy states the specific objectives of each phase, we can observe a shift in the narrative. The objective of the Consultation Phase is to "to provide an opportunity to the Parties *to address the issues raised by the Requesters related to Harm caused by the failure of the Bank to comply* with one or more of its Relevant Operational Policies" (MICI, 2021, p.14, para. 24).[11] Thus, while the general part of MICI's governing document speaks of "addressing issues," when defining the objectives of the Consultation Phase it explicitly mentions the concept of harm caused by the Bank in the event of noncompliance. It no longer speaks of alleged harm or related issues but rather of harm caused. Further it links this harm to noncompliance. However, at no time does the MICI Policy state that the Consultation Phase should or can determine the Bank's compliance with its social and environmental standards, let alone link such noncompliance to the alleged harm. Thus, during the work of the Consultation Phase, we cannot properly and sustainably refer to a "harm caused"; nor can we conclude that any agreements reached imply compliance or noncompliance with the policies.

9 Italics added for emphasis by author.

10 The Policy also sets out another objective geared to providing information to the Board of Executive Directors on the investigations conducted.

11 Italics added for emphasis by author.

The Policy states that the objective of the CRP is to "impartially and objectively investigate allegations by Requesters that the Bank has not complied with its Relevant Operational Policies and has caused Harm to the Requesters" (MICI, 2021, p. 17, para. 36). Here it can be discerned that the CRP analysis is a linear process that could be read as follows: "allegation of harm – determination of compliance or noncompliance – linking the noncompliance (if any) with the alleged harm." At the same time, MICI Policy determines that the Mechanism "is not designed to establish [...] the responsibilities of the different parties involved" (MICI, 2021, p.17, para. 37). The Policy further states that the compliance review report should include "the Panel's findings as to whether (and if so, how and why) an action or omission by the Bank relating to a Bank-Financed Operation resulted in the failure to comply with one or more of the Relevant Operational Policies (indicating the Policy in question and a description of the noncompliance), and the Harm to the Requesters" (MICI, 2021, p. 20, para. 45).

Based on the above, it is important to recognize that the Policy seems to refer to different terms as if they were similar at various times, although these terms are not comparable. From a dispute resolution standpoint, it is not the same to discuss concerns or issues raised by the requesters as it is to discuss harm caused by noncompliance. Assuming that there is damage already caused by a failure to comply with operational policies, alters the dynamics of the process. It can affect the balance of power between the parties in the dialogue process, and in turn creates a set of expectations that, if not met, can be a source of frustration and even lead to an escalation of conflict. It is therefore important to continually remind the parties that a Consultation Phase process addresses concerns, worries, and issues raised in a request ("alleged harm"), but does not include a determination of compliance with Bank policies.

Scope of MICI's role

While MICI Policy is not consistent in its references to harm in the MICI phases, it is much clearer on what should be included in relation to this issue when a request is submitted to the Mechanism. In the first place, the document includes a glossary of the key terms utilized. It offers the following definition of harm: "any substantial and direct loss or damage. Harm may be actual or reasonably likely to occur in the future" (MICI, 2021, p. 1). This opens the door for MICI to address both real and potential harm. In the second place, the Policy sets out criteria for the registration and eligibility of requests by stating that a complaint must contain a "clear explanation of the *alleged Harm* and its relation to the noncompliance of the Relevant Operational Policy in a Bank-Financed Operation, *if known*" (MICI, 2021, p. 8, para.

14.f).[12] At the same time, the eligibility criteria also specifically state that the request must include a description of "the Harm that could result from potential noncompliance" with the operational policies (MICI, 2021, p. 12, para. 22.c).[13] In this way, we have a set of well-defined elements of the Policy that clearly and concisely define the scope of MICI's intervention. The Mechanism can thus receive complaints about situations that are occurring or could occur; and, what is required of a requester is (1) to provide an allegation of harm, (2) to link it to a Bank policy if known (the requester need not specify which policy is being violated), and finally, (3) to explicitly state the potential nature of the noncompliance allegedly underlying the harm.

In addition to the above, there are two other aspects where the Policy is expressly clear: MICI does not have the power to suspend projects or disbursements; and the Mechanism cannot process complaints about projects that have not been yet approved by the Board of Executive Directors. With respect to the former, the Policy states that if the MICI director considers that a given project could generate "serious and irreparable harm," this officer may recommend to the Board of Executive Directors that project execution be suspended, but the decision ultimately rests with the Board and not with the Mechanism (MICI, 2021, p.10, para.18). In relation to the fact the MICI cannot address complaints about projects that have not been approved by the Board, it should be noted that Bank-managed grievance mechanisms were established after the adoption of the new IDB and IDB Invest environmental and social policy frameworks. These internal mechanisms, based on the logic of a "remedy ecosystem," should be able to address social and environmental complaints that reach the IDB Group before the project in question is approved by the Board of Directors, thus reinforcing a preventive approach. It should be noted, however, that these Bank-managed mechanisms are relatively new having only been established in 2021.

12 Italics added for emphasis by author.

13 Italics added for emphasis by author.

The Consultation Phase: objective, participants, and limitations

Based on the characteristics of the Consultation Phase as noted earlier, we can see that the objective of the dispute resolution function is to provide a flexible space for the parties to resolve the concerns raised in the request. Here it is worth focusing briefly on the idea of "the parties." According to the MICI Policy, the parties are "The Requesters, Management, the Borrower, the Client and/or the Executing Agency, if applicable" (MICI, 2021, p. 2). Thus, it is clear that the client or executing agency and Management are participants in a MICI dispute resolution process. This is a clear distinction from dispute resolution procedures of other IAMs (in which these parties don't generally participate in the dispute resolution process) and is thus extremely important to the remedy discussion since those providing and receiving the financing, those responsible for implementation, and those charged with oversight are all seated at the table. In other words, the two parties potentially responsible for the alleged harm and for the remediation of that harm are present and play an active role in any MICI-facilitated dialogue process.

With regard to the work of the Consultation Phase, the Policy notes that the various modalities a dispute resolution process may take depends, among other factors, on the type of harm being addressed, as well as the remedies being sought. Likewise, according to MICI Policy, one of the objectives of the assessment stage is "understanding the Harm related to potential policy noncompliance…" (MICI, 2021, p.15, para. 27). Thus, understanding the nature of the harm is highly relevant in guiding the work of the Consultation Phase and especially in analyzing which methodologies are most appropriate to address that harm.

On the other hand, with respect to the agreements that may be reached under the dispute resolution function, the Policy notes two major limitations: (a) agreements must not violate Bank policies (including environmental and social standards) and the Bank's code of ethics, nor domestic law or international law; and (b) the "Consultation Phase itself does not result in award of compensation or similar benefits" (MICI, 2021, p. 16, para. 32). This last point does not mean that during a dispute resolution process the parties cannot voluntarily agree on compensation measures, even though such compensation will not be provided, implemented, or financed by MICI. In addition, the Policy includes the key provision that once an agreement has been reached, the Consultation Phase can monitor that agreement for up to five years. This is important because it is aimed at promoting compliance of the commitments adopted and seeking to ensure the effective implementation of the solutions proposed. In this way, agreement monitoring is the bridge between the expectation of remedy provided by a signed agreement and the material solution that an implemented agreement portends.

As mentioned earlier, there are some discrepancies within the MICI Policy with respect to the idea of remedy and harm. However, as far as the Consultation Phase is concerned, we can

highlight a few key points: (a) the MICI Consultation Phase is a flexible process that seeks to address the parties' concerns; (b) the functions of the MICI Consultation Phase do not include determining noncompliance with Bank policies or whether such noncompliance is related to the alleged harm, and for this reason a possible dispute resolution process does not depend on the existence of a proven harm resulting from noncompliance; (c) agreements facilitated by MICI must not contravene national legislation, nor international law or safeguards policies; (d) the Consultation Phase does not award financial compensation, but this provision may be agreed upon voluntarily by the Parties; (e) both the IDB Group and the client or executing agency, as well as the requesters, are present in a MICI-facilitated dispute resolution process; and (f) given that addressing community concerns requires specific actions, MICI Policy allows for the agreements reached in the Consultation Phase to be monitored for up to five years. These key elements will guide us in understanding the portfolio of complaint cases managed by the Consultation Phase, and in analyzing the outcomes of this phase..

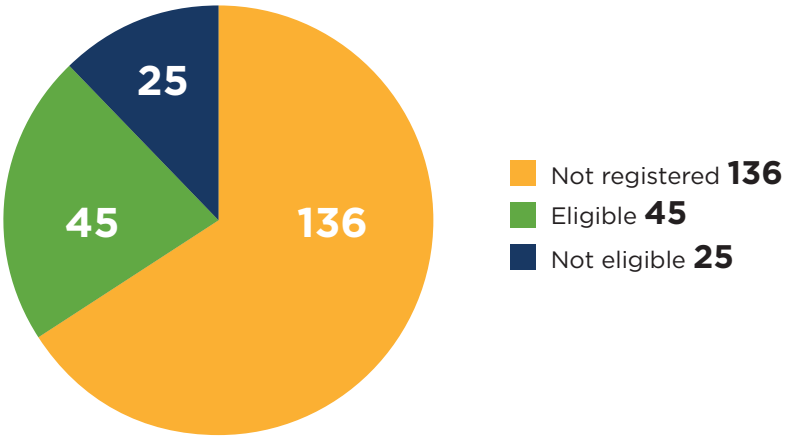
Consultation Phase team meeting with representatives of other accountability mechanisms

Totality of complaints: a review of the portfolio of cases managed by the Consultation Phase

Portfolio of cases received by MICI and managed by the Consultation Phase

From 2010 when MICI initiated its dispute resolution function until 2022, the Mechanism has received a total of 206 complaints. Figure 1 shows that only 70 of those 206 requests were registered. This demonstrates that most of the complaints submitted to MICI did not meet the basic criteria to be processed by the institution.[14] Of the 33.98% of complaints that were registered, 64.29% were ultimately declared eligible.

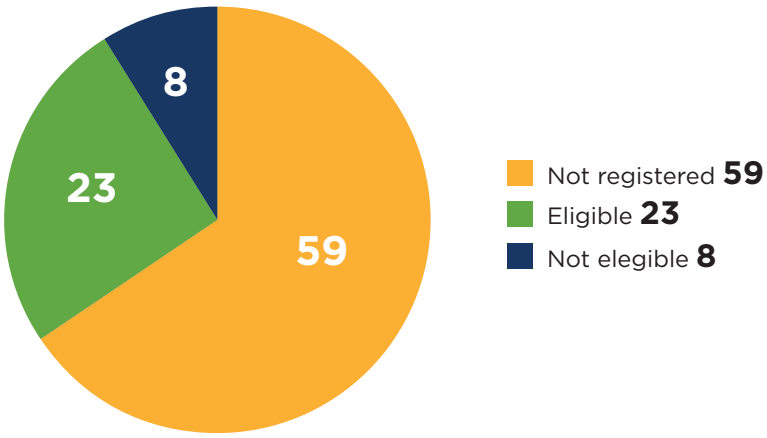
Figure 1. Complaints received from 2010 to 2022.



14 From 2014 to 2022, with the current MICI Policy in place, 54% of the unregistered cases were clearly linked to one of the Policy's exclusions: of that number, 70% were outside MICI's mandate, related instead to: purchases, procurement, and contract issues; allegations of prohibited practices and corruption; or ethics, financial, or administrative matters. In addition, 39% of unregistered complaints between 2014 and 2022 were not registered because the information submitted was incomplete.

If we focus our analysis on the time frame covered by this note, 2017 to 2022, MICI received a total of 90 complaints, 31 of which were registered. This shows that the case registration ratio is similar for both periods (33.98% between 2010 and 2022 and 34.44% between 2017 and 2022). However, an increase in the case eligibility rate is observed for the 2017-2022 period as 74.19% of registered cases were admitted for MICI processing.

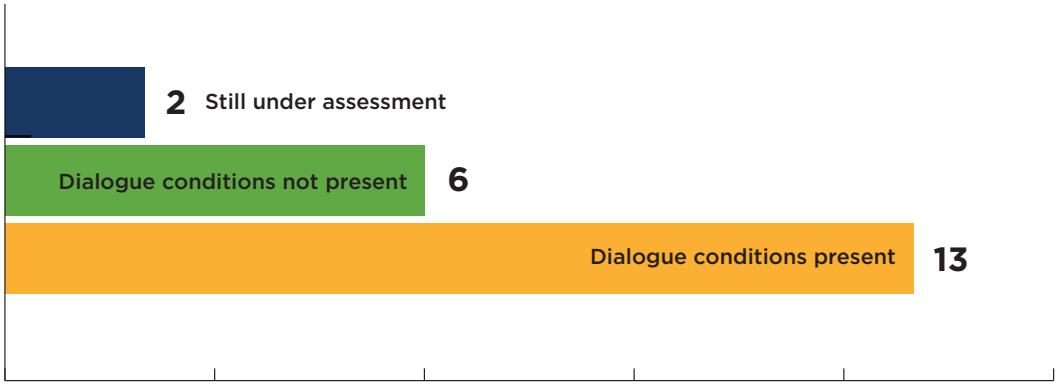
Figure 2. Complaints received from 2017 to 2022



With respect to the function selected by complainants (in eligible cases) when submitting their complaints to MICI between 2017 and 2022, the requesters opted to use the Consultation Phase in 21 of the 23 cases,[15] and only 2 opted for the Compliance Review Phase. Figure 3 shows that, of the 21 cases in which the requesters chose to use MICI's Consultation Phase, in 6 cases the analysis carried out by the Mechanism's staff concluded that conditions were not conducive to initiating a dispute resolution process. There are also two cases in which conditions were still being assessed at the end of 2022. These figures demonstrate that between 2017 and 2022 conditions for a dispute resolution were deemed adequate in 61.90% of the cases that were transferred to the Consultation Phase.

