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BR-MICI006/2011

**ASSESSMENT REPORT
SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM**

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Assessment Report São José dos Campos Urban Structuring Program (PEUSJC) BR-MICI006/2011



PROJECT OMBUDSPERSON

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SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM
BRAZIL
ASSESSMENT REPORT

1. Background

1.1 The Request: Procedure and content

1. On 10 June 2011, the Central de Movimentos Populares (CMP) submitted to the Independent Consultation and Investigation Mechanism (“ICIM” or “Mechanism”) a Request relating to the São José dos Campos Urban Structuring Program (“the Program” or “PEUSJC”), being financed by the Inter-American Development Bank (“IDB” or “the Bank”) in the município of São José dos Campos, State of São Paulo, Brazil.¹

2. The Request also referred to the Low-Income Neighborhood Improvement Program—Habitar Brasil, and hence, on 22 August 2011, the Project Ombudsperson declared that both the Habitar and PEUSJC cases were admissible. However, on 23 September 2011, the Ombudsperson issued an addendum to the Determination of Eligibility that separated the complaint into two distinct procedures: (i) the Low-Income Neighborhood Improvement Program—Habitar Brasil (BR-MICI004/2011) case; and (ii) the São José dos Campos Urban Structuring Program (PEUSJC) (BR-MICI006/2011) case.

3. As a consequence of the Determination of Eligibility, the Ombudsperson initiated the Assessment stage of the case within the context of the Consultation Phase in order to gather information about the complaint; identify the primary and secondary actors in the case; and explore the feasibility of starting a dialogue between the parties in order to address the Requesters’ concerns.

4. In the Request, and during interviews held during the Assessment, the Requesters alleged that the Program would have a series of social and environmental impacts, especially for the residents of the Jardim Nova Esperança community (also known as “Banhado”). The Requesters claimed, *inter alia*, that:

- a. The residents of Banhado were neither consulted about the Program nor informed of the reasons for resettlement and the compensation options;
- b. Public facilities that previously served the community (e.g., a childhood education center) have been systematically closed by the Municipal Government and residents were not notified of the reasons why these services were stopped;
- c. Since December 2010, some families have left the Banhado community after accepting the housing units offered by the Municipal Government, financed through the Companhia de Desenvolvimento Habitacional Urbano (CDHU).

¹ The terms Mechanism, Management, Project Ombudsperson, Mechanism Policies, Eligibility, Consultation Phase, Assessment, and any other relevant term in this report shall have the meaning assigned to them in the Policy Establishing the Independent Consultation and Investigation Mechanism (ICIM) approved on 17 February 2010 and available at www.iadb.org/mici.

Their former homes were demolished, but the Municipal Government has not cleared the debris;

- d. The only option offered by the Municipal Government to encourage residents to leave the area is said to be to purchase an apartment in housing projects that are far from the city center—a purchase that would be financed by the CDHU. In the opinion of the Requesters, this alternative would hamper the access that residents now have to public services and employment and income opportunities. It also would involve additional expenses for the families, who would have to make the installment payments to purchase the new home and pay high water, electricity and gas rates, as well as the condominium fee and public transportation costs;
 - e. One of the reasons for relocating the families from Jardim Nova Esperança is the establishment of the Banhado Municipal Nature Park at the site where the community is now situated. The creation of this park is said not to have been sufficiently discussed with the residents at public hearings; and
 - f. The bidding procedures for the Banhado and Cambuí highways are said to have begun when the município did not yet have a Transportation Master Plan; without there having been public consultations on the PEUSJC; and before any environmental impact studies had been obtained as needed for works of this type.
5. Although it was alleged that other communities would also be impacted by construction of the Cambuí highway, the Requesters in the case before the ICIM limited their complaints to families who reside in Jardim Nova Esperança (see paragraph 49).

1.2 The São José dos Campos Urban Structuring Program

6. The objective of the São José dos Campos Urban Structuring Program (BR-L1160) is to support the structuring and management of urban development, specifically in that município, through a group of environmental, urban infrastructure, transportation management, and institutional strengthening projects.² According to Program documents, it is divided into three components:³

- a. **Component I: Urban-environmental improvements.** This component is intended to improve the município's urban environmental quality and consolidate the integration between the urban space and the conservation area through the following interventions: (i) construction of urban parks with an increase in the percentage of green space in urban areas and improvement in soil permeability; (ii) resettlement of families who occupy areas designated for environmental preservation and are living in an at-risk situation; (iii) legal and urban development regularization of illegal subdivisions where families

² IDB, Loan Proposal, São José dos Campos Urban Structuring Program (BR-L1160), p. 5. Available at: <http://www.iadb.org/en/projects/project.1303.html?id=BR-L1160>.

³ Since the Loan Proposal dates from June 2008, some items proposed for the PEUSJC have already been completed by the Municipal Government, eliminated from the Program or replaced with other works or projects.

live with deficient infrastructure; (iv) specific storm drainage projects associated with road works; and (v) installation of sites for voluntary delivery of construction and demolition waste for management and recycling. The relocation of the families residing in Jardim Nova Esperança is part of Subcomponent (ii).⁴

- b. **Component II: Improvements in urban mobility.** The objective of this component is to improve the mobility of people and goods within the município by restructuring certain corridors and segments of the road system, thereby relieving congestion in problem areas, increasing the efficiency of public transportation, expanding bikeways, and improving traffic safety. Among the projects in this component are: (i) establishment of the Banhado and Cambuí highways; (ii) support for modernization of the traffic signal system and installation of an operations control center for roads; (iii) improvement of bus transfer stations and purchase of user information panels;⁵ (iv) development of the Urban Mobility Master Plan;⁶ and (v) a study of alternatives and basic design of an urban mass rapid transit system;⁷ and
- c. **Component III: Institutional strengthening.** This component will support the municipal government's strategic objective of increasing public sector efficiency and effectiveness by improving municipal public services, public administration in general, and land management.

7. The Program was approved by the IDB Board of Executive Directors on 12 May 2010 for a total of US\$178 million, of which US\$85.7 million would be financed by the Bank.⁸ The Loan Contract was signed on 18 August 2011 and the first installment disbursed on 10 January 2012. The executing agency is the Municipal Government of São José dos Campos, acting through a Program Management Unit associated with the municipal strategic planning advisor's office.⁹ The loan is guaranteed by the Federative Republic of Brazil.

