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BRAZIL

CASE BR-MICI006-2011

CONSULTATION PHASE REPORT

**SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM
(BR-L1160)**

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Structuring Program
(BR-L1160)

July 2015

CONSULTATION PHASE

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CONSULTATION PHASE REPORT

I. EXECUTIVE SUMMARY

- 1.1 This report summarizes work done between March 2012 and May 2015, by the Independent Consultation and Investigation Mechanism (hereinafter, ICIM or “Mechanism”) in relation to the Consultation Phase for Case BR-MICI006-2011. It is presented pursuant to the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49), which was in force on the date the referenced Request was received.
- 1.2 On 10 June 2011, the ICIM received a Request¹ from Mr. Cosme Vítor of Central de Movimentos Populares (CMP) representing a group of inhabitants of the Jardim Nova Esperança community in São José dos Campos, State of São Paulo, Brazil. The Request concerned the São José dos Campos Urban Structuring Program (BR-L1160), for which financing was approved by the Board of Executive Directors of the Inter-American Development Bank (IDB) on 12 May 2010. Said program aims to contribute to the structuring and management of urban development in that município, through a set of environmental, urban infrastructure, transportation management, and institutional strengthening projects. The program, which is currently in the implementation phase, is a loan operation for US\$85.7 million to the Municipality of São José dos Campos, with the sovereign guarantee of the Federative Republic of Brazil.
- 1.3 The Request refers mainly to the activities set out in Component 1 of the program concerning the resettlement of families of the Jardim Nova Esperança neighborhood and alleges, among other things, that (a) the Requesters were not consulted on the program or informed of the reasons for the resettlement or the compensation alternatives; and (b) the only housing alternative offered by the município at the time was an apartment in housing complexes far from the city center.
- 1.4 Between March 2012 and May 2015, the ICIM facilitated a dialogue process between the Requesters and the Municipal Government of São José dos Campos (hereinafter, “the Parties”), focusing on the availability of information and a review of the resettlement plan in order to bolster and build consensus for it with the affected population. During that period, sufficient trust was built to update a socioeconomic cadastre, which is a fundamental element of the resettlement plan. Nonetheless, at the end of May 2015, the Requesters decided to suspend their participation in the dialogue process, on the grounds that the counterparty was not fulfilling the conditions agreed upon for the dialogue. Consequently, and given the voluntary nature of the process, the ICIM deemed the Consultation Phase to be concluded and transferred the Request to the Compliance Review Phase, as had been requested by the Requesters.
- 1.5 The ICIM thanks the Requesters and the Municipal Government for the trust placed in the ICIM team, and for the time, work, and effort invested throughout it. It also thanks the IDB project team for its active collaboration throughout the

¹ The Request can be viewed in the ICIM Public Registry at www.iadb.org/icim.

Consultation Phase. Lastly, we should note the work done by the local facilitator, which was fundamental for the dialogue process.

II. FOUNDATIONS OF THE ICIM POLICY

- 2.1 The present Consultation Phase Report is presented pursuant to paragraph 51 of the Policy Establishing the Independent Consultation and Investigation Mechanism, approved by the Bank's Board of Executive Directors on 4 February 2010 (document GN-1830-49), which was in force when Request BR-MICI006-2011 was received; and it is also in keeping with the Transition Plan (documents GN-1830-67 and GN-1830-68) approved by the Board of Executive Directors on 10 July 2013.
- 2.2 Pursuant to the Transition Plan approved by the Board of Executive Directors on 4 February 2015 (document MI-48-1), once the Request is transferred to the Compliance Review Phase, the case will be handled according to the ICIM Policy approved by the Board on 17 December 2014 (document MI-47-3).

