



DOCUMENT OF THE INDEPENDENT CONSULTATION  
AND INVESTIGATION MECHANISM

**BR-MICI006-2011**

**RECOMMENDATION FOR A COMPLIANCE REVIEW AND TERMS OF REFERENCE**

**SÃO JOSE DOS CAMPOS URBAN STRUCTURING PROGRAM**

**(BR-L1160)  
(2323/OC-BR)**

This document was prepared by Victoria Márquez-Mees, Director of MICI

This document contains confidential information relating to one or more of the ten exceptions of the Access to Information Policy and will be initially treated as confidential and made available only to Bank employees. The document will be disclosed and made available to the public upon approval.



## **INFORMATIVE NOTE**

### Guidelines for the Compliance Review Phase

These Guidelines for the Compliance Review Phase have been drafted in accordance with paragraphs 36-41 of the MICI Policy (MI-47-3).

A Compliance Review is a factual investigation process to determine whether the Bank's Management has complied or not with the Relevant Operational Policies during the respective operation or operations, and whether the harm alleged is connected to noncompliance by the Bank with its ROPs.

Conducting a Compliance Review by the MICI is subject to the authorization of the Board of Executive Directors of the Inter-American Development Bank (the "Board of Executive Directors"), which receives a *Recommendation* from the MICI for its consideration, after a maximum period of 21 business days during which the MICI examines the main documents of the operation, the additional information provided by Management, the Request, and the ROPs. In the *Recommendation*, the MICI will state its decision to recommend or not recommend that an investigation be conducted in view of the added value for the specific case, and for the Bank in general, in terms of relevance, impact, and efficiency.

For those cases in which an investigation is recommended, the MICI will include the following items in the *Recommendation*:

- The objectives of the investigation.
- The scope of the investigation, including the proposed investigation questions. The scope will always be limited to the assertions made in the Request and will be aimed solely at investigating the acts or omissions of the Bank in the context of the operation or operations pertaining to the case and in relation to compliance with the ROPs.
- The methodology to be used, which will include the proposed investigative method or methods, the activities to be performed, and the products to be delivered.
- The investigation team, which will consist of the Compliance Review Phase Coordinator, acting as Panel Chair, and two members of the Roster of Experts. The experts will be selected based on their expertise in the technical matters required by the scope of the investigation and the availability of those experts to participate in the investigation during the required time period. These experts will only be hired once the Board of Executive Directors approves the investigation, and their inputs will be included in the Compliance Review Report.
- The timeline for the investigation, which generally will not exceed a maximum of six calendar months from the time the Panel is established. In the event that additional time is needed, the *Recommendation* document will present the requested time period and its justification.
- The estimated budget required for the investigation.

A preliminary draft version of the *Recommendation* to be submitted to the Board of Executive Directors will be circulated to Management and Requesters, who will have the opportunity to submit written comments to the MICI. The MICI will review the comments and take into account those it deems pertinent. The comments received from both parties will be included as annexes to the *Recommendation*. The final version of the *Recommendation* will be submitted for the consideration of the Board of Directors by short procedure. The investigation will be deemed to have been approved if, once the established time period for the approval by short procedure has elapsed, the procedure is not stopped by any member of the Board of Executive Directors. In the event that the procedure is stopped by any of the Directors, the matter will be placed on the agenda for deliberation by the PEC Committee and subsequent consideration in a Board of Executive Directors session.

Notice of the decision of the Board of Executive Directors will be communicated to the Requesters and Management and published in the Public Registry.

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<b>PRINTED ANNEXES</b>	
Annex I	Management Comments on the Preliminary Version of the Recommendation for a Compliance Review
Annex II	Requesters' Comments on the Preliminary Version of the Recommendation for a Compliance Review

LINKS	
1.	Original Request <a href="http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=37425538">http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=37425538</a>
2.	Project Profile <a href="http://www.iadb.org/Document.cfm?id=1195893">http://www.iadb.org/Document.cfm?id=1195893</a>
3.	Environmental and Social Management Report <a href="http://www.iadb.org/Document.cfm?id=40276798">http://www.iadb.org/Document.cfm?id=40276798</a>
4.	Comprehensive Social Action Plan <a href="http://www.iadb.org/Document.cfm?id=37344582">http://www.iadb.org/Document.cfm?id=37344582</a>
5.	Loan Proposal <a href="http://www.iadb.org/Document.cfm?id=35153148">http://www.iadb.org/Document.cfm?id=35153148</a>
6.	Loan Agreement <a href="http://www.iadb.org/Document.cfm?id=37344555">http://www.iadb.org/Document.cfm?id=37344555</a>
7.	Brazil Executive Director's Comments on the Preliminary Version of the Recommendation and ToR <a href="http://www.iadb.org/Document.cfm?id=40276720">http://www.iadb.org/Document.cfm?id=40276720</a>

