



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

**ME-MICI002-2012  
RECOMMENDATION FOR A COMPLIANCE REVIEW AND TERMS OF  
REFERENCE FOR LOAN 2644A/OC-ME  
MAREÑA RENOVABLES WIND PROJECT  
REVISED VERSION**

**This document was prepared by the Compliance Review Panel**

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**RECOMMENDATION TO CONDUCT A COMPLIANCE REVIEW  
AND TERMS OF REFERENCE: REVISED VERSION**

**CASE ME-MICI002-2012**

**MAREÑA RENOVABLES WIND PROJECT (ME-L1107)**

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## I. EXECUTIVE SUMMARY

- 1.1 The ICIM Panel has prepared the following recommendation to conduct a Compliance Review and associated Terms of Reference (“TORs”) in response to a Request for a compliance investigation related to the Mareña Renovables Wind Project (Project Number ME-L1107, the “Project”), a Non-Sovereign Guaranteed operation.<sup>1</sup> The ICIM received the Request on December 26, 2012, originally filed on behalf of 225 members of the Ikojts and Binniza indigenous communities; the number of signatories to the Request has grown to at least 1,100 since then. The Request was declared eligible for a Compliance Review on September 8, 2013. A draft of this document was circulated on January 7, 2014, to the Requesters and the Bank team responsible for the Project (the “Project Team”). Both returned comments to the Panel which have been taken into consideration in the finalization of this document, as per ICIM Policy 58.
- 1.2 The Requesters allege that the planning, construction and future operation of the Project has caused and may continue to cause social harms to their communities, traditional cultures and way of life. They allege that the construction and future operation of the Project will cause environmental harm to their land and livelihoods. The Requesters allege that they were not consulted and that the planning and other activities should have taken into account the communal land tenure, social structure and customs of the local indigenous communities. The Requesters also allege the physical safety of some community members has been threatened and harmed due to their opposition to the Project.
- 1.3 IDB Management has informed the Panel that the Project site has changed, and the Project being financed by the Bank will not be constructed on its original site. The Project Team is in the process of evaluating a new site comprised of two parcels of land, known as El Espinal and Juchitán, which are approximately 20 kilometers north of the original site. The Project has also been renamed *Energía Eólica del Sur*.<sup>2</sup> The proposed Compliance Review shall only evaluate the Mareña Renovables Wind Project and not *Energía Eólica del Sur*.
- 1.4 *The Panel recommends that the Board of Executive Directors approve a Compliance Review of the issues raised in this Request.* This document contains background information on the Request and the Bank-Financed Operation and sets forth Terms of Reference for the proposed Compliance Review.

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<sup>1</sup> Unless otherwise defined herein, terms used in this document have the meanings assigned to them in the Policy Establishing the Independent Consultation and Investigation Mechanism (GN-1830-49) (the “ICIM Policy”), approved on February 17, 2010.

<sup>2</sup> Further information can be found in publically-available documents on the Bank’s website. See: ME-L1107 : *Energía Eólica del Sur* (EES): <http://www.iadb.org/en/projects/project-description-title,1303.html?id=ME-L1107>

## II. INTRODUCTION

- 2.1 In accordance with Part D, Section 59 of the Policy Establishing the Independent Consultation and Investigation Mechanism (GN-1830-49) (the “ICIM Policy”), the Panel recommends that the Board approve a Compliance Review with respect to ICIM case ME-MICI002-2012, which relates to the Mareña Renovables Wind Project (Project Number ME-L1107, Operation Number 2644 A/OC-ME), a Bank-Financed, Non-Sovereign Guaranteed Operation (the “Mareña Renovables Wind Project” or the “Project”). The Terms of Reference (“TORs”) for the proposed Compliance Review are included as part of this Recommendation for a Compliance Review.
- 2.2 The purpose of the proposed Compliance Review is to investigate Requesters’ allegations that their rights or interests have been, or could be expected to be, directly, materially adversely affected by actions or omissions of the Inter-American Development Bank (the “Bank” or the “IDB”) that may constitute the failure by the Bank to follow one or more of its Relevant Operational Policies (“ROPs”) in connection with the Program. The objective of the proposed Compliance Review investigation would be to establish whether (and if so, how and why) any Bank action or omission in respect to the Project has resulted in non-compliance with its ROPs and direct, material adverse effects, (potential or actual) to the Requesters.<sup>3</sup>
- 2.3 A Compliance Review is a fact-finding exercise. It is designed to assist the Board of Executive Directors to promote compliance with Bank Operational Policies, support positive development outcomes for Bank-Financed Operations and encourage learning from experience at the IDB. A Compliance Review solely addresses compliance by the Bank with its ROPs, and does not involve reaching any conclusions about the actions of any party other than the Bank in connection with the relevant Bank-Financed Operation.<sup>4</sup>

