

**PUBLIC**

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

**BR-MICI004-2011  
LOW-INCOME NEIGHBORHOOD IMPROVEMENT PROGRAM – HABITAR  
BRAZIL**

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**CONSULTATION PHASE  
DETERMINATION OF ELIGIBILITY**

**TO:** Victoria Márquez-Mees, Executive Secretary  
**FROM:** Isabel Lavadenz Paccieri, Project Ombudsperson  
**CC:** Independent Consultation and Investigation Mechanism  
**REFERENCE:** Low-income Neighborhood Improvement Program – “Habitar Brasil” (BR-0273) (Case Separation)  
**COUNTRY:** Brazil  
**DATE:** 22 August 2011  
**DOCUMENT DATE:** 23 September 2011  
**ELIGIBILITY**  
**DECISION:** The Request is **eligible** for the Consultation Phase.

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**I. Summary of Request**

- 1.1** On 10 June 2011, the Independent Consultation and Investigation Mechanism (ICIM)<sup>1</sup> received a Request from Central de Movimentos Populares na Cidade de São José dos Campos (the Requesters) through Mr. Cosme Vitor (Representative).<sup>2</sup> The Request describes the material social harm alleged to have occurred in implementation of the Low-income Neighborhood Improvement Program – “Habitar Brasil” (Habitar)<sup>3</sup>
- 1.2** The Requesters allege that certain actions during implementation of the Habitar Program caused material social harm, and cite alleged threats and coercion of families in order to obtain their consent for the project; demolition of buildings based on fraudulent analyses, as well as the deterioration or loss of other personal property held in the custody of the municipal government; resettlement of up to three communities to a remote area lacking basic infrastructure; and forced expulsion of approximately 40 families from their homes, who went on to live in makeshift conditions.

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<sup>1</sup> The terms: Mechanism, Management, Executive Secretary, Project Ombudsperson, Panel, Mechanism Policies, 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 17 February 2010 and available at: [www.iadb.org/mici](http://www.iadb.org/mici).

<sup>2</sup> Mr. Cosme Vitor presented evidence that he represents Central de Movimentos Populares na Cidade de São José dos Campos. However, this will be verified by the Project Ombudsperson during the Consultation Phase.

<sup>3</sup> The Habitar Program was approved by the IDB’s Board of Executive Directors on 23 September 1998.



**1.3** The harm allegedly caused by the Habitar Program may have been produced in violation of the Operational Policy on Involuntary Resettlement (OP-710) approved in July 1998, and the Disclosure of Information Policy (OP-102) of the Inter-American Development Bank (IDB).<sup>4</sup>

## **II. Project Background**

**2.1** The objectives of the Habitar Program include: “raise living standards for poor families living in substandard neighborhoods located in metropolitan areas and urban and capital agglomerations, [and] encourage municipal governments to allocate greater resources to alleviating both the effects and the principal causes of problems in these neighborhoods”.<sup>5</sup> According to the loan proposal, the Habitar Program sought to provide an incentive to the municípios through a matching grant mechanism to finance comprehensive neighborhood improvement projects, among others, in compliance with a Strategic Municipal Plan for Substandard Settlements. Activities eligible for financing under the Habitar Program included family resettlement to new housing units and improvement of existing dwellings.<sup>6</sup>

**2.2** With respect to the potential environmental and social impacts, the Loan Proposal indicates that the impact of the direct investments financed under the Habitar Program would be primarily positive, in that they would provide low-income neighborhoods with basic services. It also notes that “in the case of family resettlements, the execution mechanism planned for the program includes the guidelines and points established in the Bank’s resettlement policy.”<sup>7</sup>

**2.3** The program amount was US\$417 million, with US\$250 million financed by the IDB. According to the Project Completion Report (PCR), as a result of revaluation of the real and the availability of additional funds, the Federal Government elected to cancel US\$71 million of the undisbursed loan balance in 2005, and US\$76.7 million in 2007, reducing the final amount financed by the IDB to US\$102.2 million.<sup>8</sup> The Habitar Program was concluded in 2009, with the last disbursement made on 13 September

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<sup>4</sup> The Disclosure of Information Policy (OP-102), approved in 1994 and revised in 1998 and 2001, applies to documents prepared between 1 January 1995 and 1 January 2004. The Disclosure of Information Policy (OP-102) approved in 2006 applies to information or documents prepared from 1 January 2004 through 31 December 2010.

<sup>5</sup> Loan Proposal, Low-income Neighborhood Improvement Program – “Habitar Brasil” (BR-0273), page 11.

<sup>6</sup> *Id.*, page 12.

<sup>7</sup> *Id.*, page 35.

<sup>8</sup> Project Completion Report, Low-income Neighborhood Improvement Program – “Habitar Brasil” (BR-0273), 7 January 2009, page 7.



