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**DOCUMENT OF THE INDEPENDENT CONSULTATION  
AND INVESTIGATION MECHANISM**

**MICI RESPONSE TO THE EVALUATION OF THE INDEPENDENT CONSULTATION  
AND INVESTIGATION MECHANISM (MICI)**

MARCH 2021

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<sup>1</sup> Andrea Repetto Vargas was appointed MICI Director in December 2020, and will begin functions on March 16, 2021, a few days after the document will be distributed to the Board of Executive Directors, who requested her active participation in the preparation of the final MICI comments to OVE's evaluation.

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1.	<a href="#">Approach Paper: Evaluation of the Independent Consultation and Investigation Mechanism (RE-542)</a>

## Glossary

<b>CP</b>	Consultation Phase.
<b>CRP</b>	Compliance Review Phase.
<b>CSOs</b>	Civil Society Organizations.
<b>IAMs</b>	Independent accountability mechanisms of international financial institutions.
<b>IDB</b>	Inter-American Development Bank.
<b>IDB Group</b>	Composed of IDB, IDB Invest, and IDB Lab.
<b>IDB Invest</b>	Formerly the Inter-American Investment Corporation.
<b>IDB Lab</b>	Formerly the Multilateral Investment Fund.
<b>IFI</b>	International Financial Institutions.
<b>IIC</b>	Inter-American Investment Corporation, now IDB Invest.
<b>MICI</b>	Independent Consultation and Investigation Mechanism of the IDB Group, for its acronym in Spanish.
<b>MICI-IDB Policy</b>	The Policy of the Independent Consultation and Investigation Mechanism for the IDB (document <a href="#">MI-47-6</a> ). The Policy, which was approved by the Board of Executive Directors on 17 December 2014, has been in force as of that date and was revised in December 2015 to ensure consistency with the MICI-IIC Policy.
<b>MICI-IIC Policy</b>	The Policy of the Independent Consultation and Investigation Mechanism for the IIC (document <a href="#">CII/MI-1-1</a> ). The Policy, which was approved on 15 December 2015, has been in force as of January 2016.
<b>OVE</b>	Office of Evaluation and Oversight of the IDB Group.
<b>Parties</b>	The Requesters, Management, the Borrower, and/or the Client, if applicable, as defined in the MICI-IDB and the MICI-IIC policies.
<b>ROP</b>	Relevant Operational Policies.

## I. Introduction

- 1.1 This document presents MICI's response ("Response") to the Evaluation of the Independent Consultation and Investigation Mechanism (MICI) and Annexes ("Evaluation") submitted by OVE to the Mechanism in February of this year<sup>2</sup> under the parameters set out in document [AM-140-1](#). The Response is divided into three sections: (i) general considerations; (ii) general comments on the evaluation; and (iii) MICI response to OVE recommendations and suggested actions to address them.
- 1.2 MICI appreciates the evaluation that OVE has carried out and considers it to be beneficial. These processes provide an external, independent, impartial, and objective view that makes it possible to reinforce what works and improve or change what does not. Therefore, this evaluation of the framework of the Mechanism's Policies and their implementation significantly strengthens the accountability of the entire institution and its comprehensive approach and underscores MICI's accountability work as part of the shared responsibility of the entire IDB Group in its efforts to ensure the environmental and social sustainability of its projects.
- 1.3 In 2012, the Mechanism underwent a similar evaluation process that identified structural and operational problems. That evaluation resulted in a Policy modification that gave rise to the current MICI and also laid the groundwork for this new Mechanism to apply the lessons learned from that process in its new operations and in implementing this new regulatory framework. Of particular note, adjustments were made to the previous organizational structure; duplicate eligibility assessments (one for each Phase) were eliminated; case management deadlines were defined; opportunities for Management's participation were incorporated; and the MICI Policy, processes, and guidelines were aligned with the IDB Group's current policies. This process involved a long transition period, significant efforts, and hard work by the Board of Executive Directors and MICI staff to consolidate the Mechanism's new structure and implement a new Policy from scratch, which—although much more robust—has required considerable effort to be properly implemented.
- 1.4 The Evaluation reflects the fact that OVE has undertaken a thorough, rigorous, and detailed process. Particularly noteworthy are the many interviews conducted, covering a broad spectrum of stakeholders relevant to this analysis, which has enriched the process and given voice to different perspectives to obtain as complete a view as possible of the Mechanism's role and performance. MICI is grateful for the participation of all the stakeholders who provided input and participated in this Evaluation.
- 1.5 MICI agrees with OVE's conclusion that there is sufficient leeway to address the limitations of the current Policy without the need for its comprehensive revision. It considers this evaluation to be a learning experience and an opportunity for the continuous improvement of its processes and practices. It also notes that the review acknowledges the

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<sup>2</sup> Conducted in accordance with the evaluation questions and methodologies in the Evaluation Approach Paper referenced above under "Links."

improvements implemented at MICI since its last evaluation in 2012 and the support that evaluation provided for the Mechanism's current functioning.