## III. BACKGROUND & PANEL RECOMMENDATION

### A. The Project and its Context

- 3.1 The Mareña Renovables Wind Project involved the construction and operation of a wind park in two indigenous communities, San Dionisio del Mar and Santa Maria de Mar, on the Isthmus of Tehuantepec in the state of Oaxaca, Mexico. The Tehuantepec Isthmus has a natural wind tunnel that generates some of the best wind resources in the world, making this area a prime location for large-scale wind energy projects and several are already

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<sup>3</sup> ICIM Policy, Paragraph 53.

<sup>4</sup> ICIM Policy, Paragraph 65.

being planned, under construction or operating in this area, including two projects, Eurus and La Ventosa, which have counted on Bank support since 2009.<sup>5</sup>

3.2 The Project design included the following components:

- a) Erection of 132 Vesta wind turbines generators with a nominal capacity of 3 MW each (102 turbines in San Dionisio, 30 turbines in Santa Maria);
- b) construction of three substations: Virgen del Carmen in Santa Maria, Tileme in San Dionisio which will be connected through the installation of a submarine cable (less than 1 km long) and, one substation in Santa Teresa;
- c) construction of a 52 km transmission line from Santa Teresa substation to the substation in Ixtepec to be connected to the national grid;
- d) installation of six docking stations to facilitate maritime access to both sites; and
- e) civil engineering works such as construction of new access roads and improvement of existing ones.<sup>6</sup>

3.3 The Board approved the Loan in the amount of up to \$1,060,000,000 Mexican pesos to finance the Project on November 23, 2011. The IDB was one of nine banks involved in the financing of the Project, and its share was approximately ten percent of the aggregate long-term senior loan commitments.<sup>7</sup> Mareña Renovables Capital SAPI de CV SOFOM ENR was the Borrower. The Project developers were *Fomento Económico Mexicano*, S.A.B. de C.V. (FEMSA), Macquarie Asset Finance Limited (a subsidiary of Macquarie Capital Group Limited) and Macquarie Mexican Infrastructure Fund. As mentioned in Section I, the Panel has been informed by the Project Team that it is in the process of evaluating a relocation of the Project and restructuring its financing; the restructuring has not yet been presented to the Board for its approval.

3.4 The Loan is a Non-Sovereign Guaranteed (“NSG”) operation and as such, according to the Bank’s Access to Information Policy (OP-102), exceptions apply limiting the Bank’s and therefore the ICIM’s ability to disclose information about the Project. According to the Access to Information Policy, information related to NSG operations shall not be disclosed except: Initial Project Abstracts, Environmental and Social Strategies (“ESS”), Environmental Impact Assessments (“EIA”), Strategic Environmental Analyses, Environmental Analyses (“EA”), Environmental and Social Management Reports (ESMR), Abstracts of Approved Projects and information which the respective borrower

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<sup>5</sup> IDB, ESMR, Mareña Renovables Wind Project (ME-L1107), Environmental category: A, November 21, 2011, pages 5-6.

<sup>6</sup> Ibid, pages 3-4.

<sup>7</sup> Management Response – TOR Compliance Review Case ME-MICI002-2012 Mareña Renovables Wind Project, January 15, 2014.

has expressly consented to disclosure.<sup>10</sup> The confidentiality requirements for NSG operations set forth in the Access to Information Policy (OP-102) apply to all public documents produced by the Panel.