2008.<sup>9</sup> According to the PCR, under the comprehensive neighborhood improvement component, the Habitar Program directly benefited 57,329 families in 84 municípios, including São José dos Campos.<sup>10</sup> With respect to project performance, the achievement of development and sustainability objectives was rated as probable in the PCR, and the implementation progress was rated as satisfactory.<sup>11</sup>

### III. Eligibility Analysis

- 3.1 Article 38 of the Policy Establishing the ICIM (the Policy) states that *“The purpose of the Consultation Phase is to provide an opportunity, applying consensual and flexible approaches, to address the concerns of a party that believes it has been or could reasonably be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-Financed Operation.”*
- 3.2 The Eligibility Analysis is based on the eligibility criteria and exclusions set forth in Articles 40 and 37 of the Policy, respectively.
- 3.3 The requesters gave a highly detailed description in their Request of the actions that allegedly occurred during implementation of the program, and the social harm that they believe it caused.
- 3.4 The Request was received by the Mechanism on 10 June 2011, i.e. more than 24 months after the last disbursement for the program made on 13 September 2008. However, Central de Movimentos Populares reported the alleged harm caused by Habitar to the IDB’s Country Office in Brazil on at least four occasions between 2002 and 2010, without their complaints being brought to the attention of the Mechanism or its predecessor.<sup>12</sup> In response to the first complaint, the Bank’s Country Office in Brazil made a site visit to São José dos Campos, and an agreement was reached whereby the municipal government gathered new statements of consent from the inhabitants. There is no information on concrete measures taken by the Bank’s Country Office in Brazil with respect to the other complaints. The Country Office limited itself, on two occasions, to requesting information on the facts reported to the program’s executing agencies. Therefore, the exclusions set forth in Article 37,

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<sup>9</sup> *Id.*, page 4.

<sup>10</sup> *Id.*, page 8.

<sup>11</sup> *Id.*, page 4.

<sup>12</sup> The complaints were filed by Central de Movimentos Populares on 2 April 2002, 21 November 2002, 17 November 2008, and 23 November 2010. The first three complaints were filed directly with the Bank’s Country Office in Brazil. The last complaint was sent to the Ministry of Planning, Budget, and Management, which forwarded the complaint to the Bank’s Country Office in Brazil.



subparagraphs “e” and “f”,<sup>13</sup> of the Policy cannot be applied to the Request, and the Request fulfills the requirements of Article 40 of the Policy.

**3.5** The results of this Eligibility Analysis are presented in the table below:

**a) Summary of Eligibility Analysis**

Eligibility Criteria	Ombudsperson Determination	Comments
Names and contact information for the Requester	Fulfilled	The contact information for the Requester is available.
Names and contact information for the Representative, if any, and proof of the authorization	Fulfilled	The contact information for the Representative and proof of the authorization are available. However, the latter will be verified by the Project Ombudsperson during the Consultation Phase.
The project or operation is duly identified.	Fulfilled	Low-income Neighborhood Improvement Program – “Habitar Brasil”
The Requester resides in the country where the operation is or will be implemented (or a qualified Representative has been duly appointed).	Fulfilled	The Requester organization is established in Brazil and its Representative resides in that country.
None of the exclusions set forth in Section 37 applies.	Fulfilled	The exclusions in Art. 37, subparagraphs “e” and “f”, do not apply to the part of the Request concerning the Habitar Program because the Requesters have filed complaints with the IDB’s Country Office in Brazil since 2002, but those complaints were not forwarded to the Independent Investigation Mechanism (IIM) or ICIM.
The Requester has reasonably asserted that it has been or could be expected to be directly, materially adversely affected by an action or omission of the IDB in violation of one or more Relevant Operational Policies.	Fulfilled	The Requesters have adequately related the social impacts caused by the Habitar Program..

<sup>13</sup> Article 37. Exclusions. Neither the Consultation Phase nor the Compliance Review Phase will be applied to: [...]

- e. a particular matter or matters that have already been reviewed pursuant to the Mechanism, or its predecessor, unless justified by new evidence or circumstances not available at the time of the initial Request.
- f. Requests dealing with a Bank-Financed Operation that are filed more than twenty-four (24) months after the last disbursement.



Eligibility Criteria	Ombudsperson Determination	Comments
The parties have agreed to participate in a consultation or mediation exercise.	Fulfilled	The Requesters and the Project team are amenable to dialogue.
The Requester has taken steps to bring the issue to the attention of Management.	Fulfilled	The Requesters have contacted the Country Office on repeated occasions between 2002 and 2010.

#### IV. Conclusion

- 4.1 In the performance of the duties and authority conferred by the Policy, the Project Ombudsperson has determined that the Request described in this document is **eligible** for the consultation phase.
- 4.2 This decision is not to be construed as a final judgment by the ICIM on the substance or the merits of the matters presented in the Request.
- 4.3 In the next five (5) business days, the Executive Secretary will proceed with registration in the Registry and notification to the Requesters, Board of Executive Directors, President, Country Office, Project team, and Executing Agency of this Determination of Eligibility.

**Isabel Lavadenz Paccieri**  
**Project Ombudsperson**