15 In these cases, the requesters indicated that they wished to use both phases of MICI. In those circumstances, processing always begins with the Consultation Phase.

Figure 3. Analysis of the 21 Cases Received by the Consultation Phase between 2017 and 2022



An important aspect related to the type of institution which submitted the complaint, only 3 of the 21 requests processed by the Consultation Phase between 2017 and 2022 concerned IDB Invest (private sector agency) projects. Thus, 85.71% of the cases handled under MICI's dispute resolution phase originated from projects financed by the IDB Group's public sector agency. This trend is even more pronounced in the 13 cases in which a dispute resolution process was initiated, with only 1 of them referring to an IDB Invest project.

Another important aspect worth noting is that more than half of the cases received by the Consultation Phase were submitted by local communities, with no support from third parties. In the 43% of cases where the requesters did receive outside support, this support came from: (a) civil society organizations in five cases; (b) law firms in two cases; (c) local leaders who are not directly affected parties in one case; and (d) government agencies in one case.

However, if we look more closely at the 13 cases that started a process under the Consultation Phase, of the 5 cases identified as receiving support from civil society organizations between 2017 and 2022 only in 1 case did the requesters received assistance by a CSO during the dialogue and negotiation phases.[16] On the other hand, of the two complaints submitted with the support of law firms, one began the dispute resolution process while conditions were not deemed suitable for moving forward in the other case. In the case that was supported by government agencies, a multistakeholder process was undertaken.

16 In addition, there were two additional cases in which, although CSOs supported the requesters in submitting their complaint to MICI, they withdrew before the start of the dialogue process. In the remaining two cases, conditions were not suitable for initiating a dispute resolution process.

Impacts alleged by requesters and outcomes achieved in the Consultation Phase

In relation to the 13 cases where conditions were favorable for initiating a dispute resolution process, as shown in Figure 4, the main concerns identified by the requesters are associated with impacts on their living conditions. In addition, there is serious concern about potential project impacts on the environment, as well as on complainants' health and property. However, in addition to the impacts they claim to be experiencing (or may experience in the future), complainants usually point to a number of shortcomings or problems with project implementation. In most of these 13 cases in which a dispute resolution was initiated, the requesters asserted that adequate consultations were not carried out, and that they lacked all the information needed to analyze the project and its potential impacts. In addition, it's possible to note that complaints usually included "substantive" allegations (e.g., impact on their livelihoods, water pollution) along with other types of "non-substantive" claims (e.g., such as not being adequately consulted beforehand and not having information about the project).

Figure 4. Impacts alleged in the 13 requests that began a dispute resolution process

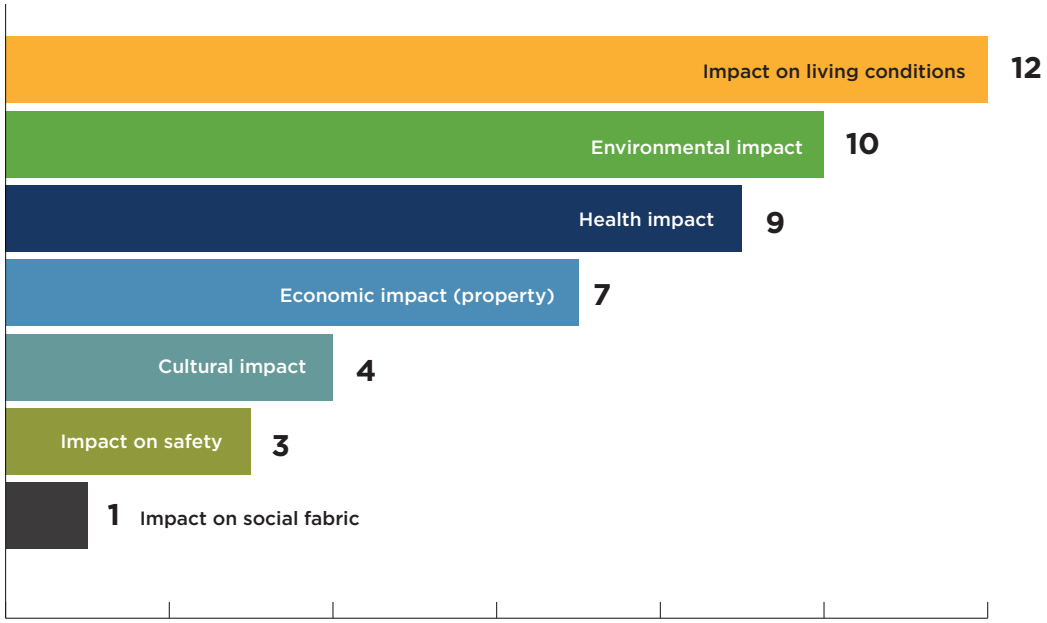
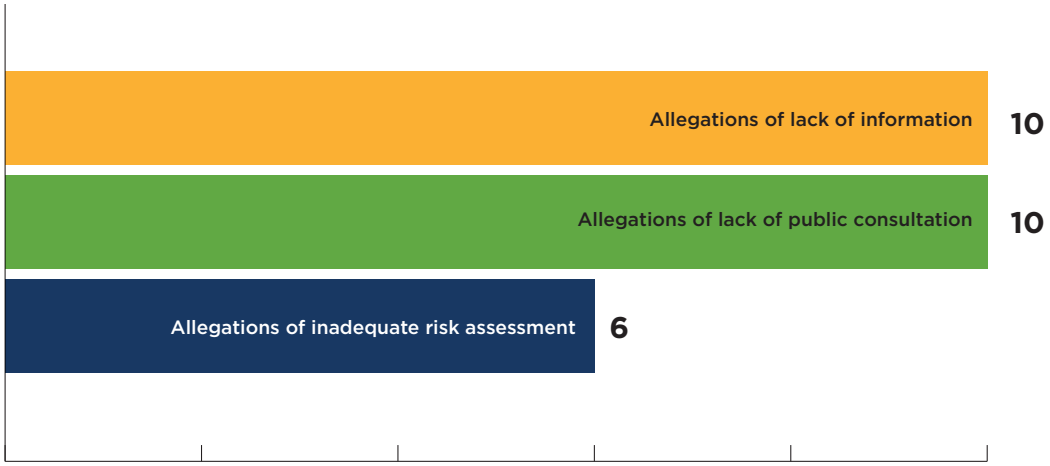


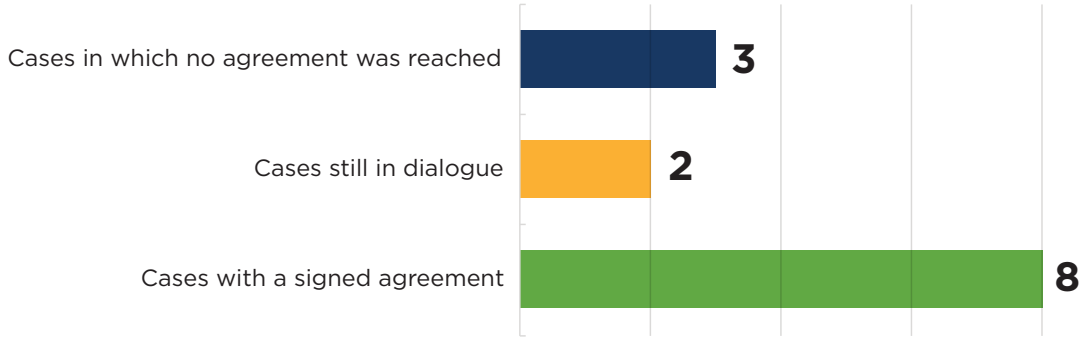
Figure 5. Other allegations associated with the 13 requests that began a dispute resolution process



On the other hand, the geographical distribution of the 13 MICI-facilitated cases shows that most of them were focused on South America: 7 in Argentina, 2 in Colombia and 1 in Ecuador. The remaining 3 cases are from Costa Rica (2) and Haiti (1).

As noted earlier, the ultimate objective of the Consultation Phase is to reach agreements that address the concerns raised by the requesters. Figure 6 shows that 13 requests began dispute resolution processes between 2017 and 2022. By the end of 2022, eight of them had concluded with an agreement between the parties; in two cases the dispute resolution process was ongoing; and in three cases the dispute resolution process ended without an agreement between the parties.

Figure 6. Outcomes of MICI-facilitated Dispute Resolution Processes between 2017 and 2022



The graph above documents that in 72.27% of the cases (8 out of 11) in which MICI facilitated a dispute resolution process and the process was completed, a voluntary agreement was reached between the requesters, the IDB Group, and the executing agency.

As mentioned earlier, MICI's experience facilitating dialogues in IDB Invest-financed projects has been limited. Of the three cases received between 2017 and 2022, only one entered the dispute resolution stage. In that case, the parties reached partial agreements but not a final agreement.[17] Therefore, all the final agreements facilitated by MICI in the last five years have been in public sector projects.

It is also important to note that, under the Policy, MICI has the authority to monitor compliance with any agreements reached. This function is essential to encourage the implementation of commitments made, thus ensuring that the agreed solutions become a reality for those involved. In four of the eight cases that concluded with a signed agreement between 2017 and 2022, all agreed commitments have been implemented and the case has been closed.[18] In the other four cases, the agreed actions are being implemented under the Mechanism's monitoring.

17 During two years of the dispute resolution phase, two partial agreements were reached on road safety and pedestrian bridges, and homes and properties. Despite the progress made on these items, no final agreement was reached on the overall five agenda items, and the case was transferred to the Compliance Review Phase.

18 The case associated with the Bogotá Metro (0184) was formally closed in the first quarter of 2023, but all actions under the agreement were implemented by December 2022. Therefore, the case was included in the sample for this study as a closed case with an implemented agreement.

Understanding case processing times

Another relevant aspect of the remedy access discussion is managing timelines. Effective remedy requires that it be achieved in a reasonable amount of time. For this reason, MICI Policy sets deadlines for each stage of the Consultation Phase: 40 business days for the Consultation Phase assessment; 12 months for the Dispute Resolution Phase; and 5 years for Monitoring Phase. If these time periods are converted to calendar days, this means that the maximum allowed for a MICI process would be approximately 2,238 days (without taking into account the possibility of requests for extensions). Between 2017 and 2022, the average case management time for those cases that entered and reached the end of the Consultation Phase (from assessment to case closure), was 396 calendar days. Looking at this same sample of cases from registration to the close of the Consultation Phase, the average processing time for all cases received by MICI that went through dispute resolution between 2017 and 2002 is 485 calendar days.[19] This information considers 13 of the 21 cases managed by the Consultation Phase between 2017 and 2022, including: (i) cases in which conditions for dispute resolution were not present; (ii) cases in which conditions were present, a dispute resolution was held, and the case was monitored and subsequently closed; (iii) cases in which conditions for dispute resolution were present, but no agreement was reached and the Consultation Phase was concluded. Section 3.C.ii details the processing times for complaints that resulted in an agreement and were monitored.

Another interesting aspect of the analysis on the average case management time in the MICI Consultation Phase is that in this phase there aren't usually requests for extensions from the Board of Executive Directors. In fact, between 2017 and 2022, extensions were requested in only 3 of the 14 cases during the dispute resolution stage (Caracol Industrial Park in Haiti, Ruta del Cacao in Colombia, and Integrated Urban Solid Waste Management in Chascomús, Argentina). In the Caracol case, a six-month extension was granted and a final agreement was reached. In the Ruta del Cacao case, the extension (during the pandemic) was for one year and the parties were unable to reach consensus on a final agreement. In the case of Chascomús, a nine-month extension was requested to continue with the dispute resolution process.[20] In relation to extensions requested during the Assessment Stage, before the onset of the pandemic (2017 to 2020) no extensions had been requested but during COVID

19 For the Registration and Eligibility Phases, the Policy allows 5 business days for registration, and 42 business days for eligibility (21 business days to receive Management's response, and another 21 business days to issue the eligibility memorandum). Without taking into account any possible requests for extensions, this amounts to approximately 63 calendar days. Therefore, if the 63 calendar days are added to the 2,238 days for the Consultation Phase, the maximum period from registration to the close of the Consultation Phase would be 2,301 calendar days.

20 This extension became effective in November 2022, so that, for the time period covered by this note, the dispute resolution process was still ongoing, without a final agreement having been reached.

it became necessary to request three extensions for different reasons. No extensions have been requested in the monitoring phase between 2017 and 2022.

This information provides a clear picture of the portfolio of cases managed by MICI's Consultation Phase, the types of issues that are brought before the dispute resolution team, what are the characteristics of the groups that bring cases to the Mechanism, and the number of cases that have concluded with agreements. The next section will further examine the outcomes of the Consultation Phase and how they relate to providing solutions for communities that believe they have been negatively affected by IDB Group-financed development projects.