1.2.1 Project components directly related to the Banhado community

8. The resettlement of the families from Banhado is *per se* one of the initiatives of the Program, under Component I(ii) – Urban-environmental improvements. According to Project documents, Jardim Nova Esperança currently occupies an Environmental Protection Area (APA) as defined in Municipal Law 2792/84 and State Law 11.262/02, where there are

⁴ See the Loan Proposal cited in footnote 2, p. 5.

⁵ According to reports from the Bank's Project Team, this will replace the original plan to build 13 Bus Transfer Stations. One of these stations is said to have been built and put into operation, but the public did not approve the new system.

⁶ According to the Bank's Project Team, this will replace the Transportation Master Plan. The Urban Mobility Master Plan will be broader and will involve all forms of locomotion.

⁷ See the Loan Proposal cited in footnote 2, p. 6.

⁸ *Id.* p. 12.

⁹ *Idem.*

risks of flooding and sanitation conditions are inadequate.¹⁰ Accordingly, the executing agency stated that approximately 400 families needed to be relocated¹¹ in order to provide them with better living conditions.¹²

9. Furthermore, according to Project documents, resettlement of the families from Jardim Nova Esperança would, among other things, make establishment of the Banhado Municipal Nature Park¹³ feasible. This park will be installed by the Municipal Government with funds obtained from an environmental compensation agreement signed with PETROBRAS in connection with the expansion of the Henrique Lage Refinery in São José dos Campos. Based on this agreement, the city government is committed to clearing the area of the Banhado plain, or APA IV and, subsequently, expropriating it.¹⁴ (See Section 3.1 of this Report).

10. Lastly, the Loan Proposal indicates that resettlement of the families from Jardim Nova Esperança will permit construction and operation of the Banhado highway, which is planned to serve as an express road.¹⁵ (See Section 3.3 of this Report).

1.2.2 Analysis of safeguards by the Bank's Project Team

11. Under the terms of the Environment and Safeguards Compliance Policy (OP-703),¹⁶ the Project was classified by the Bank as a Category B operation, based on its likely environmental or social impacts. Therefore it would require an Environmental and Social Management Plan. This is reflected in the Environmental and Social Management Report (ESMR), which outlined the strategy for the Program's environmental and social sustainability based on two lines of evaluation: (i) The Environmental Evaluation Report

¹⁰ During the Assessment stage, the Municipal Government claimed that the geotechnical map of São José dos Campos had shown the area where Jardim Nova Esperança is situated to be part of the *Alluvial Plain of the Paraíba do Sul river*. The area exhibits: (i) the possibility of alluvial flooding associated with periods when drainage systems are full, a tendency increased because of the urban occupation of the surrounding area; (ii) frequent inundations during the rainiest seasons, owing to problems with drainage of surface water in this unit; (iii) erosion and undermining of river banks, resulting in silting of riverbeds; (iv) localized settling of foundations, filled land, underground infrastructure and paved roads because of densification of soft soils; (v) difficulties in excavation because of the poor cohesiveness of the materials and the flat water table, as well as the instability of the walls of excavations undertaken in those lands; and (vi) pollution of both underground and surface waters because of disposal of sewage and domestic and industrial wastewater. The Ombudsperson's team did not find this information presented in detail in the Project documents, including the Environmental Evaluation Report and the PIAS (see paragraphs 11-15).

¹¹ See the Loan Proposal cited in footnote 2, p. 6.

¹² *Id.* p. 11.

¹³ *Idem.*

¹⁴ IDB. São José dos Campos Urban Structuring Program (BR-L1160), ESMR, p. 9; Municipal Government of São José dos Campos. Report on Environmental Evaluation of the São José dos Campos Urban Structuring Program – EER – Final Version. April 2008, p. 16.

¹⁵ See the ESMR cited in footnote 14, pp. 11-12.

¹⁶ According to Directive B.3 of the Environment and Safeguards Compliance Policy (OP-703), "Operations that are likely to cause mostly local and short-term negative environmental and associated social impacts and for which effective mitigation measures are readily available will be classified as Category B".

(EER); and (ii) the Plano Integrado de Ação Social [Integrated Social Action Plan] (PIAS) for specific Program projects. According to Project documents, the PIAS predicts a “series of positive socioenvironmental impacts that will be very significant for the city.”¹⁷

12. In 2008, the executing agency prepared an Environmental Evaluation Report (EER). That report sought to “describe the environmental status of the components and actions of the Program, in order to adapt it to the environmental premises and criteria contained in IDB environmental safeguard rules and policies, while also bringing it into line with the provisions of Brazilian environmental legislation and regulations.”¹⁸ According to the preliminary version of the EER, “the contracting of an Environmental Impact Assessment (EIA) and Report on Environmental Impact (RIMA) [of the Banhado highway] is anticipated, in order to permit a more thorough study, as well as the holding of public hearings so that the public may learn about and participate in the project.”¹⁹ The preparation of an EIA-RIMA for the Banhado highway was confirmed in the Final Version of the EER, which also calls for the same kind of study to be made for the Cambuí highway.²⁰ As a condition of the financing, the Loan Proposal indicates that the terms of reference for the environmental impact studies and their corresponding summary reports on the Banhado and Cambuí highways must be sent for review and no objection by the Bank prior to publication of the respective bidding documents.²¹ Consequently, the terms of reference for the consulting contracts associated with development of the Banhado and Cambuí highway projects, dated 26 September 2011, were reviewed and approved by the Bank. In December 2011, the Municipal Government initiated the quality and cost-based selection procedure for contracting these services.²²

13. With regard to “resettlement of the Banhado families,” the EER confirms that this is necessary for establishment of Parque do Banhado. Furthermore, based on the

¹⁷ See the Loan Proposal cited in footnote 2, p. 11.

¹⁸ Municipal Government of São José dos Campos. Environmental Evaluation Report of the São José dos Campos Urban Structuring Program. Preliminary Version. February 2008, p. 4.

¹⁹ *Id.* p. 96.

²⁰ See the EER – Final Version cited in footnote 14, pp. 119 and 121; the ESMR cited in footnote 14, pp. 24 and 30; and the Loan Proposal cited in footnote 2, p. 11.

²¹ According to the Loan Proposal submitted to the IDB Board of Executive Directors, “the following conditions will be established for certain specific projects [of the PEUSJC]: [...] (ii) the terms of reference of the environmental impact studies and their corresponding summary reports for the Banhado and Cambuí corridors will be sent for review and no objection by the Bank prior to publication of the respective bidding documents.” Loan Proposal cited in footnote 2, p. 14.

