

CONSULTATION PHASE

2010-2019



NINE YEARS OF EXPERIENCE IN DISPUTE RESOLUTION
INSTITUTIONAL REFLECTIONS PROGRAM

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ABOUT MICI REFLECTIONS

The Independent Consultation and Investigation Mechanism (MICI) is the IDB Group's independent accountability office. It handles Requests from communities in Latin America and the Caribbean that are affected by projects financed by any of the Group's institutions and where it is alleged that these institutions have failed to comply with one or more of their relevant operational policies, particularly the main environmental, social, and transparency safeguards under which the Group operates. Its mandate also includes the additional functions of publicizing the mechanism in order to promote effective access and systematizing the results of its work into knowledge products.

Given this mandate, MICI proposed to the Board of Executive Directors that resources be focused on beginning to distill MICI's case experience into analytical products that promote institutional reflection and ultimately contribute to strengthening the design, execution, and supervision of IDB Group operations.

The **MICI Reflections Program** launched in 2018 with the publication of its first product, "Analysis of the MICI Request Portfolio 2010-2017," and will gradually enrich the knowledge base as case experience allows. The actions and products generated in this Program are intended to foster institutional reflection based on the evidence presented through a catalyzing process of creating strengthening proposals relevant to the work of the IDB Group and its mission. To this end, MICI is working on three fronts: first, creating knowledge products; second, organizing institutional exchange opportunities in close cooperation with IDB, IDB Invest and IDB LAB Management; third, making use of these knowledge products to maintain ongoing dialogue with civil society organizations and sister institutions to promote greater awareness of our work throughout the Latin American and Caribbean Region.



GLOSSARY

Allegation. Claim of harm or failure to comply with a Relevant Operational Policy asserted by Requesters and/or their Representative, the accuracy of which has not been verified.

Bank or IDB. Inter-American Development Bank, public arm of the IDB Group.

Bank-Financed Operation or Project. Any Group investment or other financing activities, whether with or without sovereign guarantee (public or private sector), including any operational activities involving loans, equity investments and quasi-equity investments grants, technical cooperation assistance, and guarantees financed or to be financed in whole or in part from Group funds or from funds administered or guaranteed by the Group.

Board. The Board of Executive Directors of the IDB or the IIC.

EJATLAS. Environmental Justice Atlas.

Executing Agency/Executor. The entity designated in the relevant legal agreements to execute all or part of a Bank-Financed Operation.

Executive Director. A member of the Board of the IDB, the IIC, or the Donors Committee of the MIF.

Guidelines for the Consultation Phase. Document detailing the processing of Requests under MICI Consultation Phase for any of the institutions belonging to the IDB Group ([MI-74](#)).

Harm. Any direct, material damage or loss. Harm may be actual or reasonably likely to occur in the future.

IDB Group. Composed of the IDB, IDB Invest and IDB LAB.

IDB Invest. Commercial name of the Inter-American Investment Corporation.

IDB LAB. Commercial name of the Multilateral Investment Fund.

IIC. Inter-American Investment Corporation, private arm of the IDB Group.

ILO. International Labor Organization.

Management. The Bank Group’s manager or managers in charge of the relevant Bank-Financed Operation or any delegate thereof.

MICI Policy. Reference to the MICI-IDB and MICI-IIC Policies.

MICI. Independent Consultation and Investigation Mechanism of the IDB Group.

MICI-IDB Policy. The Policy of the Independent Consultation and Investigation Mechanism for the IDB. The Policy, which was approved by the Board of Executive Directors on 17 December 2014, has been in force as of that date and was revised in December 2015 to ensure consistency with the MICI-IIC Policy ([MI-47-6](#)).

MICI-IIC Policy. The Policy of the Independent Consultation and Investigation Mechanism for the IIC. The Policy, which was approved on 15 December 2015, has been in force as of that date ([CII/MI-1-1](#)).

MIF. Multilateral Investment Fund.

Parties. The Requesters, Management, the Borrower, the Executing Agency or the Client, if applicable.

Request. A communication submitted by the Requesters or their representative that alleges that they have suffered or may suffer harm due to the failure of the Bank to comply with one or more of its Relevant Operational Policies within the context of a Bank-Financed Operation.

Requesters. Any two or more people residing in the country where a Bank-Financed Operation is implemented who have submitted a Request to MICI, considering that they have been or may be affected by the failure of the Bank to comply with one or more of its Relevant Operational Policies within the context of that operation.

Roster. Pre-approved list of expert facilitators who support the Consultation Phase Processes on an ad hoc basis.

UN. United Nations.



INTRODUCTION

ABOUT MICI

MICI is the accountability office of the IDB Group (IDB, IDB Invest, and IDB LAB). It provides a mechanism and process, which is independent of Management, to investigate complaints from two or more Requesters alleging harm in IDB Group-financed projects caused by the IDB Group's failure to comply with its own Relevant Operational Policies.

In 1994, the Board of Governors of the IDB mandated that the Bank establish an independent inspection function to improve the transparency, accountability, and effectiveness of the IDB. The Board of Governors specified that the function should be independent of Management and investigate policy non-compliance on the basis of complaints made by aggrieved parties. In the same year, the Board of Directors created the Independent Investigation Mechanism (IIM).

As part of the Ninth Capital Increase, the Board of Executive Directors of the IDB approved a new, strengthened mechanism, the *Independent Consultation and Investigation Mechanism*, which came into effect on 9 September 2010, with expanded functions and provisions to ensure greater transparency and independence by reporting directly to the Board.

Currently, the Mechanism's operation and structure is regulated by two policies, according to the institution that originated the operation or operations subject to a Request: (i) the MICI-IDB Policy, approved by the Board of Executive Directors of the IDB on 17 December 2014, and amended in December 2015, which applies to all operations financed by the IDB and IDB LAB (formerly MIF), and (ii) the MICI-IIC Policy, approved by the Board of Executive Directors of the IIC on 15 December 2015, which applies to all operations financed by the IIC, now commercially known as IDB Invest. The Policies differ in only a few areas relating to structure, reporting line, and scope. MICI has been serving IDB Invest since January 2016.



ABOUT THE CONTENT

From 9 September 2010, the date of MICI's entry into force, to 15 December 2019, MICI received 151 Requests: 143 related to IDB projects, four to IDB LAB (previously MIF) projects, and four to IDB Invest (or its predecessor, the IIC) projects. By the end of the period of analysis, of this portfolio, 33 Requests have been found eligible, and 25 of them (76% of the total declared eligible) have been managed by the Consultation Phase. The process of the 151 Request at the eligibility stage can be consulted in the Technical Note "The MICI process: Outcomes of Registration and Eligibility 2010-2019".

This note focuses on analyzing the management of cases at the Consultation Phase during this period from different perspectives. It consists of five main sections: the regional context in which the IDB Group operates; a description of the dispute resolution process; the characterization of the Parties; the guiding principles under which it operates and the main challenges faced in reaching a consensual resolution; and the tools used.

Finally, the document includes a section called Reflections that includes the perspectives of IDB Group officials, and experts in conflict resolution, members of the Roster of Facilitation Experts of MICI, as well as MICI itself with respect to the content presented.



REGIONAL CONTEXT

The work of the IDB Group, and consequently that of MICI, must always be framed in the context of the Latin American and Caribbean countries where the institution operates. Among other factors, the prevalence of environmental and social conflicts related to infrastructure project development is particularly noteworthy in the region. In view of this, governmental, academic, and civil society institutions have undertaken to carry out a fairly systematic monitoring of the number and nature of disputes and their potential evolution into social conflicts.¹

These analyses and measurements show an increase and preponderance of socio-environmental conflicts, essentially related to infrastructure construction initiatives, as well as to the extraction of raw materials. The Environmental Justice Atlas² observatory alone reports 799 active socio-environmental conflicts in Latin America and the Caribbean.

The most recurrent structural causes include: weak participation in the decision-making process by peasant, Afro-descendant, and indigenous communities affected by the projects; the perception of inequity in the distribution of socio-economic benefits from the projects; inadequate processes for identifying, regulating, and addressing environmental impacts; greater awareness among the population of the existence of transparency and social responsibility standards; challenges in implementing the legal standards and commitments undertaken by States at the national and

1 Some examples just at the State level include Units in the Presidency of the Council of Ministers of Peru, the Office of the Ombudsperson of Peru and its Adjunct Office for the Prevention of Social Conflict, the Commissioner for Dialogue and the Presidential Commission on Human Rights in Guatemala, the Vice-Ministry of Political Affairs and Citizen Dialogue in Costa Rica, the Office of the Ombudsperson of Costa Rica, the Public Prosecutor's Office of Brazil, and the National Mediation Directorate of Argentina, among others.

2 The Environmental Justice Atlas is an initiative created in 2012 by the Autonomous University of Barcelona. It has been co directed by Leah Temper and Joan Martínez-Alier at the Institute of Environmental Science and Technology of the Autonomous University of Barcelona (ICTA-UAB) since its beginning in 2012, and coordinated by Daniela Del Bene. It has assembled data on the most relevant socio-environmental conflicts of the last 20 or 30 years through a methodology of collaboration between academics and activists. The Atlas is available in digital format at: <https://ejatlas.org/>

international levels; and disagreements between different worldviews on development processes.³

The academic community maintains that, in terms of their general characteristics, socio-environmental conflicts reveal different understandings of territory, nature, and the environment.⁴ The growing number and intensity of conflicts related to water access and use warrants particular attention. According to a publication put out by ECLAC,⁵ water-related disputes are characterized by intense polarization, the absence of spaces for dialogue, informational asymmetries, limited transparency, the insufficient or difficult handling of scientific evidence, hidden interests, and conflicts of underlying values and ideologies.

The IDB, in its publication “Lessons from Four Decades of Infrastructure Project-Related Conflicts in Latin America and the Caribbean,”⁶ confirms the multidimensional and multi-causal nature of the conflicts affecting many of the region’s development projects, particularly in the energy, natural resources, waste, and transport sectors. Among the recurrent causes of disputes and conflicts examined in the publication, researchers highlight the lack of advance planning, the inadequacy of community benefits, and the absence of ongoing communication channels that allow communities’ concerns to be incorporated into the design and implementation stages.

In that context, and as this document will show, the MICI Consultation Phase is an essential tool for the resolution of disputes in projects financed by the IDB Group.

3 Gastón Aín, Democratic Institutionalility for Dialogue and Conflict Prevention - The case of Peru. (UNDP) 2015, pp. 18-19. European Union-United Nations Interagency Framework Team for Preventive Action, “Extractive Industries and Conflict,” Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict, 2012, p. 8.

4 Maristella Svampa, “Consenso de los commodities, giro ecoterritorial y pensamiento crítico en América Latina,” Revista del Observatorio Social de América Latina, Year XIII, No. 32, November 2012, p. 19.