Understanding processes and outcames: an in- depth analysis of cases managed by the Consultation Phase

As noted in the previous section, the Consultation Phase has helped stakeholders reach agreements in 8 of the 11 cases for which dispute resolution processes have been concluded. This section seeks to analyze the main remedial actions that have been included in the MICI-facilitated agreements, and how these measures might be understood within the framework of the types of remedy described in Chapter 2. Likewise, a more detailed analysis will be carried out of the four cases in which remedial actions have already been implemented and the cases closed. The analysis of these cases will not only show what has been included in the agreements, but also how they have been implemented. Due to the realization that the discussion about access to remedy should directly involve the affected community, the analysis undertaken not only included a review of secondary information about these cases but included interviews with requesters in each of the four cases to understand their perspectives on the process and its outcomes.

It should be noted that some agreements reached through the Consultation Phase are confidential. Therefore, for this analysis, all the remedial actions have been considered in the aggregate and categorized in a general fashion with the objective of extracting valuable reflections and experiences while maintaining the confidentiality of the parties.

i) MICI-facilitated agreements: general reflections

As discussed in Chapter 2, the notion of remedy has two dimensions: procedural and substantive. MICI's Consultation Phase strives to ensure that the methodology used in the management of each case reflects the needs of the parties, as well as the context (political, social, and cultural) of the country, the region, and the specific circumstances of the operation and the dispute. One of the most important principles of case management is 'co-design' in order to ensure that access to remedy processes are legitimate, fair, and effective. According to the Guidelines for the Consultation Phase (MICI, 2018), a dispute resolution process should be designed "using as primary input the methodology, format, cultural and linguistic preferences of the stakeholders to whom they are intended" (p. 7, para. 3.2).

At the same time, there are three issues that any MICI-designed dispute resolution process should address: (i) the psychological aspects of the people involved in the dispute resolution process; (ii) the substantive elements that have been identified as the "key issues" in the request, so the dispute resolution process has a clearly defined purpose; and (iii) procedural aspects. In this way, through a co-designed dispute resolution initiative that addresses the three dimensions outlined above, the aim is to increase stakeholder confidence in the process, generate a sense of ownership of the process, and strengthen the parties' perception of the legitimacy and fairness of the MICI process.

This approach to designing a dispute resolution process has led, for example, to identify jointly with the stakeholders, neutral locations where the dialogue can take place, and to undertake the translation of official IDB and MICI documents into the requesters' native languages beyond the Bank's four official languages. Co-design has also led to the establishment of very strict conditions on the procedures for sharing technical information. This ensures that affected communities can have access to relevant documents and information before the multistakeholder meetings are held, and thus seek the advice they deem necessary, clarify doubts, and generate proposals. On other occasions, this approach has led to scheduling the start and end times of face-to-face dialogue sessions to allow local stakeholders to continue with their income-generating or childcare activities, to ensure that everyone can participate effectively in the dialogue. Likewise, the needs of the stakeholders have led in several cases to being flexible with the deadlines set out in the MICI Policy, speeding up processing times, and carrying out the assessment and dispute resolution stages simultaneously. These measures ensure that the dialogue design is adapted to the context of the country, region, project, and complainants. These are just a few examples of the various factors that must be considered during the joint design of a dispute resolution process. They highlight the importance of active stakeholder involvement in defining how the dialogue and negotiation process will function, thus ensuring that the processes are culturally and socially appropriate.

Relevant considerations on the outcomes achieved

Figure 7. Geographic distribution of MICI-facilitated agreements between 2017 and 2022

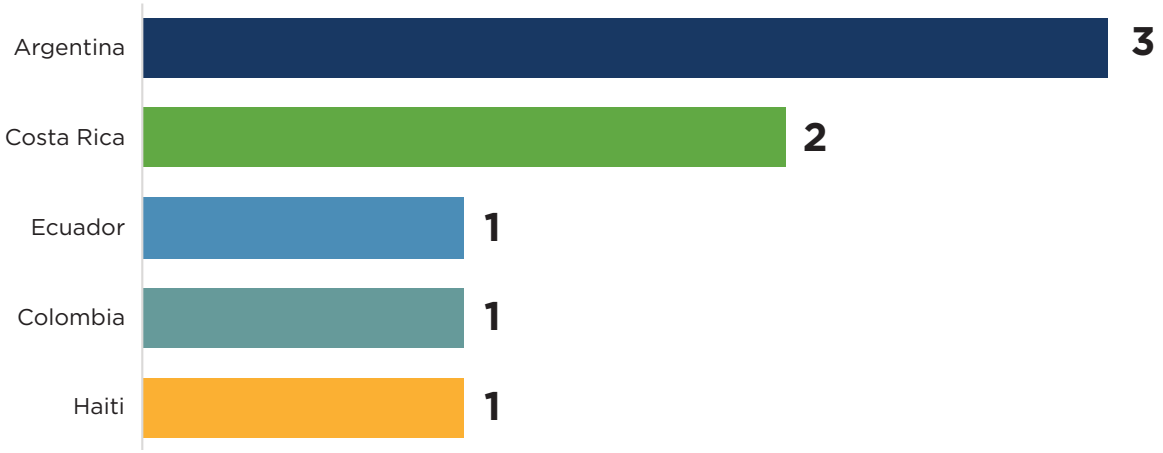
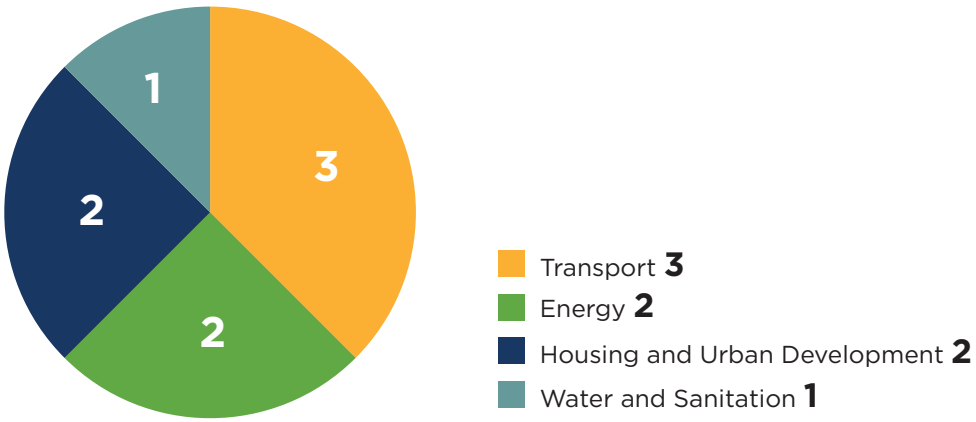


Figure 8. Sector to which projects belong



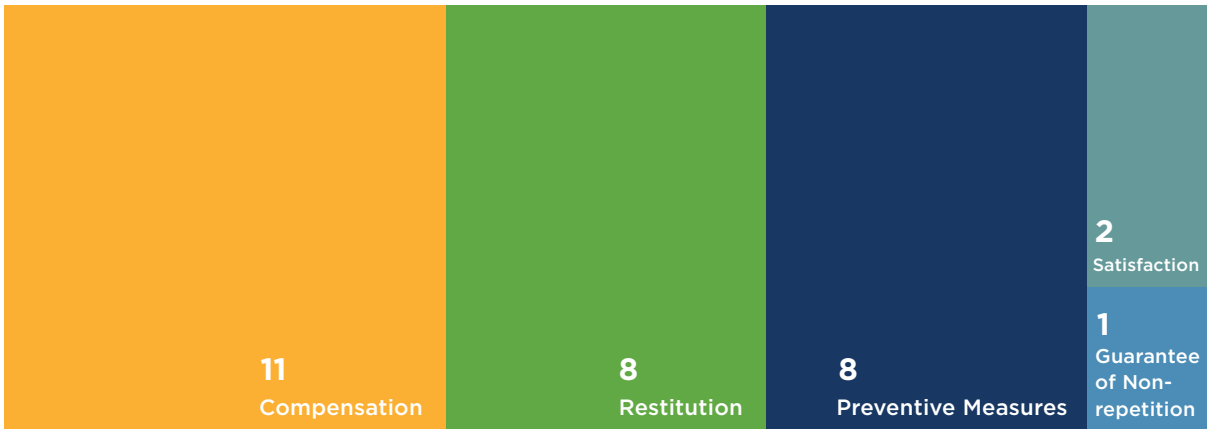
Focusing on the eight cases in which MICI has facilitated agreements, the following data emerges: (a) sectors of the projects which generated MICI requests, and (b) geographic distribution of the eight agreements reached.

In terms of the substantive dimension of the agreements reached, there is a wide range of measures and solutions that resulted from the processes facilitated by the Mechanism. These are not necessarily reflected, however, in the text of the final agreements despite having been instrumental during the talks. For example, there are partial measures or agreements, which may be procedural rather than substantive in nature, or aimed at generating information for the dispute resolution process. In addition, many of the measures or actions agreed upon under the MICI framework cannot easily be categorized into the types of remedy described in Chapter 2.

Even in this context, a review of the eight agreements reveals a varied set of measures that can be categorized into one of the five forms of remedy identified: restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition. Figure 9 presents a breakdown of the measures included in these agreements according to the type of remedy to which they might correspond.[21] As noted previously, this grouping does not include partial agreements that may have been made during the dispute resolution process but not included in the final agreement. Likewise, measures that are not readily identifiable within one of the five forms of remedy have been excluded from this categorization. Lastly, a sixth category was added, called "preventive measures," to include those solutions or actions that seek to prevent harm. For instance, sampling water to analyze its quantity and quality or altering project designs to prevent potential harm, as well as conducting technical tests to verify that a specific project component will not cause future harm. This category seeks to reflect the work that MICI's dispute resolution function performs in addressing "potential harm," in line with the holistic approach various stakeholders believe should guide the discussion on remedy.

21 Methodological clarification: The author of this note is responsible for the classification and breakdown of the measures according to the types or forms of remedy. This included a detailed review, clause by clause, of all the agreements signed by MICI in the cases identified, including confidential information. Based on this analysis, as well as on interviews with the MICI staff members responsible for managing these cases, and in conversations with the requesters, the relevant measures were categorized taking into account the objective of these measures and the definition of each form of remedy according to the literature reviewed.

Figure 9. Breakdown of solutions reached in MICI-facilitated agreements, by type of remedy



Before going into the detailed analysis of Figure 9, it is important to note that seven of the eight cases involved a combination of measures corresponding to different types of remedy. In other words, in 87.5% of the cases with agreements, various measures were agreed upon to address the issues raised. In five of the eight cases, at least two types of remedy were used in combination, and in two cases three different types of remedy were combined. If we look at the type of solution adopted, we can see that five of the eight cases agreed on solutions that can be understood as restitution, while four of the eight cases agreed on preventive measures. Compensation measures were included in five of the eight agreements reached.

A breakdown of the measures included in these eight agreements shows a set of 30 specific actions that can be categorized according to the 5 forms of remedy.[22] Figure 9 shows the breakdown of these measures by type of remedy. Taking this sample of 30 measures as the base of analysis, we observe that compensation actions account for 36.67% of the measures included in the agreements analyzed (11 out of 30),[23] while restitution and preventive measures account for 26.67% each, followed by satisfaction measures and guarantees of non-repetition with 3.23% each.

Some key considerations follow from the above. First, MICI-facilitated agreements clearly tend to include a combination of remedial measures. In this sense, the combination of measures most frequently used in the cases analyzed involves restitution and compensation actions,

22 In addition to the five forms of remedy identified in Chapter 2, the charts and analysis in this document add the sixth form of "preventive measures," as mentioned before.

23 Five of the eight cases analyzed included actions that can be categorized as compensation, for a total of 11 measures. However, of the 11 measures identified in these 8 cases, 5 of them occurred in a single case. Therefore, 45% of the compensation measures analyzed are linked to one of the eight cases studied.

accounting for 19 of the 30 measures examined. In the vast majority of cases, MICI has relied not on one single type or form of solution, but on a combination of measures that reflect the importance of addressing the access to remedy issue from a holistic perspective rather than a reductionist one focused exclusively on financial compensation, as has been proposed by different stakeholders, international institutions, human rights bodies, and civil society organizations.

Second, we can see that compensation defined more broadly has been the type of remedy most frequently used in MICI agreements. Although footnote 23 states that 45% of the identified compensation measures occurred in only one of the eight cases analyzed, it is important to highlight the inclusion of this type of measure in the agreements reached. It also bears noting that none of the 11 compensation measures included a cash payment component. The solutions analyzed in this category include road improvements, technical support for complainants to adopt new income-earning activities, provision of equipment and inputs, support for vocational training, and infrastructure construction, among others. In other words, all identified compensation measures are nonmonetary.[24]

Third, although restitution as a form of remedy is extremely complex, the MICI agreements included measures aimed at restoring the status quo of requesters claiming negative impacts. While it can often be difficult to determine with certainty that there has been complete restitution of quality of life, people's livelihoods, income-earning or commercial activities, and the preservation of an ecosystem, about a quarter of the measures agreed to during the MICI Consultation Phase have these objectives. These corrective measures include increasing access to sources of employment to reestablish livelihoods, constructing of water systems to ensure its access, expansion of reforestation programs, restitution of properties for housing or commercial purposes, and the repair of roads that are essential to the communities.

