

## Recommendations for the Implementation of OVE's Evaluation of MICI from Civil Society Organizations

In April 2021, the Office of Evaluations and Oversight (“OVE”) published the [Evaluation of the Independent Consultation and Investigation Mechanism \(MICI\)](#) (“OVE’s Evaluation”). The evaluation aimed to determine whether MICI was effective and efficient in three areas: (1) the resolution of complaints; (2) the promotion of institutional learning; and (3) MICI’s accessibility, independence objectively, impartiality, and transparency. In OVE’s Evaluation, OVE made five overarching recommendations for how the Board, the Bank, and MICI could better uphold the Bank’s environmental and social safeguards.

The Evaluation identified impediments to the effective functioning of MICI, including accessibility barriers, unnecessary limitations on its independence, and a systemic lack of remedy taken by the IDB Group when projects were not in compliance with safeguards. After the publication of the report, Bank management and MICI published responses. We, as civil society organizations working in partnership with communities who have been harmed by IDB and IDB Invest projects and who have sought redress through MICI, have decided to also publish a response.

Below, we respond to OVE’s recommendations and provide our own advice on implementation.

### Recommendation 1: Implement and Improve the Bank Management System for Environmental and Social Grievances

#### Civil Society Recommendations for Implementation:

1. Repeal the requirement that complainants first go to Management.
2. Undertake an inclusive process for developing a grievance response mechanism that aligns with the UN Guiding Principles.
3. Until the prior engagement requirement is repealed, include flexible parameters for when complainants can access MICI following untimely or otherwise unsatisfactory engagement with Management.

We concur with OVE’s findings that the requirement for communities to make prior efforts is a problematic barrier to accessing MICI. In fact, the report finds that “[p]rior contact with Management [is] one of the *main reasons* for nonacceptance of requests during registration and eligibility” (para. 3.12, emphasis added). The report further notes “significant inconsistencies in the way Management addressed the contacts made by requesters before reaching out to the MICI,” including responses that were delayed several months, insufficient, or entirely nonexistent (para. 3.13).

Project-affected people who file complaints to MICI have experienced firsthand the futility of raising certain complaints with Management. For example, [community members in Haiti who were displaced by the construction of an industrial park](#), first raised their grievances through a

letter to both Bank Management and the project operator. The community members only heard back weeks later and after additional attempts were made to reach Management. An initial meeting between the parties that seemed constructive at first proved to be a dead-end. Management and the project operator largely failed to follow through on their commitments to provide the community members with more project information. They were slow to respond to multiple attempts at further contact and, when they did, appeared dismissive of the community's concerns. Ultimately, Management and the project operator only made vague assurances that were of little comfort to the displaced community members. After [months of discouragingly fruitless attempts to engage with the Bank](#), the community members finally brought their grievances to MICI.

Yet while the report correctly identifies the problem to date with Management's response to complaints, its corresponding recommendation – to establish a Management grievance management system – is an incomplete half-measure. The effectiveness of the Bank in resolving community grievances would be better served by **repealing the requirement that complainants first go to Management**. This would bring MICI in line with good practice at other independent accountability mechanisms, including the accountability mechanism for the International Finance Corporation, United Nations Development Program, Proparco, DEG, FMO, EIB (unless projects are under appraisal), and the Green Climate Fund.

While the Bank should make multiple effective channels available to project-affected people, Recommendation 1 leaves intact an arbitrary complaints hierarchy that impedes resolution of community grievances and accountability. To facilitate the effective resolution of grievances, it is crucial that project-affected people be able to choose the approach best suited for them. In determining which forum can most effectively address their complaints, project-affected people often consider a range of factors. The nature of the grievance, timing, the perceived independence of the forum, and concerns about possible reprisals can all render one forum more effective than others, depending on the specific circumstances. **Maintaining MICI as a mechanism of last resort not only ignores the growing recognition of the risk of reprisals that complainants face, but also undermines MICI's role.**

Rather than ossify an inapt hierarchy for raising concerns, the Bank should foster an accountability ecosystem consisting of multiple accessible and effective channels for project-affected people. A complainant's propensity to utilize a Management mechanism, or any other forum, ultimately depends on its legitimacy. Repealing the prior engagement requirement and empowering complainants to choose the most effective forum for them would in turn incentivize Management to make their mechanism as safe and responsive as possible.

