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

This document was prepared by the Executive Secretary the Project Ombudsperson and the Panel Chairperson.
Evaluation of the Independent Consultation and Investigation Mechanism
Response of the ICIM

Contents

I. Response of the Executive Secretary
II. Response of the Project Ombudsperson
III. Response of the Compliance Review Panel
I. RESPONSE OF THE EXECUTIVE SECRETARY
Evaluation of the Independent Consultation and Investigation Mechanism  
Response of the Executive Secretary

I. General Considerations

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

Box 1
Purposes of the Evaluation of the Independent Consultation and Investigation Mechanism

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

1.2 In terms of purpose number 1, it is the opinion of the Executive Secretary that it has been achieved and that the evaluation has correctly concluded that the present policy and structure impede the accountable, transparent, efficient and efficacious operation of the Mechanism. It must be further underscored that the present policy and structure are the fundamental triggers of the present management problem and a series of procedural distortions also reported by OVE are a manifestation of those core issues. For this reason, any strengthening plan for the Bank’s accountability function will require focusing on the root of the problem, tending solely the “malady” and avoid dedicating resources in the alleviation of symptoms. This means revising the Policy and structure, attentive to maintaining the strengths, eliminating the weaknesses and making a clear assessment of the potential risks.

1.3 In terms of purpose number 2, the evaluation has fallen short of its scope, because even though it offers information regarding the degree in which the execution has, or has not, been transparent, efficient and effective, it neglects to make an integral analysis of areas of strength, weakness and risk. This omission makes the decision making process more complex as it offers an incomplete landscape of the operation and thrusts forward a process
of complete overhaul of the Mechanism with high risks and costs and limited probability of success.

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

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

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

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

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

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

2.4 Several of the findings reported by the evaluation had already been identified internally and the Secretariat was in the process of developing, improving and implementing diverse components to improve the procedural framework of the ICIM. The evaluation coverage period has limited the reporting of these actions and their results, so they are listed here. They are particularly relevant as the action plan recommended by OVE is proposing them as actions to be initiated and implemented during a transition period which is in our consideration unnecessary and inefficient.

2.5 Case filing system. In 2011, a protocol was developed and implemented for the filing of cases in line with Bank Policies, designating co-responsibilities by stage within the request and case management structure. Given that before the arrival of the present Executive Secretary, no systematic filing process was followed, it became necessary to create paper and electronic (IDBDOCS) files for cases already in the portfolio and at the same time applying the protocol systematically to all incoming cases. In addition, it was decided that a tailored version of the case management system acquired by the Office of Institutional Integrity would be adopted given that the high investment cost of acquiring a system for the sole use of our office was not justified on the basis of the volume of cases (19 en 26 months) registered to date and the trends reported by other peer Accountability Mechanisms. The management system will make it easier to follow-up cases and its filing, but it is important to highlight that any system, be it manual or electronic, requires the acceptance by ICIM officials of the responsibility for feeding it and the elimination of proprietary behavior as all ICIM documents are Bank property. As part of the process of unification and compliance with the Audit recommendations, the implementation plan proposed by the ICIM includes actions for the inclusion of missing documentation in the case files within a reasonable deadline and for those members requiring it, training on the Bank’s records system (IDBDOCS) is being provided.

2.6 Web Site and Public Registry. During the first semester of 2012, work was undertaken for the identification of the web site shortcomings, user needs and best practices of other Mechanism. With that information, an “identification of needs” document was produced in collaboration with EXR. After receiving proposals from different firms, a firm has been hired with the task of redesigning the web site so as to facilitate access and reduce the time spent searching for information. Simultaneously, new contents have been generated under the technical advice of EXR and translated to the four official Bank languages. By the end of the first quarter of 2013, there will be a revamped public registry that will allow users to follow up on cases at a glance. Once again, in this area, it is important to highlight that once the tool is in place, the joint challenge of the unit is to ensure that public registry and web site contents are updated periodically, a task that requires the collaboration of all officials responsible for the management of cases.

