

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

**BR-MICI005-2011  
CONSULTATION PHASE REPORT  
RODOANEL MÁRIO COVAS – NORTHERN SECTION II  
(BR-L1296)**

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## Consultation Phase Report

### Rodoanel Mário Covas – Northern Section II (BR-L1296)

**BR-MICI005-2011**

**PROJECT OMBUDSPERSON**

September 2012

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## CONSULTATION PHASE REPORT

### 1. INTRODUCTION

- 1.1 On 15 July 2011, the Independent Consultation and Investigation Mechanism (ICIM or “the Mechanism”)<sup>1</sup> received a request from Mr. Maurício Gomes de Souza (“the original Requester”), alleging potential environmental and social impacts that could affect him and his family as a result of the project Rodoanel Mário Covas – Northern Section (“the project”), financed by the IDB under loan 2618/OC-BR. The project will finance construction of the final section, the Northern Section, of the Rodoanel Mário Covas (SP-021) beltway around the São Paulo Metropolitan Region.<sup>2</sup>
- 1.2 The borrower for the project is the State of São Paulo, and the executing agency is the State Department of Logistics and Transportation (SLT), acting through Desenvolvimento Rodoviário S.A. (DERSA) (“the executing agency”), a semipublic corporation associated with the SLT. Loan contract 2618/OC-BR was signed on 14 June 2012.<sup>3</sup> To date, the Bank has made no disbursements for the operation.
- 1.3 On 31 August 2011, the Project Ombudsperson declared the Request eligible for the Consultation Phase,<sup>4</sup> marking the start of the assessment stage, which lasted from September to December 2011. During the assessment stage, 63 residents of the Condomínio Residencial Jardim Itatinga (“the Condomínio”), which is home to the original Requester, expressed interest in joining the Request as residents of the same Condomínio, alleging that they could also suffer from the impacts that would affect the original Requester. Accordingly, these residents were added to the group of Requesters in the case, for a total of 64 people.
- 1.4 In addition to generic environmental impacts, the Requesters stated that the future beltway, which would pass near the Condomínio, would directly affect the area residents due to the alleged: (i) damage to the physical structure of their homes due to the intensive use of heavy machinery and explosives during works construction; (ii) risk of soil pollution and operational accidents during construction of the beltway; (iii) impact on air quality during construction and operation of the project; (iv) high noise levels and the consequent impact on wildlife; (v) elimination of green areas and visual impact; (vi) loss of property value and

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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 report shall have the meaning assigned to them in the Independent Consultation and Investigation Mechanism Policy approved on 17 February 2010 and available at: [www.iadb.org/icim](http://www.iadb.org/icim).

<sup>2</sup> The beltway will be approximately 175 km in length and is being built in sections: the Western Section, 32 km long, and the Southern Section, 61 km long, are already in operation; the Eastern Section 43.5 km long; and the Northern Section, approximately 44 km long.

<sup>3</sup> The loan contract is available on the IDB website: <http://www.iadb.org/en/Projects/Project-description-title,1303.html?id=BR-L1296#doc>

<sup>4</sup> The Eligibility Determination is available on the ICIM website: <http://www.iadb.org/en/mici/complaint-detail,1804.html?id=BR%20MICI005%2F2011>

potential expropriation; and (vii) increased crime in the vicinity of the Condomínio due to operation of the beltway. The Request further asserts that the executing agency has provided no specific information on alternatives to mitigate each of these losses.