Fourth, it is evident that the agreements facilitated by MICI have a strong preventive focus, with almost a quarter of the measures analyzed falling into this category. Here it is worth remembering that MICI may consider allegations of actual or potential harm. This has made it possible to address complaints which have arrived at MICI, even when the negative impacts have not yet materialized. An analysis of these situations shows that some projects have reached MICI in the early stages of implementation. For example, in cases involving allegations of potential impacts on water quality, the needed testing and monitoring measures have been adopted. Other preventive measures are aimed at protecting sites considered culturally

24 The literature refers almost uniformly to the concepts of monetary, nonmonetary, financial, or nonfinancial compensation. In general terms, monetary or financial compensation involves a cash payment to the compensated person or persons, based on a quantifiable harm. Usually, this cash is delivered without any conditions. Nonmonetary or nonfinancial compensation can be understood as the provision of goods, services, or other items to the compensated party, but does not entail a cash transfer.

and historically significant or developing plans and taking actions to reduce the risk of road accidents.

The fifth point that emerges from Figure 9 is that none of the 30 measures analyzed include actions for rehabilitation, and that there are only 2 measures of satisfaction (the stopping of actions that the requesters claim were harming their health, as well as reducing the alleged impact on the requesters' Income-earning activities) and one measure guaranteeing non-repetition.

There are quite a few actions or solutions achieved through a MICI-facilitated dispute resolution process that are beyond the scope of this analysis, particularly those related to issues of access to information and transparency, production and dissemination of technical studies, promotion of active citizen participation, or measures aimed at respecting or appreciating the value of historical, cultural, or identity-related issues. These elements, although they may not fall into the category of "substantive" remedy, address other aspects of the harm alleged by the complainants. Such measures, aimed at appreciating the value of local communities' voices, or promoting access to information as a human right, should be understood within the broad framework of providing solutions to environmental and social disputes. In addition, these measures have often played a key role in ensuring the legitimacy of the dispute resolution process and in providing key information for decision-making on measures aimed at "substantive" remediation.

As seen in the pages above, the work of MICI's Consultation Phase has focused on ensuring that its processes are legitimate and responsive to the stakeholders' needs, and that they create the necessary conditions for reaching agreements to resolve the issues raised by the communities. In this context, MICI has promoted accessible and participatory dispute resolution processes that are culturally appropriate and adapted to the dynamics of the context, the project, and the conflict at issue. In addition, the agreements facilitated by the Mechanism have led to a variety of results, combining different types of solutions to address the problems identified. Given that some of these agreements are in the implementation stage and are being monitored by the Mechanism, the following section will present a more detailed analysis of the cases that have been closed. These cases will allow us to understand more clearly the final implementation results of the agreements designed to offer solutions to the problems raised by communities.

ii) Agreements that provide solutions. A detailed analysis of four cases from the Consultation Phase

This section takes a more in-depth look at the details of four requests in which agreements have been implemented and the cases have been closed: San Vicente-Jama STL (Ecuador), Reventazón (Costa Rica), Calle Mitre (Bariloche, Argentina) and the Bogotá Metro (Colombia). This analysis has used public documents produced within the framework of the Mechanism, as well as confidential information, project documents, and other information provided by the various stakeholders. Interviews were also conducted with requesters from the four cases in order to clearly and accurately capture their perceptions of the process and its outcomes. IDB staff members who were on the project teams in the cases analyzed were also interviewed.

Initially, a brief summary will be provided for each case including the requesters' main harm allegations and the agreements reached during the Consultation Phase. The cases and their outcomes are then analyzed in detail from both the procedural and substantive perspectives.

To respect the confidentiality of the interviewees and of the agreements that included a confidentiality provision, we do not specifically identify who shared a particular perspective or opinion or refer to the specific components of a particular agreement..

Reventazón Case – Costa Rica[25]

The request was filed by a family of three persons engaged in farming and ranching activities. The requesters alleged that the construction of the Reventazón Hydroelectric Project required the expropriation of approximately 4.7 hectares of their farm where, according to the family, two water sources they needed to use for their livestock and crops were located. The alleged harms were associated with: (i) economic impacts, since they could not feed their livestock, thus reducing their production and income; (ii) potential harm to health; (iii) psychological impacts due to the uncertainty of the situation they were experiencing because of the project.

MICI's Consultation Phase conducted an expedited process with an intensive methodology that merged the assessment and consultation stages. The solution agreed by the parties in April 2018 sought to reestablish water access for animal watering and irrigation through the construction of a rainwater harvesting, storage, and distribution system. It also provided for the requesters' inclusion in a sustainable farm management program. Once the agreement was signed, MICI monitored compliance for 14 months and then closed the case in July 2019.

25 For more information on this case, its processing during the Consultation Phase, and the solutions reached, please refer to the case file in the Public Registry (https://mici.iadb.org/en/cases/MICI-BID-CR-2017-0125?nid=21810) and to the One Pager, "MICI's Experience with the Reventazón Hydroelectric Project" (https://www.iadb.org/document.cfm?id=EZSHARE-898595437-157).

Case of the San Vicente-Jama Sub transmission Line - Ecuador[26]

In April 2018, a group of 547 residents from eight communities in Manabí filed a request with MICI, alleging a set of impacts that could arise from the relocation of the San Vicente-Jama Sub- transmission Line (STL) as part of the Comprehensive Reconstruction Project for Affected Zones (PRIZA). The requesters identified the following potential harms: (a) blocking of evacuation routes, given the high seismic and landslide risks in the area; (b) negative impact on tourism in the area; (c) adverse effects on the health of people living near the STL; and (d) impact on flora and fauna, particularly on protected species.

MICI's Consultation Phase convened and facilitated three dialogue sessions that led to an agreement in April 2019. The core elements of the agreement were: (a) to cancel the proposed route change for the STL, and to carry out repowering and maintenance works on the line, following the original route; (b) to relocate one of the line's towers in order to address allegation of adverse health impacts due to the fact that a family's home was located below the line's existing route; (c) the disclosure of technical studies; and (d) to provide information to the public on the agreed route and the measures to be implemented. MICI monitored the implementation of the agreement for three years, and the case was closed in June 2022 when compliance with all commitments was verified.

26 For more information on this case, its handling by the Consultation Phase, and the solutions reached, please refer to the case file in the Public Registry (https://mici.iadb.org/en/cases/MICI-BID-EC-2018-0131?nid=23507) and to the One Pager, "Beyond Agreements: The Importance of Timing in Dispute Resolution" (https://www.iadb.org/document.cfm?id=EZSHARE-898595437-291).

Case of Calle Mitre - Argentina[27]

A group of 287 business owners and shopkeepers from Bariloche (Argentina) filed a complaint with MICI on 28 February 2019 regarding the upgrade and urbanization (converting it into a pedestrian-only street) of Calle Mitre, in downtown San Carlos de Bariloche. In this complaint, the requesters raised several actual and potential impacts, including the following: (a) economic impacts arising from the construction work and how the project would affect the flow of customers, leading to a possible decrease in sales; and (b) lack of access to information.

The MICI Consultation Phase was carried out using an intensive and time-bound methodology, with the assessment and consultation stages being carried out simultaneously. After two dialogue sessions, an agreement was reached that addressed the complainants' main concerns through: (a) changes to the project design to prevent or mitigate potential economic impacts; (b) a mobility study for Bariloche's downtown area to address problems associated with car parking, among other concerns; (c) hydraulic tests to prevent potential flooding; and (d) the planting of native tree species, among other elements. MICI monitored compliance with the agreement between June 2019 and July 2021, and closed the case once all commitments were fulfilled.

27 For more information on this case, its handling by the Consultation Phase, and the solutions reached, please refer to the case file in the Public Registry (https://mici.iadb.org/en/cases/MICI-BID-AR-2019-0144) and to the One Pager, "Bariloche: The Power of Dialogue in the Transformation of a Tourist Center" (https://www.iadb.org/document.cfm?id=EZSHARE-898595437-159).

Case of the Bogotá Metro - Colombia[28]

On 15 February 2022, a group of 17 citizens filed a complaint with MICI regarding the investment project for the first line of the Bogotá Metro. They included tenants of housing or commercial premises in Bogotá, as well as property owners. The main allegations were associated with economic impacts and impacts on property, living conditions, and health, because of the resettlement and expropriation processes that were part of the project.

MICI's Consultation Phase carried out the assessment and consultation stages simultaneously convening and facilitating eight plenary working sessions in Bogotá. As a result, six agreements were reached aimed at restoring the requesters' living conditions and economic activities. MICI monitored the agreements for 10 months, during which time it was able to verify effective compliance with all the agreed-upon commitments and subsequently closed the case.

28 Here we present a summary of the main alleged impacts and the central elements of the agreement. For more information about the case, its handling by the Consultation Phase, and the solutions reached, please refer to the case file in the Public Registry (https://mici.iadb.org/en/cases/MICI-BID-CO-2022-0184).

An analysis of the solutions reached

This section will explore, in detail, the key elements of the four dispute resolution processes, as well as the solutions reached, through the lens of access to remedy. This analysis will address first the procedural dimension and then the substantive dimension.

Procedural dimension

Key elements of the procedural dimension include: (a) the co-design of dispute resolution process; (b) methods for the production and use of technical information; (c) reducing asymmetries between the parties; (d) the involvement of third parties; and (e) the time needed to reach solutions.

Co-design of Dispute Resolution Processes. This element highlights the importance of actively including the different stakeholders' perspective, so that the process is shaped by their preferences as to how a dispute resolution process should function. In addition, flexibility proved essential to co-designing a dispute resolution process to ensure that the participants were effectively at the center of the process. The flexible co-design of the dispute resolution processes thus provided the fundamental elements for reaching agreements that are adequate, timely, and reasonable for all parties.

In this sense, the requesters interviewed stated that MICI took their perspectives into account when designing the process, and that there was an openness to modifying the methodology initially proposed. They also noted that the methodologies utilized allowed the discussions to be respectful and productive, generating exchanges and reflections among the participants. The interviewees emphasized that the listening methodologies were extremely valuable since they not only helped in the search for solutions but also demonstrated that the other parties valued their perspectives and interests. According to the requesters interviewed, not only were effective listening approaches used, but the dynamics of the jointly designed dispute resolution process and MICI's facilitation allowed people to participate actively and safely.

Noting the value of jointly designing processes that promote respect and build trust, one of the requesters interviewed stated that the "gestures of humanity help a lot during the dispute resolution. It shows us that they are listening to us, that they care about us in that moment." The same complainant also reported that MICI facilitates our being able to 'work even in an emotionally charged context." Likewise, IDB staff interviewed noted the importance of using approaches which are sensitive to the complainants' concerns and understands the humanity of the persons filing the complaints.

Regarding treatment of the requesters by MICI, one of the complainants highlighted that its staff prioritized listening, stating that "everyone comes to offer you a solution, and one needs to listen." Another interviewee said that the MICI Consultation Phase treated him very well, on a personal level, and that the Mechanism reacted appropriately to situations of reprisals, being attentive and active. In this regard, he said that MICI "was always careful not to revictimize [the affected persons]." These approaches were key to building trust in the jointly constructed process.

Another factor associated with the importance of co-design is selecting where the dispute resolution will take place. In all cases, MICI sought to maximize stakeholder trust in the process and to provide an appropriate location for a frank and productive discussion. When making this decision, special attention was always paid to the social reality of stakeholders. For example, in Costa Rica, priority was given to meeting at the requesters' farm, rather than in the capital city, since the trip was approximately three hours by car and that would have required the requesters to leave their farming activities to participate in the dialogue. Also in Costa Rica, meetings were held on a schedule that did not interfere with the family's farming tasks. In the Ecuadorian case a neutral site was chosen. This made it possible to provide a safe space for all stakeholders. In two of the four cases analyzed, the requesters noted the importance of having established a neutral location for multistakeholder exchanges. From their perspective, this allowed them to feel safe and to share their thoughts, critiques, and proposals with more confidence and openness.

Systems for Producing and Using Technical Information. Reaching a consensus on the production and use of technical information is especially relevant when it comes to designing processes that are fair, transparent, and legitimate. In many cases, when designing a joint dispute resolution process it can be valuable to obtain the stakeholders' perspective on their interest in producing relevant information, as well as their preferences in terms of how to use it. In contexts of fake news, disinformation, and heightened polarization, it is essential to understand that technical information can have both positive and negative effects in a dispute resolution process. Accordingly, the handling of technical information was specifically discussed in the case of the STL in Ecuador, as well as in the Reventazón and Calle Mitre cases. This occurred sometimes when the process was being designed, and at other times while the dispute resolution process was underway as the need for such information became apparent.

Some of the key factors they took into account to make the information more available and accessible included the following: ensuring plenary sessions with detailed presentations by the experts who drafted the technical studies in order to encourage the complainants to formulate questions and provide their informed input; and reducing potential barriers to communication, whether they are related to the languages used during the discussions or the excessive use of technical jargon. It was similarly agreed in the STL (Ecuador), Calle Mitre

(Argentina), and Reventazón (Costa Rica) cases that the technical studies would be shared prior to the plenary sessions so complainants could participate after reading and analyzing the information.