2.7 Outreach and Training. As regards communication with the Bank, in collaboration with KNL, a series of interviews with selected project leaders have taken place to determine the type of ICIM information that they require and the best way to present it, so as to produce an effective dissemination strategy for the Bank to get to know the ICIM. The results of these interviews coincide in the need to make processes more transparent and ensure that they are systematically applied, avoiding discretionary decisions and maintaining a
balanced approach. Once again the success of this initiative resides on teamwork as well as on having public procedural guidelines that reduce discretionary actions and that provide procedural certainty.

2.8 As part of the clarification of processes, an intake protocol has been produced that seeks to provide certainty and clarity of how Requests are handled during the intake stage and therefore reduce discretionary management. In these matters, it is important to highlight the quality of annex 3 of the OVE report that includes specific executable recommendations to improve the intake of Requests. Such recommendations are being incorporated to the Intake protocol and the final output will be distributed to relevant audiences at the beginning of 2013.

2.9 As regards Outreach for external audiences, the definition of actions that effectively reach those populations that are most vulnerable and that can potentially be affected by Bank operations is still pending. This challenge is not unique to the ICIM and constitutes one of the main items of discussion among Accountability Mechanisms in operation.

2.10 These actions, among others, constitute the strengths from which a reconstruction of the ICIM can be undertaken. They cover almost all the tasks that OVE proposes to be undertaken during the transition period as part of the responsibilities of an official to be hired on temporary basis. I do not miss the opportunity to comment that in the Executive Secretary’s opinion, these actions have taken more time than would be desirable due to the adverse structural conditions. However, in spite of these adverse conditions, we have moved forward and said actions have been enriched by the experience gained. In the name of efficiency and logic, I would respectfully suggest using these products and work on their improvement as opposed to directing funds to the creation of similar products as proposed by the OVE recommendations.

B. A proposal to move forward

2.11 Moving forward, the findings of the evaluation coincide in several issues with an “efficiency identification” analysis that the Executive Secretary produced a few months ago and that was shared with OVE and AUG. In said document, an analysis is made of the main inefficiency generating areas, elaborating on the underlying reasons, establishing comparisons with other Accountability Mechanisms and making specific proposals for adjustment. The three core areas identified are: (a) Reporting and Accountability; (b) Mechanism Activation Process and (c) Determination of Deadlines. It is the opinion of the Executive Secretary that adjustments made in these three areas will promote the strengthening of the Mechanism under an efficiency, efficacy, transparency and accountability approach. In the case of other observed anomalies within the process, these could be solved as a result of the adjustments made on the core areas. The efficiency analysis, plus the implementation plan for the Audit recommendations, are core inputs for the strengthening process and are available for reading should the Executive Directors request them.

2.12 The Executive Secretary has no doubts regarding the feasibility of successfully restructuring the Mechanism ensuring its strengthening as regards transparency and credibility at the same time that effective controls are introduced to address the efficiency
and accountability principles. In contrast to the OVE proposal of getting rid of everything linked with the ICIM operation during its pilot phase, the Executive Secretary proposes the following plan of action which takes advantage of installed capacity, identified strengths and knowledge gained. It also reduces the risk of paralysis linked to the recruitment of temporary staff with no knowledge of the Bank and its processes.

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

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

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

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

2.13 In parallel to this process, management of cases in the portfolio would continue under the supervision of the Executive Secretary and who would be responsible of informing the Board periodically of the status of each one of the cases. Case management would be refocused towards a results-based approach and aimed at maintaining the credibility of the Bank.