III. CASE BACKGROUND

A. The Request

- 3.1 On 10 June 2011, Mr. Cosme Vítor of CMP submitted a Request on behalf of a group of residents of the community of Jardim Nova Esperança, also known as Banhado, in the city of São José dos Campos. The Request refers to the potential injury to those families as a result of the execution of the São José dos Campos Urban Structuring Program (hereinafter, "Program") financed by the Bank, and the adverse environmental impacts it could cause.
- 3.2 With respect to the group of Requesters, in October 2011 the ICIM received a letter signed by 150 inhabitants of Jardim Nova Esperança, confirming Mr. Cosme Vítor as their representative and announcing the creation of a Residents Committee (hereinafter, "Committee" or "Residents Committee"), comprising eight of the area's residents, who, together with Mr. Cosme Vítor, would represent the Requesters' interests during the process. Among other representatives of the Committee, the following were appointed at the outset: the Banhado community leader, Mr. David Morais, and representatives of the social movements, Mr. Cosme Vítor and Ms. Angela Silva. In addition, the São Paulo State Office of the Public Defender served as legal adviser to the Requesters throughout the Consultation Phase process.
- 3.3 In their communications with the ICIM, the Requesters made a series of allegations about the operation: (a) the Requesters had not been consulted on the program or informed of the need for resettlement and the compensation alternatives; (b) the only housing option offered by the município at the time consisted of an apartment in housing complexes far from the city center; (c) the rubble generated by the demolition of homes which some families had vacated voluntarily, was not being collected; and (d) the município had terminated the supply of certain services in the neighborhood, including an early childhood education center, without notifying the inhabitants of the reasons for the closure and demolition.
- 3.4 From the Requesters' point of view, resettlement, under the conditions being proposed by the município, would affect them adversely by preventing them from

- accessing public services and job and income opportunities, associated with their current strategic location close to the city center; and it would generate additional expenses for the families, such as the purchase of a new home, infrastructure costs (water, electricity, and gas), together with shared community and public transportation expenses.
- 3.5 In addition, they alleged that the implementation of a municipal natural park in the Banhado area had not been duly discussed with the population.
- B. The loan operation**
- 3.6 The São José dos Campos Urban Structuring Program (BR-L1160) entered the pipeline on 10 August 2007,² and was approved by the Board of Executive Directors through the simplified procedure on 12 May 2010. The operation involves an investment loan of US\$85.7 million³ for the município of São José dos Campos, State of São Paulo, backed by the sovereign guarantee of the Federative Republic of Brazil. The executing agency is the Municipality of São José dos Campos (hereinafter, "Municipal Government").
- 3.7 According to the Bank's Environment and Safeguards Compliance Policy (OP-703), the program is classified as a category "B" operation.⁴
- 3.8 The program's objective is to contribute to the structuring and management of urban development in that município, through a set of environmental, urban infrastructure, transportation management, and institutional strengthening projects. In particular, the urban environmental improvements component aims to improve the urban environmental quality of the município, and consolidate the separation between urban and conservation spaces.
- 3.9 According to the loan proposal document, the component in question includes the relocation of families living in the environmental hazard and conservation zones, and families whom the program aims to provide with better housing and living conditions.⁵
- 3.10 The loan contract of the program between the Bank and the Municipal Government of São José dos Campos was signed on 18 August 2011, and as of the date of this report US\$15.6 million had been disbursed.

IV. ACTIONS TAKEN DURING THE CONSULTATION PHASE PROCESS

- 4.1 The São José dos Campos Urban Structuring Program case Request was ruled eligible for the Consultation Phase on 22 August 2011⁶ (document MI-21-1); and, as a result of the evaluation performed in February 2012⁷ (document MI-21-2) the

² According to the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49), "Requests may be filed with respect to operations not yet approved by the Board [...] after the project number has been issued, for sovereign guaranteed [...] operations."

³ IDB, Loan Proposal, São José dos Campos Urban Structuring Program.

⁴ Directive B.3 of the Bank's Environment and Safeguards Compliance Policy (OP-703) states that, "[o]perations 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'."

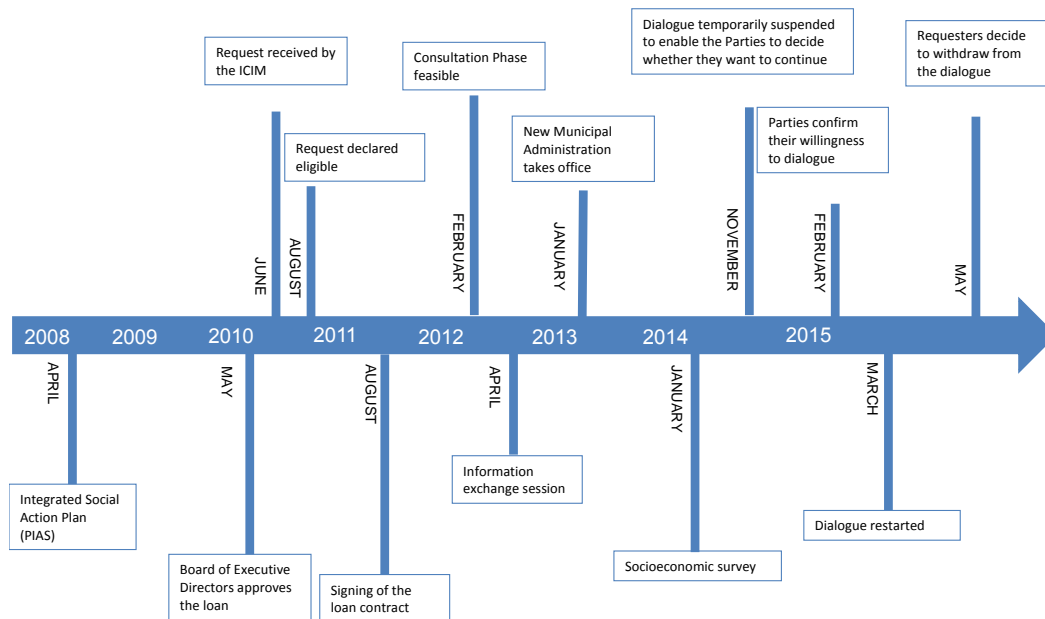
⁵ IDB, Loan Proposal, São José dos Campos Urban Structuring Program.