- 1.6 The Mechanism generally agrees with the findings and recommendations issued by OVE in the evaluation and agrees to issue an action plan, in the time frame and form provided in document [AM-140-1](#). Regarding the areas where improvement is recommended, the entire team reiterates its firm commitment, as was the case after the first MICI evaluation, to convert the findings and recommendations of this evaluation into concrete actions that will help to continue making MICI a robust mechanism, a benchmark for other institutions, and a learning tool for the IDB Group. The Mechanism is grateful to OVE for the opportunities this evaluation and its findings provide to improve its work and is confident that implementing its recommendations will contribute to a stronger, more effective, and more efficient MICI.

## II. General Comments on the Evaluation

- 2.1 In this section, we share comments on some of the topics addressed in the Evaluation, following the same structure as the chapters.

### Chapter II – The MICI Policy for the IDB Group

- 2.2 The Mechanism agrees with OVE regarding the limitations in the application of the Policy and, although it agrees with the analysis that these limitations have been managed in practice in a manner consistent with how other mechanisms operate, it shares some reflections below, following the same order as the evaluation.

#### *Consequences of a determination of noncompliance with policies and associated harm:*

- i) MICI agrees with OVE that the Policy has shortcomings in regulating this aspect and that the alternative for addressing the harm in cases of noncompliance may be to bring the project back into compliance. MICI questions whether this is the only alternative when the latter is impossible. Although the Policy explicitly states that MICI cannot directly award compensation, damages, or similar benefits, it also establishes that the Mechanism, in its Compliance Review reports, must provide the Board of Executive Directors with the factual and technical basis for a decision on the actions to be taken,<sup>3</sup> since it is the Board that has the authority to determine appropriate measures. In the evaluation, these are limited to specific measures or actions to comply with the operational policies without mentioning or analyzing other options and why they would not apply to a Policy that, as OVE indicates, is silent on this matter. However, the Mechanism welcomes the fact that the Board may also ask IDB Group Management to analyze the obstacles and present options on the course of action to be taken to

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<sup>3</sup> The OVE document reflects aspects of the MICI Policy to the effect that CRP reports should provide the technical and factual basis for a **Board decision on preventive or corrective actions to be taken**. In addition to this, the Policy expressly states that the **Board of Executive Directors is the final decision maker for any actions that may be deemed appropriate or necessary** in light of the findings and recommendations of the Compliance Review.

bring the project back into compliance. This discussion is important in connection with the following point, which refers to cases where the project cannot be brought back into compliance with the safeguards, and in relation to the OVE conclusions in paragraphs 5.9 and 5.10 of the Evaluation.

- ii) MICI agrees that it is appropriate to seek compliance with the safeguards in order to offer reparation measures and has done so where possible. However, it considers it important to reflect on whether this should be the only alternative. The perspective of the OVE report leaves out cases linked to projects that can no longer be brought back into compliance with the policies. In these cases, the proposal set out in the evaluation would not offer a determination of what should happen beyond a CRP report finding noncompliance. For example, in four of the six cases reviewed, there were circumstances such as the Bank's withdrawal of the investment; early prepayment of the debt; exclusion of the components under investigation from the project; or the end of the execution of the work. These circumstances, which could easily arise in future cases, make it difficult to make concrete adjustments to the project to bring it back into compliance and redress the harm. Similarly, complaints filed during the 24 months after the last disbursement may also pose challenges as far as taking concrete actions to bring the project back into compliance with safeguards.