2.14 Given that one of the main current anomalies is the absence of accountability by the ICIM officials, it is proposed that once that the Board approves an action plan, a performance evaluation scheme would be set up including process and achievement indicators within the time framework needed for the execution of said action plan. This would give way to a clarification of responsibilities and expected results of individuals and would ensure accountability from the outset mitigating the risk of non-performance.
II. RESPONSE OF THE PROJECT OMBUDSPERSON
Response from the Project Ombudsperson

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

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

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

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

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

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

---

1 IDb. Policy establishing the independent consultation and investigation mechanism, 17 February 2010, Paragraph 99: “Review of the Mechanism Policy. Two (2) years after the effective date of the Mechanism, the Board shall request an independent evaluation of the Mechanism. On the basis of such evaluation, and any comments thereon from Management, the Board will assess the experience with the Mechanism.”
3 Id., Paragraphs 4.1 and 4.6.
recruit personnel, establish routines, develop guidelines, and disseminate the Mechanism’s existence and mandate across the Bank. She also acted temporally as the ES.

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

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

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

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

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

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

B.1 Acceptance of requests

a) Sharing and disclosure of original requests

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

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

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

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

b) Alleged molding of requests

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

c) Eligibility determinations

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

---

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

7 ICIM Policy, supra footnote 1, Paragraph 42. “Assessment. […] The purpose of the assessment is to clarify the issues and concerns raised by the Request, identify and gather information from stakeholders, including potentially other parties similarly situated to the Requester, inquire as to the views and incentives of all stakeholders, and help determine whether a resolution to the issues raised can be reached and what is the best process for doing so […];” and Paragraph 43. “Nature of assessment. The nature and extent of the assessment will be determined by the Project Ombudsperson based on the issues raised by the Requester. […].”
did not follow this notion throughout its assessment and claims that the Ombudsperson found 5 cases eligible that should have been ineligible.

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

16. Accordingly, to determine if Paragraph 37(i) of the ICIM Policy\(^8\) applies to a request, the Ombudsperson has interpreted the Policy by its intent and not solely by its letter. The Policy not only aims at preventing that ICIM’s actions interfere with domestic ongoing disputes — and vice versa, but also at providing affected communities with effective and rapid access to the Mechanism. In her eligibility determinations, the Ombudsperson has tried to balance both objectives, ensuring that requesters are not unfairly or unduly prevented from a “meaningful recourse.” This requires flexibility because each case presents a differentiated challenge. After thorough internal discussions, this clause was interpreted in the ICIM Guidelines (Paragraph 4.25). Therefore, the Ombudsperson has consistently examined whether: a) the pending dispute and the request submitted to the Mechanism have identical objectives, issues, and parties performing similar roles; b) the Ombudsperson would actually interfere with the pending dispute; and (c) the pending dispute is active or not.

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

**B.2 Handling of Cases**

a) Efficiency

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

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

---

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


\(^10\) ICIM Policy, *supra* footnote 1, Paragraph 40(h). “[T]he Project Ombudsperson shall consult with Management as to its response and if Management is involved in addressing the concerns raised, the Project Ombudsperson shall
the need to obtain relevant information to analyze the “numerous and heterogeneous” eligibility criteria. Excluding the time period granted to Management as per article 40(h); the days when the CP team was waiting for information from the parties or the Bank; and/or the extension period requested by one of the parties, the Ombudsperson took an average of 17 (seventeen) business days – not 39 as stated by OVE\textsuperscript{11} – to determine the eligibility of requests, and this should be measured against the 15 (fifteen) business days stipulated in Paragraph 39 of the ICIM Policy.

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

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

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

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

\textsuperscript{11} OVE Report, \textit{supra} footnote 5, Paragraph 5.10.
operations of this or any other similar problem-solving function in IDB. In this regard, it is not
evident how the Report concludes, for example, that an average of 0.7 year was too long for
handling a case.\footnote{OVE Report, \textit{supra} footnote 5, Paragraphs 6.6 and 6.7.} Given the infancy of the ICIM, the benchmark could only come from comparators, which demonstrates that such average timeframe is more than reasonable.\footnote{Id., Paragraph 8.3.} Most IAMs would agree that any efficiency analysis should be done on a case by case basis and, for solution-seeking functions.