In addition, as Management responds to the directive to implement an effective grievance response system, Management should **commit publicly to developing its processes through an inclusive consultation process and establishing a mechanism in line with the [UN Guiding Principles on Business and Human Rights](#)**. Project-affected people, civil society, and other stakeholders should be afforded multiple and accessible opportunities to provide feedback, including on drafts on the mechanism's procedures. The grievance response

mechanism should fully comport with the effectiveness criteria prescribed by Guiding Principle 31 for such mechanisms. Bank Management’s grievance response mechanism needs to be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.

Further, special attention must be paid to OVE’s recommendation to ensure the Management grievance response mechanisms are “secure.” The report notes an instance where a “complaint was forwarded directly to the execution unit without taking into consideration the potential reprisal risks raised by the requesters” (para. 3.13). Any incidents of complaint mismanagement exposing complainants to the risk of reprisals severely undermine the legitimacy of any grievance response mechanism. Management must develop a robust protocol for assessing and addressing the risk of reprisals towards the mechanisms’ users and other related parties. In doing so, Management should draw heavily from [MICI’s work](#) on reprisals and that of the entire [network of accountability mechanisms](#).

Management must commit to enabling project-affected people to understand how complaints will be handled and complainants protected. The mechanisms’ full procedures, as well as less technical outreach material, should be disseminated widely and be easy to find on the Bank’s website. These documents should be available in the local languages of all project-affected people. They must also explain the grievance response mechanisms’ role within the Bank’s accountability framework, making clear the relationship and differences between the Management-led mechanisms and the independent accountability mechanism MICI. And until the arbitrary prior engagement requirement is repealed, **flexible parameters should be instituted for when complainants can access MICI following untimely or otherwise unsatisfactory engagement with Management.**

## Recommendation 2: Repeal the Legal Exclusion

Civil Society Recommendations for Implementation:

1. Publicly state that the legal exclusion is repealed effective July 1.
2. Disseminate updated versions of the MICI policy that reflect the repeal of the legal exclusion.

The report’s findings on the impropriety of the legal exclusion, and its severe restriction of accessibility, are clear. We commend the report for stating that the legal exclusion must be repealed. An IAM’s unique role within an institution is inherently distinct from judicial proceedings. IAMs examine an institution’s compliance with its own standards, a mandate that does not overlap with the jurisdiction of courts. For this reason, the existence of legal proceedings at the national level should not be a basis for “remove[ing] from consideration core issues raised in the requests which are of great importance for the IDB Group in terms of implementing its environmental and social safeguards policies and standards” (para. 3.15).

With the Board’s approval of OVE’s Evaluation, the decision to repeal the legal exclusion is made effective 1 July 2021. This decision should be publicized so that potential complainants are made aware. **The resolution approving the repeal of the legal exclusion should be published or publicly stated in some comparable manner.** Further steps must be taken as well. Updated versions of the MICI policy, with the text of paragraph 19(d) deleted and replaced simply with “[repealed]”, should be **published on MICI’s website** and otherwise disseminated.

### **Recommendation 3: Reinforce the Independence of the MICI**

Civil Society Recommendations for Implementation:

1. MICI should have the authority to determine when to undertake an investigation, without Board approval.
2. In the alternative, MICI’s policy should delineate narrow, technical grounds for non-approval and require the publication of the basis for any non-approval decision.
3. Further bolster MICI’s independence by: (a) codifying the inclusion of external stakeholders in the hiring process for MICI Directors and Phase Coordinators and (b) ensuring MICI has complete autonomy to determine the scope of, and conduct, site visits.