²² Municipal Government of São José dos Campos. Administration Department. Public Tender Processes. QCBS 001/2011/AS – In progress IDB. *Contratação de Serviço de Consultoria para Elaboração de Projeto da Via Banhado, constituído de Estudo e Relatório de Impacto Ambiental e Projeto Executivo*. Available at: <http://servicos.sjc.sp.gov.br/sa/licitacoes/licitacoes.aspx?sec=1&sit=2&mod=9>. Most recently accessed on 1 February 2012; Municipal Government of São José dos Campos. Administration Department. Public Tender Processes. QCBS 002/2011/AS – In progress IDB. *Contratação de Serviço de Consultoria para Elaboração de Projeto da Via Cambuí, constituído de Projeto Básico, Estudo e Relatório de Impacto Ambiental e Projeto Executivo*. Available at: <http://servicos.sjc.sp.gov.br/sa/licitacoes/licitacoes.aspx?sec=1&sit=2&mod=9>. Most recently accessed on 1 February 2012.

socioeconomic survey conducted in 2007/2008, the EER stated that “the population of the area is extremely underserved, which fully justifies the investments to be made [by the Project].”²³

14. Also in 2008, the executing agency drafted the PIAS, which is the basis for resettlement of the families now living in Jardim Nova Esperança. The PIAS provides that families will be able to receive, as alternative forms of compensation: (i) a home in one of the housing projects that would be implemented in different parts of the city; or (ii) indemnification to be used to obtain housing on the market.²⁴ According to the Loan Proposal, “[i]n order to mitigate the risk of loss of income for families who are removed from proximity to the city center, the municipal government will hold individual consultations with each family (home visits) to determine the options [for compensation] more precisely, and will submit a specific report on the results.”²⁵ As a safeguard, “Bank review of the final results of the solutions selected by the families and of the public consultations on the program to be held in the Municipal Council Chamber is a condition for financing of this program.”²⁶ Based on the foregoing, the Loan Proposal indicates that the executing agency must fulfill these requirements prior to relocating the families.²⁷ According to reports by the Bank’s Project Team, the Municipal Government is revising and updating the PIAS with the assistance of an expert consultant, following the guidelines of the Bank’s Operational Policy on Involuntary Resettlement (OP-710).

15. According to the ESMR, “the public discussed the Program through articles in the local media that were posted on the Municipal Government website and at the Department of the Environment between 22 February and 25 March 2008.”²⁸ In addition, the Municipal Government emphasized that the Project components originated with the Urban Structuring Plan, provided for in the município’s Plano Diretor de Desenvolvimento Integrado [Integrated Development Master Plan] (PDDI) (Complementary Law 306/06), which had been discussed with the general public at 18 public hearings.²⁹

2. Methodology for assessing the case, and results

16. In order to assess the present case, the Ombudsperson’s team conducted the following activities, among others: (i) technical review of the documents and information

²³ EER – Final Version cited in footnote 13, p. 16.

²⁴ Municipal Government of São José dos Campos. Housing Department. *Integrated Social Action Plan (PIAS). Name of Development: Jardim Nova Esperança*. February, 2008, p. 37.

²⁵ See Loan Proposal cited in footnote 2, p. 11; and the ESMR cited in footnote 14, pp. 35 and 38.

²⁶ *Idem*, p. 12.

²⁷ According to the Loan Proposal submitted to the IDB Board of Executive Directors, “the following conditions will be established for certain specific projects [of the PEUSJC]: (i) the results of the public hearing held for the Banhado favela and the agreements with the families must be sent to the Bank before family resettlement can begin.” Loan Proposal cited in footnote 2, p. 14.

²⁸ ESMR cited in footnote 14, p. 37.

²⁹ Complementary Law 306, of 17 November 2006. Available at: <http://ceaam.net/sjc/legislacao/?doc=http://ceaam.net/sjc/legislacao/leis/2006/Lc0306.htm>. Most recently accessed on 2 February 2012.

presented by the Requesters, the executing agency, and the Bank's Project Team, as well as other information gathered by the ICIM team; (ii) field visits;³⁰ and (iii) meetings with the Requesters and their representatives, the executing agency, the Project team, and other stakeholders. The Ombudsperson's team was assisted by two local facilitators during these activities.

17. The Assessment stage: (i) identified the main concerns of the Requesters and the responses by the Municipal Government on those topics; (ii) examined these allegations from a technical standpoint, based on the Bank's Operational Policies; (iii) mapped the stakeholders involved in the case, their positions and interests; (iv) identified the opportunities and difficulties for dialogue among the parties; and (v) identified some guidelines for the dialogue.



Photo 1: Meeting with the Municipal Government



Photo 2: Visit to Jardim Nova Esperança

3. Data collected during the Assessment stage

3.1 The Environmental Protection Area (APA) and future construction of the Parque do Banhado

18. The Jardim Nova Esperança community is situated in the Banhado Protection Area (see paragraph 8).

19. According to Federal Law 9.985/2000, which established the National Nature Conservation System, an APA is defined as an area, usually large, with a certain degree of human occupation, that possesses abiotic, biotic, esthetic, or cultural attributes that are especially important to the quality of life and well-being of the humans who occupy it, and

³⁰ The Ombudsperson's team made two trips to São José dos Campos to collect information on the PEUSJC: one of them from 7-9 September, and the other from 13-15 December 2011. During the visits, in addition to meeting with the various actors in the case, the team visited the sites of the Jardim Nova Esperança community (Banhado) and the Interlagos Housing Project (see paragraph 34).

has as its basic objectives protecting biological diversity, regulating its occupation, and ensuring the sustainability of the use of its natural resources.³¹

20. Based on this definition, State Law 11.262/02 created the Banhado APA, which is subdivided into three perimeters.³² The Banhado APA, created by the state law cited above, still lacks implementing regulations. This means that aspects, such as its zoning and the uses permitted in the area, have not yet been defined.

21. Additionally, Municipal Law 2.792/84 created the Municipal APA of the Alluvial Plain of the Paraíba do Sul and Jaguarí rivers. It protects the area in which the alluvial plain of those rivers is situated, and the Banhado areas sit on that alluvial plain. This area was designated as APA IV by the PDDI established in Complementary Law 121/95, and is composed of two segments.³³ Under Complementary Law 165/97 (Zoning Act), APA IV came to be composed of three segments, whose perimeters were maintained in the new PDDI established by Complementary Law 306/06³⁴ and the new Zoning Act (Complementary Law 428/10).³⁵

³¹ Article 15, Federal Law 9.985, of 18 July 2000. Available at: https://www.planalto.gov.br/ccivil_03/leis/19985.htm. Most recently accessed on 2 February 2012.