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

25. Further, there is no indication as to how the CP’s efficiency and efficacy have performed by accounting for the cost savings of operations that have been expedited or reactivated as a result of the CP’s activities, with operational and financial benefits for projects and escalation risk management. Neither does OVE offer any discussion about how in some cases, projects have improved key design or implementation aspects as a result of the CP process for this matter. On the benefit side, the OER presents very thin feedback to justify its assertion that results of closed CP cases have been “modest”.\footnote{OVE Report, \textit{supra} footnote 5, Paragraph 6.4.} There is no data on how closing these cases might have helped the parties, the Bank, the concerned executing agency, their reputation, and/or the project overall.

\textit{b) Efficacy, Planning and Results}

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

27. Although there are “inherent uncertainties” in solution-seeking processes, OVE asserts that “ICIM Principals have conducted ICIM operations without a commitment to achieving timely results”\footnote{OVE Report, \textit{supra} footnote 5, Paragraph 8.3.}. During this ICIM start-up phase, it was not yet possible to establish a consistent fully developed planning framework. The CP has developed a number of tools and elements of such framework and expects to gather initial medium-term data at the end of this year to
undertake a more structured planning framework. We had hoped that the OER would assist us by providing the analysis for setting up a baseline and some efficiency indicators.

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

c) **Impartiality and Independence**

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

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

---

10 Id., Paragraph 6.8
12 Such criteria are: i) policy coherence, ii) organizational effectiveness and efficiency, iii) transparency; iv) independence; v) accessibility and awareness, and vi) results and consequences. Id., Paragraphs 4.1-4.8.
14 For instance, Paragraphs 38, 41, 42, 46 and 50 of the ICIM Policy.
field is adequately leveled during the process. By these actions, instead of taking sides, the Ombudsperson is actually advocating for a fair and equitable process.

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

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

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

SECTION C. OVE’s Evaluation Report conclusions and recommendations

C.1 ICIM’s pilot, a failure?

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

---

21 OVE Report, supra footnote 5, Paragraph 6.11.
there are structural issues that need to be addressed and improved, in particular the ICIM’s structure and some of its procedures. However, it is not clear from the findings of the evaluation how OVE arrived at its severe conclusions. There are currently five active ongoing dialogue processes related to very complex cases. None of them would have been possible if individuals and communities believed that the ICIM provides no “meaningful recourse” to address their concerns, or if the Mechanism had not earned some trust and credibility.

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

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

C2. Terminate ICIM’s pilot phase?

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

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

39. How will the Bank know what an “effective” mechanism looks like if the lessons learned from this exercise are never extracted? Although OVE criticizes the lack of lessons thus far, it does not recommend their elaboration as a main task for the transition, prior to embarking the institution on a fruitless exercise. The arrangements seem superficial and unrealistic. For
example, the proposed work program for an interim director consists to a large degree of administrative tasks (log new requests, create a unified filing system and archive, etc.), all in addition to conduct fact-finding analysis (compliance review) to determine how each case should be handled. The OER is silent about ongoing CP dialogue processes.

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

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

CONCLUDING REMARKS

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

Annexes Hyperlink

[IDBDOCS-#37321265-Annex_A_-_Factual_Corrections_Table]
[IDBDOCS-#37321274-Annex_B_-_Elapsed_time_per_stage]
[IDBDOCS-#37321276-Annex_C_-_CP_achievements_and_main_results]
[IDBDOCS-#37321277-Anex_D_-_Views_on_OVE_Annex_3]
III. RESPONSE OF THE COMPLIANCE REVIEW PANEL
COMMENTS OF THE MICI COMPLIANCE REVIEW PANEL  
IN RESPONSE TO THE OVE REPORT ON THE  
EVALUATION OF THE  
INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

1. The following comments have been prepared by the Panel in response to the OVE Report (the “Report”). Our concern continues to be with the factual basis for some statements or conclusions. Due to time and space considerations, what follows is not a detailed analysis of the Report but rather some general considerations and comments about the Report’s contents and apparent intent, with specific examples to illustrate and demonstrate the Panel’s position. If the Board so desires, the Panel will be happy to provide a more detailed analysis of the Report, including the areas where there we agree with its findings.