## 2. ASSESSMENT FINDINGS

2.1 The assessment findings included: (i) identification of the top concerns of the Requesters and the executing agency's responses to those concerns; (ii) a map of the main stakeholders involved in the case—the Requesters and DERSA—and their positions; and (iii) an analysis of the opportunities and difficulties for the dialogue process. The Assessment Report was published in January 2012.<sup>5</sup>

2.2 The **top concerns of the Requesters and the executing agency's responses to those concerns**, as identified in the assessment stage, are summarized in the following table:

Concerns of the Requesters	Executing agency's responses
Changes in the stability of slopes and damage to the physical structure of buildings	<ul style="list-style-type: none"> <li>The engineering design and the environmental control measures during construction guarantee the geotechnical stability of all slopes. The construction methods for drilling the tunnels will follow technical standards concerning the safety of workers and the local population.</li> <li>DERSA will conduct a survey of nearby buildings not on the expropriation or resettlement lists; it is preparing a report on the condition of these buildings to identify any potential risks/damages to their physical structure and, when called for, to take the necessary mitigation measures and/or provide compensation.</li> </ul>
Risk of soil pollution and operational accidents	<ul style="list-style-type: none"> <li>The environmental impact assessment (EIA) proposes preventive measures for managing this risk and minimizing the likelihood of its occurrence.</li> </ul>
Impact on air quality	<ul style="list-style-type: none"> <li>Construction phase of the project: the EIA calls for measures to mitigate the impact on air quality as part of the program for environmental adequacy of construction procedures.</li> <li>During project operation: DERSA stated that, even with growth in the fleet over time, vehicles will be of better quality and less polluting because of compulsory changes in their manufacture. In the case of the tunnels, pollution will not reach levels of concern.</li> </ul>
Increased noise levels	<ul style="list-style-type: none"> <li>DERSA conducted an initial testing of possible noise mitigation measures, including changes in the alignment of the highway and in the structure of the neighboring buildings. If necessary, acoustic barriers will be installed or the right-of-way will be widened and buildings expropriated. The final design will detail studies and indicate specific measures in line with the results encountered and the needs of the project.</li> </ul>

<sup>5</sup> The Assessment Report is available on the ICIM website:  
<http://www.iadb.org/en/mici/complaint-detail,1804.html?id=BR%20MICI005%2F2011>

Wildlife driven away during operation of the project	<ul style="list-style-type: none"> <li>Mitigation measures will be taken so that wildlife existing in the affected areas can move away, and species that will not move on their own will be rescued by specialized teams in the course of activities to suppress vegetation.</li> </ul>
Elimination of green areas and visual impact	<ul style="list-style-type: none"> <li>The elimination of green areas will be offset by restoring and planting a much larger area, preferably within the same region.</li> <li>The executing agency states that a significant portion of the route will be hidden behind barriers and not visible from residential areas. The viaducts will be slim structures with architectural lines compatible with an urban setting.</li> </ul>
Potential expropriation of properties	<ul style="list-style-type: none"> <li>The EIA notes that there will be expropriation or relocation of dwellings along the route's surface segments, bridges, and tunnel approaches.</li> <li>In the specific case of the Condomínio, if a family has to be removed from its property, this will be done on the basis of the expropriation and compensation program.</li> </ul>
Loss of property value	<ul style="list-style-type: none"> <li>According to DERSA, it is impossible to assess the change in property values at a specific point such as the Condomínio using general models. Only the market can determine the specific impact of the project on property values, which will depend on the amount that potential buyers are prepared to pay for these properties.</li> </ul>
Increase in crime in the vicinity of the Condomínio	<ul style="list-style-type: none"> <li>DERSA noted that information can be collected on crime indicators in the vicinity of the Northern Section through the Department of Public Safety of the State of São Paulo, similar to the analysis done for the Southern Section, which indicates that crime in the vicinity of the Southern Section has not increased as a result of beltway operation.</li> </ul>