### **Chapter III – Access to MICI**

- 2.3 The Mechanism agrees generally with the evaluation regarding knowledge about MICI in the region and the enormous difficulties that both MICI and other mechanisms face in reversing this situation, despite significant efforts. The challenges related to the accessibility of the Mechanism and the communication strategy have been correctly and clearly identified. As the evaluation points out, the MICI Policy establishes that Management must support the Mechanism in this task, in which there is still much to be done. The new Environmental and Social Policy Framework also creates an opportunity to coordinate a joint effort within the institution on how to publicize the existence of the Mechanism, including to borrowers, and to improve access for potential Requesters.
- 2.4 The Evaluation reflects the difficulties Requesters face in accessing MICI in terms of meeting the complaint admissibility requirement that they establish prior contact with Management. MICI agrees that this is due to the absence of a standardized process for the receipt of complaints by the Group, while other IFIs are creating systems to respond to concerns and disputes within the institutions. Drawing on the experience observed in other mechanisms, it agrees that it will be vitally important for the implementation of this system to be well-coordinated with MICI and its policies, clearly delineating the actions and responsibilities of each party in the Group's accountability.
- 2.5 The Evaluation also correctly identifies the risk of reprisals as a major constraint to safe access to MICI, despite efforts to address them. The new Environmental and Social Policy Framework, once again, offers opportunities to better respond to this risk at an institutional level.

## Chapter IV – Case Management

- 2.6 MICI agrees with the significant progress identified by OVE in terms of transparency and predictability in case management at the Registration and Eligibility stages, as well as in the use of the Public Registry. Keeping stakeholders and the general public informed about the management of complaints is fundamental for building credibility and trust in the Mechanism. This means providing public case documents in a complete, timely, and accessible manner, and ensuring that the steps in the process are predictable for stakeholders.
- 2.7 Regarding the need to develop CRP guidelines, the Phase has developed its internal processes for implementing the Policy since 2016 through various tools designed to ensure the correct, systematic, and expeditious processing of requests in this Phase. The Mechanism sees the findings of this Evaluation as a good opportunity to: (i) issue public guidelines on the CRP; and (ii) enhance internal tools and procedures in areas identified by OVE, such as clearly stating the purpose of the investigations in the recommendations and improving the presentation of information in the investigation reports.
- 2.8 Regarding the analysis of impartiality, the evaluation highlights actions taken by MICI to consider the perspectives of the different Parties involved in the CP and finds that the overall perception of the Mechanism's impartiality was positive. To prepare the agendas and format of the Dialogue spaces, MICI works using the principle of co-design to capture the methodological preferences and the psychological, substantive, and procedural dimensions of the Parties, creating a tailor-made approach so they feel comfortable enough to explore solutions to the concerns raised in the complaints. However, this is a complex task and it is often necessary to make adjustments, break up the topics, or examine the technical aspects of certain issues more deeply as the exchange sessions progress, as long as there is a prior agreement between the Parties. The thematic scope of the Consultation Phase process is determined in the respective Eligibility Determination Memorandum for each Request and the process cannot go into new topics or issues not included therein. Nevertheless, the Mechanism welcomes this finding and recognizes the importance of always maintaining neutrality on multiple fronts and adhering to policies and guidelines as an impartial third party in dispute resolution processes.
- 2.9 The relationship between the CRP and the executing agencies or clients is determined by the Bank's Management. This is to prevent a CRP process from affecting the relationship between the two parties. In some cases, Management instructs MICI to directly contact, communicate with, and conduct its process with the Client (private sector) or Executing Agency (public sector), and this is when MICI takes a more active role in informing these stakeholders about the progress of the investigation; at other times Management assumes the role of intermediary and provides information on the process. Whatever the case may be, the Mechanism will look for ways to have a greater impact on the provision of information by the Executing Agencies.



- 2.10 MICI acknowledges the need to take a more proactive approach to communication in particularly sensitive or high-impact complaints and in recent years has moved in this direction.
- 2.11 Concerning management efficiency, MICI agrees that at times the processes have been prolonged due to the existence of several cases with overlapping dates for deliverables, or due to periodic staff turnover that requires new staff to familiarize themselves with the claims and processes and acquire knowledge. However, there are also factors external to MICI that have led to time extensions that affect the Mechanism's efficiency and effectiveness and create frustration and distrust among the Parties, particularly the Requesters. In several cases, the longest delays were due to situations beyond MICI's control, linked to specific incidents in the projects, circumstances in the countries or with the Board of Executive Directors, and delays in the provision of information for the investigation. MICI will seek to improve collaboration and communication with all relevant stakeholders to make the processes more expeditious and transparent, to improve procedural efficiency.
- 2.12 Regarding Request management expense reporting, MICI has recently taken the actions needed to more effectively identify the costs associated with the Eligibility stage by generating time codes for cases at that stage, which will improve its use of resources.