2. We believe that making corrections to the current policy framework could be a more feasible course of action than the dismantling of MICI’s current configuration as proposed by the Report. In light of our experience, the OVE recommendations may not fully take into account the amount of work that proposing a “new” Policy would entail. It took years to pass the current MICI Policy. It took us two years to make progress and to understand areas that could be improved. We believe it is possible to protect the Bank’s investment in the Mechanism and the MICI policy and to improve the MICI Policy and MICI processes on the basis of the experience accumulated thus far.

3. We agree that MICI’s operational problems are rooted in the MICI Policy itself and in the inconsistencies between MICI Policy and the TOR of the Executive Secretary. This situation was aggravated – as the OVE Report states – by events beyond the control of the current Executive Secretary, the Project Ombudsperson, the Panel Chairperson and the other Panel Members. The OVE report cites some but not all of these external factors.

4. We also agree that there are a number of issues related to the “narrow and legalistic framing of the MICI Policy”. We are aware of numerous instances in which a literal or narrow reading of the MICI Policy has created issues for those charged with breathing life into the Mechanism. Indeed in some cases, due to the need to foresee challenges to determinations made under the MICI Policy, the Panel and MICI staff has spent what may appear to be “too much” time on backing up our determinations. We also agree with the OVE report that the “narrow and legalistic framing of the MICI Policy” (OVE paragraph 4.7) seems to preclude MICI from considering cases of general environmental harm to a natural resource or a community. There are other important examples of how this tendency hinders our effectiveness. Amendments to the MICI Policy might be helpful in this regard.
5. We have succeeded in overcoming some of its constitutional problems by developing
detailed internal guidelines as required by MICI Policy.

A) COMMENTS

6. **Criticism about the Panel’s commitment to accountability**: The Panel disagrees
with language suggesting that the Panel is not committed to “accountability for
results”. This is why Panel Members accepted their posts. However, in the context
experienced by the Panel, it became clear that there existed considerable controversy
on what is meant both by “results” and by “accountability”. Recently, the Panel met
in order to prepare a document, which will be circulated that, clarifies all stages of
our work and the many outputs that are produced. We believe this will assist the
Board, Management and other players to better understand our processes.

7. Some think, and the evaluators seem to support this view, that speed of resolution of
cases is an appropriate measure. However, while target dates and time budgets
provide needed guidance, the effectiveness of IAMs is not so easily measured in
accordance with simple metrics. The Panel has from the beginning been very
conscious about setting realistic time frames and budgeting our time for our work.
Concrete experiences with the time requirements for the Panel’s tasks have been
accumulated during the start-up phase and can be used now in future planning.

8. The statement in 4.17 (references are made to corresponding paragraphs of the
Report) seems to imply that time was spent wastefully. The focus on and
unsubstantiated critique of “non-case” work by Panel Members has been a distraction
and is inconsistent with the Panel Members’ contracts, ToR, the MICI Policy and
reality. Panel Members needed to do a great deal of work on matters such as
preparing MICI and Panel guidelines, participating in the OVE review process and
the audit, participating in planning and budgeting, etc. This work supports the ability
to work on cases. It seems inconsistent to expect the work to be done according to
the given mandate and then criticize the Panel for doing this work as an integral part
of their assignment.

9. During the first six months (i.e. 25 percent of the time since MICI had started its
activities), the initial setting up of processes and procedures had to be handled by the
Project Ombudsperson, the Panel Chair and the Panel Members. This had to be done
in addition to dealing directly with the Requests that had accumulated before the
mechanism formally started.