The importance of independence for MICI, as with other accountability mechanisms, cannot be overstated. The report captures the keystone quality of independence, noting that it is “at the root of the MICI’s functioning” and a prerequisite for other attributes like objectivity, impartiality, and transparency (para. 4.3). Independence is further crucial “to ensur[ing] the credibility of the reports” MICI produces (*id.*). Independence is ultimately linked closely with MICI’s legitimacy as a community-focused accountability mechanism.

The report finds that the need for MICI to secure Board approval before commencing investigations is one of the major issues that has “given rise to situations that compromise the independence of the mechanism” (para. 4.5). Board approval of investigations has, the report continues, “on occasion become a contentious process between the MICI and Management, with outcomes that call into question the MICI’s independence” (*id.*).

Yet, unlike with the repeal of the legal exclusion in Recommendation 2, and despite the report correctly identifying how Board approval undermines MICI independence, Recommendation 3 counterintuitively stops short of prescribing a clear-cut policy change for resolving the issue. Though OVE’s Evaluation recommends treating as final MICI’s reports and recommendations – which, in light of the Evaluation’s clear findings on the subject, must be read to instruct the Board to defer to MICI’s recommendations to undertake investigations – the elasticity of the recommendation undermines the Bank’s accountability for adhering to it.

To truly ensure independence, **MICI should have the authority to determine when to undertake an investigation, without Board approval.** This is good practice that, as the report notes, is adhered to at multiple other IAMs (fn. 53). The report highlights the impropriety of the

Board stepping in to arbitrate a “highly technical issue” that MICI is much better equipped to resolve (para. 4.5). At this stage in the complaint process, there is no sound basis on which to second-guess MICI’s application of its policy and determination about the appropriateness of an investigation for any given case.

As an inferior alternative, to mitigate its deleterious effect on MICI’s independence, MICI’s policy should be updated to **delineate narrow, technical grounds for the Board’s review of MICI’s decision to investigate**. If Bank Management has reason to believe that MICI did not follow its own procedures when determining an investigation is warranted, then Management can publicly raise this concern to the Board. The Board, in turn, would limit its review to whether or not MICI followed its own processes.<sup>1</sup> Further, given their threat to MICI’s independence and legitimacy, there must be transparency for all non-approval decisions. The Board should **provide in writing its basis for any non-approval decision, to be included in MICI’s public registry of cases**.

Additional recommendations would further bolster MICI’s independence and align it with good practice. While ideally these reforms should also be codified, they can be made in practice without tension with current policy. The Board should build on the improved inclusivity of its most recent [MICI Director hiring process](#), which was supported by representatives of civil society, by committing to the inclusion of external stakeholders on future Selection Committees for the position and including this process in MICI’s policy. MICI should likewise commit to including external stakeholders in the selection process for Phase Coordinator positions. And while MICI can consult and coordinate with the relevant Executive Director regarding site visits, MICI should be afforded complete autonomy to determine the scope of, and conduct, site visits.

#### **Recommendation 4: Ensure Corrective Action When There are Findings of Noncompliance and Associated Harm**

Civil Society Recommendations for Implementation:

1. Codify expectation that MICI include recommendations for remedying harm to project-affected people and Management prepare a corrective action plan whenever noncompliance is found. Implement additional good practice, including: (a) Management consulting with complainants and other project-affected people during the development of action plans; (b) seeking MICI and complainant feedback on the sufficiency of action plans before the Board’s approval; and (c) MICI consulting with parties in the development of its monitoring reports and conducting site visits, as appropriate.
2. Commit to a comprehensive and inclusive process for conducting the analysis of systemic obstacles to corrective action, with the objective of implementing practices, including contingency funds, to enable remedy.

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<sup>1</sup> This process is delineated in the 2021 draft policy for the CAO. We object to any Board oversight of the CAO’s or MICI’s authority to decide whether to investigate but offer this as a minimum change required for MICI’s policy.

The Evaluation's plainly stated finding on the lack of remedy in compliance review cases is damning: the compliance cases analyzed by OVE "have not yet yielded concrete results for the requesters despite the MICI's findings of noncompliance and associated harm" (para. 5.7). This portends poorly for MICI's legitimacy, with the Evaluation noting the widely-held perception that "the compliance review phase whitewashes the image of the IDB Group and is not a genuine attempt to resolve the problems that its projects might create for the communities" (*id.*).