## ACRONYMS AND ABBREVIATIONS

EPA	Environmental Protection Areas
BANK	Inter-American Development Bank
IDB	Inter-American Development Bank
CDHU	Housing and Urban Development Company
EAR	Environmental Assessment Report
ESMR	Environmental and Social Management Report
MICI	Independent Consultation and Investigation Mechanism
MUNICIPALITY	Municipality of São José dos Campos
PANEL	Compliance Review Panel
PEUSJC	São José dos Campos Urban Structuring Program
ESMP	Environmental and Social Management Plan
PIAS	Comprehensive Social Action Plan
POLICY	Policy of the Independent Consultation and Investigation Mechanism (document MI-47-3), in force as of December 17, 2014.
ROPs	Relevant Operational Policies
PREFECTURE	Prefecture of São José dos Campos
PROGRAM	São José dos Campos Urban Structuring Program BR-L1160
ROSTER	The list of technical experts appointed on an <i>ad hoc</i> basis to the Panel responsible for conducting a Compliance Review

## I. EXECUTIVE SUMMARY

- 1.1 This document is a recommendation to the Board from the Independent Consultation and Investigation Mechanism (MICI) to conduct a Compliance Review of the “São José dos Campos Urban Structuring Program” (BR-L1160) in relation to allegations of potential harm that the involuntary resettlement provided for in the Program and a lack of information could potentially cause to the requester families.
- 1.2 The São José dos Campos Urban Structuring Program is a US\$ 85.7 million sovereign guaranteed loan operation approved by the Board of Executive Directors via streamlined procedure on May 12, 2010. The borrower and executing agency is the Municipal Prefecture of São José dos Campos in the State of São Paulo. The objective of the project is to contribute to the sustainable development of the Municipality through the improvement and consolidation of its physical infrastructure and urban management of the Municipality. Among other components, the program includes the creation of various urban parks, the relocation of 399 families living in an environmental preservation area, the construction of road networks, and institutional strengthening activities.
- 1.3 The Request was submitted on June 10, 2011 by Mr. Cosme Vítor, of the *Central de Movimientos Populares*, on behalf of a group of residents of the *Jardim Nova Esperança* community in the city of São José dos Campos. The Requesters allege that the resettlement will cause a significant deterioration in their living conditions, given that the only resettlement option offered to them would not guarantee the same living conditions they currently enjoy, and they assert that in the process they have already lost access to public services that used to be available to the community. They further allege that they were not properly consulted or informed of the resettlement plans and the options for compensation.
- 1.4 The Request was received under the Policy Establishing the Independent Consultation and Investigation Mechanism (GN-1830-49), approved by the Board of Executive Directors in February 2010. It was declared eligible for the Consultation Phase in August 2011 and managed under that Phase until 2015. On December 17, 2014 the Board of Executive Directors approved the new MICI Policy (MI-47-3) and, in view of the Transition Plan approved by the Board of Executive Directors on February 4, 2015 (MI-48-1), the Request was processed thereafter in accordance with the new MICI Policy (MI-47-3). In late May 2015, the Requesters decided to withdraw from the dialogue process and, consequently, because it is voluntary, the Consultation Phase was concluded. On August 14, 2015, the case was transferred to the Compliance Review Phase.
- 1.5 This document contains five sections and two annexes designed to offer the Board of Executive Directors the pertinent information for it to consider the MICI's recommendation to authorize the investigation. Section II presents a summary of the

operation “São José dos Campos Urban Structuring Program”; Section III summarizes the allegations made by the Requesters both in their Request and in the interviews held during the assessment stage of the Consultation Phase; Section IV summarizes the processing of the matter by the MICI to date; and Section V presents the recommendation to investigate and the proposed terms of reference for conducting the Compliance Review: the proposed rationale, scope, methodology, timeline, team, and budget. In addition, in keeping with the MICI Policy, a preliminary version of this document was circulated to the Requesters and to Management for their comments, which were carefully examined. A copy of the draft was also shared with the Executive Director for Brazil, who provided a document with comments on March 14, 2016. The MICI has included in this version those comments from Management and the Requesters it finds pertinent, and will send them a communication stating the reasons for which some have not been considered. The annexes include the comments from Management and the Requesters on the preliminary version of this document. Finally, the beginning of this document contains links to the main reference documents used in its preparation, as well as to the comments made by the Executive Director for Brazil to the draft recommendation.