5 Liber Martín & Juan Justo, “Análisis, prevención y resolución de conflictos por el agua en América Latina y el Caribe,” Natural Resources and Infrastructure Series. ECLAC, No. 171, April 2015, p. 9.

6 Graham Watkins, Sven-Uwe Mueller, Hendrik Meller, María Cecilia Ramirez, Tomás Serebrisky, Andreas Georgoulas. Lessons from Four Decades of Infrastructure Project-Related Conflicts in Latin America and the Caribbean, IDB, 2017. Available at: <https://publications.iadb.org/en/lessons-four-decades-infrastructure-project-related-conflicts-latin-america-and-caribbean>







THE MICI CONSULTATION PHASE

MICI offers two processes for Requesters to choose from: the Consultation Phase, which is a dispute resolution process in which MICI acts as a facilitator; and the Compliance Review Phase, under which the Group's actions are investigated vis-à-vis its environmental, social, and transparency standards. In both cases, MICI's actions are governed by the principles of independence, impartiality, fairness, and transparency.

The MICI process at the Consultation Phase is governed by its Policy and the Guidelines for the Consultation Phase, which supplement and clarify the provisions of the Policy.

The Consultation Phase seeks to encourage the Parties to reach sustainable agreements that address the issues raised in the Request. To this end, it offers the possibility for the complainants, the IDB Group, and the borrower or executing agency (the Parties), to approach the issues raised in the Request in a flexible and collaborative manner with the ultimate objective of generating solutions.

During 2010- 15 December 2019 period, MICI has managed 25 cases at the Consultation Phase, spanning 10 countries in Latin America and the Caribbean.

MICI'S CONSULTATION PHASE

Three documents guide the action of the Consultation Phase:

MICI-IDB POLICY for operations financed by IDB or IDB LAB.

MICI-IIC POLICY for operations financed by IDB Invest.

CONSULTATION PHASE GUIDELINES applicable to both Policies.

FIGURE 1. GEOGRAPHICAL DISTRIBUTION
PORTFOLIO OF CASES MANAGED AT THE CONSULTATION PHASE 2010-2019

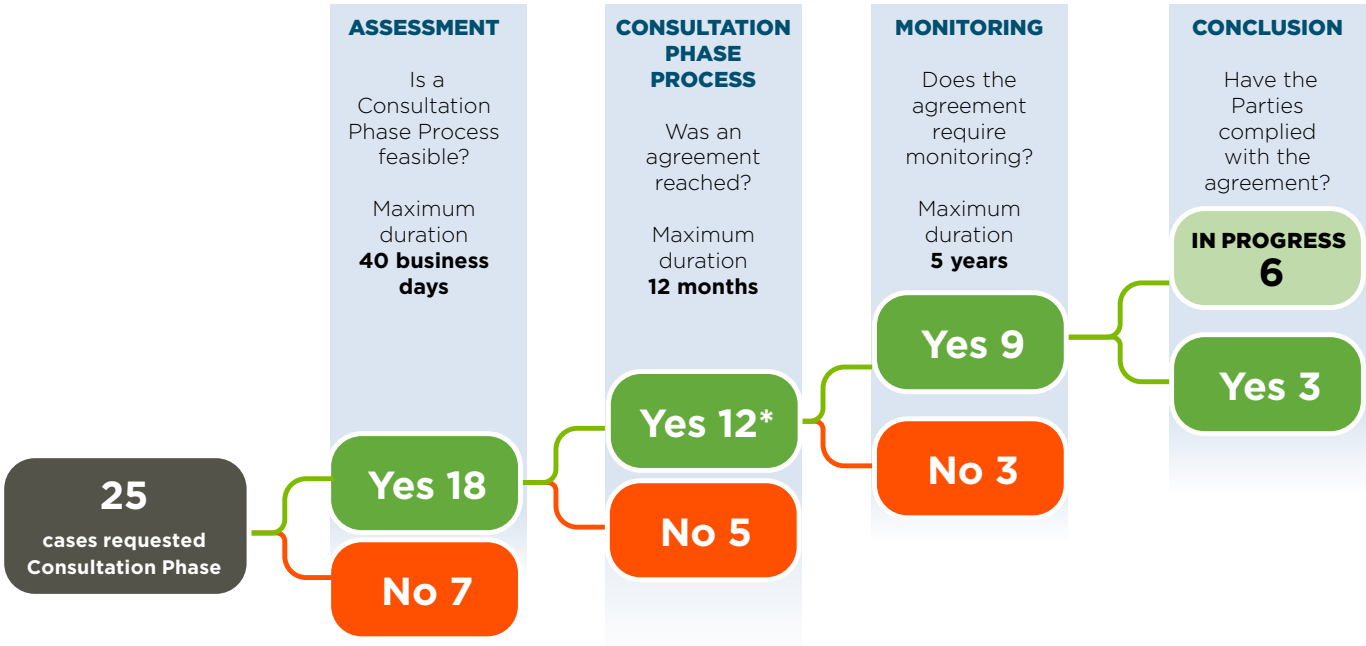


Source: MICI Database

STAGES OF THE CONSULTATION PHASE

The Consultation Phase has three stages: Assessment, Consultation Phase Process, and Monitoring (Section H of the MICI Policy). Figure 2 below shows the process followed by the 25 cases that have been managed at the Consultation Phase during the period under review. At each stage a milestone decision is presented, which determines whether the case is transferred to the next stage or concluded at this phase. By 15 December 2019, agreements had been reached in 52% (12) of the cases managed, with six already closed due to fulfillment of commitments made, and six still at the monitoring stage. The remaining 12 concluded Consultation Phase processing (7 during assessment and 5 during the Consultation Phase Process), and were transferred to the Compliance Review Phase. The following subsections detail the purposes of each stage and the results obtained in the management of the portfolio under analysis.

FIGURE 2. CONSULTATION PHASE CASE PORTFOLIO 2010-2019
MANAGEMENT AND OUTCOMES BY 15 DECEMBER 2019



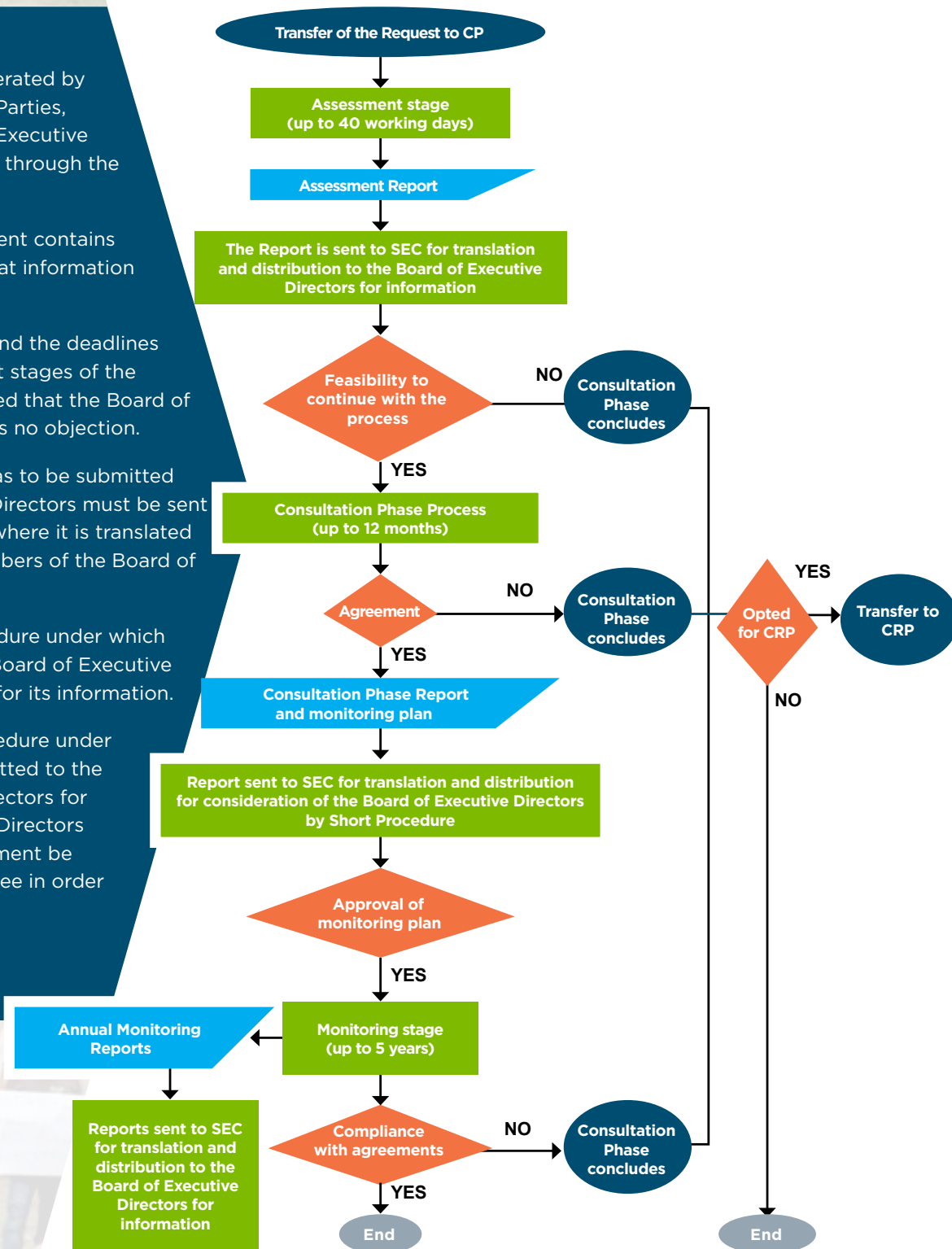
Source: MICI Database

*One is still in Consultation Phase Process

FIGURE 3. FLOW CHART OF THE CONSULTATION PHASE

EXPLANATORY NOTES

- The public documents generated by MICI are distributed to the Parties, to the respective Board of Executive Directors, and to the public through the MICI Registry.
- When a MICI public document contains confidential information, that information will be redacted.
- The MICI Director may extend the deadlines established for the different stages of the Consultation Phase, provided that the Board of Executive Directors gives its no objection.
- **SEC:** Any document that has to be submitted to the Board of Executive Directors must be sent to the Group's Secretariat where it is translated and distributed to the members of the Board of Executive Directors.
- **FOR INFORMATION:** Procedure under which a document is sent to the Board of Executive Directors of the IDB solely for its information.
- **SHORT PROCEDURE:** Procedure under which a document is submitted to the IDB Board of Executive Directors for its no objection. Executive Directors may request that the document be considered by the Committee in order to make a decision.



Stage 1. Assessment

The objective of the assessment is to understand the allegations of harm presented in the Request and their context. It also seeks to gain a better understanding of the project in relation to the Request. The ultimate purpose of the assessment is to determine whether the Parties would be amenable to a consensus-based resolution.