## **Chapter V – Results**

- 2.13 OVE examined the key factors that have limited the Group's effectiveness in ensuring that the negative impacts of its projects are remedied. In response to this analysis, MICI will strive to issue Compliance Review reports containing recommendations with alternatives for the Board to determine appropriate or necessary measures to ensure redress when it is impossible to bring the project into compliance with policies, and to overcome challenges when Executing Agencies and Clients cannot finance those measures.
- 2.14 Regarding MICI's efforts to contribute lessons learned, the Mechanism welcomes the opportunity to deepen the analysis of recurring and systemic issues based on the experience it has gained over 10 years, which has been the main objective of the MICI Reflections Program. MICI agrees with OVE's assessment and considers it vitally important to be able to provide the institution with lessons learned from case management, precisely to contribute to sustainable development by improving the implementation of environmental and social safeguards in projects, and therefore reaffirms its commitment to continue working in this direction.

## **Chapter VI – Aspects of MICI's Internal Functioning**

- 2.15 MICI staff turnover has different impacts, as OVE identifies, in terms of loss of human capital and knowledge about processes and systems, how MICI operates, and its relationships with the Parties, which is reflected mainly in the need to invest time and

resources to meet this challenge. MICI agrees with the OVE assessment that staff turnover poses challenges to institutional capacity and memory.

- 2.16 Consistent with MICI's analysis in the 2021 Work Plan and Proposed Budget, the Mechanism will seek to address this weakness systemically and strengthen its human capital.
- 2.17 Regarding the consistent application of the Policy, MICI also believes this is ensured by several existing elements and tools at the Phases and Mechanism levels, including the internal guidelines and other tools mentioned above for implementing the Policy. In addition, it is the responsibility of the Phase Coordinator, under the supervision of the Director, to prevent inconsistencies in the implementation of the MICI Policy, whether by new or permanent staff.
- 2.18 Although there is an annual strengthening plan in place and training activities have been held in specific areas, MICI agrees that there is room for improvement in staff training programs that build on the efforts made to ensure a solid and continuous institutional strengthening.
- 2.19 Regarding the assessment that there is a need for more diverse staff, mainly in CRP and specifically with specialists in the practical application of environmental and social safeguards, MICI always strives to have a staff that meets the needs of the work involved in a Compliance Review.
- 2.20 Besides the team at headquarters, the Mechanism has rosters in both the Consultation and Compliance Review Phases, where the diversity of professions, experience, and qualifications of the personnel is also ensured. Specifically, in the Compliance Review Phase, these experts have experience in implementing environmental and social safeguards on a range of issues, and their work forms an essential part of the Mechanism's investigations.
- 2.21 The Mechanism agrees that there is a window of opportunity to build the team's capacity in various institutional aspects to improve its relationship and communication with both IDB and IDB Invest Managements. MICI values the diversity of profiles, which it regards as a factor that enhances its work and results and will consider these aspects when recruiting personnel.

### III. Response to the Recommendations in the Evaluation

- 3.1 This section presents the Mechanism's response to each recommendation made by OVE in the evaluation. As mentioned above, MICI is already taking measures to address some, and in others, it is making specific proposals to put them into effect. In addition, Annex I presents a matrix summarizing MICI's position on the recommendations.

#### **Recommendation 1. Implement the IDB Group's environmental and social complaint management system**

- 3.2 This recommendation is addressed to IDB and IDB Invest Management. However, MICI offers a perspective based on its experience in the management of environmental and social complaints, and in keeping with the best practices of other mechanisms where IFIs have made similar efforts, and therefore shares some reflections:
- 3.3 These systems should allow for clear coordination between MICI and Management's systems, focused on defining interaction processes and methodologies consistent with MICI Policies and that allow for their coexistence, with particular emphasis on ensuring the independence of MICI and its role within the Group's accountability system. This interaction between Management's complaint handling systems and the MICI policies should include, among others, the following actions:
- i) Explore effective, accessible, and safe ways for Management and borrowers to make affected individuals and communities aware of MICI's existence as a mechanism of last resort.
  - ii) MICI will provide the information that Management publicizes about the Mechanism and its process.
  - iii) Define the methodologies for relations and communication between institutions. Management should specify the information and contact details MICI should provide when it receives requests that have not met the requirement of prior contact with Management and outline the process for the referral of complaints addressed directly to the Mechanism.
  - iv) Ensure that this system continues to allow affected communities access to MICI at any time, preventing unnecessary or unwarranted limitations and delays that may cause subsequent incremental harm.
  - v) Define complaint procedures where there is a risk of reprisals.
- 3.4 In addition to the above points, MICI is available to share the lessons the Mechanism has learned in the management of its cases.

