



INDEPENDENT CONSULTATION  
AND INVESTIGATION MECHANISM

## MEMORANDUM

### CONSULTATION PHASE ELIGIBILITY DETERMINATION

**FROM:** Isabel Lavadenz-Paccieri, Project Ombudsperson  
**TO:** Executive Secretary  
**CC:** MICI  
**RELATED PROJECT:** Loan 1998/OC-BR "Programa de Saneamiento da Bacia da Estrada Nova- PROMABEM"  
**COUNTRY:** Brazil  
**TODAY'S DATE:** December 17, 2010

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#### Summary of Request and Determination:

Mr. Jose Nildo Trindade da Costa (the "Requester") submitted, on October 4, 2010 for consideration of the Independent Consultation and Investigation Mechanism ("ICIM") a request with observations regarding the resettlement and expropriation process being carried out in his community Estrada Nova, as part of the above-mentioned program (the "Request").

The Requester alleged that the resettlement component of the program is being executed in "an arbitrary manner" and that affected properties are being forcibly bought at a lower value causing economic impact and unnecessary stress to the whole process and the community.

After reviewing the request, and providing the Requester with a reasonable opportunity to clarify and complete the Request, and after having contacted the Project Team, this Project Ombudsperson hereby determines that the Request **is eligible for the Consultation Phase** under the ICIM for the reasons described below<sup>1</sup>.

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<sup>1</sup> The terms: Mechanism, Management, Executive Secretariat, Project Ombudsperson, Panel, Mechanism Policy, Eligibility, Consultation Phase, Assessment and any other relevant term in this memorandum shall have the meaning assigned to them in the Independent Consultation and Investigation Mechanism (ICIM) Policy approved on February 17, 2010 and available

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## I. Background

1. The project subject of this request is Loan 1998/OC-BR, "Programa de Saneamiento da Bacia da Estrada Nova- PROMABEM", approved by the Board of Executive Directors on July 7, 2008.
2. Given that one of the Project specific objectives is to improve the living conditions of the population in the Project area and, more specifically, improve the housing conditions of the affected population through, among others, regularization of land rights and the adoption of housing solutions that are adequate to the circumstances and the needs of such population, the Requester notes that in his case, he is being adversely impacted by the program that may cause him and his family impoverishment, and disarticulation of their social network. In his Request he also notes the potential impact that could be inflicted to his property and to his family savings, since, as expressed by the Requester, in the so called "negotiation" process there has been little information available. He has requested an explanation from PROMABEM and has not yet received any answer.
3. The requester emphasizes that he and his family will not be able to recover from this loss and that, as a result of this project, they will end up being poorer than before.
4. He also points out at the lack of community participation and continuous information flow, in the project area. This is a concern shared by a number of neighbors that have lived in the area for more than 30 years.

## II. Eligibility Analysis

5. According to ICIM Policy, specifically Article 38, the purpose of the Consultation Phase is to provide an opportunity for applying consensual and flexible approaches to address the concerns of a party that believes it has been adversely affected by an action or omission of an IDB funded operation, in violation of "Relevant Operational Policies"<sup>2</sup>.
6. As part of the process of determining whether any request is eligible for the Consultation Phase, requests must comply with the ICIM Policy, in particular Sections 40 and 37 thereof.
7. In this particular case, the issues raised in the Request are related to the Resettlement Policy and the Disclosure of Information Policy (OP-710 and OP-102, respectively).

A summary of the results of this analysis is presented in the table below.

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<sup>2</sup> See Article 26, "Relevant Operational Policies" in ICIM Policy.

ELIGIBILITY CRITERIA	OMBUDS DETERMINATION	COMMENTS
Names and contact information available	YES	Mr. Jose Nildo Trindade da Costa (the "Requester")
Bank-financed operation identified	YES	Loan 1998/OC-BR
Requesters reside in Project Area	YES	House 125 on Av Bernardo Sayao, Estrada Nova. Brasil.
None of the exclusions of the policy applies	NO	
Requesters have asserted that they have been or could be directly, materially affected by the Project, and they have described the direct and material harm by an act carried out or omitted to be carried out by the Borrower in relation to the Project <u>in violation of a Relevant Operational Policy.</u>	YES	The Relevant Operation Policies that could be applicable to this specific case, OP 710 and OP 102, Resettlement and Disclosure of Information Policies.
Parties are amenable to a Consultation Phase and dialogue	YES	This includes requesters and project team.
Requester have taken steps to bring the issue to the attention of Management and/or project team	YES	The Requester has sent a note to the Executing Agency

### III. Contacting the Requesters and Management

8. This project Ombudsperson has contacted the Requesters and the Project team in order to gather more information and to ensure a proper understanding of its decision of Eligibility. The Project Team has been collaborating with this process.

### IV. Conclusion

9. The Project Ombudsperson has determined that the Request described herein presented by the requesters **is Eligible** for the Consultation Phase.

10. Although a request may meet ICIM eligibility criteria for the Consultation Phase, this determination **does not imply any judgment on the part of the Mechanism** of the merit of the issues raised in the Request.
11. Within the next two (2) business days, the Executive Secretariat will post the notice of registration on the Registry and notify the Requester, the Board, the President, Management and the Project Executing Agency of this determination.

**Isabel Lavadenz Paccieri**  
Project Ombudsperson  
**Independent Consultation and Investigation Mechanism**  
**IADB**