⁶ The Memorandum of Eligibility is available in the ICIM public registry at www.iadb.org/icim.

⁷ The Evaluation Report is available in the ICIM public registry at www.iadb.org/icim.

- then Project Ombudsperson concluded that there was an opportunity for the Parties—the Requesters and the Municipal Government—to jointly and voluntarily seek solution alternatives.
- 4.2 Nonetheless, as the Municipal Government was participating in an ICIM consultation process with another group of inhabitants, also represented by Mr. Cosme Vítor (case BR-MICI004-4011), both Parties decided it was best to prioritize the process already under way, while still addressing specific points, with support from the Consultation Phase team.
- 4.3 The Consultation Phase process was conducted from March 2012 to May 2015, and involved the following stages: (a) monitoring of the Resettlement Plan activities; (b) bringing the Parties together for the dialogue; and (c) relaunch and closure of the dialogue. Figure 1 sets out a timeline showing a number of important milestones in the process and the program. Considering the link between the issues raised in the Request and the resettlement component, the dialogue process focused on this issue and particularly on supporting the preparation of a revised resettlement plan (hereinafter, “revised Resettlement Plan”) and consultation thereon with the affected community.

Figure 1. Process Timeline



- 4.4 This approach reflected the fact that during the evaluation stage of the Consultation Phase, the Municipal Government reported that it was in the process of revising and updating the Integrated Social Action Plan (PIAS),⁸ and holding consultations with the Banhado population to generate a more robust and participatory Resettlement Plan than the 2008 PIAS. In late 2012, the Municipal

⁸ The loan proposal for this operation included an Environmental and Social Management Report (ESMR), an Integrated Social Action Plan (PIAS), and an Environmental Assessment Report (EAR). The PIAS documents the proposed resettlement plan at the time the operation was presented for approval.

- Government presented this revised plan to the Bank, but according to the comments made by the Environmental Safeguards Unit, in February 2013, in order to have a robust plan the socioeconomic cadastre needed to be updated and an adequate communication and consultation strategy created.
- 4.5 As a result of the local election process, it became necessary to confirm the willingness of the new Municipal Government to participate in the dialogue process. In March 2013, it confirmed its interest, thereby allowing the process to proceed, focused particularly on information exchange. In April 2013, the ICIM team held a meeting for public information exchange in Banhado, in which the program's components and its objectives were clarified, emphasizing the justification for resettlement. This was important because in the electoral period, the possibility had been raised of some of the families remaining in Banhado, which would have created high expectations among some of the area's residents who did not wish to relocate.
- 4.6 In July 2013, the Bank's project team and the Municipal Government, supported by the ICIM, agreed upon a work plan to address certain areas that required strengthening, in terms of the activities to be executed in the project. Among other things, specific actions and dates were defined for: (a) strengthening the program's management team; (b) setting up a local office to serve the affected population; (c) updating the socioeconomic cadastre of the Banhado population; (d) contracting a social expert to prepare the revised Resettlement Plan; (e) the actual preparing of the revised Resettlement Plan; and (f) the start of the dialogue once a draft of the revised Resettlement Plan had been prepared.
- 4.7 This work plan was presented to the Requesters for consideration; but in September 2013 they notified the ICIM that they did not accept the preparation of the cadastre, since they feared that this would imply their acceptance of resettlement as a fact.

