

Corporate Evaluation

MICI

Evaluation of the Independent Consultation and Investigation Mechanism



ABSTRACT

The 2008-2012 Country Program Evaluation concludes that the Bank's program was programmatically aligned with Government's National Plan for Human Development and addressed five areas essential for growth and poverty reduction. The one significant omission in the Bank's program from a development perspective was the lack of attention to governance – an area identified as a priority for future strategies by the previous Country Program Evaluation.

The Bank played a central role in financing the country's fiscal gap over the evaluated period, reflecting increased country demand in the context of the global financial crisis. Nevertheless, time constraints limited the Bank's analytical efforts to identify important policy reforms in the first series of three programmatic policy-based loans, resulting in relatively weak policy content in those loans.

Even with significant increases in the level of concessional resources allocated to Nicaragua and greater complexity in programming, the efficiency of program execution improved. In terms of developmental effectiveness, project-level results have generally been poorly documented. Furthermore, the Bank has at times overlooked the issue of recurrent cost financing for services initiated under investment loans, leading to the untimely suspension of programs and undermining the effectiveness of the initial investment.

In light of CPE findings, OVE recommends that the Bank: (i) undertake further diagnostic and analytic work to delineate the Bank's potential role and value-added; (ii) continue to support improvements in the efficiency of public expenditure, including in the electricity sector; (iii) strengthen the measurement and reporting of results at the project level; (iv) identify potential sources of financing for the continued provision of services beyond project completion; and (v) consider allowing D-2 countries access to emergency lending facilities to meet fiscal needs in times of crisis.

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ABBREVIATIONS AND ACRONYMS

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

EXECUTIVE SUMMARY

Background

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

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

MICI’s mandate

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

MICI’s policy

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

Structure

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

Handling of Cases

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

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

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

Conclusion

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

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

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

Recommendation

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

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

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

I. INTRODUCTION

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

II. INDEPENDENT ACCOUNTABILITY MECHANISMS

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

¹ Bissell and Nanwani (2009), p. 5.

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

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

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

Table 2.1
Major MDBs and their accountability mechanisms

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

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

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

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

Box 2.1
IAMs have ombudspersons, not mediators

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

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

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

A. Policy

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

⁴ IDB document GN-1830-49.

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

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

Box 3.1
Key Features of MICI Policy

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

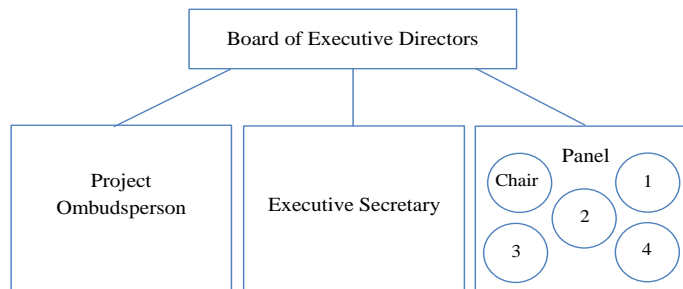
B. Structure

3.3 MICI has a three-part structure:

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

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

**Figure 3.1
MICI structure**



3.4 Terms of reference (TOR) for the principals and panel members were approved by the Board in May 2010⁶. The TOR closed a gap in the policy by specifying that the project ombudsperson and the executive secretary report to the Board. They also introduced an inconsistency with the policy by endowing the executive secretary position with a leadership role. They state, for example, that the executive secretary is to “lead the planning, implementation, and supervision of the ICIM office,” and “lead ICIM’s stakeholder engagement, outreach, communications and knowledge strategies.” Neither the policy nor the TOR provides for performance review for the project ombudsperson, the executive secretary, or the panel members.

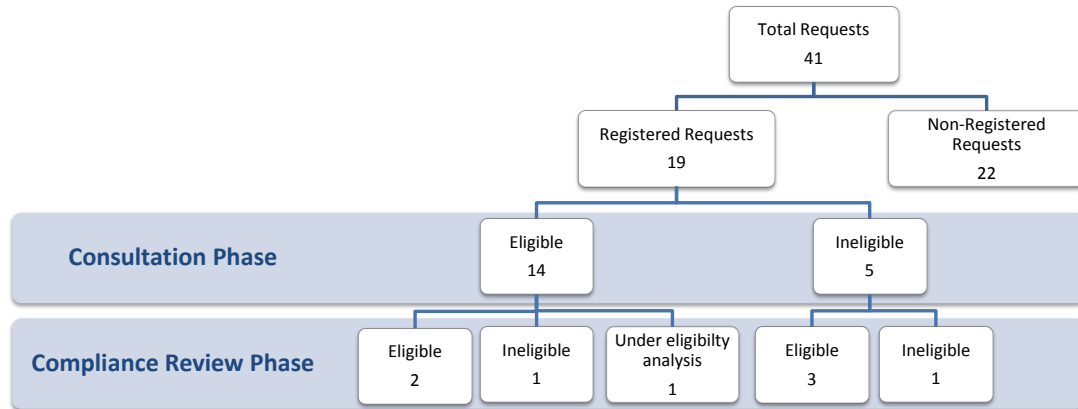
3.5 MICI has two staff members who support the unit as a whole, and the project ombudsperson and panel have each been supported by one or two case officers and some administrative assistance. The project ombudsperson, executive secretary, and panel chair maintain offices in the MICI suite.