This stage is crucial to identify inputs and methodological preferences of the Parties for the design of the process, if all are willing to engage in dialogue and explore solutions. During the assessment period, which lasts a maximum of 40 business days, MICI conducts a documentary study, visits the project area, and meets with Requesters, IDB Group officials responsible for the project, and the executing agency/client in order to gain in-depth knowledge of each Party's positions regarding the allegations of harm and the possibilities for resolution.



Source: MICI photographic archive

As shown in figure 4, for the portfolio managed by the Consultation Phase in the 2010-2019 period, MICI found that in 72% of cases the Parties were willing to participate in a Consultation Phase Process and considered that there was a high likelihood of achieving a positive outcome, i.e. an agreement. In the remaining 28% it was not possible to start a process for three main reasons: (1) the executing

agency was not willing to participate (12%); (2) the Requesters withdrew their intention because they did not trust the impartiality of the process (8%), and (3) the positions of the Parties were so far apart that it did not seem feasible to reach a collaborative resolution through a MICI process (8%). It is important to remember that the Consultation Phase Process is voluntary, and the Parties may choose not to participate in it, and they are also free to suspend their participation during the process if they so decide.

The results of the assessment of the cases that undergo this stage, are available in the virtual registry on the MICI website.

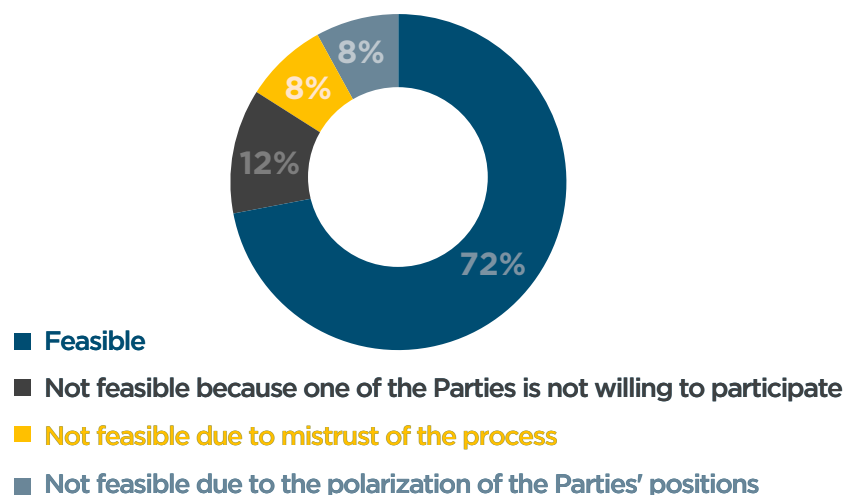
ASSESSMENT STAGE – REASONS WHY A CONSULTATION PHASE PROCESS MAY NOT BE FEASIBLE

LACK OF WILLINGNESS OF ONE OF THE PARTIES. Under the principle of voluntary nature, Parties only participate if they wish to do so.

MISTRUST OF THE PROCESS. Parties are not willing to participate if they do not have confidence in the fairness, impartiality, and independence of the facilitators.

POLARIZED POSITIONS. If the Parties take positions at opposite extremes and are reluctant to be more flexible, a Consultation Phase Process may be unlikely to produce an agreement.

FIGURE 4. CONSULTATION PHASE CASE PORTFOLIO 2010-2019
FEASIBILITY DETERMINATIONS AT THE ASSESSMENT STAGE
(FIGURES AS OF 15 DECEMBER 2019)



Source: MICI Database



WHEN A CONSULTATION PROCESS IS NOT FEASIBLE BECAUSE ONE OF THE PARTIES MISTRUSTS THE PROCESS:

MICI-BID-BR-2019-0142. BRAZIL. SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM - REQUEST III

The objective of the Program was to contribute to the sustainable development of the Município of São José dos Campos by improving its infrastructure and urban management. The IDB Board of Executive Directors approved its financing in 2011, and on 18 February 2019 the Bank's Management additionally authorized the design and construction of the Arco da Inovação (Ponte Estaiada), which was not originally envisaged in this operation.

During the Assessment stage, MICI found high levels of mistrust between the Requesters and the Executing Agency. Furthermore, the Requesters expressed interest in addressing issues that, although directly related to the alleged impacts, would be outside the scope of the MICI process. The accelerated pace of the construction work, as well as the Requesters' perception that the other Parties were not truly committed to seeking solutions, were determining factors. After several exchanges and inquiries by MICI to assess whether conditions favorable to a dispute resolution process existed, the Requesters indicated their preference to continue the case via the Compliance Review Phase.

18 CASES WHERE A CONSULTATION PHASE PROCESS HAS BEEN FEASIBLE

CASE MICI-PR-2010-001 - Development of the Industry of Products of the Vegetable Sponge

CASE MICI-PN-2010-002 - Pando-Monte Lirio Hydroelectric Power Project

CASE MICI-AR-2010-004 - Multiphase Development Infrastructure Program: Support Production in Entre Ríos

CASE MICI-BR-2011-005 - Estrada Nova Watershed Sanitation (PROMABEN)

CASE MICI-AR-2010-007 - Provincial Agricultural Services Program II (PROSAP II)

CASE MICI-BO-2011-013 - Santa Barbara-Rurrenabaque Northern Corridor Highway Improvement Program

CASE MICI-BR-2011-019 - Low-Income Neighborhood Improvement Program - Habitar

CASE MICI-BR-2011-020 - São José dos Campos Urban Structuring Program

CASE MICI-CO-2011-021 - San Francisco-Mocoa Alternate Road Construction Project - Phase I

CASE MICI-CO-2011-023 - El Dorado International Airport

CASE MICI-AR-2012-035 - Agrifood Health and Quality Management Program (CCLIP)

CASE MICI-PE-2015-094 - Rural Land Titling & Registration Project in Peru - Third Phase (PTRT-3)

CASE MICI-BID-HA-2017-0114 - Productive Infrastructure Program - Request II

CASE MICI-BID-CR-2017-0125 - Reventazon Hydroelectric Power Project - Request V

CASE MICI-BID-EC-2018-0131 - Program for the Reconstruction of Electricity Infrastructure in Areas Affected by the Earthquake in Ecuador

MICI-BID-AR-2019-0144 - Productive and Tourism Infrastructure Program for the Province of Rio Negro

MICI-BID-AR-2019-0148 - Reconquista River Basin Environmental Sanitation Program- Request III

MICI-BID-AR-2019-0150 - Railroad General Roca Improvement Program - Constitución - La Plata Line

Beginning with the assessment stage, the Consultation Phase team plays the role of an impartial third party whose ultimate objective is to foster a process in which the Parties feel comfortable enough to explore solutions together. This third-party role is crucial in bringing them together and establishing a basic level of trust between them, with a view to the process they intend to begin. Having a flexible process that is adapted to the specific circumstances, the stakeholders involved, and the state of the relationships between them is essential to its viability. The methods used depend on the urgency, the type of harm, the political, cultural, and social context of the place where the operation is being carried out, as well as the likelihood that the process will lead to positive results.

Stage 2. Consultation Phase Process, the dispute resolution process

If MICI decides at the end of the assessment that it is feasible to achieve a positive outcome with a Consultation Phase Process, case management enters this second stage.

The Consultation Phase Process is the dispute resolution process that offers Parties the opportunity to address the issues raised in the Request within a flexible, consensus-based framework where they feel comfortable enough to explore solutions together. The MICI Policy provides for a 12-month period to reach such solutions on a consensual basis; there is an alternative of extending the period when a particular case so requires, and MICI considers that an extension will lead to a positive outcome.

This stage includes the joint design with the Parties of agenda items to be discussed, their sequence, the participants, the format of the meetings, the



place, and the language, among other aspects. When designing the processes, the MICI staff tries to consider psychological, substantive, and procedural aspects in the methodological proposal submitted to the Parties for their consideration. Psychological aspects refer to the professional, emotional, or psychological interest of any individual who takes part in a dispute resolution process because they feel recognized, respected, and listened to. Substantive aspects take into account the central theme or themes to be addressed. Finally, procedural aspects include the manner in which the process will unfold, i.e. the rules, times and formats that the Parties agree upon in advance to govern the process.

MICI provides a process proposal based on the assessment inputs and offers a space for the Parties to have a productive exchange in its formulation and implementation. Once the design and rules of the process are validated by the Parties, MICI is responsible for organizing and facilitating the meetings with the support of facilitation experts (see Roster of Facilitation Experts).

It should be noted that in any MICI process the facilitator has always been supported by a member of the Mechanism's staff.

The MICI **ROSTER OF EXPERTS** in facilitation of alternative dispute resolution processes is composed of professionals renowned in the region of Latin America and the Caribbean who contribute both their expertise and their knowledge of the local context and common practices of the place where the process will be conducted.

Respecting the principles of impartial and fair treatment of the Parties involved in a process, the facilitation experts lead and/or assist, as necessary, the technical and substantive work involved in the design, implementation, facilitation, and systematization of processes within the Phase.

During the 2010-2019 period, MICI managed 18 consultation processes, reaching agreements in twelve of them (67%) and one remaining in process. The remaining five did not result in an agreement due to the withdrawal of one of the Parties (11%) or because MICI decided to close the process term (17%).