Bringing the Parties together for the dialogue (October 2013–October 2014)

- 4.8 In view of this situation, the ICIM worked with the Requesters to clarify the objectives of the socioeconomic cadastre as a tool under OP-710⁹ for formulating a revised resettlement plan. As a result, the Requesters decided to accept the holding of the socioeconomic survey, provided this was a collaborative exercise between the Municipal Government, the Office of the Public Defender, and the representatives of the social movements.
- 4.9 In November and December 2013, the Parties discussed and agreed upon the following: (a) the methodology; (b) the content of the form to be used; and (c) the logistics of the socioeconomic survey. In those months the Parties also agreed that: (a) families living in the hazard area could have priority in departing for housing complexes if they so decided after having been informed of the options open for consideration under the revised Resettlement Plan; (b) remodeling work on the homes in the area would only be permitted with authorization from the Municipal Government; and (c) the Municipal Government would implement a number of measures in the neighborhood to improve the inhabitants' living

⁹ Paragraph V.1. of the Bank's Involuntary Resettlement Policy (OP-710) states that, "Accurate baseline information must be compiled [...]. It will include information on the number of people to be resettled, and on their socioeconomic and cultural characteristics."

- conditions (installation of street lighting, cleaning of drainage channels, upgrading of access roads, among other things).
- 4.10 In two intensive days of work, 11 and 12 January 2014, a team of 40 social assistants conducted a socioeconomic survey of 461 families (1,284 individuals) residing in *Banhado*. The survey was the outcome of close collaboration between the Parties accompanied by the ICIM; and the data so collected provided a basis for preparing a robust, revised Resettlement Plan that would be consulted with the population.¹⁰
- 4.11 Nonetheless, during the months following the survey, the process continued to present challenges that undermined the fragile trust between the Parties, particularly as a result of the monitoring conditions, which required a “freeze” of the area to prevent an influx of new inhabitants and ensure that the survey data faithfully reflected the profile and needs of each of the resident families, and thus be able to offer compatible housing alternatives.
- 4.12 In May and June 2014, the Municipal Government presented the *Banhado* road (*via Banhado*) project to the Requesters and their representatives and advisers. It also presented a socioeconomic diagnostic assessment based on the survey data; and it was agreed that the Municipal Government would give a public presentation on this information to *Banhado* residents. To ensure the success of that presentation, it was agreed that the Parties would meet a few days before it was prepared.
- 4.13 Although the preparatory meeting could not be held because the Requesters cancelled their participation, the Municipal Government decided to go ahead with the public presentation. This was done on 7 September 2014, with the ICIM attending as an observer. At the event, the impossibility of urbanizing the area and the construction of the *Banhado* road were put forward as justifications for the resettlement. In addition, five alternatives for the families’ resettlement were presented, and information was provided on the functioning of the Local Support Office to assist the *Banhado* population in the process of choosing alternatives and to provide information. The Office was set up in the vicinity of the neighborhood to facilitate community access.
- 4.14 With the aim of complementing the information obtained in the socioeconomic survey, the Municipal Government held an inquiry to ascertain the current preferences of the families to be resettled, in terms of the five alternatives proposed. Although this survey did not oblige the families to accept resettlement, the mere fact that it was held generated a lot of fear among the population.
- 4.15 Meanwhile the Municipal Government made several changes to its program team, which weakened communication with the community, even as it continued working on the preliminary revised Resettlement Plan.
- 4.16 In October 2014, the Requesters informed the ICIM that they were dissatisfied with the dialogue process, in particular because they felt that the Municipal Government was not fulfilling the commitments undertaken (see paragraph 4.9); and this was fueling distrust among the Requesters. Moreover, within the Municipal Government, a number of questions arose as to the representativeness of the

¹⁰ According to OP-710 (paragraph V.1.), this data will provide an important basis for the definition of eligibility criteria and the compensation and rehabilitation required for the resettled families.

Requesters, since the cadastre revealed a majority group was in favor of being resettled.

- 4.17 In this context, and given the existence of divergent positions within the Requesters' group, the ICIM asked the Requesters to analyze the situation and decide whether they wanted to proceed with the consultation phase process; and, if so, to clarify who among the Requesters group were in favor of continuing the dialogue, to thus be able to address the issues of representativeness that had been raised.