³² According to the State Law, the following are prohibited in the Banhado APA: (i) subdivision of land for urban purposes; (ii) installation of a polluting industrial facility; (iii) expansion of the areas occupied by existing industrial facilities; (iv) use of land management methods that may lead to soil erosion or silting of waterways; (v) removal of existing plant cover; (vi) exploitation of minerals; and (vii) use of the area for vacation homes. See State Law 11.262, of 8 November 2002, Article 4. Available at: <http://www.legislacao.sp.gov.br/legislacao/index.htm>. Most recently accessed on 2 February 2012.

³³ Complementary Law 121 of 27 April 1995, Article 17. Available at: <http://ceaam.net/sjc/legislacao/?doc=http://ceaam.net/sjc/legislacao/leis/1995/Lc0121.htm>. Most recently accessed on 2 February 2012.

³⁴ Complementary Law 306/2006 cited in footnote 29, Article 13, Annex 2 and Map 1 – Territorial Macrozonning.

³⁵ Complementary Law 428 of 9 August 2010, Annex 5 – Description of the Perimeter of the Urban Macrozone of the município of São José dos Campos. Available at: <http://ceaam.net/sjc/legislacao/?doc=http://ceaam.net/sjc/legislacao/leis/1995/Lc0121.htm>. Most recently accessed on 2 February 2012.

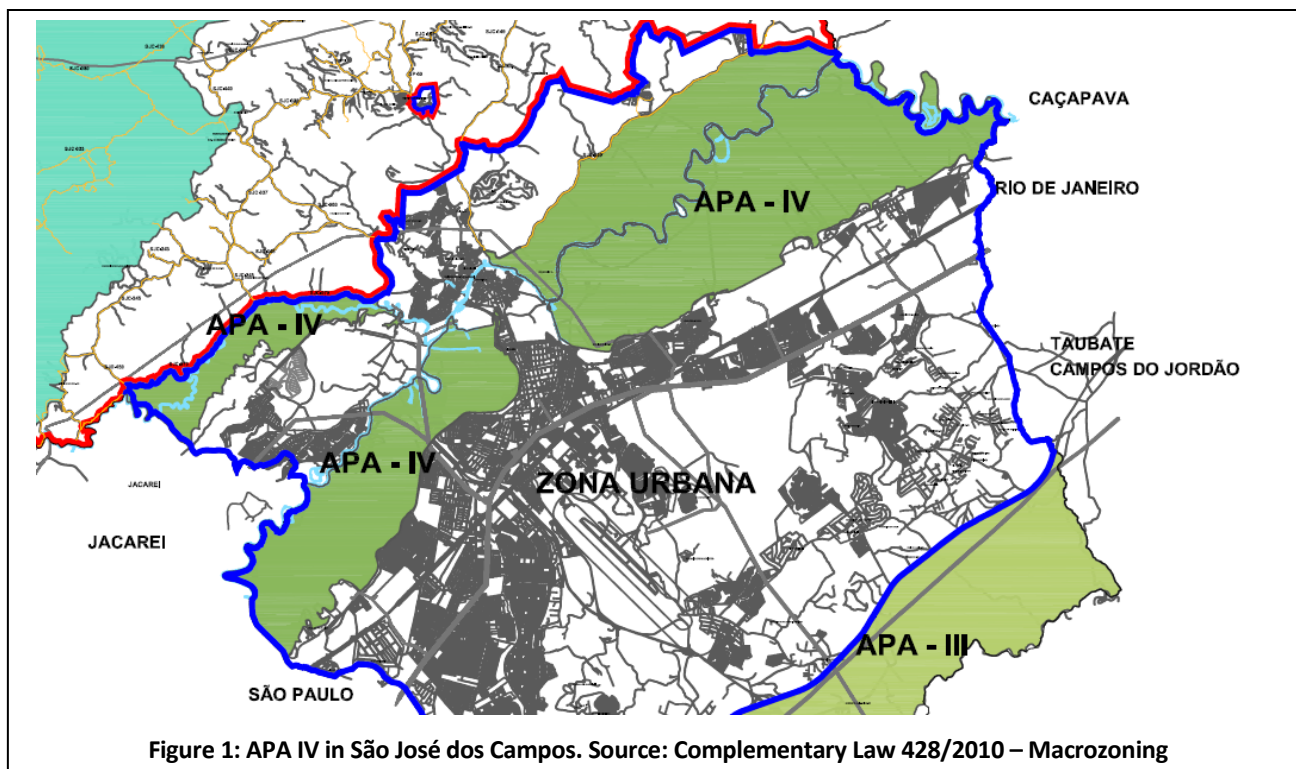


Figure 1: APA IV in São José dos Campos. Source: Complementary Law 428/2010 – Macrozonning

22. No implementing regulations have been issued for the Municipal APA, either.³⁶ However, creation of the Banhado Municipal Nature Park in the area corresponding to the state and municipal APAs, specifically in the section between the former railway line and the bed of the Paraíba do Sul river, would guarantee that some regulation applies to part of its perimeter and its buffer zone under the Management Plan that will be drafted for this new conservation unit.³⁷

23. APA IV lies along the várzeas [floodplains] of the Paraíba do Sul river (segments 1 and 2) and of the Jaguarí river (segment 3), covering a total of 9,100 hectares. The area is said to present various drainage problems due to the proximity of the water table to the surface.³⁸ Because of the nature of its soil and its hydric conditions, the Banhado APA “has significant restrictions to the installation of urban activities and needs specific rules to control its use or occupation, with the primary objective being environment protection.”³⁹

24. With funds from PETROBRAS obtained as environmental offset for the Henrique Lage Refinery (see paragraph 9), the Municipal Government intends to establish a Unidade

³⁶ According to the Municipal Government, although no specific rule exists that would regulate the Municipal APA, the Zoning Act (Complementary Law 428/2010) establishes parameters for use and occupation of all areas in the entire município, which includes, therefore, this APA.

³⁷ Municipal Government of São José dos Campos. Message 083/ATL/2011 of 1 December 2011 referring to Bill 658/2011 to “create the Banhado Municipal Nature Park and accomplish other purposes.”

³⁸ See EER – Preliminary Version, cited in footnote 18, p. 46.