**Recommendation 2. Set aside the judicial exclusion.**

- 3.5 The Mechanism agrees with OVE's findings that this exclusion has, in practice, hindered requesters' access to MICI and that it creates limitations in terms of procedural efficiency. It also recognizes the reputational risk that using this exclusion has posed for the Group when there are potential environmental and social liabilities, especially given that MICI's purview is set exclusively by the ROPs.

**Recommendation 3. Strengthen MICI's independence.**

- 3.6 MICI agrees with this recommendation and will take the following actions:
- i) Submit final reports to the Board of Executive Directors to which changes are made only to correct factual errors.
  - ii) Develop guidelines with measures and practices to address the limitations of the MICI policies, including issues such as the consequences of a determination of noncompliance with the policies and associated harms; the link between noncompliance and alleged harm; monitoring of action plans, and others deemed necessary in its independent technical judgment. The above is framed within the intervention rationale underpinning the Mechanism's existence and functioning.

**Recommendation 4. Ensure that corrective action is taken when there are findings of noncompliance with policies and related harms.**

- 3.7 MICI agrees with the recommendation and will continue to make its recommendations with a view to bringing the IDB Group back into compliance with its operating policies, so that projects comply with the applicable policies for the identification, mitigation, and/or offsetting of the negative environmental and social impacts associated with such noncompliance. Where it is impossible to bring the project back into compliance with the ROPs, it will present recommendations consistent with the options derived from the analysis described in recommendation 4.ii.d.

**Recommendation 5. Strengthen MICI's internal capacities.**

- 3.8 MICI agrees on the importance of continuous staff capacity building and therefore generally accepts this recommendation. However, MICI already has technical experts in the practical application of safeguards policies, namely the experts who participate in the investigations. MICI will also continue to strive for staff diversity in its future recruitment efforts. We will select the candidates that best meet MICI's requirements to ensure proper complaint management and excellence in the processes of both Phases.
- 3.9 MICI agrees with the recommendation to expand staff training through a structured, ongoing program to ensure consistent application of the Policy and is committed to strengthening its staff training system.

- 3.10 MICI will also redouble its efforts in the analysis of recurring, systemic, and relevant topics for the Group, based on the cumulative experience of its years of operation, improving the development of learning products for the institution.
- 3.11 MICI agrees with the recommendation and will enhance its communication strategy with concrete actions to support case management in high-conflict situations, besides what it has already been working on in specific cases.
- 3.12 Finally, as stated at the beginning of this Response, MICI will develop an action plan for the recommendations pertaining to the Mechanism approved by the Executive Directors, share its experiences with complaint management, and take the necessary steps to improve its functioning, effectiveness, and efficiency as part of the IDB Group's accountability system.

### Annex 1. Matrix of MICI's Position on OVE Recommendations

OVE Recommendations	MICI's position	Comments and/or actions to address the recommendations
<b>Recommendation 1</b>	Agreed	<ul style="list-style-type: none"> <li>• Enable clear coordination between MICI and Management's systems, so it focuses on defining processes and interaction methodologies consistent with the MICI Policies.</li> </ul>
<b>Recommendation 2</b>	Agreed	<ul style="list-style-type: none"> <li>• MICI agrees that this exclusion has, in practice, hindered Requesters' access to MICI, besides creating limitations in terms of procedural efficiency.</li> </ul>
<b>Recommendation 3</b>	Agreed	<p>MICI agrees to:</p> <ul style="list-style-type: none"> <li>• Submit final reports to the Board of Executive Directors that are final documents not subject to amendment, and</li> <li>• Develop guidelines with measures and practices to address the limitations of the current framework of the MICI Policies.</li> </ul>
<b>Recommendation 4</b>	Agreed	<ul style="list-style-type: none"> <li>• MICI agrees to continue to make recommendations to address Policy noncompliance and negative impacts consistent with the powers of the Executive Directors.</li> </ul>
<b>Recommendation 5</b>	Agreed	<p>MICI agrees to:</p> <ul style="list-style-type: none"> <li>• Continue to invest in the training of its staff.</li> <li>• Continue to strive for staff diversity. In the next hiring process, it will recruit and select candidates that best meet the requirements of MICI in both Phases.</li> <li>• Increase efforts to analyze recurring and systemic issues of the Group, improving learning generation.</li> <li>• Enhance its communication strategy with concrete actions to support case management in high-conflict contexts.</li> </ul>