3.5 The Project was classified as a Category A operation under the Bank’s Environmental and Safeguards Compliance Policy, indicating high risk. This designation is given to those projects that are “likely to cause significant negative environmental and associated social impacts, or have profound implications affecting natural resources.”<sup>11</sup> According to the Environmental and Social Management Report (“ESMR”) for the Project, the classification was “primarily due to the scale of the wind park, the potential for significant direct and indirect impacts on avian and marine fauna, the likelihood of residual impacts on the terrestrial fauna, the presence of social conflicts in the vicinity of the Project area [and] the potential cumulative impacts on avian fauna given the presence of numerous other wind parks in the region.”<sup>12</sup>

*Table 1: The Project’s Area of Influence as Defined by the Bank<sup>13</sup>*

Direct	Indirect
San Dionisio del Mar	San Mateo del Mar
Santa Maria del Mar	San Francisco del Mar
Pueblo Viejo	Álvaro Obregón
	Juchitán de Zaragoza

3.6 The Panel understands from the Requesters and other sources that physical progress on the Project was been stalled for some time. As noted above, IDB Management has informed the Panel that the Project will no longer be constructed in its original site.

**B. The Request**

3.7 The ICIM received the Request on December 26, 2012. The Request was filed by Mr. Leonardo Ariel Crippa (the “Representative” or “Mr. Crippa”), a staff attorney of the Washington, DC-based, non-governmental organization the Indian Law Resource Center. The Request was submitted on behalf of 225 members of the Ikojts and Binniza indigenous communities (the “Requesters”) of the following seven communities on the Tehuantepec Isthmus: Santa Maria Xadani, San Mateo del Mar, Colonia Álvaro Obregón, San Francisco del Mar, San Dionisio del Mar, Juchitán de Zaragoza and Unión Hidalgo. The Requesters asked that their identities be kept confidential for security reasons and hence designated Mr. Crippa as their Representative before the ICIM.

<sup>10</sup> Access to Information Policy (OP-102), Paragraph 4.1 (j), 2010.

<sup>11</sup> Policy Directive B.3, OP-703 Environment and Safeguards Compliance Policy.

<sup>12</sup> IDB, *ESMR*, *op cit*, page 29.

<sup>13</sup> *Ibid*, pages 7-8., and Management Response – TOR Compliance Review Case ME-MICI002-2012 Mareña Renovables Wind Project, January 15, 2014.



- 3.8 The Request alleges that social harms have been and more such harms could be expected to be caused to the Requesters, their traditional cultures and way of life as a result of the planning, construction and future operation of the Project. They allege that the construction and future operation of the Project will cause environmental harm, which in turn will materially adversely impact their land and livelihoods, which are highly dependent on fishing activities in the nearby lagoons. In addition, a lack of prior consultation with the indigenous groups that are resident of the Project area is alleged. This relates in large part to the Requesters' collective land rights as recognized by Mexican law. Several community members and leaders have alleged their safety was threatened and some that they have been physically attacked as a result of their opposition to the Project. The Panel does not have information as to the identity of the parties that may have perpetrated these alleged attacks or whether such attacks actually took place. Any investigation of such allegations would be the responsibility of local authorities and not the ICIM.
- 3.9 The Barra de Santa Teresa and Punto Tileme are gathering places for traditional ceremonies and the Requesters feared that the construction and operation of the Project in this territory would directly affect them all by interrupting their use of this culturally important land and harming their cultural integrity.

**C. Alleged Harm and Relevant Operational Policies**

- 3.10 Below is a table summarizing the principal allegations of harm made by the Requesters and highlighting the ROPs to which it appears to the Panel that such allegations are potentially related.

*Table 2: Summary of Alleged Harms and Potential Non-Compliance with ROPs*

Allegations from Requesters	Relevant Operational Policy <sup>14</sup>
Inadequate consideration of the system of self-governance of indigenous communities	<ul style="list-style-type: none"> <li>• OP-765 Indigenous Peoples Policy</li> </ul>
<ul style="list-style-type: none"> <li>-Lack of meaningful and timely consultation</li> <li>-Lack of accessible information about the Project including the location of the Executing Agency's offices and to whom questions about the Project could be directed</li> </ul>	<ul style="list-style-type: none"> <li>• OP-102 Access to Information</li> <li>• OP-703 Environment and Safeguards Compliance Policy</li> </ul>
-Negative impacts on indigenous communities' ability to utilize the Barra de Santa Teresa and Punto Tileme for	<ul style="list-style-type: none"> <li>• OP-765 Indigenous Peoples Policy</li> <li>• OP-703 Environment and</li> </ul>

<sup>14</sup> Any alleged non-compliance with ROPs in connection with the Program would be assessed on the basis of relevant ROPs in force at the time the Program was approved in 2011, unless the Panel discovers that one of these ROPs and/or available legal documentation provided otherwise. See: ICIM Policy, Paragraph 26.