In this way, the consensus reached among stakeholders on how to use and create technical information led to the positive use of such products in three of the four MICI cases analyzed in this section. This technical information produced or shared consensually and responsibly, addressed important concerns for the requesters, narrowed information gaps, and provided data to find solutions to the problems raised. In Costa Rica the effective sharing of information led to a technical solution on how to restore access to water, while in Ecuador it informed the decision-making process to re-route the transmission line. In the case of Bariloche, the technical information provided ideas for the design of a public policy that could address one of the main concerns raised by the shopkeepers.

Reducing Asymmetries between the Parties. In all of these cases, MICI held numerous bilateral meetings with all stakeholders. These sessions had several objectives, but one of them was to provide advice and training to stakeholders when appropriate. For example, in the case of Costa Rica, a scenario-building exercise was carried out with the requesters to provide the family with more tools for their internal discussion and analysis of the possible outcomes of the process, as well as the risks and opportunities associated with their different strategies. In the four cases analyzed in this section, discussions were also held with some of the stakeholders to strengthen their dialogue and negotiation skills with the aim of reducing asymmetries and improving the dispute resolution process. In one of the cases, training in strategic negotiation was provided to both requesters and client representatives prior to the start of the plenary meetings. In this sense, four of the five requesters interviewed indicated that the accompaniment, advice, and guidance provided throughout the process was extremely valuable. They underscored that this support and advice allowed them, among other things, to hone their negotiation strategies and to approach the talks better informed and prepared. The remaining requester of the five interviewees stated that, while they valued MICI's advice sometimes it did not bring the expected results and the joint analysis sessions were not always useful.

Another relevant point to consider in reducing asymmetries and supporting the requesters is that in none of the four cases analyzed did the requesters receive support or advice from third parties (CSOs, grassroots organizations, law firms, etc.) when submitting their complaints or participating in the dispute resolution process. Two of the five requesters interviewed said, however, that it would be a good idea for MICI to inform complainants that there are civil society organizations that could assist communities to better manage their claims before IAMs, and they suggested that MICI could put them in contact with these CSOs. In their view, this could help reduce the asymmetries, especially those felt by vulnerable communities.

Although they stated that MICI provides valuable support, they noted that complainants are at a disadvantage at the dialogue table and that technical support from a CSO could be useful at times.

On the other hand, interviews with IDB staff also revealed the importance of recognizing that not all stakeholders have knowledge and experience on how to approach a dialogue or negotiation process. In this regard, it seems important that the advice and information provided by MICI staff throughout the dialogue process should be offered to all the parties. One aspect that came up repeatedly in the interviews was the idea of "concession" when considering entering into a MICI dispute resolution process. The parties often believe that a negotiation will require "giving up a lot" (on the part of all of the stakeholders) or suspending a project (on the part of the executing agency and the Bank), both of which can generate negative incentives. Being able to explain how the Mechanism works and describing what kind of possible outcomes can be achieved, through using examples from other cases, was emphasized as helpful by some interviewees and should thus be part of MICI's initial interaction with all stakeholders.

The Involvement of Third Parties. Third parties have played an important role in at least two of the four cases analyzed. The proper identification and inclusion of third parties in a dispute resolution process is connected to the effectiveness of that process. In the case of Calle Mitre, for instance, the role of the Municipality of San Carlos de Bariloche was absolutely crucial. Although it was neither a "party" under the MICI Policy nor a contractor of the project, the municipality had regulatory authority over the street construction as well as an intrinsic interest in the work that was taking place on one of the city's most iconic streets. Moreover, as the closest and most present tier of government, it had a previous relationship with the merchants. The advanced progress of the construction also meant that any possible agreement would have to be implemented quickly thus requiring the acceptance and commitment of all stakeholders. For this reason, the construction contractor was also brought into the dialogue and was able to provide some technical specifications, as well as general advice as to what was feasible and how various tools or proposals could address the concerns expressed. In this way, the dialogue table included the project financiers, the executors of the IDB loan, the company that would implement part of the commitments assumed, and the political leaders responsible for a highly sensitive project of clear strategic importance to the city.

In the case of Ecuador, the very structuring of the operation and the way it was implemented ensured the participation at the dialogue table not only of the Ministry of Energy and Non-Renewable Natural Resources (which was technically the executing agency for the loan), but also of the PRIZA Program (established to carry out these reconstruction activities) and CNEL EP(the public company that provided technical advice to the Ministry on the design,

supervision, and implementation of the electric grid). The involvement of these public sector stakeholders made it possible to undertake a process that required a great deal of coordination between different entities to address the issues raised by the requesters. In addition to facilitating coordination and cooperation among relevant stakeholders, the broad composition of the dispute resolution table enabled participants to have at their disposal the different technical inputs needed to solve the problem and created the conditions for a prompt and efficient decision-making process.

Time Needed to Reach Solutions. This aspect connects the procedural and substantive dimensions, which will be examined in the following section. Understanding the time it takes to deliver solutions to the requesters requires us to consider what occurred before the complaint reached MICI (for example, the time it took for the complainants to submit their grievance to other entities such as the IDB Group's project-level or management-led grievance mechanisms). It also requires considering factors related to the design of a MICI-facilitated process (from assessing the outcomes of previous dispute resolutions, to proposing tailored methodologies), and the unfolding of the dispute resolution itself. In addition, time considerations are also linked to the substance of the remedy since a solution that is not reached or implemented within the appropriate time frame may lose it corrective purpose. To be effective, remedy must be timely and the notion of "time" is an important factor in the design of a dialogue process. The timing issue also has a powerful impact on the stakeholders' perceptions about the potential alternative solutions the MICI process can generate and how these solutions would address their problems.

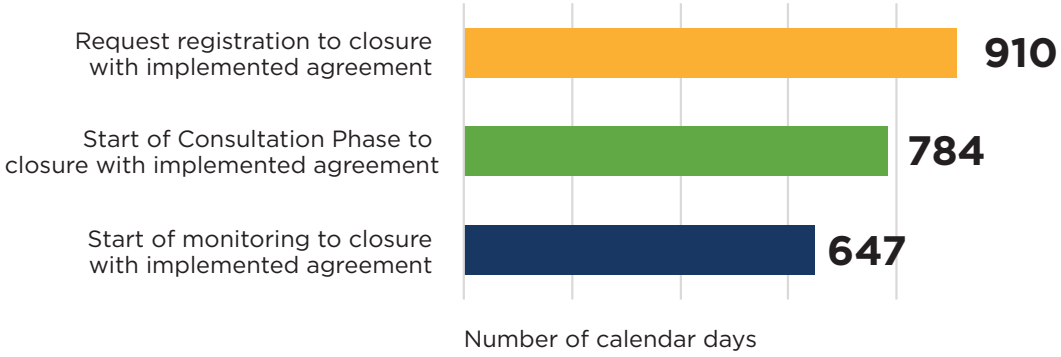
During the interviews, some requesters expressed frustration at not being able to resolve problems early on, as well as fatigue from submitting complaints to different bodies. Complainants from three of the four cases analyzed indicated that it took a long time before discussions could begin within the framework of the Mechanism. Interviewees pointed out that the processes leading up to the MICI Consultation Phase (the Mechanism's eligibility stage, and/or previous interactions with the Bank or the client) sometimes lead to frustration, fatigue, and attrition, which reduces expectations for reaching an agreement. One of the requesters also emphasized the enormous personal dedication it took to understand and learn not only about the Mechanism, but also about IDB policies. This complainant also reported that holding discussions with fellow citizens to explain the Mechanism was hard work both during the preparatory stage, as well as during the dispute resolution phase. Every minute spent presenting and defending the complaint was time in which their business was not operating, or in which they had to rely on help from family or friends to keep her business open.

These perceptions also influence the parties' methodological preferences for approaching a dialogue, at times causing them to prioritize expeditious processes. For all of the above

reasons, some of the requesters suggested that, when possible, it would be beneficial to shorten the time it takes to reach an agreement facilitated by an impartial third party such as MICI.

In this context, Figure 10 shows the processing times for the four cases analyzed in this section, in which the agreements have been fully implemented..

Figure 10. Average processing times of a request in which agreement is reached and fully implemented



Having identified the requesters' perspective on the time it takes to initiate a MICI-facilitated dialogue, and focusing on what the Mechanism can address, we can see from Figure 10 that the average processing time within MICI (from complaint registration to closure) in the four cases analyzed was 910 calendar days. The registration and eligibility stage accounts for an average of 13.85% of this processing time, or approximately 126 calendar days. Notably, in two of the four cases analyzed, extensions of the eligibility period were granted so that the Bank and the client could address the problem before the Consultation Phase intervened.[29] This initial registration and eligibility stage assesses whether the complaint is indeed within MICI's remit, assessing the content of the request to ensure compliance with the Policy and identifying the main issues put forward by the requesters.

Once the registration and eligibility stages are completed, the Consultation Phase begins. The maximum time frame provided for in the MICI Policy for the three stages of the Consultation Phase is 2,238 calendar days. In the four cases mentioned above, the average processing time from the Consultation Phase assessment to the closure of the request was 784 calendar days, or 35% of the time available in the Consultation Phase. At least two important aspects emerge here: (a) the speed with which the four agreements were reached; and (b) the considerable share of processing time spent on monitoring the final agreement.

Regarding the speed with which agreements were reached in the four cases analyzed, it is important to note that in three of them the assessment stage and dispute resolution phase were carried out simultaneously. This tends to significantly reduce the processing time. Adapting the methodology to work expeditiously, combining phases, is tied to the importance of co-design and of being sensitive to stakeholder needs and the project context. Acting quickly also made it possible to take advantage of the windows of opportunity, so that more options for potential solution were available. This was especially important in the cases of Calle Mitre, Bogotá Metro, and STL in Ecuador.

In relation to monitoring of agreements, Figure 10 shows that this stage accounted for most of the days taken to process the four cases analyzed: on average, this stage takes up 647 of the 784 calendar days. In other words, 82.5% of the average processing time of the four cases by the Consultation Phase was spent on monitoring compliance with the agreements reached. Monitoring of agreement can be considered 'dispute resolution 2.0' and is thus an indispensable stage in the remedy provision cycle. It allows for the materialization of the agreements in concrete actions that address the complaints of the communities.

29 Despite this extra time for the requesters, the client, and the Bank to settle the issue without MICI's intervention, the complaint was not resolved and a MICI-facilitated dispute resolution process was initiated. It is important to note that extending a deadline before starting the Consultation Phase process may, in some circumstances, have a negative impact on future dispute resolution efforts.

It's important to recognize that the sample of cases for the time management analysis is small, in addition to having some peculiarities (such as the carrying out the assessment and dispute resolution stages simultaneously in three cases). This does not diminish the importance of rapid case management by MICI, but it may indicate that as the number of completed cases increases management time periods will tend to be longer. This is especially true with highly complex claims that require extended negotiations in challenging contexts, and where a variety of factors may affect the likelihood of addressing community complaints expeditiously. For example, one of the main cases handled by the MICI Consultation Phase is associated with the Caracol Industrial Park project in Haiti. In that case, the dispute resolution process took 18 months since it required a deadline extension approved by the Board of Executive Directors. By the end of 2022, MICI had been monitoring the case for four years. Another example is Ruta del Cacao (Colombia), which was managed by the Consultation Phase almost entirely virtually due to the pandemic, and in which a final agreement was not reached. This case required extensions of the assessment stage (which took four months) and the dispute resolution process (which took two years).

Substantive Dimension

Focusing now on the results of MICI's dispute resolution processes, five key elements are identified for analysis: (a) initial expectations prior to the Consultation Phase process; (b) types of remedial measures included in MICI-facilitated agreements; (c) requesters' perception of the outcomes obtained; (d) financing of remedial measures; and (e) the role of agreement monitoring.

Initial Expectations. The perception of those who claim to be affected by a project is key not only to the design of a dispute resolution process, but also to its conclusion. Do they consider the results achieved to be satisfactory? To understand the answer to this question, it is vitally important to understand what their initial expectations were when they came to MICI. In essence, the distance between this initial expectation and the solution reached is key to understanding perceptions about the outcomes of the process.

Here we should differentiate between two aspects: the expectation of what they could obtain in the process, and the solution preferred by requesters. The interviews revealed that four of the five complainants did not have high expectations in terms of what they could obtain from the process. This is sometimes due to distrust between the parties or frustration with previous dispute resolution or negotiation processes, as well as to a lack of knowledge about MICI and its processes. In addition, a decline in appreciation, respect, and trust in institutions

also affects the requesters' expectations given that their counterparts in a potential MICI-facilitated dialogue are public and private institutions.

With respect to the solutions expected or favored by the different groups of requesters, we found that, to a greater or lesser degree of detail, complainants were able to articulate a set of expected solutions to their claims. From obtaining higher compensation to concrete proposals for changes to the project design, the requesters had a certain clarity about their proposed solution, even if they were uncertain about whether the process would lead to that result. In some cases, the initiation of the dispute resolution process and/or MICI's assessment of the conditions for dialogue provided the requesters with greater clarity on how the dispute resolution process might work, and what they might feasibly obtain through it. Only once the parties interact with the Mechanism and are in dialogue with the other stakeholders, do the interests and positions of all the parties become clearer. This allows for a more detailed analysis of the viability of some of the initial demands, which also serves to gauge the expectations for a solution more accurately.