AGREEMENTS REACHED

12 CASES HAVE RESULTED IN AGREEMENTS:

CASE MICI-PR-2010-001 - Development of the Industry of Products of the Vegetable Sponge
(Signed 08/29/2011)

CASE MICI-AR-2010-004 - Multiphase Development Infrastructure Program: Support Production in Entre Ríos
(Signed 12/18/2012)

CASE MICI-BR-2011-005 - Estrada Nova Watershed Sanitation (PROMABEN)
(Signed 02/10/2011)

CASE MICI-AR-2010-007 - Provincial Agricultural Services Program II (PROSAP II)
(Signed 03/18/2011)

CASE MICI-BR-2011-019 - Low-Income Neighborhood Improvement Program - Habitar
(Signed 05/24/2014)

CASE MICI-AR-2012-035 - Agrifood Health and Quality Management Program (CCLIP)
(Signed 07/18/2012)

CASE MICI-PE-2015-094 - Rural Land Titling & Registration Project in Peru - Third Phase (PTRT-3)
(Signed 08/17/2017)

CASE MICI-BID-HA-2017-0114 - Productive Infrastructure Program - Request II
(Signed 12/8/2018)

CASE MICI-BID-CR-2017-0125 - Reventazon Hydroelectric Power Project - Request V
(Signed 04/12/2018)

CASE MICI-BID-EC-2018-0131 - Program for the Reconstruction of Electricity Infrastructure in Areas Affected by the Earthquake in Ecuador
(Signed 04/17/2019)

CASE MICI-BID-AR-2019-0144 - Productive and Tourism Infrastructure Program for the Province of Rio Negro
(Signed 05/24/2019)

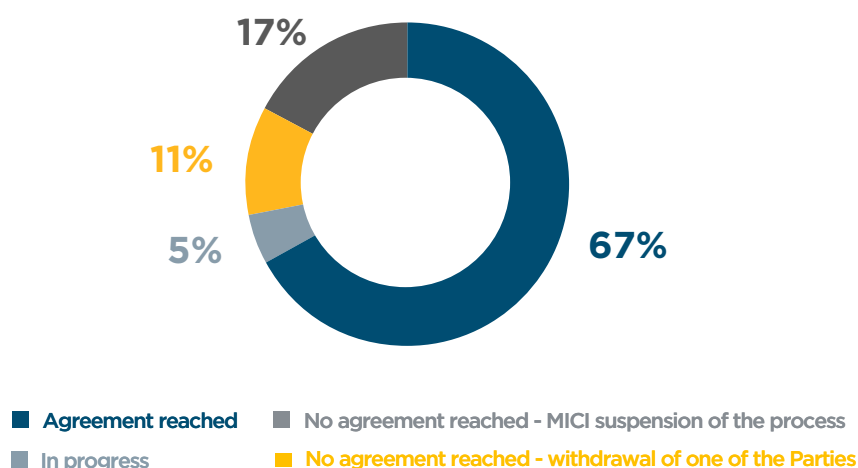
CASE MICI-BID-AR-2019-0148 - Reconquista River Basin Environmental Sanitation Program- Request III
(Signed 11/05/2019)



SITUATIONS WHERE MICI DECIDED TO TERMINATE THE CONSULTATION PHASE PROCESS DURING THE 2010-2019 PERIOD:

- The IDB's connection with the project ended due to early loan repayment.
- Legal proceedings arose between the Parties.
- Growing polarization in the Parties' positions.

FIGURE 5. CONSULTATION PHASE CASE PORTFOLIO 2010-2019
CONSULTATION PHASE PROCESS OUTCOMES
(FIGURES AS OF 15 DECEMBER 2019)



Source: MICI Database

Even with no agreement reached, a Consultation Phase Process can be considered successful considering the quality of the processes offered, where the Parties have the information and freedom to make decisions that better address their needs.

With regard to the cases where the Parties reached an agreement within the process facilitated by MICI, case management concluded in three of them with the signing of the agreement, with no provisions for any further actions beyond this milestone; in the other six cases, the agreements involved a number of activities to be carried out within a specific period of time after signing, and therefore required monitoring to ensure compliance. It should



be noted that the MICI Policy allows for the agreement to remain confidential if the Parties so decide. To date, the Parties in three cases have chosen to maintain the confidentiality of the agreement.

A MICI PROCESS: OUTCOMES AND IMPLICATIONS OF AN AGREEMENT

MICI-BID-EC-2018-0131. Program for the Reconstruction of Electricity Infrastructure in Areas Affected by the Earthquake in Ecuador

The financing operation approved by the Board of Executive Directors on 25 January 2017 supports a multiple works program to rebuild the electricity generation and distribution infrastructure affected by the April 2016 earthquake. One of the works was the reconstruction of the San Vicente-Jama sub-transmission line, which involved relocating 9km of the line from the mountains to the coast.

In view of this relocation, the Requesters filed a complaint with MICI citing the potential health impacts of electromagnetic radiation, the impact on local tourism and birds, the lack of environmental, social, and disaster risk impact studies, and the failure to carry out public consultations.

MICI convened and facilitated three dialogue sessions where relevant technical information was shared, and the different options for the sub-transmission line's route were analyzed based on studies of risks and alternatives. These meetings made it possible to reach an agreement on the implementation of the work, including the line's route, and the disclosure of information. In addition, since the agreed activities were expected to take a few months, a monitoring plan was requested to verify compliance with the commitments.

Stage 3. Monitoring

In cases where the Parties reach an agreement where completion requires one or more actions in addition to the signature, the MICI process provides for the activation of the third stage of the process, monitoring. The MICI Policy limits this stage to five years from the signing of the agreement.

The monitoring stage includes all activities related to the creation of joint spaces for the Parties to collaboratively achieve compliance with the agreements. At the beginning of the stage, MICI works with the Parties to create a monitoring plan and timetable. In addition, it facilitates the spaces and events that make it possible to follow the progress of compliance with the terms of the agreement.

Monitoring aims to solidify the relationships built in dialogue processes through joint monitoring structures created to supervise agreements, as well as in other spaces that may be created as a result of the deliberations.

WHAT MONITORING ACTIVITIES ARE PROVIDED FOR IN MICI CASES?

MICI's role during the implementation period of the agreements is to maintain or strengthen the trust established between the Parties during the Consultation Phase Process in order to achieve compliance with the agreed commitments. Activities carried out during the monitoring phase include:

- Facilitating and serving as the technical secretariat in mixed spaces already formed or to be formed by both Parties and responsible for carrying out frequent monitoring.
- Telephone conversations with the Parties and other stakeholders who have been involved in the Consultation Phase Process to determine their level of satisfaction with the fulfillment of commitments, as well as to maintain regular contact with the Parties and encourage communication between them.
- Organization of specific meetings in the event of disagreements, disputes, or growing dissatisfaction with the degree of compliance with the agreements.
- Field missions to personally interview the Parties and learn first-hand how the commitments are being implemented.
- Collaboration in building communication platforms and using new information technologies through which the Parties can, in real time, communicate facts or situations that endanger compliance with the agreements, thus making it possible to take preventive measures.
- Develop any other monitoring task requested jointly by the Parties, always within the framework of what is regulated by the Policies.

Of the sample analyzed, six of the twelve cases that have reached agreements have required the establishment of a monitoring plan with objective and measurable compliance milestones.

The monitoring plan and its duration are directly linked to the content of the agreement.

MONITORING COMMITTEES AS A TOOL TO SUPPORT COMPLIANCE WITH AGREEMENTS

MICI uses this tool regularly to maintain smooth communication between the Parties during the implementation of the activities contained in an agreement, as well as to identify challenges to compliance at an early stage and address them in a timely manner.

MICI-BID-AR-2019-0144 ARGENTINA. Productive and Tourism Infrastructure Program for the Province of Rio Negro

In this case, the merchants of Calle Mitre, one of the most important commercial arteries in San Carlos de Bariloche, were facing significant economic impacts due to construction delays, as well as potential future impacts from changes made to the project during its construction phase.

The IDB, the executing agency, the municipal government, the construction company, and the Requesters reached an agreement after two working sessions facilitated by MICI. As part of this Agreement, a Monitoring Committee was set up consisting of representatives of all the Parties. With MICI's facilitation, it will be responsible for monitoring the progress of the commitments undertaken. To this end, they will hold in-person meetings and use virtual communication platforms.



CHARACTERIZATION OF THE CONSULTATION PHASE PROCESSES

Under the MICI Policy, the essential Parties to a process are:

- 1 The Requesters who file a Request with MICI
- 2 The IDB Group officials
- 3 The representatives of the project's executing agency

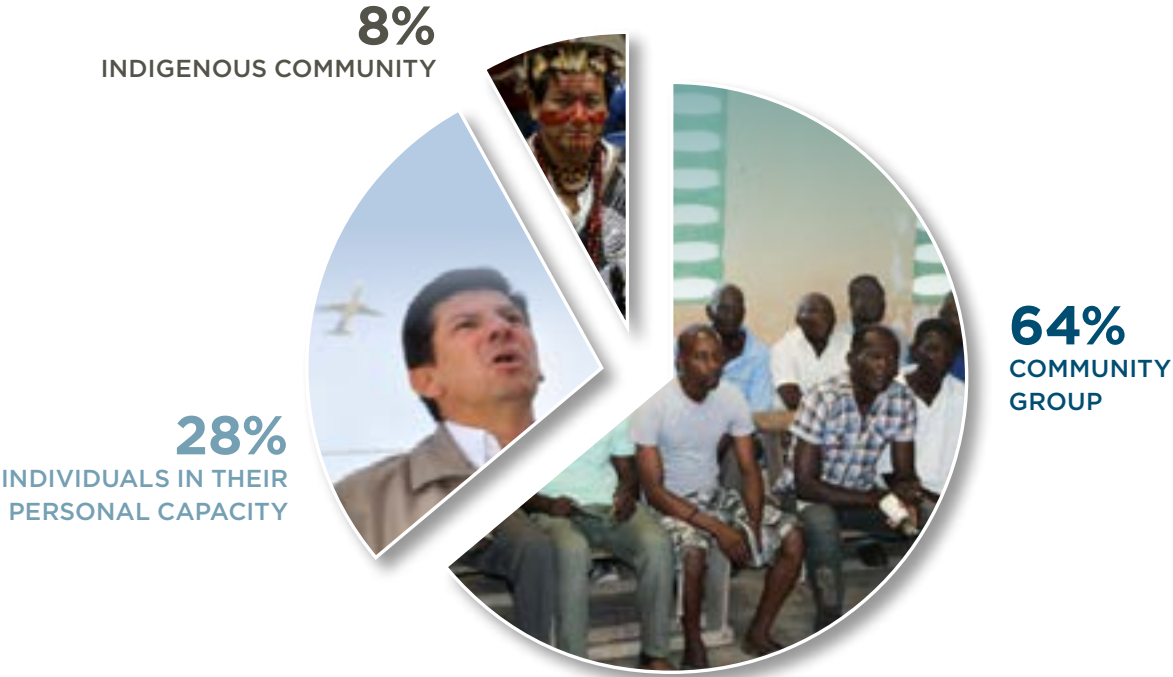
Knowing the Parties is an essential element of building a Consultation Phase Process.

REQUESTERS

In the cases managed by the Consultation Phase during the 2010-2019 period, 64 % of Requesters have been community groups; 28% have been one or more individuals in a personal capacity, and 8% have been indigenous peoples.



FIGURE 6. CONSULTATION PHASE CASE PORTFOLIO 2010-2019
CHARACTERIZATION OF THE PARTIES: REQUESTERS
(FIGURES AS OF 15 DECEMBER 2019)



Source: MICI Database

MICI cases generally involve low-income populations with modest levels of education and limited organizational capacities. At the same time, each case is unique and specific to the issues of harm alleged and the Requesters who file them. The handling of a case where the claimant is a single individual representing himself does present different complexities compared to other cases where the Requesters are groups of residents united by the same issue of harm, but with different interests and capacities; or indigenous peoples, with their own particular non-Western cosmovision, governance structure, and reality.

Complexity also increases on matters such as planning, timing, logistics, coordination and resources, to the extent that Requests involve numerous Requesters or the process is undertaken in remote areas. When analyzing the sample we found that, from 2015 onward, MICI has handled a greater proportion of cases where the process involves a large number of individuals or communities, as shown in Table 1.