sociocultural purposes such as traditional religious ceremonies -Potential destruction of cultural heritage sites	Safeguards Compliance Policy
Disregard for concept of benefit-sharing with indigenous population in the Program design	<ul style="list-style-type: none"> <li>• OP-765 Indigenous Peoples Policy</li> </ul>
Allegation of threats, acts of intimidation, and physical attacks against community leaders and members who oppose the Project	<ul style="list-style-type: none"> <li>• OP-765 Indigenous Peoples Policy</li> <li>• OP-703 Environment and Safeguards Compliance Policy</li> </ul>
Construction of transmission lines, expansion of existing access routes, and construction of new access routes could: <ul style="list-style-type: none"> <li>– partition land, changing traditional land use</li> <li>– accelerate acculturation</li> <li>– threaten health and safety of community members unaccustomed to heavy vehicular traffic</li> </ul>	<ul style="list-style-type: none"> <li>• OP-765 Indigenous Peoples Policy</li> <li>• OP-703 Environment and Safeguards Compliance Policy</li> </ul>
The Project could negatively affect the biodiversity both in the lagoons and in the maritime zone adjacent to the Barra, including harm to flora and fauna and soil erosion	<ul style="list-style-type: none"> <li>• OP-703 Environment and Safeguards Compliance Policy</li> </ul>
Potential threats to food security and traditional subsistence economy based on fishing in the lagoons	<ul style="list-style-type: none"> <li>• OP-703 Environment and Safeguards Compliance Policy</li> <li>• OP-765 Indigenous Peoples Policy</li> </ul>

**D. ICIM Action to Date**

3.11 The Request was first processed by the ICIM’s Consultation Phase as per the ICIM Policy beginning on January 7, 2013. Subsequently, the Project Ombudsperson sought more information from the Requesters via the Representative. On February 1, 2013, the Project Ombudsperson declared the Request ineligible for the Consultation Phase.

3.12 On March 8, 2013, the Requesters asked that their case with the ICIM be considered under the Compliance Review Phase. The Representative filed additional information about the case with the ICIM, indicating that as of that date a total of at least 1,100 community members had signed on as Requesters. After gathering and reviewing information for the eligibility analysis, and communicating with the Representative of the Requesters and Management regarding the Request and the Project, the then Chairperson issued a memo on September 8, 2013, determining that the Request was eligible for purposes of the Compliance Review Phase.

**E. Response to Draft Recommendation and TOR by Management and Requesters**

3.13 In advance of its completion for submission to the Board, a draft of this document was circulated to Management and the Requesters and both were provided twenty business days to comment on it, as per ICIM Policy, Section 58. Comments provided by both Management and the Requesters were carefully reviewed and contributed to the strengthening and refinement of this document for which the Panel wishes to thank both parties for their efforts.

**F. Panel Recommendation**

3.14 The Panel has analyzed the Request and several Bank documents related to the Project, communicated with and reviewed information provided by the Requesters and communicated with Management regarding the Project and the Request. In light of the alleged harms and the ROPs to which they appear to relate, described in Table 2, *the Panel recommends that the Board authorize a Compliance Review.*

3.15 The Panel recognizes from the preliminary work done in connection with determining eligibility of the Request and preparing this document that Management did undertake actions to comply with ROPs and deal with environmental and social harms that could result from the Project, including work that resulted in the preparation of the ESMR. At the same time, the Requesters have made allegations (summarized in Table 2) that, in the Panel’s view, warrant further investigation. The allegations appear on their face to assert material adverse effects that could potentially have been related to actions or omissions of the Bank. The purpose of the proposed Compliance Review would be to establish whether (and if so, how and why) any such Bank action or omission resulted in non-compliance with a one or more ROPs. Given the limited information available to the Panel at this time, no conclusions as to these matters can be nor have been reached. A Compliance Review would afford the Panel the opportunity to seek further information, interview stakeholders and investigate the allegations to make an informed assessment.<sup>16</sup>

**IV. TERMS OF REFERENCE FOR THE PROPOSED COMPLIANCE REVIEW**

4.1 The TORs are intended to guide the Compliance Review process. The TORs are prepared drawing from the relatively limited information available to the Panel before it is authorized to conduct a Compliance Review: the original Request, Bank Project documents, and subsequent communications and information submitted to the Panel by both the Requesters and Management. ICIM Policy requires that the TORs include “objectives of the Compliance Review, the specific investigative criteria, a brief