Types of Remedial Measures. As highlighted in section 3.C.i, the measures included in MICI-facilitated agreements are varied. There are procedural agreements, agreements linked to deadlines that must be met, commitments associated with access to information and citizen participation, and of course agreements of a substantive nature. Thus, the specific agreements that can be analyzed through the lens of the types of remedy identified in Chapter 2 are only some of the aspects that come into play in a MICI-facilitated agreement. For instance, at least 13 measures among the 4 agreements analyzed in this section can be considered to involve access to information, the production of relevant technical information for decision making, or citizen participation. All these aspects were, each in their own measure and context, highly relevant to the overall process even if they were not "the solution" per se to the specific problem. As noted above, many of the complaints allege lack of consultation, lack of access to information, and inadequate risk analysis, in addition to the alleged "material" or principal impact.

The agreements facilitated by the Mechanism often include clauses for which the group of requesters is responsible to deliver. These actions range from obtaining the necessary permits and authorizations to build or use different infrastructures that are part of the agreement, to paying debts that must be settled to move forward with the commitments assumed, as well as ensuring that project personnel have access to certain areas of the community to clean and maintain the works. Thus, in the vast majority of cases all stakeholders have responsibilities to uphold within the framework of an agreement facilitated by MICI.

In this sense, to analyze the content of an agreement, and especially to understand the different interests that each stakeholder seeks to address at a negotiation table, we should

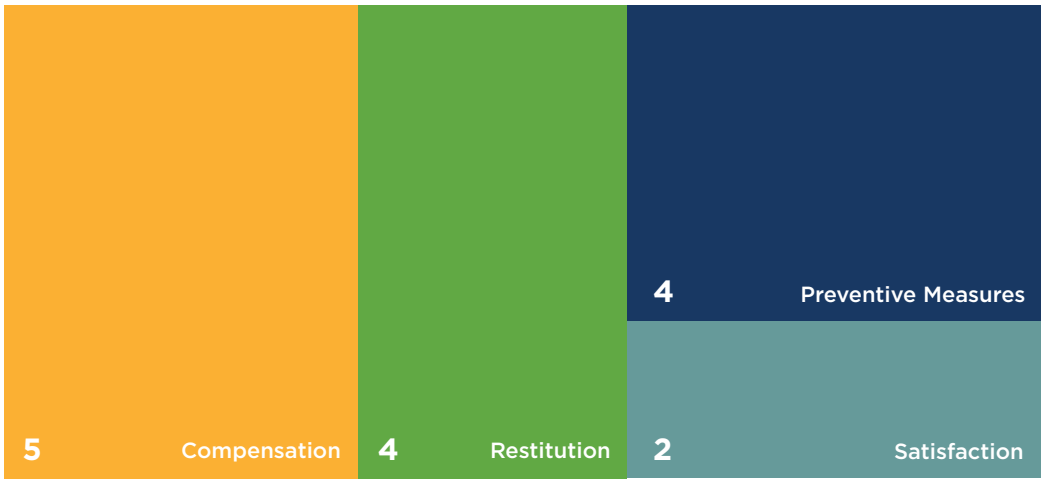
Dialogue session for the claim Environmental Sanitation Program for the Reconquista River Basin | **Argentina**

keep a broad perspective and not lose sight of the complexity and variety of factors, responsibilities, and actions that are part of a dispute resolution process and that must be reflected in any agreements reached between the stakeholders in conflict. Tangible and material solutions are extremely important to the requesters, but their assessment and analysis should not detract from the various actions that are critical to reaching agreements and providing those concrete solutions to communities that have alleged impacts from development projects.

With the above clarification, the analysis of the four reference cases shows that there are at least 15 actions or solutions that could be categorized as "forms of remedy" identified in Chapter 2 of this study. The breakdown of these measures according to the five forms of remedy, plus the category of "preventive measures," is shown in Figure 11 below.[30]

30 Methodological clarification: The author of this note is responsible for the classification and breakdown of the measures according to the types or forms of remedy. To this end, the four agreements in question were reviewed in detail, clause by clause, including confidential information. Based on this analysis, as well as on interviews with MICI staff in charge of managing these cases, and on conversations with the requesters, the relevant measures were categorized taking into account their objective and the definition of each of these forms of remedy according to the literature reviewed.

Figure 11. Solutions Reached in MICI Agreements that have been Closed, by Remedy Type (2017-2022)



This breakdown of remedial measures by type is similar to that analyzed in Figure 9, which categorizes the measures from the eight agreements facilitated by MICI between 2017 and 2022. For those agreements that have been fully implemented, in cases that are now closed, the breakdown of the 15 actions into the 6 respective categories would be as follows: (i) 33.33% can be understood as solutions that seek to provide compensation; (ii) 26.67% are intended to make restitution for an alleged negative impact; (iii) 26.67% are solutions that seek to prevent harm; and (iv) in 13.33% of the cases, the measures are intended to provide satisfaction, understood here as the termination of an alleged impact.

Based on the above, a similar breakdown can be observed between measures aimed at offsetting, remediating, and preventing potential harm as the main outcomes of a MICI-facilitated dispute resolution process. Along these lines, we should once again note that in the category of compensation measures, none of the five measures analyzed included a cash payment. These actions can be understood as "non-monetary compensation," such as: providing training courses which in turn provides inputs to boost the complainants' income sources; the construction of infrastructure needed by the requesters to reestablish their livelihoods; and technical and legal support to identify new properties for restitution, tax exemptions or tax relief, among others.

With regard to measures that could be termed restorative, the challenge identified in the literature arises with respect to seeking "full restitution." For example, one of the agreements under study includes measures aimed at restoring access to water through the construction of infrastructure to capture, distribute, and store water. While it is difficult to estimate how much water was available before the project, or at least how much water the requesters used

(there was no clear baseline), the solution that was reached provides water efficiently and consistently and was even developed to prevent the potential impact of seasonal drought. In another case, the necessary resources were secured for the replacement or restitution of property used for residential or commercial purposes, both for owners and tenants who claimed to have been adversely affected by the IDB-financed project. Replicating the exact same conditions can be complex, and in the case of commercial activities it may take some time to reestablish the flow of customers. In many cases, defining with certainty the level of restitution achieved would require a subsequent assessment, after a reasonable period of time, to analyze the complainant's "final" situation.

A clear example of preventive measures can be found in the case of Ecuador, where the agreement facilitated by MICI allowed for a change in the project design, altering the route of the sub-transmission line, and thus preventing the occurrence of the various potential impacts that the group of complainants alleged. Other preventive measures consisted of carrying out tests and studies to ensure the proper functioning of the different components of a project. These measures reflect the fact that, although MICI cannot consider complaints about projects that have not been approved by the Board of Executive Directors, there are times when preventive action can be taken to avert actions that complainants alleged will cause them harm.

Another interesting issue for analysis is the level of relations and linkage between the solutions reached in the agreements and the type of project financed by the IDB Group. A review of the different cases shows that, in general terms, the measures have not been "limited" to actions that can be included strictly within the project activities. This denotes a certain flexibility that is essential in a dispute resolution process whose objective is to reach a consensus on creative solutions to the problems presented. For example, the Calle Mitre project did not include a mobility plan among its components, but the development of this plan made it possible to not only address one of the main concerns of the group of complainants, but also to continue to provide valuable information in the relationship between the Bank, the municipal government of San Carlos de Bariloche, and the executing agency. In other cases, the solutions are directly related to the project design (as in Ecuador), or they may be linked to some of the actions included in the Environmental and Social Management Plans, broadening or complementing the measures designed by the Bank and its client.

One important consideration, and one that bridges the parties' expectations and the type of measures agreed upon is delimiting which solutions are feasible and which are not in a MICI process. In discussions with Bank staff, a very important point was raised in this regard. The type of remedial measures, and their scope, are heavily influenced by the environmental and social policy framework. This framework, which guides the IDB's actions, provides an initial map of where to look for solutions. In this way, solutions that can be reached under the

MICI framework are viable as long as they comply with (or do not violate) the Bank's policy framework.

In this context, the policy framework is closely linked to the idea of flexibility discussed above, as it provides the "boundaries" of the process for Bank staff, but also gives them (and their client) room to propose and implement creative solutions. Although at times there may be circumstances that merit "going beyond" the policy framework (i.e., going beyond the framework, but not contradicting it). According to some of the discussions with IDB staff, identifying areas of convergence between the requesters' interests and the possibilities afforded by the policy framework is usually the key to agreeing on viable solutions. On the other hand, the "risky" side of flexibility with remedial measures would be, according to the interviews, the creation of precedents suggesting that the Bank would support "x" or "y" measure in certain circumstances, and that this precedent could thus become the expectation of all stakeholders in similar contexts.

Requesters' Perception of the Results Achieved. Eighty percent of the requesters interviewed (four out of five) indicated that they were satisfied with the outcomes achieved through the MICI-facilitated agreements. In one of the four claims analyzed, two different requesters were interviewed due to the particular circumstances of the case. One of them said he felt that his living conditions had not been fully remedied through the MICI process, even though he acknowledged that all the agreed elements had been fulfilled.

The requesters who were satisfied with the outcomes highlighted the importance of MICI's role. They reported that the Mechanism's presence and the listening it fostered made it possible to find a middle ground between the parties and to reach consensus. This aspect of reaching consensus by finding a "middle ground" is essential, since it connects the issue of initial perceptions and demands with the assessment of final outcomes. All the complainants interviewed who valued the solutions reached said that the agreement was the best that could have been achieved, and that it resolved their problems. In virtually all cases, the complainants acknowledge that various options were analyzed (some advocated by the complainants and others by their counterparts) and that the measures agreed upon responded adequately to their demands. In the words of one of the interviewees, "It was resolved as best we could and that's fine. It was a negotiation, so we knew we had to compromise. But we were clear about what remedies could not be left out of the negotiations."

This aspect is linked to a fundamental issue in any negotiation process and is discussed in the literature on access to remedy and the concessions that take place in a dispute resolution or negotiation process. On this matter, the five complainants interviewed said that they knew it was very likely that they would have to make some concessions in order to reach agreements. None of them seemed to assume that they would be able to get to the end of the process

Meeting with the parties to the claim regarding the Potable Water and Sanitation Program (PayS) for Urban Centers | **Argentina**

having successfully obtained their exact "request" or initial demand. The interviews revealed that, for most complainants, the key was to be clear about what could not be conceded, and then be flexible in how to reach a reasonable solution that would satisfy the core interests of their complaint. One of the requesters interviewed said that the key is to be strategic and to know that some demands can create additional conflicts rather than solutions. For this person, it is important to understand that the other parties will also have to yield, and that this process may also involve difficulties for them. Therefore, the fairness of requests is a central part of "being strategic." Another important part of "being strategic" is recognizing which alternatives are actually feasible, and which, for various reasons, are not.

Consistent with the above, in three of the four cases analyzed, the requesters reported that they had availed themselves of other grievance processes[31] besides MICI's, and that the solutions reached in the MICI process were better than those offered by other entities, or even the only one in which they had succeeded in obtaining a concrete response. In this way, analyzing which of the different complaint mechanisms available would provide the best

31 The concept of "other grievance processes" is understood broadly, to include complaints to local governments, other IAMs, rights of petition, legal complaints, and others.

response was also a factor for the requesters when it came to reaching agreements through MICI.

With respect to the discussion of "partial remedy" that may occur in a dispute resolution process, one of the requesters interviewed offered a relevant perspective. Despite being satisfied with the agreement implemented, this person considers that his/her income-earning capacity has not been 100% restored to the situation that existed prior to the arrival of the IDB-financed project, especially in view of possible future expansions of this person's business. However, when asked for his/her perspective in the interview, the response was blunt: "Calling it a partial solution detracts from the process." Another complainant, in a similar situation, recognized that the restoration of his livelihood (income-earning activity) was extremely complex, given that the nature of the project and its social changes were bound to bring about substantial change. However, from his perspective, the MICI agreement enabled him to keep approximately 70% of business clients, and thus considers that his situation was remedied as a result of the consensus reached.

Returning to the only requester among the five interviewees who feels that he did not obtain remedy, it is interesting to note the contrast between his initial expectations (which were analyzed above) and his perspective on the outcome of the process. This requester acknowledged during the interview that his expectations of what could be obtained were very high, and even noted that an agreement was reached because both he and the client made concessions. He also pointed out that all of the consensual measures were carried out, but that even so he does not think his living conditions have been restored. As a result, he feels that he is worse off now than before the arrival of the project. When asked why he thinks his situation has not been remedied he mentioned a reduction in sales related to his business which, in his analysis, is because important aspects were not considered when selecting the remedy measures at the time the agreement was signed. However, we should note that the requester himself stated that these shortcomings were not the result of bad faith, but rather that the haste to reach agreements led to a quick process. It was thus difficult to foresee some of the factors that ultimately affected him during the implementation of the agreed solution

Financing of Remedies. There is a growing interest among some stakeholders in knowing not only what kind of remedial measures are achieved through a dispute resolution process, but also *who finances* these improvements. For the various measures discussed in this note, the evidence shows that the sources of financing are diverse. In some cases, funds come from the project's own budget, while in other cases the executing agencies may contribute to the proposed costs. In addition, the Bank has contributed its own resources for the implementation of some specific measures under MICI-facilitated agreements.