- 1.6 Pursuant to paragraph 41 of the MICI Policy (MI-47-3), and as detailed herein, it is recommended that the Board of Executive Directors authorize the MICI to conduct a Compliance Review investigation regarding the “São José dos Campos Urban Structuring Program” (BR-L1160), in order to objectively and impartially investigate the complaints of the Requesters and determine whether the Bank failed to comply with Operational Policies OP-710, OP-703, and OP-102, and, if so, whether such noncompliance caused harm to the Requesters.
- 1.7 In addition, by conducting this investigation MICI fulfills the objective established by the Board of Directors to provide the Board with information regarding investigations<sup>1</sup>. Furthermore, MICI could also provide information about systemic issues related to Management’s current practices in the design of operations and the observance of Relevant Operational Policies.

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<sup>1</sup> Policy, paragraph 5 b.

## II. THE PROJECT<sup>2</sup>

### A. Background<sup>3</sup>

- 2.1 The Municipality of São Jose dos Campos is located in the middle of the Rio Paraíba do Sul Valley, in the geomorphological province known as the Atlantic Plateau, with a total area of 1,099.60 km<sup>2</sup>. It is buttressed by Serra do Mar and Mantiqueira, through which the Paraíba do Sul River flows, and the surface of which forms one of the three major secondary watersheds of Brazil, covering an area of approximately 57,000 km<sup>2</sup> in three states (Minas Gerais, São Paulo, and Rio de Janeiro).
- 2.2 This municipality is part of the country's most important economic hub, represented by the President Dutra Highway, which links the São Paulo Metropolitan Region and Rio de Janeiro. The various urban and industrial economic centers in the region account for nearly 50% of Brazil's GDP. São Jose dos Campos, Taubaté, and Jacareí are key points in the São Paulo area, and form part of the country's most developed region.
- 2.3 Since 1960, the municipality has had a Comprehensive Development Master Plan designed to regulate urban growth and the development of the Municipality. The fourth and current Comprehensive Development Master Plan was approved in 2006 through LC 306/06. It introduced urban planning instruments from the City Charter to correct distortions, providing for urban expansion areas and analysis criteria (by regions and by socioeconomic sectors). The Plan also created a hierarchy of road networks, and raised concern for the improved preservation and distribution of green areas in the city, optimizing the drainage conditions.
- 2.4 The city of São José dos Campos experienced a sharp population increase in the second half of the last century<sup>4</sup> owing to its strong economic development, which attracted a large number of new residents. The lack of a more effective oversight on the part of the Government allowed for environmental protection areas to be occupied, especially along the banks of some urban rivers and streams, resulting in the degradation of the environmental conditions and adversely affecting the quality of life for the entire city. The families residing in those areas generally live in constant risk of flooding.
- 2.5 In 1999, the Municipality established a housing policy that, in less than 10 years, resulted in the removal of 15 *favelas* and the urbanization of two others, directly serving some 7,000 residents. According to the documents, those residents were resettled in housing units under regular conditions of habitability in housing complexes equipped

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<sup>2</sup> The information in this chapter is a synthesis of the content of the Program-related documents in the possession of the Bank. Its sole purpose is to provide basic information on the Program and its context with respect to the issues raised in the Request.

<sup>3</sup> The information in this section was taken from the Environmental and Social Management Report drafted for the São José dos Campos Urban Structuring Program (BR-L1160).

<sup>4</sup> According to the IBGE demographic censuses, the population of São José dos Campos grew from 148,332 inhabitants in 1970 to 539,313 in the year 2000.

with a complete infrastructure of essential services and community facilities (schools, basic health clinics, community centers).

- 2.6 According to the ESMR, *Jardim Nova Esperança* (the *Banhado Favela*), which is included in the Program, was recognized as the last remaining concentration of substandard housing in the city's urban center when the operation was identified. Because it was located in a flood-prone EPA with poor sanitation conditions, the need to remove and resettle 399 families was underscored in the report. According to the ESMR, in addition to providing better living conditions for those families, the removal of this settlement would allow for the establishment of the Banhado Park, which was already supported by compensation funds from Petrobras.