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<sup>16</sup> ICIM Policy, Paragraph 53.

description of the Bank-Financed Operation, proposed schedule and budget for the investigation, anticipated use of consultants, and a statement of the deliverables, which shall comprise the Panel report.”<sup>17</sup>

**A. Objectives of the Compliance Review**

4.2 *Determine Bank Compliance with applicable ROPs:* The Panel would examine whether the preparation, approval process and implementation of the Project by the Bank complied with ROPs relevant to the allegations and concerns of the Requesters, as outlined in Table 2.

4.3 *Determine if a causal link exists between alleged harm and non-compliance with one or more ROPs:* The Panel would perform a detailed investigation of the alleged harms presented by the Requesters to discover whether a causal link can be established between the harms and actions or omissions by the Bank in violation of its ROPs.

**B. Focus of the Compliance Review**

4.4 The Panel’s focus during the proposed Compliance Review, based on its prima facie review of the Request and other supporting information available at this time, would be on the areas described below. The questions that follow each focus area are meant to be guiding questions and are a non-exhaustive list.

4.5 *Indigenous Peoples*

a) Were communities adequately consulted regarding the Project in a way that was meaningful and timely? Was adequate attention devoted to sharing Project information with potentially affected parties, including construction plans and analysis of potential impacts, risks and mitigants? Were suitable channels made available for community members to contact the Executing Agency and/or the Bank with questions or to request further information? What was the content of the consultations that were carried out around the Project? Was there adequate notice of consultations? Were the consultations held in places and at times where it was reasonably likely that potentially affected people would be able to attend without undue hardship? Were consultations held in compliance with the Environment and Safeguards Compliance Policy’s B.6 Directive on consultations as required for Category A operations?

b) Were consultations carried out in a manner consistent with the local legitimate decision-making processes of all of the affected indigenous communities? Were relevant government agencies involved in the consultation process?<sup>18</sup> Did the

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<sup>17</sup> ICIM Policy, Paragraph 58.

<sup>18</sup> Section V of the Operational Policy on Indigenous Peoples provides that: “In countries that have government agencies specialized in indigenous issues and in the protection of indigenous rights, the project proponent will seek the participation of these agencies in all stages of the consultation process.”

- consultations meet the standards set forth in the Operational Policy on Indigenous Peoples?
- c) Did Project planning include adequate consideration of whether benefit sharing with the indigenous communities was possible, as per the Operational Policy on Indigenous Peoples?<sup>19</sup>
  - d) Were the local indigenous populations' collective rights of ownership, possession, and use of their lands duly taken into consideration in accordance with the Operational Policy on Indigenous Peoples?
  - e) Were social and cultural impacts adequately and appropriately taken into account and analyzed, when defining the areas of direct and indirect influence for the Project? How did the Bank consider the use by multiple communities of the Barra de Santa Teresa and Punto Tileme as a cultural site when making these determinations? Did the Bank adequately evaluate potential adverse impacts on cultural integrity given the siting of significant infrastructure and clearing of land on the Barra de Santa Teresa? Were these evaluations in line with the standards set forth in the Operational Policy on Indigenous Peoples?

#### 4.6 *Environmental Safeguards*

- a) Given the Category A classification given to the Project, were adequate measures put in to place to protect local biodiversity in compliance with the Bank's ROPs?
- b) How were the direct and indirect areas of influence of the Project determined? Are these designations sufficient to cover the affected parties given the nature of wind projects? Did these determinations and designations comply with the Bank's ROPs?
- c) Were potential negative cumulative impacts on the environment and health of the local population appropriately considered and taken into account in the environmental impact assessment and management plans for the Project given the multitude of wind projects already in existence in the area?
- d) Did the Bank ensure that adequate account was taken of potential adverse impacts on the traditional economy of indigenous peoples in the areas of influence of the Project, which depends on fishing activities around the Barra de Santa Teresa? Did the Bank ensure that adequate plans were in place to prevent and/or minimize/mitigate possible adverse impacts on the traditional fishing economy, in line with the provisions set forth in the Operational Policy on Indigenous Peoples?
- e) Did environmental assessments and subsequent management plans comply with the standards required by the Bank in its Environmental and Safeguards Compliance Policy and associated Directives?