We have seen this through our casework. In 2011, [communities in Colombia](#) brought a complaint to MICI about a project expanding the El Dorado International Airport in Bogotá alleging that the severe noise pollution from the nearby airport caused serious harm to people's health. MICI's investigation found that IDB violated at least seven aspects of its environmental and social safeguards, including a failure to evaluate the scale and impact of noise pollution, lack of meaningful consultation with affected communities, failure to validate or implement noise mitigation measures, and failure to monitor noise violations, the result of which caused community members to suffer chronic insomnia, hearing damage, and developmental delays for children. MICI made multiple recommendations for how to bring the project into compliance, including that the bank work with relevant Colombian authorities to improve the sustainability of the airport. Unfortunately, IDB's Board decided that this aspect of implementation was not in the IDB's control and instead rested with national authorities, thus leaving the communities without adequate redress.

The Evaluation's recommendation for all Bank stakeholders – the Board, Management, and MICI – to adhere to practice that consistently enables corrective action is a step in the right direction. However, this result would be better achieved with clear policy changes. The expectation that MICI issue recommendations for project-level corrective action, and that Management create corrective action plans, whenever there are findings of noncompliance should be codified. This is good practice at mechanisms like the EBRD's IPAM (see IPAM policy, paras. 2.7(d)(ii)(a), 2.7.1(a)).

Additional procedural details are needed to ensure alignment with good practice and effectiveness for remedying harm to project-affected people. These changes would best be codified but can be made standard practice without tension with the current policy. These practices include:

- **Consultations on the development of corrective action plans:** MICI's policy already calls for complainants to be consulted during investigations and given an opportunity to comment on draft compliance review reports, including recommendations (MICI Policy, para. 44). It should also be standard procedure for Management to consult with complainants and other project-affected people during the development of action plans and provide them opportunities to comment on draft action plans. *See Inspection Panel policy, para. 70.*
- **Approval of action plans based on sufficiency:** The Evaluation recommends that the Board consistently verify that the action plans substantially respond to the findings of compliance review reports. The Board's final decision on action plans (MICI Policy, para. 47) should be based on whether the plan's proposed actions will sufficiently bring the

project into compliance and remedy harm. MICI's policy should codify the opportunity for MICI and complainants to comment on the action plan's sufficiency, for the Board's consideration in making that determination. See *IPAM policy, para. 2.7.1(f)*.

- **Monitoring of underlying compliance:** As the Evaluation recommends, MICI should, as standard practice, monitor the implementation of action plans. MICI's mandate should be to monitor the case until all instances of underlying noncompliance have been remedied. See *CAO policy, para. 4.4.6*.
- **Conducting monitoring:** In addition to consulting with complainants and other parties in preparation of a monitoring plan and timeline (MICI Policy, para. 49), MICI's policy should explicitly give the mechanism the mandate to consult with parties in the development of its monitoring reports and conduct site visits, as appropriate. See *ADB AM policy, para. 194*.
- **Alerting the Board:** MICI should have the authority to alert the Board when an action plan is not being adequately implemented, or when a plan is no longer sufficient because of emerging circumstances, and make recommendations for its improvement. See *IPAM policy, para. 2.8(d)*.

In addition to the gaps in MICI's current practice that hinder corrective action, the report correctly identifies that there are "major systemic challenges" to the delivery of effective remedy at the Bank and other development finance institutions (para. 5.10). This fundamental issue is well documented. The seminal study [Glass Half Full](#) found that "failure to ensure redress for complainants" is endemic across the development finance landscape, and a "DFI's inability or unwillingness to commit to and implement measures that address complainants' grievances" is repeatedly evinced in IAM case studies and surveys of project-affected people.