³⁹ See Complementary Law 306/2006, cited in footnote 29, Article 13.

de Proteção Integral [Comprehensive Conservation Unit] (UPI) in the Banhado APA: the Banhado Municipal Nature Park. This kind of effort requires expropriation of the respective area and restriction of its use to scientific research, environmental education and interpretation activities, recreation in contact with nature, and ecological tourism.⁴⁰

25. The total proposed area for the Parque do Banhado is approximately 5.2 million m². However, nearly 70% of this land consists of two private properties that are the subject of litigation in the courts. Therefore, to prevent delays in establishing the Parque do Banhado, the Municipal Government opted to establish it, initially, with a smaller area of approximately 1.5 million m². Of this initial portion, 64% are privately-owned properties and the remainder is owned by the Municipal Government.⁴¹ Consequently, the Banhado community occupies both private areas and areas of public domain.

26. Between 6 May and 6 June 2011, the Municipal Government held online public consultations about the Parque do Banhado and discussed it in the Municipal Environment Council. In addition, interested parties could go to the Municipal Environment Department to consult specific technical material pertaining to creating the Parque do Banhado. On this point, the ICIM did not find evidence of any other forms of public consultation.⁴² On 1 December 2011, the Municipal Government sent the City Council a bill to “create the Banhado Municipal Nature Park and accomplish other purposes.” This bill, recorded as No. 658/2011, is making its way through the Municipal Legislature.⁴³

⁴⁰ Federal Law 9.985 of 18 July 2000, cited in footnote 31, Articles 7 and 11:

Art. 7 Conservation units that are part of the SNUC are divided into two groups, each with specific characteristics: I – Comprehensive Conservation Units [...]

§ 1 The basic objective of the Comprehensive Conservation Units is to preserve nature. Only indirect use of their natural resources is permitted, except as provided otherwise in this Law. [...]

Art. 11. The basic purpose of the National Park is to preserve natural ecosystems of major ecological importance and scenic beauty, making possible the conduct of scientific research and the pursuit of environmental education and interpretation activities, recreation in contact with nature, and ecological tourism.

§ 1 The National Park is the property of the people and constitutes public domain. The private areas included within its boundaries shall be expropriated in accordance with the law. [...]

§ 4 Units in this category, when created by a State or Município, shall be designated, respectively, as State Nature Parks and Municipal Nature Parks. (*emphasis added*).

⁴¹ Municipal Government of São José dos Campos. Department of the Environment. *Proposta de Criação do Parque Municipal do Banhado – Public Consultation*, pp. 7, 9, and 10.

⁴² The Municipal Government claimed that under Article 22, §§ 2 and 3, of Law 9.985/2000 (cited in footnote 31), “the creation of a conservation unit must always be preceded by technical studies and public consultation in order to identify the most appropriate location, size, and boundaries, as provided in regulations. [...] During the consultation that is the subject of § 2, the government is required to supply appropriate and intelligible information to the local population and to other interested parties.” In the opinion of the Municipal Government, this rule does not order that the population be consulted via public hearings.

⁴³ Message 083/ATL/2011 cited in footnote 39.

3.2 The Jardim Nova Esperança community

27. Jardim Nova Esperança is situated in the “Concha do Banhado” on the alluvial plain that constitutes the várzea of the Paraíba do Sul river, and is part of the state and municipal APAs of Banhado. The community is settled alongside the former trunk line of the Central Railway of Brazil and near the slope of the plateau along which Avenida Madre Teresa extends, at the edge of the urban core of the município of São José dos Campos.

28. This occupation of Banhado began in 1930. Since then, its proximity to the central part of the município spurred its growth, but without any urban planning or design.⁴⁴ According to a socioeconomic survey conducted by the city in 2002, for which the figures were updated in 2007/2008, 399 families were living in Jardim Nova Esperança.⁴⁵

29. The area exhibits vegetation typical of Brazil’s várzeas, with waters coming to the surface but not readily draining away because of the flat topography. Since it is a várzea area that originally experienced seasonal flooding, the natural conditions of the terrain were not suitable for urban development. It was difficult to install infrastructure networks, and construction of homes was hazardous due to the instability of the soil. Only the portion closest to the old railroad bed was somewhat better suited for urban occupation, because the terrain was more stable there.

30. At present, families live in two distinct zones of Jardim Nova Esperança: (a) the lower part, with várzea characteristics, in which they “live with dampness all year, and during the rainy season with continual inundations.”⁴⁶ and (b) the upper part, where houses were built on turf, and, during the dry season, the families face the problem of the fires that occur in Concha do Banhado because of farming practices, household waste disposal, or vandalism.⁴⁷

31. The population survey updated in 2007/2008 showed that 94.6% of the families who were living in the Banhado had as many as six members, and 4.5% of them had seven to nine members. Only 0.8% were composed of 10 or more members. At that time, 43.3% of the community’s population was under the age of 17, and 14.2% was ages 18 to 25.⁴⁸ The survey also noted the low level of school attendance among residents, particularly heads of families, which contributed to their being unemployed or underemployed.⁴⁹ Among the most

⁴⁴ According to the PIAS, some upscale condominiums built in the Banhado area in the 1970s and 1980s resorted to engineering solutions to make the site suitable for residence. PIAS cited in footnote 24, p. 14.

⁴⁵ *Id.* p. 16

⁴⁶ *Id.*, p. 14.

⁴⁷ *Idem.* Because of these fires, the local population is subjected to toxic smoke, which also spreads into the center of the city due to the pattern of prevailing winds.

⁴⁸ PIAS, cited in footnote 24, pp. 17 and 19.

⁴⁹ *Id.* p. 20.

common occupations for Banhado residents were general services helper, scavenger of recyclable materials, janitor/cleaning lady, and mason's helper.⁵⁰

32. The size and quality of buildings in Jardim Nova Esperança varies, from small improvised wooden structures to small country homes of 19,000 m².⁵¹ Most of the houses are built of masonry to low construction standards, with asbestos cement tile roofs. Construction standards fall as the buildings sit further from the old railroad bed and closer to the muddier areas. On some plots, families try to supplement family income by operating small retail establishments, growing vegetables, and fishing. Many families who live in the area have purchased the rights to their properties⁵² and invested in home improvements.⁵³

33. The Banhado community is supplied with water and electricity, although there are some illegal connections to these services. However, certain social facilities that used to function in the community have been deactivated. The nursery school and community center were closed two years ago. In July 2011, without any advance notice to the community, the headquarters of the Helio Augusto de Souza Foundation (FUNDHAS), where children in the community took part in educational activities, was demolished. Now the children attend other schools in the central part of the município (such as the Escola Santos Dumont) and the FUNDHAS headquarters that operates next to the Municipal Palace in the central part of the município.