2.3 During the assessment stage, the Project Ombudsperson observed that the Requesters lacked a unified position on their willingness to enter into an ICIM-facilitated dialogue process. In the early months of the assessment, the 64 Requesters expressly stated their wish to participate in the Consultation Phase. However, on 14 October 2011, the president of the Residents Association of the Condomínio Jardim Itatinga (“the Association”) granted powers of representation to Mr. Mauro Victor, Requester in the case regarding Rodoanel Mário Covas – Northern Section I (BR-MICI003/2011), which also relates to the project and is currently under review by the ICIM Compliance Review Panel (“the Panel”).<sup>6</sup> Under that proxy, the Association authorized Mr. Victor to describe to the Panel the impacts the project would have on the residents of the Condomínio and the surrounding area. On 16 October 2011, Mr. Victor presented the following to the Panel: (i) the letter stating the powers granted by the Association; and (ii) a petition signed by Dr. Carlos Eduardo Castro Souza, attorney for the Condomínio, and Mr. Mario Santos, founder of the Condomínio corporation and resident, setting out the various environmental and social impacts that the project would cause for the Condomínio residents.

<sup>6</sup> Case BR-MICI003/2011 was declared ineligible for the Consultation Phase on 22 August 2011 and, pursuant to the ICIM Policy, was transferred by the Executive Secretariat to the Panel on the petition of the Requesters. The Ineligibility Determination is available on the ICIM website: <http://www.iadb.org/en/ICIM/complaint-detail,1804.html?id=BR%20ICIM003/2011>

- 2.4 In late October 2011, the Project Ombudsperson asked the Requesters to clarify their position in the present case, particularly whether they wished to start the dialogue process. In reply to the request for clarification from the Project Ombudsperson, in November 2011 Dr. Castro Souza explained that: (i) the information submitted to the Panel in case BR-MICI003/2011 was for purely illustrative purposes; and (ii) the Requesters intended to proceed with the Consultation Phase, without forgoing the opportunity to explain the generic adverse impacts of the project to the Panel. However, as a condition for participating in the dialogue, the attorney for the Condomínio and the original Requester asked that the Project Ombudsperson provide guarantees that processing of the loan operation would be suspended during this process. In response, on 21 November 2011, the Project Ombudsperson explained that, under the ICIM Policy,<sup>7</sup> complaints before the ICIM generally do not halt the processing or execution of a Bank-financed operation, and in this case no exceptional condition applied that would merit such a recommendation.
- 2.5 After a further exchange of correspondence, and given the different positions taken by the Condomínio residents, in December 2011 the Project Ombudsperson asked the Requesters to confirm their willingness to initiate the ICIM-facilitated dialogue process. In response to that request, some Requesters confirmed their intention to pursue the Consultation Phase. Other Requesters said they had no confidence in a dialogue process with DERSA, some even stating that the process could provide a tool for the executing agency to proceed with construction and operation of the works, since the process with the ICIM would not halt processing of the loan. However, as of the completion date of the Assessment Report in January 2012, the majority of the Requesters had not responded to the request for confirmation.
- 2.6 Therefore, in view of the extreme loss of confidence in the executing agency among some Requesters and the lack of a unified position on the part of the Condomínio residents, the Assessment concluded that, as of the assessment completion date, it was neither feasible nor appropriate to conduct a dialogue process dealing with matters of interest and impact for all Condomínio residents, without the express consent of the majority of those residents.

### 3. CONCLUSION OF THE CONSULTATION PHASE

- 3.1 The assessment closed with the conclusion of the Project Ombudsperson that “[in January 2012] the conditions do not exist to pursue an ICIM-sponsored dialogue process,”<sup>8</sup> for the following reasons: (i) the majority of Jardim Itatinga residents have not stated that they are in favor of pursuing the Consultation Phase; (ii) there has been a severe loss of confidence between the Requesters and the executing agency; and (iii) the condition set by the Requesters for initiating dialogue cannot be guaranteed by the Mechanism.<sup>9</sup>

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<sup>7</sup> Policy Establishing the ICIM, Section 48.

<sup>8</sup> ICIM, Rodoanel Mário Covas – Northern Section II (BR-MICI005/2011), Assessment Report, paragraph 52. Available at: <http://www.iadb.org/en/mici/complaint-detail,1804.html?id=BR%20MICI005/2011>

<sup>9</sup> Policy Establishing the ICIM, Section 50.