These insights are finally being acknowledged and acted upon by other multilateral development banks. A recent external review of the International Finance Corporation (IFC) recommended establishing a remedial framework where both clients and the institution contribute to contingency funds, in order to address the demonstrated insufficiency of remedy in the vast majority of its IAM compliance review cases. In response, IFC published a year-long [plan](#) for developing more effective remedial solutions. An external review team assessing accountability for environmental and social noncompliance at the African Development Bank also [made recommendations](#) for how the Bank and its accountability mechanism could better ensure that adequate remedy is provided to communities and notably stated that "[a]chieving full and effective remedy through a compliance review process requires the active and constructive participation of the Management, an aspect that is frequently lacking in most MDBs."

The OVE Evaluation recommends undertaking an analysis of these systemic obstacles to remedy and options for addressing them. Commensurate with the importance of the issue, which goes to the heart of the Bank's "do no harm" mandate, this **analysis must be thorough and with the objective of implementing practices that will enable remedy**. The Bank must commit to a comprehensive and inclusive process for conducting its analysis, with special consideration paid to the perspectives of project-affected communities. The Bank needs to produce an unflinching evaluation of the issues that result in unremedied harm for communities

and be clear-eyed about the reforms necessary to address it, including remedy contingency funds. Shifting environmental and social risk away from local communities and otherwise ensuring the equitable distribution of project benefits is precisely the type of development activity within the Bank’s mandate. And creating financial vehicles that effectively align objectives and incentives is squarely within the Bank’s expertise.

Finally, while OVE’s Evaluation documents multiple instances where communities have been left with unremedied harm, despite a compliance review verifying a causal link to the Bank’s noncompliance, there is regrettably no recommendation in the report for these communities. While the report’s forward-looking recommendations for improving practice and better remedying future harm are necessary, the Bank also should remedy harms already independently verified by MICI. For all cases in which MICI has found noncompliance or the parties have negotiated outcomes through dispute resolution, including cases that MICI is currently monitoring, the Bank should undertake assessments of what is needed to provide adequate remedy to communities and either provide that remedy or require clients to do so. All assessments of remedy should include consultations with project-affected communities.

#### **Recommendation 5: Strengthen MICI’s Internal Capacity**

Civil Society Recommendations:

1. MICI should be given sufficient budget to shift away from the consultancy model and create more staff positions.

One focus of the Evaluation’s analysis of MICI’s internal functioning is the reliance on a consultancy model for personnel. The report notes that all case officers, analysts, and assistants are consultants subject to short contract limits, despite this being a known factor “impairing the continuity and consolidation” of the case-processing functions (para. 6.5). The importance of the MICI personnel to the mechanism’s effectiveness at resolving grievances is self-evident. As the report notes, the high rate of turnover that results from the consultancy model “poses challenges for the mechanism’s capacity and institutional memory, as well as for a consistent implementation of the policy” (*id.*).

Yet the corresponding recommendation’s focus on ongoing training, while important, largely misses the mark. MICI’s focus should be on **shifting away from the consultancy model and creating more staff positions**. Giving MICI the ability to retain case officers will foster institutional memory that can withstand leadership turnover. The Bank should commit to providing the financial and human resources necessary for making this shift.

The report’s analysis of MICI’s internal functioning omits a key issue. Elsewhere the Evaluation notes the frequency of delays (para. 4.19) but fails to analyze the potential connection of this issue to capacity limitations. A true accounting of the delays in case processing must include an examination of capacity constraints and recommendations for increasing capacity. Given the issues caused by frequent delays in case processing, including on the mechanism’s ability to



facilitate timely corrective action, the Bank should make a commitment to increasing capacity as necessary to avoid delays.

### **Consultations are Required for Implementation of All Recommendations and Implementation Will Require Changes to MICI's Policy**

Steps taken to improve environmental and social compliance and accountability for noncompliance should be informed by the people who noncompliance most affects: namely people living near and working at project sites. To hear from project-affected peoples and their advocates, IDB and MICI should consult publicly on their plans to implement OVE's recommendations.