## **B. The São José dos Campos Urban Structuring Program (BR-L1160)**

- 2.7 The São José dos Campos Urban Structuring Program BR-L1160 provides for a specific investment loan of US\$ 85.7 million for the Municipality, guaranteed by the Republic of Brazil.<sup>5</sup> The executing agency is the Prefecture of São José dos Campos.
- 2.8 As part of the Bank's identification process, the Operation was included in the "Report on the 2008 and 2007 Lending Programs and Updates on the Loan Program" (document GN-2477), within the portfolio that would be submitted to the Board of Executive Directors for approval by simplified procedure. The program was ultimately approved by the Board of Executive Directors under that procedure on May 12, 2010. The Loan Agreement was signed on August 18, 2011, and the first disbursement was made on January 10, 2012. The Program is currently in the execution stage and US\$ 19.1 million have been disbursed to date.
- 2.9 The purpose of the Program is to contribute to the sustainable development of the Municipality, seeking to achieve a better balance among its economic, environmental, and social aspects through the improvement and consolidation of its physical infrastructure and urban management of the Municipality. The program consists of three components:<sup>6</sup>
1. Urban-environmental improvements: This component is intended to improve the Municipality's urban environmental quality and consolidate the integration between the urban space and the preservation area through the following : (i) creation of up to six urban parks with an increase in the percentage of green space and improvement in soil permeability in urban areas; (ii) resettlement of families who occupy areas designated for environmental preservation to improve their housing conditions; (iii) regularization of illegal subdivisions where families live in conditions of precarious infrastructure (approximately 2,000 lots) and the channeling of the respective processes to the relevant authority responsible for their legalization; (iv)

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<sup>5</sup> Loan Proposal, Project Summary.

<sup>6</sup> Loan Proposal, paragraphs 1.17-25.

establishment of up to 21 sites for voluntary delivery of construction and demolition waste for management and recycling; and (v) implementation of an open canal for storm water drainage.

2. Improvements in urban mobility: through the restructuring of 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. This component includes: (i) works to establish the Banhado and Cambuí highways; (ii) construction of up to 13 bus connection stations; (iii) modernization of the traffic signal system and the operations control center; (iv) development of the urban mobility master plan; and (v) a study of alternatives for an urban mass rapid transit system.
3. Institutional strengthening: to support the municipal government's strategic objective of increasing public sector efficiency and effectiveness by improving municipal public services, public administration and land management. The structure of this component includes two sub-components: (i) information technology management in the municipal government, and (ii) land registry management and electronic services.

2.10 According to the Loan Proposal, the resettlement of the families removed from *Jardim Nova Esperança*—which dates from 1930—will not only provide better living conditions for the families that live there but will also make it possible to establish the Banhado Park, build the future Banhado Highway, and consolidate the urban and environmental perimeters. The document specifies that, in accordance with the Municipal Housing Policy and the Bank's resettlement procedures (OP-710), the families are being relocated under a comprehensive social action plan, summarized in the ESMR. It also establishes that the social intervention process includes housing options located in different parts of the city and compensation to obtain housing on the market. In order to mitigate this situation and the risk of lost income faced by the families who are displaced from the proximity of the vicinity to the city center, the prefecture will work individually with each family (home visits) to more accurately define the options, and will submit a specific report on the results. The Bank, for its part, recommends in the Loan Proposal that the option of compensation to obtain housing be more broadly disseminated.<sup>7</sup> The document also establishes that the outcomes of the public hearing for the Banhado *favela* and the agreements with the families must be submitted to the Bank prior to start of the resettlement of the families, as a condition for the financing of *Jardim Nova Esperança*. The execution of this component was set to take place in the first year of implementation (2011).<sup>8</sup>

2.11 The program was classified as category "B" in accordance with the Environment and Safeguards Compliance Policy (OP-703); and the Project documents established that the applicable policies are the Operational Policy on Involuntary Resettlement (OP-710);

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<sup>7</sup> Loan Proposal, paragraph. 2.8

<sup>8</sup> Loan Proposal, Annex II, p. 3.

directives B.01, B.03, B.05, B.06, B.07, B.10, and B.11 of OP-703; and the Access to Information Policy (OP-102).