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<sup>19</sup> Operational Policy on Indigenous Peoples. Part II, Strategy for Indigenous Development: Section VI, Major Strategic Focuses and Priorities for Bank Action, "Promoting Rights, Regulations, and Legal Safeguards," subsection (f), page 39.

#### 4.7 *Threats to Safety, Intimidation and Attacks*

- a) Was the Bank aware at any time of alleged threats, intimidations and/or physical attacks against community members for their presumed opposition to the Project?
- b) How might alleged threats, intimidations and/or physical attacks have affected the ability of community members to participate in the consultations and otherwise voice their views? Did the Bank ensure that special measures were considered or put in to place to make certain that person(s) fearful for their safety could still take part in consultations to ensure compliance with the Environmental and Safeguards Compliance Policy and the Operational Policy on Indigenous Peoples?
- c) How did the Bank ensure that appropriate consideration was made as to how these alleged threats might have affected social cohesion of the indigenous communities, given the allegation in the Request that some community members who were outspoken against the Project allegedly suffered intimidations and threats to the extent that they felt they needed to flee for their own safety? Did the Bank take appropriate measures such that this dynamic was dealt with in line with the directive on Development with Identity in the Operational Policy on Indigenous Peoples?
- d) In its assessment of social risks surrounding the Project, did the Bank take adequate notice of long-standing social conflicts over land in the Project area? Was the Bank's screening and assessment of social risks commensurate to the situation on the ground based on information available at the time? Did the Bank identify and formulate adequate management plans for social risks to ensure that the requirements set forth in OP-703 (for example its Directive B.4) and other ROPs could be met?

#### **C. Investigation Methodology, Activities and Timeframe**

4.8 The Panel's methodology for an investigation includes fieldwork, fact-finding, verification, interviews with Requesters and Bank operations staff, and review of relevant Project documents and ROPs. To achieve the objectives of the proposed Compliance Review, the Panel would employ best practices that have evolved and are documented in the literature for this kind of investigation by independent accountability mechanisms at the Bank's peer institutions.

4.9 Once authorized to undertake a Compliance Review, the Panel would begin with a desk review to prioritize lines of investigation to ensure it is as efficient and targeted as possible. The Panel would undertake research at the Bank's headquarters and where the Panel members work, make a site visit to the Project area, carry out interviews with federal and state government officials as needed and visit the Bank's Country Office in Mexico.<sup>20</sup> Specifically, the Panel would organize and undertake the Compliance Review along the following lines:

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<sup>20</sup> In accordance with ICIM Policy, Paragraph 61, these activities are designed to ensure the Panel has ample input from all concerned stakeholders. All stakeholders will be given the opportunity to record their views in writing; any

- a) *Develop an understanding of the Bank's role in the Project design, evaluation and execution*
  - i. Research and review of ROPs, Bank Project files and documentation, and other information obtained from IDB staff
  - ii. Research information and documentation obtained from public sources, the Requesters and other credible sources
  
- b) *Establish an understanding of legal issues relevant to the Request and the Compliance Review*
  - i. Analyze the Loan Agreement to understand the full context of the Project and to review conditions and responsibilities placed on the Borrower that may be related to compliance issues relevant to the Request
  
- c) *Contact stakeholders to gain their perspectives*
  - i. Maintain communication and information flow with the Representative of the Requesters
  - ii. Continue to communicate with and share information with Project team
  - iii. Meet with the Executive Director for Mexico and the Dominican Republic and his staff
  - iv. Interview Mexican officials from relevant government agencies such as the Ministry of Energy (SENER)
  - v. Open channels of communications with representatives of the Borrower and Project developers
  
- d) *Carry out additional research, including the following*
  - i. Review reliable third party information that may pertain to the alleged harms and/or the Project and may otherwise be helpful
  
- e) *Undertake a site visit*
  - i. Meet in person with Requesters who have to date asked that their identities be kept confidential, but who have indicated they will meet in person with the ICIM Panel
  - ii. Meet in person with representatives of the Borrower and Project developers
  - iii. Visit the Project site and areas of influence
  - iv. Take steps to verify the observations, allegations and facts underlying the Request, crosscheck these with other community members not party to the Request, local authority figures and other reliable sources
  - v. Meet with relevant federal government officials including the Ministry of Energy (SENER)
  - vi. Meet with representatives of the state Government of Oaxaca
  - vii. Meet with Mexico-based project team and the Bank's Mexico Representative

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submissions would be annexed to the final Panel report. See also footnote 19 regarding the comment period for the draft Panel report.