TABLE 1. PORTFOLIO OF REQUESTS AT THE CONSULTATION PHASE 2010-2019
BY REQUESTER TYPE
(FIGURES AS OF 15 DECEMBER 2019)

Year	Requests transferred to the Phase	Number of Requests by Type of Requester			Estimated number of people served
		Individuals	Community Groups	Indigenous Communities	
2010	6	3	3	0	25
2011	7	0	6	1	283
2012	1	1	0	0	1
2013	0	0	0	0	0
2014	0	0	0	0	0
2015	1	0	0	1	1166*
2016	1	1	0	0	11
2017	2	1	1	0	426
2018	3	0	3	0	1545
2019	4	1	3	0	151
Total	25	7	16	2	---

*1166 native communities are represented in one of the cases managed under the Consultation Phase. Accurate population data are not available.

Source: INEI. II. Census of Indigenous Communities of the Peruvian Amazon, 2007.

Harm alleged had different roots. The following table presents the 7 categories used and the definition for each one of them.

DEFINITIONS

ENVIRONMENTAL IMPACT. The project has played a part in generating or increasing air, soil, water, noise, odor, or dust pollution. Environmental impact also includes adverse effects on biodiversity, natural resources, protected species, climate change, and ecological services.

CULTURAL IMPACT. The project has interfered with or threatened aspects of past and present practices of the Requesters' community, in relation to traditional or historical infrastructure/heritage that the affected community considers to be of critical value for transmission to future generations. This includes adverse impacts on intangible heritage such as language, visual arts, music, religion, beliefs, and customary practices.

IMPACT ON LIVING CONDITIONS. The project has played a part in generating adverse economic impacts for the Requesters due to the loss or disruption of livelihood or income generation; cost of living increases; or restricted access to means of production, public infrastructure, or sites of interest. It also includes impacts due to involuntary resettlement.

IMPACT ON SOCIAL FABRIC. The project has affected the social patterns and norms of the Requesters' community or has created or deepened divisions within that community.

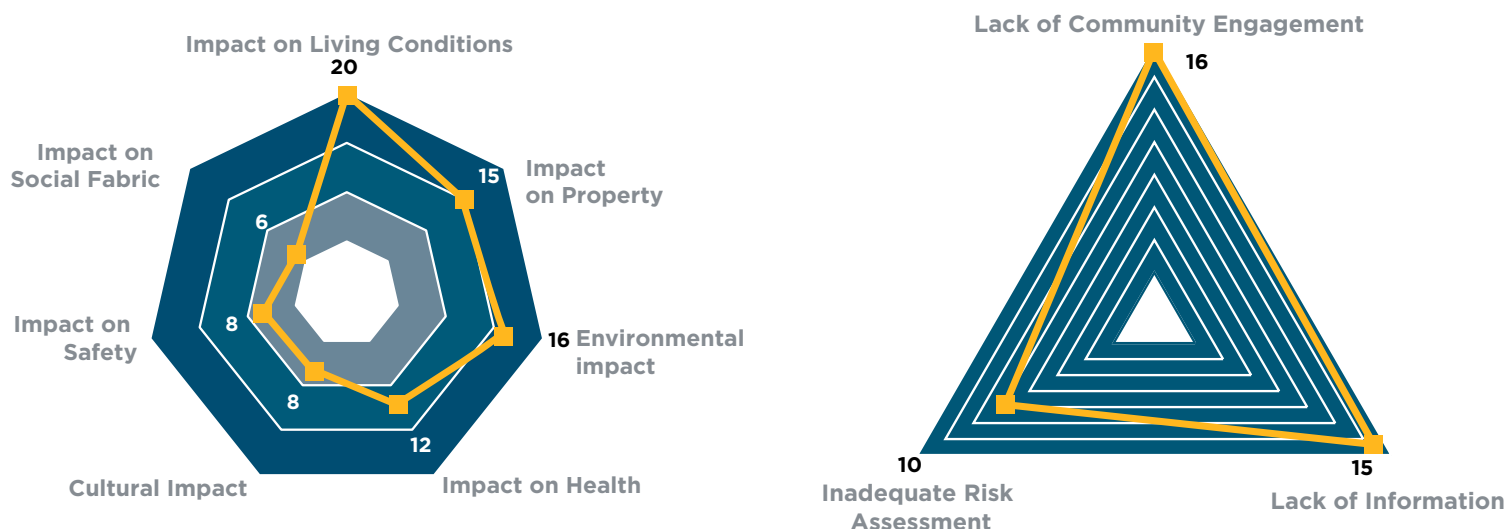
HEALTH IMPACT. The project has played a part in introducing disease or causing a decline in the health of the Requesters. This includes limiting access to medical services or medicines (modern or traditional).

SECURITY IMPACT. The project has played a part in the perceived increase of insecurity, violent acts, or abuse in or against the Requesters' community.

IMPACT ON PROPERTY. The project has adversely affected the Requesters' property by deterioration, destruction, or expropriation.

For the 25 cases analyzed, Figure 7 shows that the majority of cases present harm related to the Requesters' living conditions and property, almost always as a result of involuntary resettlement activities or the economic displacement caused by the project to already vulnerable communities. Another frequent area of harm concerns negative environmental impacts, especially the impact on water availability or pollution of water sources, noise pollution, and/or air pollution, all of them relevant factors when assessing the living conditions of the affected population.

FIGURE 7. CONSULTATION PHASE CASE PORTFOLIO 2010-2019
IMPACTS AND ALLEGATIONS OF NONCOMPLIANCE
(FIGURES AS OF 15 DECEMBER 2019)



Source: MICI Database

Allegations of noncompliance have been grouped in three themes in order of importance for Requesters: lack of community engagement (64%), lack of information (60%), and poor risk assessment (40%). In many of the cases managed at the Consultation Phase we found the three themes to be interrelated, as a community may consider that risks have not been properly identified if it does not have effective access to information and/or consultations have been inadequate.

DEFINITIONS

INADEQUATE RISK ASSESSMENT. The identification of a project's impacts: (i) was not performed correctly by one of the IDB Group institutions; (ii) did not include the risks perceived by the Requesters; or (iii) is not considered reliable.

LACK OF COMMUNITY ENGAGEMENT. The Requesters consider that they were not adequately consulted about the impacts of the project or involved in the decision-making process; that the consultations were not sufficiently publicized; that they included only selected stakeholders; that the records did not reflect their actual content; that they were conducted in a language other than that of their community, or that they were conducted in a culturally inappropriate format.

LACK OF INFORMATION. The Requesters consider that they have not had access to sufficient and timely information, or access to information, to determine how the project would affect them.

The importance of the consultation lies in its transversal character to guarantee or materialize effective access to information and encourage participation.

In general, there are differentiated, though not contradictory, perceptions about the quality of the consultation processes that take place in the early stages of the project cycle and prior to project siting. While executing agencies are usually convinced that they have done everything possible to identify the key stakeholders, assemble them, and present them with the main project information for discussion and exchange, some Requesters are dissatisfied with the quality and organization of these processes, or directly allege that they have not been consulted in time. Lack of timely consultation can aggravate existing conditions by negatively predisposing potentially affected actors and allowing false or negative information to circulate about alleged social and environmental impacts. It is understandable that consultation processes vary considerably depending on the risk, scale, and complexity of the project in question. However, there are three major points of significance in this area. The first is when communities expect, as part of a meaningful and quality consultation, to be able to propose options or alternatives and feel there is a willingness to consider them. The second is the availability and quality of information regarding the impacts or risks that communities perceive and plans to deal with them. Receiving information about the benefits of a project is not enough for communities to give their consent when they are experiencing or fear experiencing effects caused by it. Given the lack of information, the affected population concludes in a linear manner that the risks have not been appropriately assessed. The third is focused on form; at the preliminary stage of preparation and analysis of the conditions and circumstances under which a consultation can take place, cultural relevance and traditional conflict resolution or participation mechanisms already existing at the community level are often decisive. Taking these aspects into consideration allows for substantive interaction based on recognition, respect, and the possibility of joint construction.

ENVIRONMENTAL, SOCIAL AND TRANSPARENCY STANDARDS OF IDB GROUP

The IDB Group has a set of rules (Operational Policies) that include environmental and social safeguards applicable to all Bank projects and make sustainability an integral part of the Bank's work.

These rules are mandatory for all Bank staff and serve as a guide for the identification, management, and monitoring of potential environmental and social impacts caused by Bank projects.

These Policies also establish the standards that Bank-financed operations must meet regarding access to information and consultation with the Region's population.

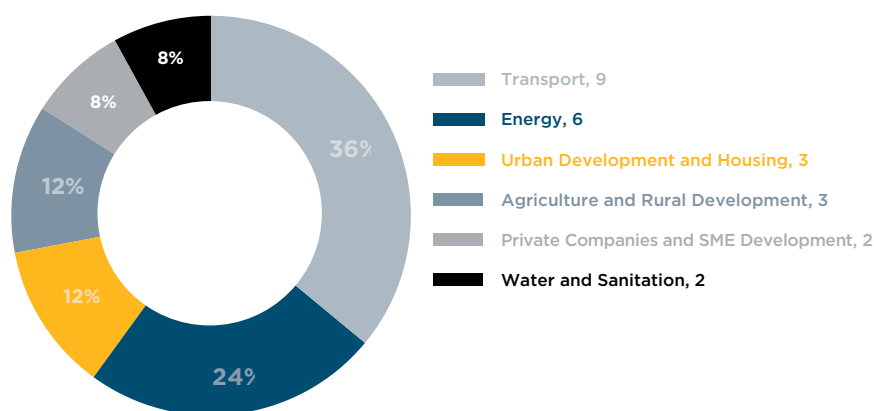
- The IDB Operational Policy on Environment and Safeguards Compliance and the IDB Invest Policy on Environmental and Social Sustainability define, among other things, risk assessment and management standards as well as standards on the robustness, timeliness, and process of community engagement.
- The IDB Access to Information Policy and IDB Invest Disclosure of Information Policy define the requirements for the disclosure of Bank-generated information and access to that information by affected communities and interested audiences.

IDB GROUP OFFICIALS

From 2010-2014 (when the previous MICI Policy was effective), the Consultation Phase did not foresee the participation of IDB Officials in the process. Their participation, already defined in the current MICI Policy, stands out from sister mechanisms which do not entail such a requirement.

The IDB Group is usually represented in a MICI process by the project team leader, a relevant sector expert, and one or more environmental and social specialists. Within the sample, the Requests referring to the transport and energy sectors stand out (see Figure 8).