10. **Confusion about the Panel’s motivations and its handling of independence**: There is a suggestion “Panelists” invoked independence to justify uncooperative
behavior. While considering independence important, the Panel has consistently
advocated cooperation and communication within MICI.

11. It is unfortunate that the OVE Report did not compare the remuneration of the Panel
with the current rates at comparable accountability mechanisms. The daily rates
payable to Panel Members are considerably lower than at the World Bank’s Inspection Panel and at other IAMs.

12. Panel Members joined the MICI because of their interest in promoting accountability and positive development outcomes. Three of the five Panel Members have regularly worked for the IDB before accepting the Panel position. At a possible loss of future contractual relationships with the IDB, all Panel Members have agreed to not work for the IDB in any capacity for five years after the expiry of their terms. In our view this restriction was a wise decision by the Bank’s Board to ensure the Panel’s independence.

13. The OVE report refers to a conflict of interest situation because Panel Members are paid a daily fee, alleging that there would be an inherent interest to prolong the Panel’s work. Although in theory there could be a conflict of interest, in praxis Panel Members have provided evidence and testimony that they have routinely and considerably under-billed their time dedicated to MICI because they understood that much of their work was related to the start-up of the MICI. They wanted to demonstrate good will by not invoicing all the time that had to be unexpectedly devoted to internal MICI matters and that could have been avoided had a more effective MICI structure been in place from the beginning.

14. The amount of time and controversy related to the cost of the Panel seems to fly in the face of reality and fails to take into account the facts. For example, the annual budget for the honoraria of all five Panel Members in the MICI’s Budget for 2013 is less than one year’s salary package of either MICI’s Project Ombudsperson or for its Executive Secretary.

15. Panel Members accepted their assignments on the basis of their TOR, which state that Panel Members are expected to work on a part-time basis or on a full-time basis when their workloads justify such an arrangement. That the limitations engendered by contradictions between the Policy and the subsequently drafted TOR of the Executive Secretary demanded more than the theoretically anticipated time from the Panel should not be a surprise and should not be made the responsibility of the Panel.

16. Panel Members were unaware of document MI-2 of September 1, 2010 on Panel remuneration guidelines until its existence was pointed out in the Audit Report of Budget Execution in the MICI of August 3, 2012. On the other hand, this document also recognizes the special nature of the Panel’s work and points out that Panel Members may have to work uninterruptedly for periods longer than the normal 190 days per year for consultants and proposes that Panel Members not be subject to this rule.

17. **Assessing the Panel’s role in outreach:** The Panel’s TOR explicitly refer to the Panel’s responsibility in conducting outreach activities. However, budget constraints have not permitted Panel Members to sufficiently participate in outreach activities. The focus on the Panel’s “cost” has been a significant limiting factor that has
prevented Panel Members from fully carrying out their mandate in this area. To complain that the Panel costs too much and at the same time state that we need to do more is inconsistent. This highlights a theme that has been challenging for the Panel throughout the initial phase of MICI. We were hoping that the Evaluation would provide sufficient background on these issues, since they need to be addressed in the context of providing the Panel with the possibility to exercise its judgment vis-à-vis its work, subject, of course, to being responsible caretakers of the Bank’s assets and thus with due regard to the budgets approved by the Board.

18. The Report contains references to “few” completed cases. What are the standards employed to make such judgments? Elsewhere, the Report itself states, “cases in some IAMs have lasted up to four years”. The MICI Policy itself recognizes that cases cannot be time-bound. The issues raised by Requests are not simple to define or deal with. Comparable data regarding how many days other IDB units spend on similar or related efforts should be provided so as to achieve a balanced view. For perspective sake, the estimated time that Management required to respond, using a large multi-disciplinary team, to the Panel’s Compliance Review of the Paraguay Highway Corridors case amounted to 688 hours (i.e. approximately 80 days).