Based on the interviews conducted, at least two aspects should be considered, the type of measures or actions that need to be financed and the cost of such measures. Regarding the former, the IDB has at times contributed its own funds for technical studies. Other studies have also been carried out with project funds. This is relevant since the issue of what type of actions could be financed by the IDB came up in different interviews with Bank staff. Some interviewees felt that the Bank should support the executing agency in the evaluation of alternatives, studies, and proposals, and that it would then be the client's responsibility to implement the agreed material solutions. In this way, the Bank could play a role in the search for solutions from a technical support perspective. Logically, in administrative terms, financing studies and technical analyses is more feasible than financing infrastructure or other types of measures.

With respect to the latter issue of cost, several IDB staff members stated that the higher the cost of the measure, the more difficult it is to reach an agreement. From this perspective, if the cost of the solution(s) is extremely high major obstacles may arise that keep such a commitment from being part of a voluntary consensus-building process. During the interview process, it was noted that in some cases the high cost of a solution could pose challenges for the officials in charge of approving and implementing such an expenditure. Hence, the "justification" of considerable and unforeseen expenses could be a barrier to reaching a voluntary consensus on solutions. The parties therefore must consider the willingness of the executing agency receiving the IDB Group financing to solve the problem, as well as the amount to be invested in such a solution and the risks associated with the approval of those expenditures by the responsible officials.

The interviews also shed light on another potential challenge when considering the financing of remedial measures, in situations when the operation in question is has terminated. Another factor which may complicate matters even further is if, in addition to the project being terminated, the client or executing agent no longer is operating. In that case, remedy and financing options may be clearly reduced.

It is important to remember here that the objective of a dispute resolution process is to resolve the issues raised, not to assign responsibility. The Mechanism must therefore ensure that the agreed measures are effectively implemented and that the problems at issue are addressed. Creative solutions often allow for the use of resources that do not necessarily rely on the project, but which make it possible to address the remediation steps being considered in the dialogue process. As mentioned earlier, some of the compensatory measures described were not monetary in nature, but rather took advantage of a wide range of options available to the stakeholders. These included using existing components of the project and other initiatives already in operation, as well as other ongoing improvement measures being carried out by the executor or the Bank.

As mentioned earlier, the method and form of financing remedial measures is not within MICI's mandate. In addition, the Mechanism has limited information and/or technical knowledge to make financing proposals or issue opinions on funding of remedial actions. In this way, the Mechanism's role is not to determine or reach a consensus on *who* finances the agreed measures, or what financial instrument is used to that end. These considerations are not usually an "agenda item" for the dispute resolution process and are highly circumstantial. In this regard, the link between the agreed measure and the party responsible for financing it is not straightforward, rather it is defined case by case without the specific participation of MICI.

Role of Monitoring Agreements. Monitoring the dialogue agreements is essential to ensure that the corrective measures are effectively implemented and the complaints addressed. In a real sense, monitoring of agreements functions as a "dispute resolution 2.0" stage, where the parties continue to interact regularly to supervise compliance with the agreement and seek solutions to any unforeseen events that may arise in the implementation of the agreed actions. To guarantee this ongoing process, MICI's agreements usually include the establishment of a monitoring committee composed by the stakeholders' representatives and facilitated by the Mechanism.

After agreements are reached, challenges are to be expected in their implementation. Such problems may be administrative (e.g., delays in bidding processes to move forward with certain actions), as well as logistic in nature, or may even be linked to specific aspects of the agreements. Some of these situations arose in the various cases analyzed. In Bariloche, the parties agreed to amend part of the agreement in order to address the requesters' concern that the trees to be planted should all be local species, while in Reventazón it was not feasible nor timely to purchase water tanks of the size originally stipulated in the agreement. In Ecuador difficulties arose with the company contracted to carry out the construction, and subsequently with the public bidding process to select a replacement company. In all the circumstances described above, the keys to overcoming setbacks were: (a) the adaptability to understand that the context and other issues may affect what was originally agreed to; (b) the flexibility to seek appropriate solutions; and (c) not losing sight of the fact that the objective of the agreements is not so much to implement the actions set out in them as to respond to the concerns raised in the request. Thus, working together during the agreement monitoring stage is central to ensuring the effectiveness of a dispute resolution process.

IV. Conclusions:

Lessons from Dispute Resolution Processes to Provide Solutions to Affected Communities

The essential role of the accountability mechanisms of international development financial institutions that carry out dialogue and conflict resolution tasks, is to provide project-affected communities with a process for receiving solutions to address alleged harms. In the words of one of the requesters interviewed, "The important thing is that they solve my problem and not that they say I'm right or apologize to me." Therefore, the main objective of this note is to explore the lessons from alternative dispute resolution approaches which provide access to remedy, and in particular analyze the experience of MICI's Consultation Phase.

Based on the systematic review of the cases shared, the interviews conducted, and the analysis carried out, we can conclude that the MICI Consultation Phase provides an effective and structured institutional means for reaching consensus-based solutions that address community complaints. As noted in Chapter 3, between 2017 and 2022, agreements were reached in 72.27% of the cases whose dispute resolution process was initiated and completed in that period. Four of the eight agreements have been implemented, making it possible to address the communities' concerns and close the cases. The remaining cases are in the implementation stage. It was also noted in Chapter 3 that 80% of the requesters interviewed were satisfied with the outcomes reached in MICI's Consultation Phase.

Reaching this outcome was possible thanks to a set of key elements of MICI's approach in particular, and from the alternative dispute resolution sector in general. These elements are a key contribution of MICI's Consultation Phase, since they improve the likelihood of generating dialogue processes that provide consensual solutions. The research undertaken has led to the identification of at least five aspects: (a) tangible and comprehensive solutions; (b) enhancing the value of an impartial third party; (c) flexibility and haste; (d) human approach to conflict resolution; and (e) strategies for reducing asymmetries.

In addition to these key aspects mentioned above, the research has also identified at least two relevant issues that should be analyzed and considered when undertaking a dispute resolution process since they increase the chances of reaching consensual solutions. These issues, which in some cases may be less visible and more difficult to measure, are: (a) managing expectations, and (b) aligning incentives to resolve disputes.

Below we discuss the main factors associated with these aspects and issues, as identified in the research.

Key elements of a dispute resolution process

Tangible and comprehensive solutions: process, substance, and monitoring. The dispute resolution processes facilitated by the MICI Consultation Phase favor a comprehensive approach in which procedural and substantive dimensions are considered, various types of proposed solutions are combined to address the diversity of allegations presented, and affected parties play an active and central role. In terms of the process, the active participation of local communities as well as listening to and addressing their concerns helps to restore a sense of dignity to these stakeholders. In this way, the dispute resolution process becomes not only the means to reach tangible answers, but also the process by which the role of local communities is valued and their experience and knowledge is appreciated. As reflected in the final report of the Calle Mitre case in Bariloche, all participants deeply valued the dispute resolution process that was established, the information flow, the constructive dialogue which occurred despite divergent positions, and the knowledge gained. This experience made it possible to build synergy between the "technical knowledge" held by specialists and the "experiential knowledge" held by citizens.

The process facilitated by the Mechanism allowed for the inclusion of measures to compensate the complainants, restore their living conditions, and prevent the occurrence of potential harm. In addition, the MICI process also provided an opportunity to address demands related to the lack of information and participation by sharing project information, producing new technical studies, and actively involving complainants at different times of the process. Put succinctly, the MICI Consultation Phase facilitates processes where solutions go beyond material considerations. Given that the allegations include different types of impacts, the agreements reached are wide-ranging and there is no single action that can be considered "the solution". Rather, the set of responses seeks to address comprehensively the complaints presented by the requesters. In this way, the range of agreed measures addresses economic, health, and income-earning concerns, as well as using an approach which values the voices of local communities.

However, reaching agreements is not enough. To provide solutions, their implementation must be monitored. In the four cases analyzed, MICI spent an average of 82% of its case management time monitoring the commitments made by the parties. Solutions become real when agreements are reflected in constructions, studies, and opportunities for participation. In addition, monitoring compliance also provides the space and flexibility needed to deal with unforeseen issues that may arise. Understanding monitoring as a new layer of multistakeholder conflict resolution, MICI has been able to seek alternative solutions when, for various reasons, some component of the original agreements could not be fulfilled.

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Enhancing the value of an impartial third party. In the four cases of the Consultation Phase portfolio which were analyzed in depth, it was shown that there were attempts made to resolve the problems identified by the local communities before the complaints were submitted to MICI. However, these efforts failed to produce solutions that were adequate and satisfactory for all stakeholders involved. This can occur for different reasons, which are beyond the scope of this note, but it does allow us to assess one aspect which is the role of dialogue processes such as the MICI Consultation Phase. They serve as impartial third parties acting to build consensus-based solutions that comprehensively address communities' problems. Different stakeholders interviewed, both Bank staff and complainants, highlighted the value of MICI's work and its ability to create opportunities for dialogue and listening, even in emotionally charged contexts.

MICI not only operates in emotionally charged contexts, but also in contexts of extreme polarization and fake news where trust in institutions and fellow citizens is historically low. The Mechanism often works in situations also marked by dialogue fatigue where previous unsatisfactory experiences can reduce the willingness to initiate a new dialogue, or in some cases further exacerbate disputes and animosity. Therefore, having a process that can generate basic trust, not necessarily between the stakeholders in conflict but in the dialogue

process itself, is an essential task. This in turn, is a key aspect which allows for establishing interpersonal relations that will ultimately lead to consensual solutions. In short, it is often necessary to rely on an impartial third-party actor such as MICI which has the requisite capabilities and experience to facilitate this process.

Involving impartial third parties early in the dialogue process is key to ensuring that their inclusion is more likely to lead to satisfactory solutions. The longer the delay in addressing issues beset with open and active conflict, the more the likelihood that new tensions will arise and potentially lead to more erosion of trust. This can also lead to contrasting narratives becoming more aggressive and increased resentment about earlier failed bilateral dispute resolution processes, both of which can leave the parties less inclined to engage in future dialogue. In short, these factors undermine the likelihood for achieving creative and effective solutions.

In addition, delays can also lead to missing opportunities for dialogue which emerge at different moments. This can in turn can limit the range of possibilities for creative solutions which may emerge during different stages of project implementation. The menu of options tends to be broader in early stages of project implementation and the cost (whether technical, financial, or political) of implementing alternative solutions is also generally lower as well. Therefore, although MICI is part of a grievance ecosystem (within the IDB Group), it is important to note that its capacity for action and for facilitating consensual solutions will be greater the sooner it is activated.

It's important to emphasize that the involvement of an impartial third party should be viewed not only as a way to approach conflict management for local communities, but also as a tool for the IDB Group and its clients. The array of measures that communities can use to express their disagreement or opposition to a project are varied ranging from traditional and social media campaigns and lawsuits in local and international courts, to protests and boycotts. MICI provides a normative process to address demands that, if left unmet, could generate both reputational risks and operational impacts. In short, the role of an impartial third party will be more effective if it is viewed as being impartial, and it will have more opportunities to propose solutions the earlier it gets involved in the dialogue process.

Flexibility and haste in Case Management. As the literature on access to remedy frequently mentions it is important for processes (and outcomes) to be appropriate. To this end, flexibility is an essential quality that dispute resolution mechanisms such as MICI provide. The processes carried out by the Consultation Phase are based on an extensive and rigorous situational analysis and take into account the capability and needs of the parties. A central principle is the co-design of the dispute resolution processes, which relies not only on the technical expertise of MICI officials, but also on the knowledge, experience, and interests of the participating

stakeholders. This makes it possible to focus on the cultural appropriateness of the processes designed and facilitated by the Consultation Phase. The dialogue methodology for each case thus seeks to reflect and value stakeholder needs. These include the: enabling and limiting aspects of the context and project (whether political, social, or cultural); preferences in terms of methodology and timing of the process; need for access to information; and the importance of using translation for documents and simultaneous interpretation for meetings, among other factors.

Another important aspect of the flexibility needed to reach effective solutions relates to who is part of a dispute resolution process. Here it should be emphasized that MICI Policy, unlike those of other IAMs, states that IDB Group Management (whether the public or private arm) is a participating actor in the dialogue. This has been fundamental in MICI's work and instrumental to the achievement of consensual solutions. However, it is sometimes necessary to go beyond the complainants, the client, and the Bank to reach effective, appropriate, and sustainable solutions. The flexibility of MICI's Consultation Phase has permitted the inclusion of other third parties that have been pivotal to achieving solutions, as discussed earlier in the case analysis. Thus, both the Bank's involvement and the flexibility of the Consultation Phase to involve other relevant stakeholders are factors that differentiate MICI's processes from those of other IAMs which generally don't involve third parties in their dispute resolution processes.

Another key aspect of providing solutions is to make use of flexibility to expedite case management when necessary. This is based on the principle that the provision of solutions must be timely. As reflected in Chapter 3, the MICI Consultation Phase helped the parties reach agreements through expedited dialogue and negotiation stages in the four cases analyzed. This was facilitated through work arrangements that merged the assessment and dispute resolution phases, significantly reducing processing times. In this context, being able to identify the windows of opportunity was key to ensuring that the available responses were sufficient and appropriate to the needs of the requesters as well as to the capabilities of the executing agencies and the Bank. Avoiding time-consuming processes, when conditions permit, is essential to fully exploit one of the benefits of non-judicial grievance mechanisms which is the possibility of providing solutions more quickly.