- 3.2 However, the Project Ombudsperson left open the possibility that the Consultation Phase may be reactivated, provided that the conditions for dialogue exist and the Request still meets the other eligibility requirements for the Consultation Phase.
- 3.3 Given the circumstances of the present case, particularly the willingness of some Requesters to engage in dialogue, after the Assessment Report the Project Ombudsperson declared a waiting period before proceeding to close the Consultation Phase. If any changes took place during that period in the conditions observed in January 2012, the Requesters would have the opportunity to promptly initiate a unified dialogue process to the benefit of all residents of the Condomínio.
- 3.4 In parallel, under BR-MICI003/2011, on 19 July 2012, the Chair of the Panel explained to Mr. Mauro Victor and Mr. Mario Santos that: (i) although it might serve as a good example of the potential damage arising from the project, the information relating to the Condomínio could not be formally considered by the Panel, so long as the present case (BR-MICI005/2011) had not been fully processed by the ICIM Consultation Phase; and (ii) the Panel could consider the concerns of the Condomínio residents, provided that they followed the Mechanism's standard procedure and, once the Consultation Phase concluded, stated whether they wished to activate the Compliance Review Phase. In response to the Chair of the Panel, on 20 July 2012, Mr. Mauro Victor stated that, in his judgment, the concerns of the Condomínio residents already formed part of case BR-MICI003/2011,<sup>10</sup> since they had authorized him to represent them in the Compliance Review Phase under the proxy granted by the President of the Association (*supra* paragraph 2.3) and accompanying documents.
- 3.5 On 30 July 2012, Mr. Mario Santos wrote to the Chair of the Panel and Project Ombudsperson, "formally waiving the intermediation of the IDB's Project Ombudsperson and requesting inclusion of the [Condomínio's] case before the ICIM Compliance Review Panel." Significantly, Mr. Mario Santos is not part of the group of Requesters in the present case and submitted no documents confirming his powers to represent the Condomínio. For that reason, on 31 July 2012, the Project Ombudsperson asked the Requesters for their position on Mr. Santos's statement, stating whether or not they agreed. In that communication, the Project Ombudsperson stated that, if no response were received from the Requesters by 2 August 2012, the Project Ombudsperson would deem them unopposed to Mr. Santos's statement and thus proceed to conclude the Consultation Phase.
- 3.6 The request for confirmation was answered by one of the Requesters on 1 August 2012, with copies to the other Requesters, stating among other things that: (i) the executing agency had begun inspections of the properties within the Condomínio; (ii) a decree of public interest had been issued that included part of the Condomínio area; and (iii) time was running out for a dialogue with DERSA. From the Requester's communication it was apparent that the lack of confidence in the executing agency persists and conditions have not changed from the time of the assessment. On 7 August 2012, the Project Ombudsperson

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<sup>10</sup> On 22 December 2011, the Panel issued the Eligibility Determination in case BR-MICI003/2011, commencing the Compliance Review process. The Eligibility Determination is available on the ICIM website: <http://www.iadb.org/en/mici/complaint-detail,1804.html?id=BR%20MICI003/2011>

again told that resident—and the other Requesters—that the feasibility of a dialogue depended on the commitment and willingness of the parties, a condition clearly not seen in the present case. In response to that message, on 20 August 2012 the same resident confirmed the position not to proceed with the Consultation Phase.

- 3.7 Given that, to date, the other Requesters have not stated their intention to initiate the dialogue process, the Project Ombudsperson confirms that appropriate conditions are not met to pursue the Consultation Phase. Accordingly, **the Project Ombudsperson declares the Consultation Phase concluded in the present case,**<sup>11</sup> and pursuant to the ICIM Policy, the case file will be transferred to the Executive Secretariat.

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<sup>11</sup> Policy Establishing the ICIM, Section 47; and ICIM Policy Implementation Guidelines, paragraphs 4.37 and 4.38.