In its Evaluation, OVE cautions against undertaking a comprehensive review of MICI's policy (para. 72). Because there are aspects of MICI's policy that are not in line with good practice, some of which were identified by OVE, we had [expected that a comprehensive review would be on the horizon](#). A policy review, when undertaken for the purpose of making a policy more effective for complainants, has proven to be an effective and inclusive way of considering reforms. Most accountability mechanism policy reviews include public consultations so that the very people who might need to use the mechanism have a say in its design. There is no reason why implementation plans in response to OVE's Evaluation cannot undergo a similar public consultation process. There is also no reason why changes to MICI's policy should not be made as part of the implementation. We strongly encourage the Board, the Bank, and MICI to make necessary policy changes to improve accountability for environmental and social noncompliance and to consult publicly on their proposals.

### **Conclusion**

MICI plays a crucial role within the IDB, providing a channel for project-affected people, the purported beneficiaries of the Bank's work, to raise grievances about projects and seek redress. However, as the OVE Evaluation makes clear, there are gaps in MICI's current practice – and the related practice of the Board and Management – that hinder MICI's effectiveness. To ensure MICI's legitimacy, the Bank must act to address these issues in full.

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## **Recomendaciones de la sociedad civil para la implementación de la Evaluación del MICI**

### **Recomendación #1: Implementar y mejorar el sistema de gestión bancaria para los reclamos ambientales y sociales.**

Recomendaciones de la sociedad civil para la implementación:

1. Derogar el requisito de que los solicitantes primero acudan a la Administración.
2. Empezar un proceso inclusivo para desarrollar un mecanismo de respuesta a reclamos que se alinee con los Principios Rectores de la ONU.
3. Incluir parámetros flexibles sobre cuándo los reclamantes pueden acceder al MICI después de una participación inoportuna o insatisfactoria con la Administración, hasta que se derogue el requisito de participación anterior.

### **Recomendación # 2: Derogar la exclusión legal**

Recomendaciones de la sociedad civil para la implementación:

1. Declarar públicamente que la exclusión legal se deroga a partir del 1 de Julio.
2. Divulgar versiones actualizadas de la política del MICI que reflejen la derogación de la exclusión legal.

### **Recomendación #3: Reforzar la independencia del MICI**

Recomendaciones de la sociedad civil para la implementación:

1. El MICI debe tener la autoridad para determinar cuándo se puede realizar una investigación, sin la aprobación de la Junta.
2. Como alternativa, la política del MICI debe delinear razones técnicas y precisas para una decisión de no-aprobación, y requerir la publicación de las bases para cualquier decisión de no-aprobación.
3. Fortalecer aún más la independencia del MICI al: (a) codificar la inclusión de partes interesadas externas en el proceso de contratación de directores y coordinadores de fase del MICI y (b) garantizar que el MICI tenga total autonomía para determinar el alcance de las visitas al sitio y realizarlas.

#### **Recomendación #4: Asegurar la acción correctiva cuando hay hallazgos de incumplimiento y daño asociado**

Recomendaciones de la sociedad civil para la implementación:

1. Codificar la expectativa de que el MICI incluya recomendaciones para remediar el daño a las personas afectadas por proyectos y que la Administración prepare un plan de acción correctiva cuando se detecte un incumplimiento. Implementar mejor prácticas adicionales, incluyendo: (a) Consultoría, en parte de la Administración, con los reclamantes y otras personas afectadas por proyectos durante el desarrollo de planes de acción; (b) solicitar comentarios del MICI y del denunciante sobre la suficiencia de los planes de acción antes de la aprobación de la Directorio Ejecutivo del Banco; y (c) que el MICI consulte con las partes en el desarrollo de sus informes de monitoreo y realice visitas al sitio, según sea adecuado.
2. Comprometerse con un proceso integral e inclusivo para realizar el análisis de los obstáculos sistémicos para la acción correctiva, con el objetivo de implementar prácticas, incluidos los fondos de contingencia, que permitan un remedio.

#### **Recomendación #5: Fortalecer la capacidad interna del MICI**

Recomendaciones de la sociedad civil:

1. El MICI debería recibir financiación suficiente para alejarse del modelo de consultoría y crear más posiciones para personal.