Human approach to conflict. All the requesters interviewed indicated that they had received attentive and personal treatment from MICI. Discussions with Bank staff underscored the importance of understanding the human dimension of the problems presented, being sensitive to those who speak out, and actively listening to local communities to understand and address their complaints. In highly conflict-affected contexts and, as previously mentioned, where there is considerable distrust and polarization, the aim of MICI's Consultation Phase is to

forge trusting relationships with stakeholders who participate in its dialogues so this leads to the design and implementation of a respectful and inclusive process.

An essential element of this relationship building process is the time spent together. The Consultation Phase team prioritizes regular contact with all participants, not only through in-person multistakeholder dialogue spaces and bilateral meetings, but also through virtual calls using WhatsApp, Teams, or Zoom in order to establish an open and responsive connection. These ongoing contacts seek to provide a channel for listening to communities' voices within the framework of development projects while, at the same time, ensuring safe and trustworthy spaces for all stakeholders. This relational work also aims to build social capital by investing efforts in improving the relationship between local stakeholders (communities and clients whether public or private), given that the dispute resolution process will come to an end and MICI will disengage, but these stakeholders will continue to live in the same locale and share spaces, initiatives, and perhaps even participation in other projects.

The human approach to social conflicts also entail recognizing that filing complaints is neither a simple process nor an easy one. In many cases, local communities come to bodies such as MICI after making enormous efforts to seek solutions from other actors and being frustrated by the lack of response. This takes a high emotional toll and requires a great deal of their own and their families' time, as well as time away from their income-earning activities. It is not their job to file grievances or manage projects, but they take on that role because they want to address a harm they believe is occurring or could occur. There is no doubt that the complaint handling process is not simple for Bank staff, or for representatives of clients and executing agencies, and thus their needs, concerns, and interests should also be analyzed, valued, and considered. Since their role is related to project design and implementation accountability, mechanisms such as MICI can play a helpful role in their work.

This brings us back to a substantive aspect of what was discussed in Chapter 3, that the complaints not only seek remedy for material harm, but also aspects of identity, dignity, and value that local communities often feel have been undermined. Complainants may perceive that they have not been listened to, or even that they have been disrespected. Mindful of these considerations, the MICI Consultation Phase adopts an approach that is sensitive to the diversity of factors at play in social conflicts and that focuses on human relations, as well as creating opportunities for listening and exchange, and valuing the role, needs, and perceptions of local stakeholders. This in turn, improves the chances of reaching consensual solutions that respect everyone's interests, whether material, cultural, or symbolic.

Strategies for reducing asymmetries. It is vitally important to identify the needs that stakeholders may have with respect to training, information, decision-making processes, and other aspects that tend to lead to asymmetries between the parties. Systematically mapping

these needs can help to improve strategies to reducing asymmetries and thus strengthen the shared dispute resolution process. As highlighted in Chapter 3, the requesters interviewed appreciated the ongoing support afforded by the Mechanism. This support was provided during the assessment stage as well as during the dispute resolution phase. In some cases, MICI carried out scenario-building exercises and provided training and coaching sessions on negotiation strategies.

As noted in Chapter 3, few communities submit their complaints to MICI with the support of civil society organizations, and such involvement is even less frequent in the dispute resolution processes. As the interviews with complainants revealed, complainants may not be aware of the existence of organizations that could provide them with needed technical and/or operational support. On this basis, some interviewees suggested that one way to improve strategies for reducing asymmetries would be for MICI to inform local stakeholders of the existence of CSOs and other organizations that have experience working with IAMs, multilateral banks, and environmental and social safeguards policies.

It is important to note that in the needs-analysis it carries out to address asymmetries among the parties, MICI not only analyses the capability of complainants, but also of executing agencies and the Bank. While project executors and IDB Group staff may have some advantage due to their higher level of organizational experience, it should not always be assumed that all they and other stakeholders have the necessary tools to engage effectively in a facilitated dispute resolution process..

Two Relevant Issues that Influence the Effectiveness of Dialogue Processes that can Provide Solutions for Communities

Managing expectations. Knowing and managing stakeholder expectations is essential, as they influence the parties' understanding of the access to remedy process, perception about the dispute resolution, and scope for potential agreements. From the perspective of the complainants, unmet high expectations can lead to the perception that the final outcome is not "enough" or even "fair.'' Sometimes expectations are not only high, but they exceed the framework of the project and the mandate of the IDB Group and MICI, which makes it even more difficult for the experience to conclude with a positive outcome.

For their part, executing agencies sometimes have an initial perception that "giving in" will undermine the project, that it could open the door to a barrage of complaints, or that it will directly change the nature of the project or action being implemented. There is a perception that the "cost of giving in" will be extremely high. From the Bank's perspective, the fear is that it may not be able to meet the expectations of both complainants and clients about the role it should play nor the level of involvement it can have in the process.

Therefore, it is essential to: (i) correctly and rigorously map the parties' initial expectations; and (ii) make predictability a central pillar of the work of a dispute resolution process. From the early stages of handling a complaint it is important to carry out a systematic analysis to understand the perspectives, interests, and objectives of the parties. In the case of the MICI Consultation Phase, areas of possible agreement (among other factors) begin to appear during the assessment stage, which examines whether conditions for starting a dispute resolution exist. It would not make much sense, nor would it be consistent with the human approach to conflict, to promote a dispute resolution process under unsuitable conditions which could deepen the levels of frustration, mistrust, and animosity.

In this sense, it is essential to be predictable in terms of how the Mechanism works, and to clearly inform the parties about what kind of remedial measures and outcomes are possible in this process. Providing information about the entire conflict resolution process, explaining the objectives of each stage, and answering any questions they may have is a task with needs to be done continuously in order to give the parties the necessary information and tools they need to make informed decisions about the process. In many cases, it may include informing the stakeholders about what remedy options might be available in other venues, such as utilizing MICI's compliance investigation function or using other complaints mechanisms or judicial forums. It may be also useful to use scenario-building methodologies and share lessons from previous MICI dispute resolution experiences and their outcomes.

Along with the discussion about what remedy can or cannot be achieved in a dispute resolution process, it will be important to continue discussing the financing aspects of any potential redress proposals. As mentioned in Chapter 3, while this aspect is not an issue MICI can discuss in detail or resolve, it is generally an important expectation of the parties. Which entity is ultimately held responsible for causing the alleged harm will have a direct bearing on how generous or expansive the possible remedy actions might be. It is important to note that this discussion is currently taking place among human rights organizations, civil society organizations, and development finance institutions. As long as there are no procedures that define how and by whom costs will be met, the answers will need to be determined on a case-by-case basis. In addition, issues such as the scale of the expected remedy and whether it is allowed by the policy frameworks of the clients and Bank are important aspects some stakeholders will need to consider when advocating for remedy.

One of the main challenges that could arise in the discussion on financing is when the alleged harm is related to an operation for which there is no longer an executing agency (i.e. when the operation has terminated and the implementing entity no longer exists), or when the financial institution is no longer financing the project in question (i.e. the executing agency still exists, but there is no contractual relationship between it and the IFI). In situations such as these, the opportunity to carry out a dispute resolution process may be limited, since a

Meeting with complainants of the Drinking Water and Sanitation Program (PAyS) for Urban Centers | **Argentina**

key player in the discussion (the executor) would be missing. The ability to be flexible and creative may also be constrained by the lack of current financing available or implementing actions which would make it possible to address some of the remedy proposed.

Aligning Incentives to resolve disputes. The different incentives to initiate, negotiate, and effectively agree on solutions in a dispute resolution process must be adequately assessed, as initiating a dispute resolution process without the proper incentives structure is neither responsible nor good practice. The various incentive at play should be analyzed throughout the dispute resolution process in order to understand their possible fluctuations. As discussed in Chapter 3, there are three main aspects which should be considered when analyzing stakeholder incentives, although these don't exhaustively cover the topic.

First, for every dialogue carried out there should be a plan about how to convey a message that all stakeholders can benefit from the opportunities a dispute resolution process affords. As highlighted in the discussion on the value of having an impartial third party, all stakeholders

can benefit from a MICI-facilitated process. However, the parties are often not aware of the potential benefits of the dialogue process since most (including executing agency nor IDB Group staff) don't have any personal experience engaging with the Mechanism. The responsibility for explaining the opportunities resides primarily with MICI, but Bank staff members are also often responsible for communicating these potential benefits to their clients. If the perception by clients and the Bank is that a Consultation Phase process will only take up time and require making major concessions to local stakeholders, it may be difficult to find creative remedy solutions. If, however, MICI is perceived as an additional tool to enhance relations with local stakeholders, improve environmental and social standards, and prevent or mitigate potential reputational impacts, clients and the Bank may be more willing to take part in the dialogue.

MICI is part of the IDB Group's grievance management ecosystem, which includes the project-level complaint mechanism, IDB Group Management-led mechanisms (both public or private sector), and finally MICI as an independent mechanism. Knowledge about the three levels of this ecosystem is not necessarily widespread among different stakeholders who could participate in the Mechanism's dispute resolution process, so sharing with these stakeholders how the Mechanism works is important.

The second fundamental aspect of understanding incentives is related to the discussion about harm and responsibility for remedy. The literature on access to remedy offers a continuum that associates a harm reported by communities with noncompliance by the financing entity, and the subsequent determination of levels of responsibility. This means that: (a) the idea of "existing harm" is assumed, since without harm there would be no need for remedy; (b) the focus is on linking the existing harm to a policy noncompliance (always thinking in terms of the sphere of development banking); and (c) levels of responsibility for the occurrence of the harm and therefore responsibility for covering the cost of the proposed remedy. However, this continuum does not apply to the dispute resolution role carried out by IAMs. The dispute resolution process does not assign responsibility, nor does it analyze whether there was compliance or noncompliance with operational policies. Rather, IAMs focus on the notion of 'alleged harm' and the causal relations between the harm and 'possible noncompliance' with policies. The process is voluntary and the parties, if they so desire, engage in a non-adversarial consensus-building process.

If the objective of any of the parties is to prove that the harm has occurred due to noncompliance with social and environmental policies, or to provide legal opinions on the project's adherence to national laws in order to dismiss the allegations of harm, the dispute resolution process will most likely not have a positive outcome. If any of the parties considers that the executor is indisputably responsible for the alleged harm, while the other party focuses on technical studies to demonstrate the absence of any connection between

the alleged harm and the project implemented, there is also limited chance for a successful dispute resolution outcome. The challenge, therefore, is how to improve stakeholders' understanding of what the MICI Consultation Phase is, how it works, and what remedies can be addressed within its scope, so as to better align the incentives for the dispute resolution process.

A better understanding of these factors will enable stakeholders to make better use of their time and decide strategically where and how to focus their energies. It will also encourage the proper functioning of the dispute resolution process if they decide to use it. In short, the greater the focus on determining responsibility (in a process that does not have that objective), the less incentive there will be to seek creative and consensual solutions to the problems raised by the communities. At the same time, the greater the emphasis on defending the quality and sound implementation of a project (in a process that does not seek to analyze project design and implementation), the less incentive and willingness there will be to consider alternative environmental and social management measures to improve the project and address complaints.

The third element that influences the incentives to engage in a solution-oriented dispute resolution process is the contextual and institutional landscape. Some social, political, and economic contexts provide more openings for negotiation and dispute resolution processes than others. There are some project contexts that provide more space to think about alternatives, while other contexts limit the range of possibilities. Electoral dynamics may slow down the process, or conversely social conditions in a given region may be conducive to seeking consensus. Strong institutional relationships may foster incentives to maintain these relationships and thus focus on the search for solutions, while in other scenarios where institutional relationships are weaker and not consolidated the incentives will be less. Some solid institutional frameworks favor the search for creative solutions, while other institutional architecture restrict or limit what can be achieved. All these aspects should be analyzed in each case as they can become enabling or limiting factors for a dispute resolution process that seeks to provide consensual solutions to community problems. The ability to influence and adapt to such conditions will also vary in each specific case and context.

In conclusion, providing consensual solutions to social and environmental problems is at the heart of the dispute resolution processes facilitated by IAMs. Therefore, the discussion on access to remedy in the framework of accountability mechanisms should include both the compliance and dispute resolution functions. Including both functions will enrich the ongoing debate on accountability since it has been largely focused on compliance alone. Approaching access to remedy from a holistic point of view which recognizes the central role dispute resolution can play in delivering solutions provides greater clarity on the access to remedy pathways available to communities.

Annex I:
List of Interviewees

NAME AND LAST NAME	POSITION, FUNCTION, OR ROLE
Ingrid Débora Marinozzi	Requester
Henry Ureña	Requester
Persona 1[32]	Requester
Persona 2[33]	Requester
Tayisiya Teplyuk	Requester
Carlos José Echevarria Barbero	IDB staff member
Zachary Daniel Hurwitz	IDB staff member
Serge-Henri L.M. Troch	IDB staff member
Juan Manuel Leaño	IDB staff member

32 The identity of the person is protected because, when the Request was filed, the complainants requested the confidentiality of their identities.

33 The identity of the person is protected because, when the Request was filed, the complainants requested the confidentiality of their identities.

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