### III. THE REQUEST<sup>9</sup>

- 3.1 On June 10, 2011, Mr. Cosme Vitor, of the *Central de Movimientos Populares*, filed a Request on behalf of a group of residents of the *Jardim Nova Esperança* community in the city of São José dos Campos. The Request alleged potential socioeconomic harm to those families as a consequence of the program, as well as potentially negative environmental impacts.
- 3.2 Both in their Request and in the interviews held during the assessment stage of the Consultation Phase, the Requesters maintain, among other assertions, that:
1. The residents of Banhado were neither consulted about the Program nor informed of the reasons for resettlement and the compensation options. On this same issue, they state that:
    - a. One of the reasons for the resettlement of the families of *Jardim Nova Esperança* is the establishment of the Banhado Municipal Nature Park where the community is currently located. The creation of this park was not adequately discussed with the residents at public hearings; and
    - b. The program was not subject to public consultation with respect to the Banhado Highway, and it does not have the necessary environmental impact studies.
  2. The only option offered by the Municipality 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. For 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 purchase the new home and pay for public services, including the high water, electricity and gas rates, as well as condominium fees and public transportation costs;
  3. Public service facilities that previously served the community (such as a childhood education center) were systematically closed by the Municipality without notifying the residents of the reasons why these services were stopped;
  4. The debris from the demolition of houses belonging to families who agreed to relocate to housing units offered by the Municipality starting in December 2010 has not been cleared, resulting in adverse health effects.

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<sup>9</sup> The original Request received on June 10, 2011 is available in the Links section of this document. Because the original Request referred to adverse effects arising from two Bank-financed projects—the Low-Income Neighborhood Improvement Program – Habitar Brasil (BR0273) and PEUSJC (BR-L1160)—and did not contain detailed information about the harm alleged, the information related to the Requesters' concerns has been extracted from documentation gathered subsequently and directly by the MICI in a meeting with the Requesters during the Consultation Phase.

- 3.3 From the Requesters' point of view, their main concern is that the resettlement will result in the significant deterioration of their living conditions, without their having been able to participate in the process, or have their perspective as an affected group taken into account.

#### IV. THE MICI PROCESS TO DATE

- 4.1 The original Request in case BR-MICI006-2011 "The São José dos Campos Urban Structuring Program" (BR-L1160) was received on June 10, 2011, while the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49) was in effect, and it was processed under that Policy until February 4, 2015. From that time forward, the Request has been handled under the new MICI Policy (MI-47-3) and the Transition Plan (MI-48-1).<sup>10</sup>
- 4.2 On August 22, 2011, the Request was declared eligible for the Consultation Phase by the then-Project Ombudsperson. At the end of the assessment stage, in February 2012, it was concluded that there was an opportunity for the Parties to seek alternative solutions jointly and voluntarily. The Consultation Phase process began in March 2012.<sup>11</sup> The Requesters and the Prefecture participated, while the Bank's Management also accompanied the process, helping the executing agency to improve the Resettlement Plan.<sup>12</sup>
- 4.3 At the end of May 2015, the Requesters decided not to continue taking part in the dialogue process. Consequently, because the process is voluntary, the Consultation Phase was concluded. The Consultation Phase Report was issued the following July, and on August 14, 2015, the case was transferred to the Compliance Review Phase.<sup>13</sup> When the Consultation Phase was concluded, the Municipal Prefecture was coordinating actions to disseminate the preliminary resettlement plan in order to encourage participation in its finalization and implementation.
- 4.4 On August 16, 2015, the MICI Director assumed office and began the preparation of this document, the draft of which was provided to the Requesters and Management for

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<sup>10</sup> On December 17, 2014, the Board of Executive Directors approved the revised version of the Policy of the Independent Consultation and Investigation Mechanism (document MI-47-3), instructing its immediate entry into force. Complementarily, the Transition Plan (MI-48-1) was approved on February 4, 2015, establishing that, if an agreement is not reached within a maximum period of 12 months, and given that the Requesters had also asked for a Compliance Review, the Request would be transferred to the Compliance Review Phase and processed in accordance with the provisions of the current policy for eligible Requests that have opted for the Compliance Review Phase.

<sup>11</sup> The information on the Consultation Phase, the different documents issued during that Phase and the case information record can be viewed in the [Public Registry](#).