⁵⁰ Idem. p. 21. According to the Requesters, these types of work are very closely tied to the central parts of the município. The Municipal Government, on the other hand, believes that they can be done anywhere in the município and argues, for example, that: (i) with respect to stonemasons and their helpers, the number of construction projects underway in the areas further from the center greatly exceeds that in the areas close to the Banhado community; (ii) with regard to cleaning ladies, the number of residences in the center is very small compared with other regions; and (iii) the Futura Cooperative developed by the Municipal Social Development Department to work with scavengers of recyclables is situated in the southern part of the município.

⁵¹ According to the Municipal Government, only four of the about 20 country houses in the Banhado area serve as their owners' permanent residence.

⁵² Some of them are making monthly payments to the Instituto Nacional de Colonização e Reforma Agrária. [National Institute for Settlement and Agrarian Reform] (INCRA).

⁵³ Some renovations have been done with express authorization from the Municipal Government.



Photo 3: Jardim Nova Esperança / View from Av. Madre Tereza



Photo 4: Banhado / Old railroad bed



Photo 5: Streets perpendicular to the railroad bed



Photo 6: Demolished houses - Jardim Nova Esperança



Photo 7: Houses in Jardim Nova Esperança



Photo 8: Houses in Jardim Nova Esperança

3.2.1 Resettlement of families from Jardim Nova Esperança – The process

34. Since the survey done in 2007/2008, more than 100 families have left Jardim Nova Esperança under Municipal Government housing programs. They moved to housing

projects built by the CDHU.⁵⁴ The Requesters and the city differ as to the reasons that led those families to leave the community. The Requesters say that the Municipal Government, using figures from the socioeconomic survey, selected some residents to meet, individually, at the Housing Department. At those meetings, the residents were informed that they were to be resettled in other communities because, among other reasons, the Banhado highway was being created. The city then offered homes to these families to get them to leave the community. For its part, the Municipal Government says these families approached the Housing Department separately and voluntarily, and asked to sign up for the município's housing programs. Based on Civil Defense reports on the families' properties, it was determined that the houses were at risk. That is why these families were given priority on the list for município housing programs and awarded units in projects financed by the CDHU—Boa Vista, Frei Galvão, Santa Luzia, and Interlagos.⁵⁵

35. The houses of families who left the community were demolished. The debris was left at the sites in order to prevent anyone from rebuilding there.⁵⁶ However, the accumulation of debris has created unhealthful conditions and bothered the residents. But residents are afraid that the movement of heavy equipment to remove the debris would adversely affect their properties.⁵⁷

36. As regards community participation in the design and implementation of a resettlement plan, the PIAS indicates that the social service team from the Housing Department held a meeting on 3 January 2008, at the Basic Health Unit in the center of the city, “with local leaders (the longest-term residents, and business owners) and representatives of the facilities existing in the community [of Banhado]” in order to “become familiar with the area and begin the field work [by the Social Services team].”⁵⁸ In addition, this team met with a group of former residents on 8 January 2008 “for the purpose of becoming familiar with the socio/historical/cultural realities of the community via a participatory methodology.”⁵⁹

37. The PIAS provides that on a second occasion, “the diagnostics on the population and the areas will be presented, as will the intervention project, at a meeting open to the community held in the City Council meeting room or in the Municipal Government

⁵⁴ According to information from the Municipal Government furnished in February 2012, these families accepted the options offered by the city: 25 moved to the Boa Vista project; 8 to the Santa Luzia project; 53 to the Frei Galvão project, and 33 to the Interlagos project.

⁵⁵ According to the Project Team, the Municipal Government is asking that the expenses it incurred in removing these families [who] voluntarily left Banhado be recognized by the Project as counterpart funds.

⁵⁶ According to the Municipal Government, about eight of the demolished houses have been rebuilt.

⁵⁷ During the December 2011 visit to São José dos Campos, made to resolve this problem and relieve the atmosphere of tension between the Municipal Government and the community, the ICIM suggested that a coordinated effort be made by the local facilitator to remove the debris. The Municipal Government would remove it in two stages: the first with use of machines in the areas where this is possible, and second using manual methods, with priority given to the use of local labor. As of the date of this report, removal of the debris had not started. The Municipal Government said this was due to rainy weather.

⁵⁸ PIAS cited in footnote 21, p. 26.

⁵⁹ *Idem*.

auditorium.”⁶⁰ However, the ICIM did not find references to the holding of these events in the Project documents.

38. The PIAS mentions activities in which the community participated during preparations for the resettlements.⁶¹ However, it does not indicate how the PEUSJC was presented to and discussed with the Banhado community in a previous phase, during development of the Project and of the Resettlement Plan itself. It is not clear whether and how the people in this community were informed of the reasons for the relocation of families—including explanations about the creation of the Parque do Banhado, the alternative forms of compensation of the families affected by the Project, and other topics of interest to the residents of Jardim Nova Esperança. The PIAS does not indicate whether and how the families received this information during interviews conducted during the 2007/2008 socioeconomic survey. Nor is it clear whether and how the families might have been able to participate in preparing the PIAS, which is understood as the Resettlement Plan applicable to the Banhado community in the framework of the Project.

3.3 The Banhado highway

39. The Integrated Development Master Plan (PDDI) for the município (Law 306/2006) includes sections about public transportation and the road network.⁶² According to the PDDI, the road network for Banhado is part of the município’s macrosystem.⁶³

40. The Banhado highway will be located on the border between the Central Region and the Rio Paraíba plain. It will circle the fringe of Banhado, following the route of the old federal railroad trunk line (see paragraph 26). Together with the Norte and Colinas-Limoeiro roads, this highway will bound the APA IV-Banhado, serving as a physical barrier to expansion of the urban and human occupation in this conservation unit. Furthermore, the Banhado highway will serve as an alternative route giving direct access to the Rodovia Dutra at the border with the município of Jacareí, thereby completing one segment of the beltway. This means that the Banhado highway would reduce traffic congestion through the central area.

41. The road will be a two-way express road about 3.8 km. long. Some of its features are: 3 travel lanes in each direction (each lane 3.5 meters wide), a variable-width median, sidewalks 4 meters wide, and a segregated two-way bike path 3 meters wide. One lane,

⁶⁰ *Idem.*

⁶¹ The PIAS lists some measures intended to encourage community participation during Project implementation, such as: (i) proposals to form a committee that would follow the progress of the works, serving as intermediary between the government and the population as a whole; (ii) keeping the schedule of periodic meetings with the residents on pace; (iii) helping the communities to monitor and understand all the stages of the Project; (iv) carrying out actions in the areas that would lend visibility to actual accomplishments in the stages of the Project; (v) furnishing information that would enable the residents to follow the course of the development of the Project, such as plans, pictures, and documents on its progress; (vi) making it possible for leaders to meet with authorities outside the Municipal Government who could attest to the true status of the Project and answer questions; and (vii) periodic visits to the job sites with leaders and other interested residents. PIAS, cited in footnote 21, pp. 26 and 30.