Relaunch and closure of dialogue (November 2014–May 2015)

- 4.18 On 26 November 2014, the ICIM received formal confirmation from the Requesters communicating their wish to continue participating in the process and setting out a series of conditions to be fulfilled by the Municipal Government and the Bank. They also informed the ICIM that if no agreement could be reached in the Consultation Phase, they would be interested in the Request being considered for the Compliance Review Phase.
- 4.19 The ICIM informed the Municipal Government of the Requesters' position, and it expressed its desire to continue with the process. The IDB confirmed its willingness to continue providing technical support as needed during the process.
- 4.20 To resume the dialogue process, the ICIM held several preparatory meetings with the Parties and the Bank team, to agree on the topics to be addressed, each Party's representatives, and the dialogue schedule.
- 4.21 The Municipal Government's representatives were formally designated in March, through an official letter from the Chief of Staff. The Requesters confirmed their representatives in a document signed by 108 Banhado residents.
- 4.22 In a joint meeting on 13 March 2015 the dialogue was formally resumed, and the following results were achieved: (a) clear definition of the Requesters group and their representatives; (b) appointment of the Municipal Government's representatives tasked with coordinating the project; (c) clarification of the role and function of the Bank's project team, both in the context of the project and of the dialogue; (d) discussion, agreement, and signing of the rules governing the dialogue; and (e) discussion of a work plan and timetable for the dialogue, (see Annex I) in accordance with the process of finalizing the draft of the revised Resettlement Plan; presentation, consultation with the population, and adjustments thereto; and eventual finalization thereof with the approval of the affected population, pursuant to the guidelines of the Bank's Involuntary Resettlement Policy (OP-710). Measures were also discussed and agreed upon for dealing with the commitments that the Municipal Government had assumed previously (see paragraph 4.9). In addition, given the concern among Banhado residents over the fact that there was no formal means to make use of the better quality housing units left vacant by families that had been voluntarily relocated, the ICIM facilitated the formalization of a "home exchange" commitment in which the criteria and methodology were agreed upon.
- 4.23 The schedule agreed upon envisaged the presentation of the draft of the revised Resettlement Plan to the representatives of the dialogue on 23 May, followed by a public presentation on 24 May. The Municipal Government was prepared to move forward with these activities in compliance with the schedule. A few days before that date, however, the ICIM received notification from the Requesters that they

had decided not to continue participating in the dialogue process, and they asked for their Request to be transferred to the Compliance Review Phase. The Requesters alleged that the Municipal Government was failing to fulfill the commitments assumed in the process, since public hearings on the Banhado road environmental impact study had been scheduled without any discussion of the revised Resettlement Plan with the residents of Jardim Nova Esperança.

- 4.24 With this decision, pursuant to the ICIM policy, the Consultation Phase process was brought to a conclusion, although not before the ICIM had held meetings with both Parties individually to explain the next steps in the ICIM process.

V. REFLECTIONS AND LESSONS LEARNED

- 5.1 The Consultation Phase process for the São José dos Campos Urban Structuring Program case generated important reflections and lessons for the ICIM, which are discussed below:
- 5.2 **Resettlement activities.** The Involuntary Resettlement Policy (OP-710) generally establishes that “[e]very effort will be made to avoid or minimize the need for involuntary resettlement.”¹¹ However, it should be noted that when resettlement is an objective of the operation, “the guiding principle will be to minimize the disruption of the affected population.”¹² During the dialogue process, there was a lot of confusion about the reasons for the resettlement, particularly among the Requesters. Consequently, we consider it pertinent for the fluid execution of projects that the impacted population has clear and accurate information on the justification for the resettlement.
- 5.3 **Information management in resettlement projects.** Resettlement projects generate a great deal of fear and uncertainty among the impacted population, and this is aggravated if the information is of poor quality or is not timely. In the present case, the PIAS issued in 2008 was based on a cadastre performed in 2002 and updated in 2007. Since then, the Banhado inhabitants have lived in a climate of continuous uncertainty, based on information generally emanating from the media. This disinformation has fueled mistrust that the Banhado residents feel towards the municipal administration, which was already at a high level as a result of other involuntary removals that have occurred in the município.¹³ In the present case, the ICIM played an important role as a bridge and in restoring communication channels between the Municipal Government and the Requesters.
- 5.4 **Creation of the revised Resettlement Plan.** The macro objective of the dialogue was to create the conditions necessary for the Parties to successfully implement a robust and participatory resettlement process. This would require the efforts of all the involved parties (the Requesters, the Municipal Government, and the IDB). Accordingly, one of the first actions of the ICIM team was to present the basic elements of the Involuntary Resettlement Policy (OP-710) so as to focus the discussion within the policy’s limits. Ensuring that the executing agencies and the

¹¹ Involuntary Resettlement Policy (OP-710), paragraph III.1.