C. Cases

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

⁶ IDB document GN-1830-55.

Figure 3.1
Overview of MICI requests



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

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

Box 3.2
Scope of issues addressed by MICI cases

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

Note: Shaded cases indicate private sector projects.

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

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

Table 3.1
MICI expenditures

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

Source: MICI data.

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

Figure 3.2
Distribution of MICI expenditures



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

Note: Graph includes 2011 and 2012 expenditures.

⁷ IDB document MI-12-8.

⁸ As of October 22, 2012.

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

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

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

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

Box 4.1

Mission statements of other mechanisms

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

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

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

Box 4.2

Unanswered questions about compliance in two MICI consultation cases

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

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

Box 4.3

Management response to complaints in other MDBs

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

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

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

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

B. Accountability

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

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

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

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

C. Panel remuneration

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

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

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

D. Panel members’ roles and accountabilities

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

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

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

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

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

V. ACCEPTANCE OF CASES

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

A. Criteria

5.2 MICI’s eligibility criteria are numerous and heterogeneous, and they require more subjective judgment than those of most other IAMs. MICI policy specifies a total of 17 criteria to be met before a request is eligible for review. They are listed in two separate groups: 8 “exclusion” and 9 “eligibility” criteria (see Annex 4). Using the 17 criteria, the project ombudsperson determines the eligibility of every case for a consultation process. Then, for the subset of cases that also go to the compliance panel, the policy requires the panel chair to again review their eligibility against the same set of criteria¹⁷. This evaluation refers to this process as “duplicate eligibility determination”.

5.3 The 8 “exclusion” criteria include some matters that can be determined *prima facie*—for example, whether a request concerns an alleged fraud, ethics, or procurement problem. Other matters require research or judgment—for example, whether a request relates to actions that are the responsibility of parties other than the Bank. Likewise, the 9 “eligibility” criteria include some matters that are purely factual—such as the requester’s contact information—and others that are difficult to assess, like whether the requester is “materially adversely affected” by the project, and whether there is an ongoing legal proceeding concerning the issue. MICI assesses all exclusion and eligibility criteria without visiting the site or even necessarily contacting all the parties, even though the more complex and nuanced issues would be better determined on the basis of on-site discussion and fact-finding. This arms-length approach has contributed to prolonged elapsed times and questionable determinations.

B. Registration process

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

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

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

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

Table 5.1
Elapsed time with executive secretary (calendar days)

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

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

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

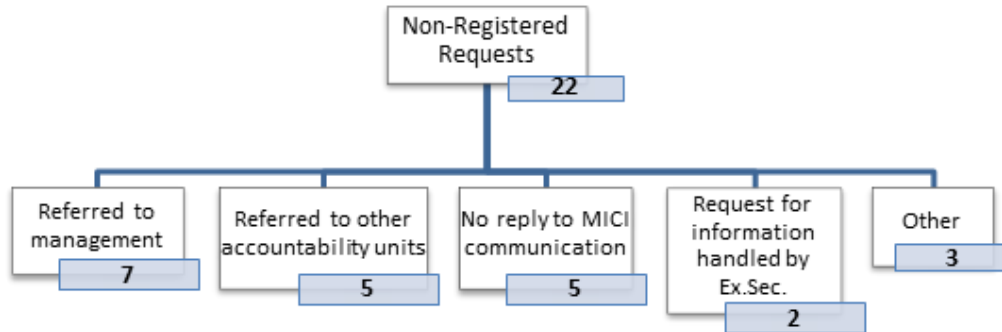
- 5.6 On the basis of the executive secretary’s review, 19 requests were classed as “registered” and the other 22 as “non-registered.” The registered/non-registered classification is not prescribed in MICI policy; rather, it is an operating procedure adopted by the incumbent principals. MICI policy calls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

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

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

¹⁸ Para. 95.