FIGURE 8. CONSULTATION PHASE CASE PORTFOLIO 2010-2019
CHARACTERIZATION OF THE PARTIES: SECTORS⁷
(FIGURES AS OF 15 DECEMBER 2019)



Source: MICI Database

In cases where IDB Group staff were involved, a more robust Consultation Phase Process more closely linked to the Bank-financed project can be identified. In addition, it presents an opportunity to build conflict resolution capacity at the project level, which can influence the Bank's preventive action in line with the provisions of the safeguards.

The role of IDB Group staff members has proven to be essential to the processes, as they help find solutions as an active and proactive part of the dispute resolution process. Having the Bank participate in the process also builds credibility with external stakeholders and ensures that the Group takes ownership of the issues presented. This kind of process can also have positive impacts on the long-term relationship of the Parties involved and lead to more sustainable outcomes for the IDB and the beneficiaries.

EXECUTING AGENCY

In Consultation Phase Processes, one or more representatives from executing agencies or Clients are considered essential parties to the process.

In the case of the public sector, the representatives of the executing agency are federal or municipal public officials. For private sector projects, the person responsible for the environmental/social or community engagement area is generally assigned to be the client's representative.

⁷ The graphic is structured considering the specific sector of the project subject to the complaint. Given that two Requests refer to two different sectors in one operation, it was considered more suitable to show them separately.

In both cases, the decision on representativeness is taken by the client or executor, normally with the intention to include the participation of officials directly involved in the project, in order to have more knowledge and impact. The lack of experience to participate in processes of this nature, as well as a limited availability to devote reasonable time, are some challenges encountered by MICI. Additionally, the high turnover of personnel is to be considered, particularly for cases related to the public sector in which the electoral calendar to be taken into account at the municipal, federal or even national level needs.

Of the 25 cases managed by the Consultation Phase during the period of 2010- 15 December 2019, 20 (80%) have been related to public sector projects, and five (20%) have been related to private sector projects.

OTHER PARTIES

During the processing of cases at the Consultation Phase it is vitally important to understand and analyze the connection of key stakeholders with the dispute resolution process beyond the essential Parties (Requesters, the executing agency, and the IDB Group). Cases have been managed where third parties, such as contractors and/or consultants, are responsible for the execution of one or more of the project activities, and their perspectives and/or knowledge may be critical in providing solutions to the problems identified in the Request and avoiding new disputes while managing the case.

PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS (CSOS)

Out of the 25 cases managed during the Consultation Phase, five were accompanied by CSOs, which played an advisory role, representing the interests of Requesters. In some cases, they can contribute to level the asymmetries of power that exists within the Parties in the process.

MICI-BO-2011-013 - Santa Barbara-Rurrenabaque Northern Corridor Highway Improvement

MICI-BR-2011-019 - Low-Income Neighborhood Improvement Program - Habitar

MICI-BR-2011-020 - São José dos Campos Urban Structuring Program

MICI-PE-2015-094 - Rural Land Titling & Registration Project in Peru - Third Phase (PTRT-3)

MICI-BID-HA-2017-0114 - Productive Infrastructure Program - Request II

Relevant third parties may also include organizations that have supported Requesters in their activation of the mechanism. In general, they do not actively participate in dialogue spaces, but are present as observers or advisors to the Requesters. Also, in many cases, they facilitate the contact to groups of Requesters and support the Mechanism in the preparation of the group and the management of expectations.

It is very important to maintain a constant and fluid communication channel to ensure a good understanding of the process by the Requesters, and it also offers a direct source of information of context and perspectives.

STAKEHOLDER MAPPING

STAKEHOLDER MAPPING is a technique that seeks to identify key **ACTORS** of a system and also makes it possible to analyze their interests, importance, and influence on the outcomes of an intervention.

Any dispute resolution strategy requires the prior identification of primary, secondary, tertiary actors and potential saboteurs to the construction of outputs, proposals, or responses.

The ways in which stakeholders exert their influence are varied, and the means available to influence the development of the process are also varied, so identifying them early and establishing a channel of communication with them is an extremely important task. Often times individuals, organizations, or groups that have not been included in the design, implementation, and/or assessment of a process can cause difficulties, and in some cases even impede the development of a project or dispute resolution process.

Finally, the identification or mapping of strategic actors is not a one-time event in the development of a dispute resolution space. Actual situations are dynamic, and sometimes political, social, or economic changes affect communities and their forms of organization, giving rise to the emergence of new social spaces and new forms of leadership. The development of the MICI cases has shown that it is important to repeatedly update the original stakeholder mapping. There are cases where communities have created new forms of association as a result of the impacts of a given project. In view of these situations, it is important to recognize emerging actors and to analyze their arguments, representativeness, and decision-making mechanisms, as well as to explore formats that allow them to be integrated in some way into the development of the process.

Stakeholder mapping is a key component in identifying interested third parties. It should potentially include other co-financing institutions, if any, and representatives of other mechanisms as participants in the resolution process if they have also received similar complaints.



CO-FINANCING

Three of the 25 cases managed at the Consultation Phase involved co-financing from other multilateral development banks and their mechanisms received Requests similar to those filed with MICI.

However, only in one of those cases, the dialogue process was managed jointly.

CASE MICI-PN-2010-002 - Pando-Monte Lirio Hydroelectric Power Project.

CASO MICI-PN-2011-031 - Panama Canal Expansion

CASO MICI-BID-CR-2017-0125 - Reventazón Hydroelectric- Request V

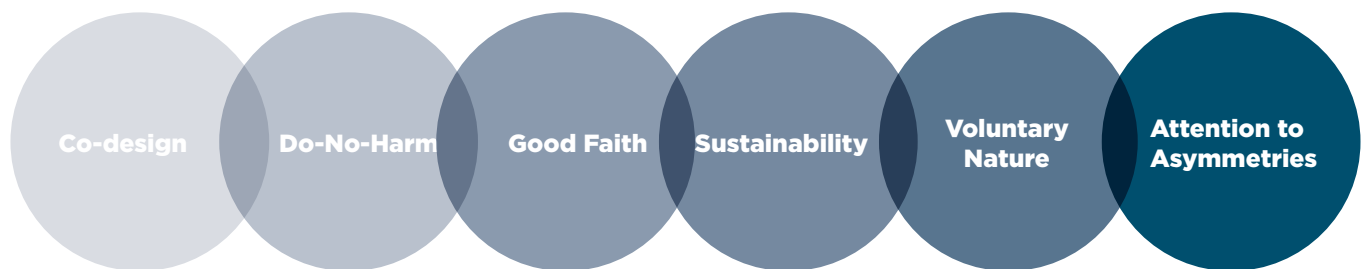




GUIDING PRINCIPLES OF THE CONSULTATION PHASE

Every process initiated at the Consultation Phase is governed by a set of general principles and considerations that, among other purposes, helps create a sense of ownership and enhance the legitimacy of the process.

PRINCIPLES FOR CASE MANAGEMENT AT THE CONSULTATION PHASE



Source: Guidelines for the MICI Consultation Phase

CO-DESIGN

Consultation Phase Processes should be designed and prepared using as primary input the methodology, format, cultural and linguistic preferences of the actors to whom they are directed. Co-design is aimed at increasing the trust between actors and the sense of ownership of the process in addition to creating the conditions for an effective exchange. The MICI Consultation Phase identifies the space, provides resources and knowledge, and offers facilitation so that a consensual and sustainable solution can be reached to address the issues or concerns initially raised by the Requesters.

DO-NO-HARM

The possibility of causing harmful effects when entering conflict scenarios and addressing vulnerable populations is real. Experience shows that good intentions are not enough to achieve positive results and prevent negative impacts. It is necessary to address multiple and complex factors that inevitably affect conflict scenarios, to prevent harm and carry out clean actions that promote well-being.⁸

8 Rodríguez Puentes, Ana Luz, ponencia Reflexiones sobre el compromiso ético de la acción sin Daño, <http://www.bivipas.unal.edu.co/bitstream/10720/220/6/D-222-2009-92.pdf>

The MICI processes must be designed and implemented with an ethical focus based on the principle of “Action without harm”, avoiding at all times the worsening of preexisting situations or controversies between the Parties.

GOOD FAITH

The principle of good faith in MICI processes is based on the premise that the Parties enter into these processes committed to seeking agreements and dialogue. They promote an honest exchange based on the interests of the Parties, always avoiding hidden intentions and agendas that do not contribute to a satisfactory resolution of existing disputes.

In building a minimum level of trust that allows for the exploration of alternatives and possible consensus-based decision-making, it is important to manage the expectations of all actors, avoid assumptions, and maintain an attitude of intellectual honesty throughout the process.

SUSTAINABILITY

MICI aims to guide the Parties so that the agreements signed are viable, focusing on the problem-solving capacities that the space offers to address the concerns raised. Consultation Phase Processes will be oriented toward seeking sustainable and durable solutions, always prioritizing the transformation of relations between the Parties and seeking to build social capital, a central element for economic development and the well-being of people.

VOLUNTARY NATURE

The voluntary nature principle governs all MICI processes, where Parties may withdraw at any time if they so wish. Particular attention is paid during a process to ensure that the Parties are comfortable with its progress, and there is flexibility to make methodological or procedural modifications as appropriate.

ATTENTION TO ASYMMETRIES

In most of the Requests processed at the Consultation Phase, the Parties have differentiated capacities to participate effectively in dispute resolution processes. A situation of asymmetry exists between the Parties, when there are considerable differences in understanding and analysis, as well as in

the practical skills to interact, defend positions and interests, and maximize potential benefits in dialogue, mediation, and negotiation processes. This asymmetry must be mitigated in order to increase the likelihood of success in the handling and development of the complaint.

Consultation Phase Processes should be particularly sensitive to the existence of considerable asymmetries between the Parties so as not to undermine the possibility of reaching satisfactory results.







MAIN CHALLENGES, TOOLS, AND APPROACHES

The cases managed under the MICI Consultation Phase during the 2010-2019 period, regardless of the project sector or country of origin, present similar recurrent challenges that trigger conflict between the Parties, as well as delays and/or cancellations in the projects involved. Many of the conflicts have arisen during the pre-identification, identification, and preparation stages, according to the findings of the IDB study,⁹ but since MICI can only be activated once the operation is approved, these conflicts have generally intensified and the polarization between the Parties has escalated by then. This brings particular challenges involving the erosion of trust and breakdown of communication between the Parties. In some cases, there is also “dialogue fatigue” if, considering that MICI is a last resort, IDB Management has sought to address the concerns, but has not been successful.

In the following paragraphs, we outline the main challenges faced by MICI during Consultation Phase management and the tools it uses to turn them into opportunities to resolve the dispute raised in the Request and rebuild the relationship between the affected communities, the executing agency, and the IDB Group.