⁶² Complementary Law 306/2006 cited in footnote 29, Articles 57, 60-63, and Charts 4 and 5.

⁶³ *Id.*, Articles 60-63.

although not segregated, would be designated for public transportation. A strip of land 80 meters wide has been reserved for the highway, including space for some kind of future inter-regional mass transit.

42. According to Project documents, clearing out Jardim Nova Esperança is a prerequisite for building the Banhado highway (see paragraph 10). The Municipal Government argues that it is not feasible for families to remain in Jardim Nova Esperança, since the Banhado highway would be an express road, accessible only at the beginning and end of its route. This means that in the vicinity of the present Banhado community, people would not be able to cross the highway in the direction of downtown São José dos Campos.

43. Furthermore, on 10 January 2012, the Secretaria do Patrimônio da União [Federal Government Property Department] (SPU) published Directive 122 of 24 November 2011 revoking Directive 18 of 4 August 2009 that had authorized the Municipal Government to build a road system on property owned by the former Rede Ferroviária Federal S.A. (RFFSA) railroad, which is where the Banhado highway would be built.⁶⁴ In the new directive, the SPU ordered suspension of the construction until the Municipal Government confirms that there are no low-income people living on the federal government property on which the road system would be built. This subject is being discussed by the SPU, the Municipal Government, and the offices of the public defenders of São Paulo and the federal government.

44. As mentioned earlier, as part of the environmental licensing of the Banhado highway, an EIA-RIMA will be conducted and public consultations will be held (see paragraph 12).

45. Lastly, according to Project documents, despite the provisions of the PDDI regarding public transportation and the road system, “[the município] still needs an urban transportation master plan that would provide other public transportation alternatives.”⁶⁵ This is why, in the Improvements in Urban Mobility component of the PEUSJC, it was originally intended to develop an Urban Transportation Master Plan. This will now be replaced by a Mobility Master Plan⁶⁶ that would deal more with mass transit than with the Banhado and Cambuí highways.

3.4 The Cambuí highway

46. The Cambuí road system is part of the group of roads on the municipal macro plan and will be 9 km long when built in the Cambuí Corridor. The purpose of this highway is to

⁶⁴ Office of the Superintendent of Federal Property for the State of São Paulo. Directive 122 of 24 November 2011.

⁶⁵ Loan Proposal cited in footnote 2, p. 4.

⁶⁶ On this subject, the Ombudsperson’s team observed differences of opinion between the Requesters and the Municipal Government as to whether a Transportation Master Plan exists in the município. According to the Municipal Government, although there is no such plan, Article 57 of the PDDI (Complementary Law 306/2006, cited in footnote 29) provides the general outlines of the public transportation policy adopted by the Município; Article 60 addresses the general lines of road system policy; Article 61 defines the município’s structural system by identifying the existing and planned structural roads (shown on Map 4 – Roads Macrostructure/Ranking of Roads); and Article 62 ranks the components of the road system.

connect the Putim region with the Avenida Presidente Juscelino Kubitschek region. The road will occupy the vacant areas on the right bank of the river. Its final segment, between Rodovia Dutra and Avenida Presidente Juscelino Kubitschek, may extend over the left bank to connect with existing roads. The Cambuí highway will be a two-way express road, with the following features: 3 travel lanes in each direction (each lane 3.5 meters wide), a variable-width median (modal width 3.0 m), sidewalks 4 meters wide, and a segregated two-way bike path 3 meters wide. One lane, although not segregated, would be designated for public transportation.⁶⁷

47. The route of this highway has not yet been specifically determined; there is only a functional design. In December 2011, the Municipal Government began a competitive bidding process to contract consultants' services to develop the plans for the Cambuí highway, including the basic design, the EIA-RIMA, and the final design (see paragraph 12). After these studies have been done, it will be possible to obtain further details about the route, and the neighborhoods that may be affected by the Cambuí highway.

4. Map of actors and positions

48. During the Assessment stage, the actors in this case were identified. In order to clarify the positions of each of them, and using merely formal definitions, these actors were classified as primary and secondary. Primary actors are those people and/or entities directly affected by the Project or who directly influence decisions on its design, implementation, and operation, as well as their legitimate representatives. Classified as secondary actors are those people and/or entities who are not directly affected by the Project but have already impacted or may impact the context, the adoption of Project decisions, and/or resolution of the conflict. The following paragraphs summarize the roles and positions of the primary and secondary actors.

4.1 Primary actors

4.1.1 The Requesters

49. This group is made up of residents of Jardim Nova Esperança (the Banhado community). Questioned by the Ombudsperson's team as to who are their interlocutors in dealings with the ICIM, the Requesters indicated certain residents of the community as being their representatives. Additionally, the group said it has been supported and is also being represented by the CMP of São José dos Campos. On more than one occasion, the Requesters expressed an interest in beginning a dialogue through the ICIM.

50. As mentioned, the Banhado families say that a move to an area far from the city center would cause a deterioration in their living conditions (see paragraph 4). Initially, they wanted to stay in the Banhado community and were asking the Municipal Government to adopt an appropriate urban planning scheme for the area. However, if it is shown that it is impossible for them to stay in Banhado, the Requesters would agree to leave the community provided they are covered by a participatory resettlement plan that, among other things, would properly compensate them and guarantee living conditions better or the same as they

⁶⁷ ESMR cited in footnote 14, p. 12; Loan Proposal cited in footnote 2, p. 7.

currently enjoy. Furthermore, they demand that an EIA-RIMA on the Banhado highway be drafted—one that would include public consultations with the affected population. The Requesters also emphasized the importance of their participation in the design and implementation of the resettlement plan, as well as in public consultations about the aforementioned EIA-RIMA.