Figure 5.1
Disposition of non-registered requests



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

C. Eligibility determinations

5.10 Eligibility determination for the consultation phase took on average 55 calendar days (39 business days equivalent) — more than twice as long as the 15 business days prescribed in MICI policy. The elapsed time was about the same whether the cases turned out to be eligible or ineligible. This prolonged average elapsed time reflects two main factors. First, MICI policy permits the project ombudsperson to allow time for Management and the requester to try to resolve the problem. These intervals have in some cases been lengthy. Second, the narrow and legalistic approach of the MICI policy with its 17 eligibility criteria makes it difficult to obtain reliable information without visiting the site, including, in some cases, identifying the official requesters. Considering also the time elapsed in the registration process (see Table 5.1), the average requester waited almost three months (84 calendar days) before learning whether his or her case would proceed.

5.11 The project ombudsperson determined that 14 cases were eligible for a consultation process and 5 ineligible.²⁰ The eligibility determinations were consistent with MICI policy in three-quarters of cases, but five cases were declared eligible that should, in OVE’s judgment, have been found ineligible (see Table 5.2). The case of Brazil Habitar was declared eligible even though the request had been filed more than 24 months after the last disbursement, a fact recorded in the eligibility memo itself. In Panama Canal Expansion evidence was not obtained —as required by the policy—that the requester resides in Panama

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

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

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

Table 5.2
Problematic determinations of eligibility for consultation

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

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

D. Duplicate eligibility assessment

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

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

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

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

E. Handling of cases under judicial review

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

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

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

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

VI. HANDLING OF CASES

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

A. Consultation cases

1. Efficacy

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

Table 6.1
Outcomes of closed consultation cases

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

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

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

2. Efficiency

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

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

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

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

Table 6.2
Elapsed times for consultation cases (calendar days)

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

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

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

²²

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

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

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

3. Impartiality

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

²³ BR-MICI005-2011 Consultation Phase Report Rodoanel Mario Covas-Northern Section II, para. 3.3.

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

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

B. Compliance cases

1. Efficacy

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

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

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

2. Efficiency

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

Table 6.3
Elapsed times for compliance cases (calendar days)

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

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

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

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

3. Impartiality

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

VII. COMMUNICATION

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

A. Public reporting on cases

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

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

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

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

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

B. Communicating with potential requesters

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

C. Communication within the Bank

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

**Table 7.1
MICI presentations to IDB staff through June 2012**

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

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

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

VIII. CONCLUSION AND RECOMMENDATIONS

- 8.1 MDBs have recognized that independent recourse and compliance mechanisms can help improve the quality of their operations. In creating the MICI in 2010, the Board attempted to place IDB in the mainstream of current practice. This effort has failed. MICI has provided almost no meaningful recourse to individual complainants, nor has it generated any systemic lessons to help the institution improve.
- 8.2 The situation is unlikely to improve with the passage of time or with the appointment of different principals, because the root of the failure lies mainly in the MICI policy. The policy reflects ambivalence about the extent to which the Bank wants to receive complaints and learn from them, as well as confusion about the respective roles of problem-solving and compliance. Moreover, it creates a structure in which MICI cannot be held accountable for delivering results with integrity and efficiency. A new policy is needed, which must be anchored in an unambiguous commitment to creating an effective and accountable mechanism.
- 8.3 The weaknesses in MICI's policy have been exacerbated by actions of the incumbent panel chair, project ombudsperson, and executive secretary. They have conducted MICI operations without achieving timely results, with insufficient transparency, and in persistent and open disagreement among themselves. This behavior has prevented MICI from earning the trust and credibility it needs if its findings and recommendations are to be taken seriously by Bank Management and outside observers. The mechanism in its present form will not be able to overcome this handicap.
- 8.4 OVE recommends that the Board terminate the MICI pilot phase, implement a transition plan along the lines sketched in part A below, and launch a process to create an Independent Accountability Office (IAO) as described in part B. Dates in *italics* are suggested for purposes of discussion.

A. Termination of MICI pilot phase and transition plan

- 8.5 In response to the Board's request that this evaluation include specific recommendations, OVE recommends that the Board take the following seven steps, which should be considered as a package:
1. **Terminate the pilot phase with a decision to suspend the MICI office in its current form**, with effect from *January 31, 2013*.
 2. **Launch a policy reformulation process** to be completed by *July 31, 2013*. The new policy will establish an Independent Accountability Office (described in part B).
 3. **Prepare a communications package** by *January 31, 2013*, anchored in a public statement that the Board is strongly committed to ensuring that the Bank has a transparent, effective, and efficient recourse mechanism and accordingly is acting promptly on the lessons from the pilot period and the findings from the OVE evaluation. The communications plan could also include, for instance, "Frequently asked questions" aimed at staff and

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

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

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

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

B. Independent Accountability Office

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

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

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

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

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

Box 8.1

Independence of MDBs' problem-solving units

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

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

Box 8.2

Use of panels in compliance review mechanisms

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

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

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