EROSION OF TRUST

Trust is a core element of human interactions. It is earned with time and effort and lost very easily. Unfortunately, once trust is lost, it is extremely complex to rebuild. Development processes and projects that entail the construction of infrastructure works require a minimum level of trust between the executing agency and the communities in order for there to be a respectful exchange of opinions, and the joint analysis of information and documentation that allows for informed decision-making. The growing polarization seen in many societies in the Latin American and Caribbean region exacerbates trust issues by encouraging disparagement, animosity, and the creation of stereotypes and prejudices.¹⁰ Unfortunately, polarization creates a host of psycho-social effects and a climate

9 Graham Watkins, (coord), Op. Cit., p. 23

10 Cesar Rojas, “La polarización irrumpe en escena”, Magisterial Conference as part of the IV Global Congress of Mediation, Bolivia, November 2008. Cesar Rojas, la polarización su dinámica ambidiestra, en Democracias Callejeras, 2013. Pag. 331. Editorial REI

of heightened emotions that is immune to technical or scientific knowledge, and further deepens feelings of suspicion and distrust of those who think differently.

Levels of trust in relationships are conditioned by the level of communication. One of the main ways to build relationships of trust is through verbal and non-verbal communication. The challenge in contexts of mistrust is that the Parties tend to communicate less rather than more, which only exacerbates mistrust.

Because it is a mechanism of last resort, MICI becomes involved only after a project has already been approved and gone through the various stages of identification and preparation, and may already be underway or even completed. Relationships between the Parties at the time a Request is filed are generally characterized by low interaction, absence of reciprocal influences, mistrust, mutual criticism, and limited willingness to engage. On many occasions, initial differences between the executing agency/borrower and the communities may have evolved negatively for various reasons into relationships of distrust or outright hostility. The reasons behind poor quality relationships or mistrust are multiple and are generally due to a variety of factors, never to a single event or isolated attitude.

In case **MICI-PE-2015-094—RURAL LAND TITLING & REGISTRATION PROJECT IN PERU - THIRD PHASE (PTRT-3)**, the Requesters had begun a dialogue with the Bank almost a year before coming to MICI in the still early stages of project implementation. During this time, the Bank Representative held regular meetings with them, and important agreements were reached regarding the project's activities and the goals to be met in the area of native community land titling. However, the Requesters' trust was eroded when they believed that the agreements would not be honored because they had not received written confirmation of them, and because periodic meetings were suspended during the transition period between Representatives.

In view of this challenge, the dispute resolution processes managed by MICI seek to rebuild a minimum level of trust—not in the institutions or the people who represent them in the dialogue settings, but in the basic rules of the process that will guide this interaction. To this end, and making use of the principle of co-design, it is essential to ask the Parties about the method to be used, the frequency and number of meetings, minimum information needs, number of people to participate, language, location, presence or absence of observers, relationship with the press, use of social networks, breaks in the session, speaking time, validation of rules of procedure, profile of the facilitator, decision-making

formulas, systematization of meetings, confidentiality rules, and any other crucial aspect for the preparation of a Consultation Phase Process.

BUILDING TRUST THROUGH CO-DESIGN

Co-design methodologies allow for the joint definition of a set of key procedural aspects that will determine the perception of legitimacy of the processes, as well as the empowerment of the actors involved. The formulation of the issues, deciding which stakeholders to invite, the estimated duration, the best time to conduct a process, and the number of events that make up the process, the costs, the materials needed and their cultural relevance, the need for facilitators, observers and technical experts, ways to record attendance and developments during the events, among other aspects, should be jointly defined by the interested Parties in order to shield the process from subsequent objections.

The active participation, willingness, and flexibility of representatives of the IDB Group in several of the dialogue spaces established so far have allowed for designs, formats, and working mechanics with which Requesters have felt comfortable. The feeling of having created a safe space where agreed rules are respected and options can be explored, information analyzed, and opinions shared without having to make a hasty decision contributes to the renewal of trust and the establishment of new personal relationships, as in some cases the individuals in charge of the projects also change over time. The time-related element, i.e. the net amount of time shared in common spaces, is crucial to rebuilding a minimum level of trust that allows for effective dialogue.

JOINT ACTIVITIES OUTSIDE THE DIALOGUE SPACE

Activities that can be organized outside the space strictly devoted to institutionalized dialogue or exchange also contribute to mutual understanding, empathy, and the exploration of ideas in less formal contexts. Joint visits to the project site or other similar initiatives, conversations, academic events, and extended informational meetings may be some of the activities carried out between the formal dialogue spaces. The existence of such spaces usually leads to improved relations and, in certain circumstances, helps to build a minimum level of trust between the Parties. These meetings can be informal or scheduled.

The principles of good faith and sustainability are an indispensable part of the process of building trust between the Parties. Therefore, in any Consultation Phase Process it is important to manage the expectations of all stakeholders, avoid assumptions, and maintain an attitude of intellectual honesty throughout the process to lead to the exploration of alternatives and eventually to a consensus-based solution.

Lack of trust may also lead the Parties not to take a long-term view in the interactions, deliberations, and any agreements they may reach within the space provided by the Mechanism. Even in short-term processes, it is advisable to adopt and convey an attitude of interest in the future. This in turn may allow other elements to be brought to the dialogue table, facilitating relationships of trust that not only survive after MICI's departure, but also build capacity for engagement between the Parties in contexts in which the MICI does not intervene.



ACCESS TO INFORMATION

When communities lack access to relevant information on projects, it severely damages trust between the Parties and affects the attitude with which disputes and/or controversies are resolved. When they have not had timely and comprehensible access to project information, the quality of participation in dispute resolution processes also tends to decline. Environmental and social impact assessments, impact management plans, resettlement plans, and other studies are often among the documents most commonly sought by Requesters because they are a source of knowledge about how the project will impact them and how this impact is to be mitigated. In addition, when community participation and consultation processes are called into question, the documentation relating to those consultations and their outcomes are of interest to the affected Party.

ENSURE THAT INFORMATION IS AVAILABLE IN CULTURALLY RELEVANT FORMATS

Documents needed to understand the project should be accessible in formats adapted to the characteristics of its target audience, such as language, style, and format, as this increases the transparency of the process, and promotes trust in furtherance of productive exchange.

Given that there is an abundance of information for each project, it has been practical during the preparation of the dialogue to identify ahead of time those priority documents to be shared with Requesters. At that time, it is also relevant to determine the formats for presenting the content of the documentation, such as language, style, length, and even the form of dissemination.

The presentation of technical studies by specialists, as well as the value of having spaces where the complainants' questions and concerns are addressed during the MICI Consultation Phase, has proved extremely important in rebuilding a bond of respect, mutual recognition, and initial rapprochement between the Parties.

Information tends to broaden the horizon and opens up the possibility of new options to help settle the dispute, and is also the basis for building trust between the Parties.

MICI-BID-HA-2017-0114 - PRODUCTIVE INFRASTRUCTURE PROGRAM - REQUEST II

During the Consultation Phase Process, MICI convened and facilitated six rounds of structured dialogue, following up on the issues pre-defined by the Parties on the agenda and using a methodology agreed upon at the outset. Each round lasted two days and was preceded by preparatory meetings with each Party and ex post meetings were held with the Requesters. The Mechanism kept in constant contact with the Parties through telephone calls and face-to-face meetings.

During the dialogue process, the Parties reached 19 partial agreements that included: translation into Creole and access to key socio-environmental documents and information pertaining to the Project, a visit to the water treatment plant and general tour of the Industrial Park, a joint review of the terms of reference for an independent assessment of the Compensation and Livelihood Restoration Action Plan provided in the framework of Policy OP-710 on Involuntary Resettlement, and an in-person review of compensation payments. As a result of the process, the Parties reached a final agreement on 8 December 2018.

THE POTENTIAL FOR ADDITIONAL TECHNICAL STUDIES

The expert knowledge presented in additional technical studies is “objective” knowledge and an extremely valuable source of information for improving social participation in development projects, fostering virtuous collaborative processes, and informing decision-making in the framework of dispute resolution processes. However, in many cases the lack of access to such information or doubts about its origin can increase the mistrust between social actors, and even cloud the understanding of the problem or issue in question. The challenge is to create the conditions so that the production and dissemination of technical information is adequate and allows for a constructive contribution that positively impacts the relationship between the Parties.

Caso MICI-CO-2011-023 - El Dorado International Airport

To support the dialogue process in this case, MICI commissioned a noise management and mitigation study from the British company WSP in November 2013.

In December 2013, the noise expert gave a presentation to the Parties on relevant international best practices and, from that perspective, on the study’s analysis of the current situation at the El Dorado Airport. The study proposed alternatives to address the noise problems faced by the communities.

In addition, the opportunity to have technical studies to improve the Parties’ knowledge of the social and environmental impacts of the project, as well as the possible options for reaching agreements, should not be missed.



Therefore, in the processing of MICI cases, it has been found that the selection of experts and the co-design of their work plan are key factors to strengthen trust between the Parties and enhance the credibility of the information provided by the selected professional.

During MICI's case management, the method of presenting additional technical studies has been identified as relevant. Elements ranging from the language used to the methods of presentation (PowerPoint presentations, scale models, guideline drawings) must be considered to ensure that the technical information becomes an opportunity to provide answers and promote understanding. One practice that has yielded positive results in the framework of the MICI processes has been to promote spaces for those responsible for the reports to present their results and for there to be an exchange of information in order to resolve doubts. This type of discussion session with experts¹¹ or technical presentations facilitates the stakeholders' understanding of highly complex technical information. In contrast, the absence of this type of space and the mere forwarding of studies for the Parties' information has led to confusion and even the rejection of the options put forward, because of the difficulties in fully assessing the quality of the work produced, and how their interests or needs could be addressed on the basis of this study. To the extent possible, new or technical information should be introduced at times during the process when emotions are not running high, as the anxiety generated by highly polarized and controversial

11 Mirna Ángela Cuentas & Linares Méndez, Anaí (comp)., Guía Práctica de Diálogo Democrático. UNDP, OAS. 2013, pp. 28; 50.

contexts also makes people immune to the new information. Neurological scientists have developed research that shows that it is practically impossible for a human being to experience feelings of genuine curiosity if at the same time he or she feels threatened or uncomfortable.

The timeliness of technical studies is also a relevant factor. Given that the results of these products could contribute to the improved design of activities related to the project and/or to the unfolding of dispute resolution processes, it is important not only to co-design technical studies and present them to the Parties in an instructive manner, but also to carry them out within a period of time that maximizes the use of their results. At times, the delay in carrying out technical studies has created tension between the Parties, and has made it difficult to provide early warning of potential conflicts that could distort project implementation.

ASYMMETRY OF CAPACITIES FOR EFFECTIVE PARTICIPATION

It is often rare for communities or individuals who submit a Request to the Mechanism to be fully prepared to initiate a dispute resolution process aimed at finding sustainable solutions to the issues that prompted the complaint.