- viii. Seek public or other official documents that might be relevant to the Request that have not yet been obtained

4.10 The Panel estimates that, once authorized, the proposed Compliance Review process will take approximately eight and a half months, as described in Table 3 below.

*Table 3: Summary of Investigation Activities and Timeframe<sup>21</sup>*

Timeframe from date of non-objection	Activities
6 weeks	Preparation of Compliance Review
2 weeks	Fact-finding mission to project site
3 weeks	Focused desk review – verification of findings
6 weeks	Production of draft report
2 weeks	Translation of the draft to Spanish for circulation
7 weeks	Draft report submitted to Requesters and Management for 45 calendar days to provide written comments, as per ICIM policy <sup>22</sup>
6 weeks	Review and finalization of the report
2 weeks	Final editing, translation of report and annexes
2 weeks	Distribution period
1 week	Board consideration


**D. Deliverables**

4.11 The Compliance Review will result in the delivery of the Panel report to the Board for consideration and subsequent release to Requesters and the public. The Panel will meet with the Board if requested after the distribution of the report. The Panel may also include its recommendations, views or observations in regard to its findings or systemic or other issues, should such be discovered during the Compliance Review process.<sup>23</sup> At the request of the Board, the Panel may monitor the implementation of any corrective actions agreed upon as a result of the Compliance Review. Should the Board request monitoring, the Panel would prepare a monitoring plan and issue reports at least semiannually.<sup>24</sup>

**V. COMPLIANCE REVIEW LOGISTICS**

**A. Budget**

5.1

 The tentative budget is based on the following assumptions:

<sup>21</sup> All time periods are estimates and do not take into account unforeseen impediments such as unavailability of stakeholders, non-business days and other such circumstances beyond the ICIM's control.

<sup>22</sup> ICIM Policy, Paragraph 68.

<sup>23</sup> ICIM Policy, Paragraph 64.

<sup>24</sup> ICIM Policy, Paragraph 72.



- a) The Board authorizes the Compliance Review by the end of November 2014;
- b) the Requesters, Executing Agency and other relevant parties are available such that a mission to the project site could be scheduled to occur in late January to early February;
- c) the Report is distributed during the fourth week of July 2015 allowing for the Board to consider it from the second week of August; and.
- d) the current Panel Members continue their involvement with the case beyond March 2015.

**B. Investigative Team**

5.2 The following Panel members would make up the investigative team:

- a. Mary Rose Brusewitz, Panel Chairperson
- b. Mario Epstein, Panel Member
- c. Korinna Horta, Panel Member

5.3. The Panel does not anticipate needing to contract any outside consultants with the exception of interpreters during the mission to the Project site, should it be required for interviews with Requesters.

**C. Investigative Timeframe**

5.4 The investigation is estimated to last a maximum of eight and a half months inclusive of consideration by the Board of Executive Directors. Table 5 below shows the expected timeframe for the investigation and other administrative tasks required for completion of a Compliance Review in line with the ICIM Policy and Board procedures under the assumptions described in paragraph 5.1.

Table 5: Tentative Task Schedule

Compliance Review for ME-MICI002-2012			2014				2015																																		
			DEC				JAN				FEB				MAR				APR				MAY				JUN				JUL				AUG						
	INVESTIGATION TASK SCHEDULE	Estimated time required in weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37		
1	Preparation of Compliance Review	6 weeks	█	█	█	█	█	█																																	
2	Focused desk review - Verification of findings	3 weeks							█	█			█																												
3	Fact-finding mission to project site	2 weeks									█	█																													
4	Production of Draft Report	6 weeks											█	█	█	█	█	█	█																						
5	Translation of Draft	2 weeks																		█	█																				
6	Circulation of Draft to Mgmt and Requesters for comments	7 weeks																				█	█	█	█	█	█	█													
7	Finalization of Report	6 weeks																												█	█	█	█	█	█						
8	Final internal editing, translation and distribution to Board	2 weeks																																			█	█			
9	Distribution period prior to consideration	2 weeks																																					█	█	
10	Consideration by Board	1 week																																						█	
	Total weeks/ Panel Days estimated	37 weeks	█																																						