¹² Involuntary Resettlement Policy (OP-710), paragraph IV.2.

¹³ In particular, the Banhado residents have mentioned the experiences of people who were resettled in the IDB Habitar project (see case BR-MICI004-2011) and other more recent local events.

- affected population have access to this information can help facilitate resettlement processes.
- 5.5 **The role of the IDB.** When the ICIM received the Request, the loan contract between the Bank and the Municipal Government had not yet been signed, and resettlement activities were at a standstill. Throughout the processing of the case in the Consultation Phase, the Bank played an active supervisory role in the operation and the collaborative work with the ICIM. During the dialogue process, the IDB's technical contributions and support to the executing agency were essential in making progress.
- 5.6 **Community organization and interested third parties.** In addition to the representatives of the social movements, for the purposes of the dialogue process a Residents Committee was set up consisting of four Banhado residents who represented the over 100 Requesters in the ICIM case. Given the size of this Requesters group, the Committee made it possible to keep the Requesters informed of the status of the process, and to bring the group's concerns to the table. As is natural, any dysfunctionality of the Committee directly impacted the mindset and decisions of the group as a whole. Moreover, the Requesters had support from other interest groups that stood up for the Requesters' concerns and proved to have influence on the community dynamic. For the ICIM process, it was important to limit participation in dialogue meetings only to those directly involved, so as to guarantee a safe, impartial space for seeking specific solutions to the problems posed, in which transparency and trust-building were at a premium.
- 5.7 **Limitations regarding communication with the Requesters.** In relation to communication between the ICIM and the Residents Committee, a major constraint was the fact that only two representatives of the social movements and one member of the Committee had access to the Internet. This represented a considerable limitation on communication between the ICIM and the Requesters and had an impact in terms of the time required for each step of the process and for reaching consensus on issues among the group. On this point, as well as others, the local facilitator proved to be an essential tool in terms of supporting the consultation processes.
- 5.8 **Ongoing participation in the dialogue.** During the Consultation Phase process, two situations were faced that weakened the process at specific points in time. Firstly, the electoral process which resulted in changes in the Municipal Government; and, secondly, changes among the officials and residents participating in the ICIM process. These two situations caused delays, as it became necessary to provide recaps of the process and reach consensus on objectives and, on several occasions, communication bridges had to be rebuilt between the Parties, thus highlighting the need for more nimble and time-efficient processes.

VI. NEXT STEPS

- 6.1 As the Requesters had indicated that if an agreement could not be reached they were interested in a Compliance Review, the Interim Director of the ICIM will transfer the Request to the Compliance Review Phase.

- 6.2 Pursuant to the Transition Plan (document MI-48-1), when the case is transferred to the Compliance Review Phase, it will be dealt with in accordance with the current policy (document MI-47-3).

ANNEX I: WORK PLAN AND TIMELINE AGREED ON BY THE PARTIES IN MARCH 2015

Date	Meeting	Specific topic	Ongoing topic
25 April 2015	First Meeting	Detailed schedule	Summary of progress, communication plan
23 May 2015	Second Meeting	Preliminary Resettlement Plan	Summary of progress, communication plan
24 May 2015		Presentation to the community	
		Delivery of the document	
20 June 2015	Third Meeting	First group analysis of the Preliminary Plan	Summary of progress, communication plan
18 July 2015	Fourth Meeting	Second group analysis of the Preliminary Plan	Summary of progress, communication plan
15 August 2015	Fifth Meeting	Third group analysis of the Preliminary Plan	Summary of progress, communication plan
19 September 2015	Sixth Meeting	Discussion depending on the needs of the moment	Summary of progress, communication plan
17 October 2015	Seventh Meeting	Discussion depending on the needs of the moment	Summary of progress, communication plan
		Delivery of the document	
7 November 2015	Eighth Meeting	Final Resettlement Plan – Presentation to the Parties in the ICIM dialogue Discussion of ICIM monitoring of the resettlement process according to the plan	Summary of progress, communication plan
8 November 2015		Presentation to the community	
5 December 2015	Ninth Meeting	Final Resettlement Plan agreed upon Dialogue objective Arrangements for monitoring compliance with the Plan	Summary of progress, communication plan
2016			
Monitoring of compliance with the Plan			