For this reason, it is recognized as good practice to organize preparatory sessions with all the Parties to quickly identify any weaknesses to participate in a dispute resolution process, and then offer a realistic, culturally relevant, and needs-based capacity building module. The chances of reaching an agreement increase exponentially when all Parties have the necessary conceptual tools for analysis and resolution.

There are groups, organizations, and communities that have received training prior to the start of the Consultation Phase Process and others that are supported and advised by civil society organizations in the processing of cases before MICI. This is undoubtedly a strength, and in general these organizations play a very important role in helping complainants fully understand the process, its timing, the possible implications and outcomes of each Phase, potential delays, and other key aspects of complaint processing.

The predictability and understanding of the MICI process is a key factor that clearly contributes to the improved management of the processes and a maximization of the potential benefits of the Consultation Phase. In this

regard, the facilitation team should continue to hold sessions prior to any formal dialogue meeting to explain to the Parties the main objective, nature, stages, deadlines, maximum duration, possibilities for extension, and potential methods to be used during the Phase.

SCENARIO BUILDING

Training in scenario building is a tool that MICI frequently uses to strengthen situational analysis capacities and to identify the challenges and barriers that mediation and negotiation processes often face, including breakdowns, stalemates, attacks, feelings of intimidation, and reluctance to make commitments.

Scenario building methodologies are developed jointly by the Parties under the guidance of the Consultation Phase team, allowing the Parties to work out a range of resolution alternatives based on the identification of critical variables for the outcome of the process. The exercise allows the stakeholders to visualize the relationship between their conduct and the desired outcomes. These trainings include topics such as value creation techniques in negotiation or dialogue processes, problem solving approaches, and procedural tools that are generally unknown to the Parties and limit their capacity for effective participation.

The opportunity for all the Parties in a Consultation Phase Process to understand what is at stake, identify the key information they need to be able to interact with the other actors, and then suggest options for building consensus based on interests and needs, is a qualitative leap in participation and increases the chances of reaching sustainable agreements in Consultation Phase Processes.







GENERAL REFLECTIONS

The IDB Group operates in a regional context characterized by rising socio-environmental conflict, with considerable degrees of social polarization and where different visions of how to achieve sustainable development coexist.

A number of regulatory advances in the Latin American and Caribbean region have been consolidating a network of judicial and extrajudicial bodies where individuals and organizations assert rights, file requests, and seek corrective measures through multiple, sometimes interrelated, channels, based on what they perceive as openings or real possibilities in their pursuit of justice and remediation.

MICI's dispute resolution process functions as the IDBG's mechanism of last resort, helping to bring about sustainable solutions to the issues at stake, contributing to the de-escalation of disputes and their potential evolution into social conflicts.

MICI's nine years of experience in dispute resolution processes has demonstrated the importance of building bridges of trust from the initial stages of project design. These bridges are based on two-way communication to foster understanding of each Party's perceived concerns and challenges; providing transparent, direct, and timely information; and upholding commitments.

From 2010 to 2019, MICI managed 25 cases in the Consultation Phase out of a total of 33 cases declared eligible for processing. It was determined during the Assessment stage that in 18 of these cases the Parties were willing to participate in a process and their initial positions suggested that it was feasible to reach an agreement through a MICI-facilitated process. That is, in 72% of the cases that went to the Consultation Phase, the Requesters, the executing agency, and the Bank were all willing to engage in dialogue and resolve disputes in a process facilitated by an impartial third party. To date, agreements have been reached in 12 of those cases (66% of the cases that began a Consultation Phase Process) and one is still in the dialogue process. At the end of the period under review, six cases have been closed upon compliance with the agreed commitments and the rest are at the monitoring stage.

The approach used in MICI's Consultation Phase Processes encourages the building of social capital and the improvement of relations between the Parties, even in cases where consensus-based solutions are not reached, thereby contributing to the creation of long-term connections between the affected communities or persons, IDB Group Management, and the executing agency.

Several themes are mentioned repeatedly in the interaction and dialogue spaces that are designed during the Consultation Phase.

Inadequate participatory processes create mistrust and resistance to change. Co-design methodologies allow for the joint definition of a set of key procedural aspects that will determine the perception of legitimacy of the processes, as well as the empowerment of the actors involved. The formulation of the issues, deciding which stakeholders to invite, the estimated duration, the best time to conduct a process, and the number of events that make up the process, the costs, the materials needed and their cultural relevance, the need for facilitators, observers and technical experts, ways to record attendance and developments during the events, among other aspects, should be jointly defined by the interested Parties in order to shield the process from subsequent objections. Pre-existing participatory structures in the community can be used for the preparation and adaptation of culturally relevant materials needed in consultation processes.

Lack of trust between Parties, challenges to meaningful communication and access to information, as well as existing asymmetries between Parties can be addressed through informal spaces, easily understood formats and tools, materials in indigenous languages, and staff with the skills to operate in multicultural contexts.

The opportunity for all the Parties in a Consultation Phase Process to understand what is at stake, identify the key information they need to be able to interact with the other actors, and then suggest options for building consensus based on interests and needs, is a qualitative leap in participation and increases the chances of reaching sustainable agreements in Consultation Phase Processes. For this reason, it is advisable to reinforce efforts aimed at providing capacity building that is culturally relevant and tailored to the needs of the Parties prior to the start of conversations.

Over time, political, social, economic, or cultural events can substantially change the contexts in which disputes and dialogues or participatory processes surrounding IDB Group-funded projects take place. It is useful to frequently review situational analyses and in particular to maintain ongoing stakeholder mapping that reflects the true situation in the area in which the project takes place.

Technical know-how and the new information it provides are a window of opportunity for dispute resolution that cannot be wasted. The selection of culturally appropriate experts, the involvement of Requesters in work plans or assessments, as well as the way in which conclusions or findings are presented to Requesters are elements that can improve or worsen the climate of a conversation, dialogue, mediation, or negotiation, and it is therefore imperative that they be carefully planned and executed.

It is important to recognize that conflict is natural and inherent to development project interventions. Certainly, MICI's experience shows that in most cases communities are willing to resolve their concerns through dialogue and negotiation. The timely and expert attention of an impartial third party makes it possible, as shown by the results obtained in the Consultation Phase, to build bridges of communication that improve the sustainability of operations and position the IDB Group as an entity committed to the region's welfare.

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ANNEX I.

LIST OF REQUESTS MANAGED AT THE CONSULTATION PHASE 2010-2019

As of 15 December 2019

	Registry Number	Name	Date of Receipt
1	MICI-BID-AR-2019-0150	Argentina. Railroad Gral Roca Improvement Program - Constitución - La Plata Line (AR-L1158)	June 2019
2	MICI-BID-AR-2019-0148	Argentina. Reconquista River Basin Environmental Sanitation Program - Request III (AR-L1121)	May 2019
3	MICI-BID-AR-2019-0144	Argentina. Productive and Tourism Infrastructure Program for the Province of Rio Negro (AR-L1106)	February 2019
4	MICI-BID-BR-2019-0142	Brazil. São José dos Campos Urban Structuring Program- Request III (BR-L1160)	February 2019
5	MICI-CII-CO-2018-0133	Colombia. Ituango Hydropower Plant (CO-11794-04)	June 2018
6	MICI-BID-CO-2018-0133	Colombia. Support for Structuring the Ituango Hydroelectric Project (CO-T1250)	June 2018
7	MICI-BID-EC-2018-0131	Ecuador. Program for the Reconstruction of Electricity Infrastructure in Areas Affected by the Earthquake in Ecuador (EC-L1219)	April 2018
8	MICI-BID-CR-2017-0125	Costa Rica. Reventazon Hydroelectric Power Project - Request IV (CR-L1049)	August 2017
9	MICI-BID-HA-2017-0114	Haiti. Productive Infrastructure Program - Request II (HA-L1055)	January 2017
10	MICI-BID-PR-2016-0101	Paraguay. Downtown Redevelopment, Modernization of Metropolitan Public Transport, and of Government Offices Project - Request II (PR-L1044)	May 2016
11	MICI-PE-2015-0094	Peru. Rural Land Titling & Registration Project in Peru - Third Phase (PTRT-3) (PE-L1026)	August 2015
12	MICI-AR-2012-035 (AR-MICIO04-2012)	Argentina. Food and Agriculture Health and Quality Management Program (AR-L1032)	January 2012
13	MICI-PN-2011-031 (PN-MICIO02-2011)	Panama. Panama Canal Expansion (PN-L1032)	October 2011
14	MICI-CO-2011-023 (CO-MICIO02-2011)	Colombia. El Dorado International Airport (CO-L1029)	August 2011
15	MICI-BR-2011-022 (BR-MICIO05-2011)	Brazil. Mário Covas Rodoanel - Northern Section (BR-L1296)	July 2011
16	MICI-CO-2011-021 (CO-MICIO01-2011)	Colombia. San Francisco-Mocoa Alternate Road Construction Project - Phase I (CO-L1019)	Jul-11
17	MICI-BR-2011-020 (BR-MICIO06-2011)	Brazil. São José dos Campos Urban Structuring Program (BR-L1160)	June 2011
18	MICI-BR-2011-019 (BR-MICIO04-2011)	Brazil. Low-Income Neighborhood Improvement Program - Habitar (BR0273)	June 2011
19	MICI-BO-2011-013 (BO-MICIO01-2011)	Bolivia. Northern Corridor Highway Improvement Program - Santa Barbara-Rurrenabaque and San Buenaventura (BO-L1011)	February 2011

	Registry Number	Name	Date of Receipt
20	MICI-CR-2010-010 (CR-MICI001-2010)	Costa Rica. Electric Interconnection System for Central American Countries (SIEPAC) (CR-L1009)	December 2010
21	MICI-AR-2010-007 (AR-MICI002-2010)	Argentina. Provincial Agricultural Services II (PROSAP II) (AR-L1030)	November 2010
22	MICI-BR-2010-005 (BR-MICI002-2010)	Brazil. Estrada Nova Watershed Sanitation Program (PROMABEN) (BR-L1065)	October 2010
23	MICI-AR-2010-004 (AR-MICI001-2010)	Argentina. Multiphase Program for the Development of Production Support Infrastructure in Entre Ríos (AR-L1036)	June 2010
24	MICI-PN-2010-002 (PN-MICI001-2010)	Panama. Pando-Monte Lirio Hydroelectric Power Project (PN-L1054)	March 2010
25	MICI-PR-2010-001 (PR-MICI001-2010)	Paraguay. Development of the Vegetable Sponge Products Industry (PR-S1004)	February 2010

ANNEX II. SOURCES OF INFORMATION USED

MICI case files (2010- December 2019)

Electronic systems

- Convergence for management of IDB operations
- Maestro for management of IDB Invest operations
- Go Pro for MICI case management

Policies

- MICI 2010 Policy (GN-1830-49)
- MICI-IDB Policy (MI-47-6)
- MICI-IIC Policy (IIC / MI-1-1)



MICI REFLECTIONS

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