19. Recognizing achievements: We realize that “hard” data are difficult to come by after the short period examined by OVE (effectively, the evaluation concentrated on the 14 month period between the appointment of the Executive Secretary in 2011 and the mid-year point of 2012).

20. Paragraph 4.9 could have, but did not analyze how differences in interpreting the terminology of the MICI Policy may have contributed to confusing discrepancies between what the Board approved de jure and what some thought ought to be the de facto situation. A major source of confusion seems to have been in the usage of the term “Office”. Some see it as equivalent to the totality of MICI including the Panel and the Ombudsperson; in this case the Policy is clear that the Executive Secretary is not the supervisor of the two other principals. Some see the term “Office” as the support structure and the administrative staff of MICI; under this definition, the Policy gives the Executive Secretary a mandate to be in charge of an “office” that provides and consults with the other principals on the most effective use of support and administrative resources. This would be a fruitful area in which to review the MICI Policy.

21. There are some statements as to which we were unable to see how they were supported by the facts presented.
   a. A case in point is the invocation of the recent Audit Report (4.11). A circumspect reading of the Audit Report would have shown to the evaluation team that the principal observations of the Audit focus on the fact that MICI has been deficient in establishing administrative procedures. A lack of clarity between the MICI Policy and the ToRs also created this situation, and these were not the responsibility of any of the MICI principals.
22. The Report cites that the eligibility determination for the Panama Canal Expansion case was not in compliance with the MICI Policy. The Panel Chairperson made the eligibility determination based on available information. The Panel Chairperson had firm proof to back up his eligibility determination.

23. Under “Conclusion” the OVE Report states that the effort vis-à-vis creating MICI “has failed”. This is a broad and sweeping statement that seems to lack objectivity. It is true that there are important issues at MICI that need resolution. However, in terms of carrying out the mandate to do casework, it seems inaccurate to state that our work to date has not made significant contributions:

   a. The Board praised the Panel’s Compliance Review on the **Pando Monte Lírio Hydroelectric Project** and Management has agreed to an Action Plan to address the problems identified by the Review;
   b. The Panel’s Compliance Review Report on the **Paraguay Highway Corridors Project** has helped focus the attention on the need to grant land rights to an indigenous group. Although we cannot establish a direct causal relationship, following our mission to the field this group received legal title to its traditional homeland after more than a decade of conflict. A potential and serious reputational problem for the Bank was avoided. Although we concluded our work on this case in early 2012, requests for extension by Bank Management for the preparation of its response, review of the final draft by the Executive Secretariat and translation needs have led to considerable delays in its publication.
   c. In our first case, and perhaps the most complex to date, **Serra do Mar** in Brazil, budgetary constraints did not allow the Panel to carry out a pre-eligibility mission. A mission could have clarified conflicting assertions by the various stakeholders including Board Members, overlapping requests and the applicability of clause 37i). Sorting through the possibility of judicial proceedings at the local, state and federal levels in Brazil as well as Management’s own inconsistencies of obtaining in Brazil approval for a project component that lacked a sufficiently clear institutional foundation (deemed unconstitutional by some forces in Brazil), added time-consuming complexity to the case and to a temporary suspension of Panel work. However, and again we cannot establish a direct causal relationship, the Panel’s engagement in this project is associated with improved public consultation processes in the affected areas.
   d. While some might consider the number of concluded cases as the only relevant output of the Panel’s work, it is considered a best practice in all IAMs to also attribute value to the panel’s careful work on eligibility determinations. This is clearly demonstrated in the case of the Request for a compliance review of the **Termoeléctrica Del Golfo Project**. A circumspect evaluation of the Panel’s eligibility determination would have shown that the Panel’s careful work was not only necessary in light of the Requesters’ claim of new evidence, but also ensured that the Bank would not be accused of reckless negligence in case the alleged serious health risks should materialize.
e. We recognize that “hard” data are difficult to come by after the short period examined by OVE (it seems that the evaluation concentrated on the 14 month period between the appointment of the Executive Secretary in 2011 and the mid-year point of 2012). Evaluations of compliance work consistently point to the value of the “deterrent effect” of this type of work. Realizing that this can be reliably measured only over a longer time span.