4.1.2 The executing agency

51. The executing agency is the Municipal Government of São José dos Campos, acting through a Program Management Unit (PMU) associated with the Office of the Mayor. The PMU is assisted by staff from the municipal departments of urban planning, housing, transportation, the environment, administration, treasury, and legal affairs, as well as by external consultants.⁶⁸

52. The Municipal Government showed itself to be open to explaining and discussing viable solutions to the concerns raised by the Requesters, and expressed its intention to join the dialogue facilitated by the ICIM. With respect to the area of Jardim Nova Esperança, the Municipal Government does not believe that housing can coexist with the proposed road system and the creation of the Banhado Municipal Nature Park. However, it stated that relocation of the families would occur independent of these two projects, given the unhealthfulness and hazards of the area occupied by the community. At any rate, the Municipal Government emphasized that the PIAS is being revised and updated along the lines of the Bank's Operational Policy on Involuntary Resettlement (OP-710). Furthermore, the Municipal Government stressed that EIA-RIMAs will be drafted for the Banhado and Cambuí highways and will include public consultations.

4.2 Secondary actors

4.2.1 The Federal Government Property Department (SPU)

53. The SPU is the agency responsible for administering the assets of the former federal railroad, the Rede Ferroviária Federal (RFFSA). Those assets include portions of land along the route of the old railroad tracks. The SPU may assign or sell off these areas, including for purposes of resettlement. Recently, the SPU ordered suspension of the road work that included the Banhado highway being built on RFFSA land (see paragraph 43).

4.2.2 Office of the Public Defender – State of São Paulo

54. The State Office of the Public Defender (São José dos Campos regional office) has provided legal assistance to the residents of Jardim Nova Esperança. In particular, it got the SPU involved by calling attention to the presence of families living on areas owned by the former RFFSA that had been transferred to the Municipal Government so that it could establish the road system that includes the Banhado highway.

⁶⁸ ESMR cited in footnote 14, p. 34.

5. Principal findings of the Assessment stage

55. **Analysis of the facts, based on the Bank's Operational Policies.** From the information gathered during the Assessment stage, in light of the Bank's Operational Policies on Involuntary Resettlement (OP-710) and on Women in Development (OP-761),⁶⁹ it was observed that:

- a. Resettling of the families from Banhado is *per se* one of the components financed under the PEUSJC. However, the PIAS and other Project documents indicate the reasons that justify the removal of residents from the Banhado community only superficially. The reasons include: occupation of an APA; unhealthful conditions; and hazardousness of the situation;⁷⁰
- b. Although the Municipal Government interviewed the families during the socioeconomic survey conducted in 2002 and updated in 2007/2008, the Banhado community claims that it did not receive sufficient, appropriate information about the PEUSJC, including the reasons, alternatives for resettlement, and options for compensation. The Ombudsperson's team did not find sufficient data to explain whether and how the Requesters were truly able to participate in developing that resettlement plan;⁷¹
- c. The compensation options originally contained in the PIAS do not explain the steps that would be taken by the executing agency, especially actions intended to create jobs and generate income and to ensure maintenance or improvement of the living conditions of the people affected by the Project,⁷² taking into consideration the special situation of the women who would be relocated;⁷³ and
- d. The analysis of the impacts on the economic status of the families who would be resettled in housing projects situated far from the city center did not consider certain new expenses that these people would then have to pay, such as transportation, condominium fees, and gas. In the framework of the PIAS, no mention was made of compensation for temporary or permanent loss of income.⁷⁴

56. According to information from the executing agency, during the revision and updating of the PIAS, probably taking place at the end of March 2012, there will be consultations with Banhado residents.

⁶⁹ This policy was approved by the Board of Executive Directors in 1987 and updated on 3 November 2010. It is now known as the Operational Policy on Gender Equality in Development (OP-761).

⁷⁰ OP-710, Directives IV.2 and III.1.

⁷¹ OP-710, Directives IV.2ii and V.2.

⁷² OP-710, Directives III.2, IV.2 and V.3.

⁷³ OP-710, Directives IV.3, V.1, V.2 and V.3, and OP-761, Directive 5.

⁷⁴ OP-710, Directives III.2, IV.2 and IV.3.

6. Final considerations

57. The present dialogue is taking place in an atmosphere of tension between the Municipal Government and certain representatives of the Requesters. This tension is aggravated by factors foreign to this case, with a deterioration of trust among the primary actors. However, the process sponsored by the ICIM creates an opportunity for the parties to look for alternatives to resolve the concerns expressed in the Request.

58. The primary actors confirmed their willingness to take part in the dialogue sponsored by the ICIM. The Requesters presented some topics that they would like to discuss during that process, and proposals to solve the problems outlined in the Request. During preparation for the dialogue, the Ombudsperson's team will assist with the identification of the subjects suggested by the parties for the dialogue, as well as in the drafting of a joint agenda for it. These matters will be discussed in detail among the parties during the next stages in the Consultation Phase.

7. Next steps

59. The Ombudsperson's team will begin preparing the parties for the dialogue. These activities will include: (i) confirmation of the parties' willingness to begin a dialogue and look for solutions; (ii) re-establishment of the channels of communication among the parties; (iii) confirmation of the names of the representatives who will take part in the dialogue; (iv) a participatory design of the exchanges of information, methodology, and rules for the dialogue; (v) facilitation of the dialogue, aimed toward a search for solutions; and (vi) participatory design of the monitoring of eventual agreements.

60. The Mechanism will contact the primary actors so that they can confirm the names of the people who will represent them at the table. In addition, the ICIM will contact the secondary actors to invite them to become part of the dialogue process as observers. The representatives of the primary actors who will sit at the table would, ideally, have the following characteristics:

1. *Direct representation of the parties and all their positions.* In the case of the Requesters, priority will be given to the views and decisions made by the families who are directly affected by the Project;
2. *Authority to make decisions, or direct access to the people who can make them.* For a more robust dialogue among the parties, which would facilitate the search for solutions, it is best that the actors who sit at the table have the power to make decisions, or direct access to the decision-makers, or can activate expeditious procedures for adoption of decisions by their representatives; and
3. *A compact group.* While respecting each group's internal procedures for making decisions and selecting its representatives, the setting of the dialogue will be composed of the smallest possible number of people, who would maintain the characteristics and integrity necessary to an effective search for solutions.

61. After the parties, in a participatory manner and with facilitation by the ICIM, have designed the methodology and approved the rules for the dialogue and have received the information needed to adopt decisions and agree on the instruments that will facilitate this process, the dialogue will proceed according to the rules established by the parties for this process and may involve one or more sessions—consecutive or interspersed.

62. When the dialogue is considered to be finished, the parties will decide, jointly, about the monitoring of the agreement(s) potentially reached, and will address such matters as a monitoring plan, methods of monitoring, and their intention that the ICIM perform it.