B) ISSUES THAT SEEM TO BE MISSING FROM THE EVALUATION

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

C) ADDITIONAL NEEDS FOR CORRECTION OF FACTUAL ERRORS

25. In 4.10 and 4.17 there are some items that need to be corrected: The Panel has consistently been committed to sharing information within MICI and has requested the establishment of a unified filing plan and an efficient filing and communication system from the beginning. The decision during 2012 to use IDB Docs is not an optimal solution for the Panel Members who work from diverse remote locations and do not have easy access to IDB Docs. The Panel does not hire its own consultants and administrative assistants. All hiring is done by the Executive Secretary.

26. In 4.11, we note that Panel Members, including the Panel Chair have been meticulous in their recording of time spent on work for MICI. They have only invoiced a portion of their time devoted to MICI. All invoices are checked by at least two persons and all payments are made by the Executive Secretary. There is a need to support the statements on travel, contracting, remuneration and budget management with facts. The focus of the recent Audit was to examine the adequacy of procedures. The key findings and recommendations pointed to the absence of adequate administrative procedures, which situation is being remedied. But the we do not believe that there have been any substantiated violations of Bank policies.
27. The statement in 4.17 that one Panel member billed more than 40 days for non-case work, primarily the writing of procedural guidelines, which do in fact remain in draft form, implies wastefulness and is profoundly misleading. The Board requested this project to be done. All MICI Principals requested that this Panel member carry out this work to help address some of the MICI Policy problems, many of which are correctly identified by the OVE Report. These guidelines have proved to be extremely useful. As per the Policy, they have been shared with the Board. There was all along an expectation that they would need further refinement based on the results of the reports from Audit and OVE and in line with recent experience.

28. In 5.5 it is stated that having the Executive Secretary establish whether Requesters have brought the problem to IDB Management’s attention is consistent with the MICI Policy. That is not accurate. Eligibility determinations are to be made by the Project Ombudsperson or Panel Chairperson, as applicable.

29. In 5.12 as well as in 5.13, it is imperative, if such statements are made, to also explain the reasons for delays. For instance it would be instructive to analyze several Board discussions on the expectations of some Executive Directors, who were seeking considerable detail at the eligibility determination stage. Some suggested that a fully reasoned judgment as to Policy compliance is necessary before a Compliance Review is even authorized. There remains uncertainty about the level of work required at the eligibility determination phase. The Panel looks forward to working on this area with the Board so there can be shared understanding about use of resources and allocation of time at this early stage in the life of a case.

30. The Panel has acted in an impartial way. Statements in 6.18, alleging lack of impartiality, do not seem factual. Similarly, it must be understood that correspondence with Requesters to explore planning dates are not official announcements.

**D) CONCLUSION**

a. All Panel Members have worked hard to realize the spirit and the letter of the MICI Policy. Realizing the difficulties embodied in any start-up phase, we have identified and tried to iron out inconsistencies in MICI’s normative framework that have become evident as we have worked together with the Board, Management and other MICI principals. Progress has clearly been made: in addition to spearheading the development of the Policy Implementation Guidelines, procedures for the compliance review process were developed; above all, work on complex cases was initiated and cases were completed.

b. As the evaluation points out, independent accountability at International Financial Institutions is a relatively new field. It was therefore with great hope and anticipation that an evaluation of MICI was commissioned to help iron out existing kinks in MICI’s approach.
c. The Panel is prepared to work with the Board, Management and the other MICI principals to work on issues with the MICI Policy, many of which are identified in the Report and many others identified internally by the MICI, and to make the Mechanism better. Giving up on MICI would be a loss to IDB and to the citizens whose livelihoods the Bank wants to develop and protect.

… And a final thought:

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

— Albert Einstein