<sup>12</sup> During the assessment period of the Consultation Phase, the Prefecture reported that it was in the process of reviewing and updating the comprehensive social action plan (PIAS), as well as holding consultations with the residents of Banhado to create a more robust and participatory PDR, compared to the 2008 PIAS. In late 2012, the Prefecture submitted its revised version to the Bank; however, according to comments made by the Safeguards Unit in February 2013, a robust plan would require that the Prefecture update the socioeconomic registry and create an appropriate communication and consultation strategy.

<sup>13</sup> For additional information, see the Consultation Phase Report, which can be viewed in the [Public Registry](#).

comment on January 15, 2016. Both parties were given 21 business days to submit their comments, which have been carefully examined.<sup>14</sup> The MICI is grateful for the remarks and points made by each Party. This version has impartially and objectively included those comments that the MICI has deemed pertinent, and the MICI will offer the Parties an explanation of the reasons why some have not been considered. The original comments of both Parties can be viewed in the annexes to this document.

## **V. RECOMMENDATION FOR A COMPLIANCE REVIEW**

- 5.1 This *Recommendation* for a Compliance Review and its Terms of Reference is submitted to the Board of Executive Directors for its consideration pursuant to paragraphs 39, 40, and 41 of the Policy.
- 5.2 According to paragraph 41 of the Policy, it is recommended that the Board of Executive Directors authorize the MICI to conduct the Compliance Review investigation in relation to the “São José dos Campos Urban Structuring Program” (BR-L1160) operation, with the objective of determining whether the Bank failed to comply with operational policies OP-710, OP-703, and OP-102<sup>15</sup> and if such non-compliance caused harm to the Requesters during the design/implementation of the Program.
- 5.3 The MICI underscores that the harm alleged by the Requesters of a serious nature because it affects a particularly vulnerable sector of society and has continued for a lengthy period of time, which increases their vulnerability. The MICI additionally observes that the documents examined preliminarily contain conflicting information that gives rise to uncertainty and speculation with regard to the true scope of the Program and its implementation. There are also discrepancies between the Requesters’ assertions and what is stated in some of the Program documents. In light of the above, the MICI finds that it is appropriate to investigate the facts in order to clarify the circumstances of the case with respect to the acts or omissions of the Bank, taking the stipulations of the ROPs as a reference.
- 5.4 It is important to note that on the submission date of this *Recommendation*, the resettlement of the families of *Jardim Nova Esperança*—which in the original Program plans was slated to take place in 2008—has only involved some voluntary removals. In addition, Management has informed the MICI that in November 2015 the Borrower submitted a Program modification proposal to the Bank, which would eliminate the resettlement of the families of *Jardim Nova Esperança* and the construction of the

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<sup>14</sup> Because the MICI had not yet completed its structure of governance when the draft was circulated, the MICI Director, in keeping with the Transition Plan, decided to extend the comment period by 6 business days (with respect to paragraph 40 of the current MICI Policy).

<sup>15</sup> According to the Glossary contained in the MICI Policy, the Relevant Operational Policy “is the version in effect at the time of Board approval of the Bank-Financed Operation that is the subject of the Request.” When this operation was approved, OP-102 on Access to Information, GN-1831-18, of August 7, 2006, was in effect.

Banhado Highway from the scope of the Bank-financed Program.<sup>16</sup> Management indicated that, if an Modifying Contract were signed, the Bank would no longer have a contractual relationship with the Borrower in connection to the financing of the Banhado Highway and the resettlement of the families.

- 5.5 On the submission date of this Recommendation, the request for modification is said to be pending approval by the Federal Government of Brazil. It is the opinion of the MICI that the results of the investigation, even if the components that gave rise to the Request are eliminated, would offer the Board of Executive Directors a determination of whether the Bank complied or not with the Relevant Operational Policies during the time of the Bank's involvement with the Program and its connection to the harm alleged by the Requesters—which is the Mechanism's *raison d'être*. An investigation would also provide the Board with relevant information about the application of OP-710, OP-703, and OP-102 in projects like the one at issue in this case, which address such a sensitive issue as the involuntary resettlement of particularly vulnerable populations. The reasons for the MICI's decision to make this recommendation are outlined below, as well as the proposed scope, methodology, timeline, and budget.

#### A. Rationale

***Compliance with the Operational Policy on Involuntary Resettlement (OP-710) and the Access to Information Policy (OP-102) in terms of information, consultation, and a participatory process.***

- 5.6 The Requesters allege that they have not received information about the reasons for the resettlement or the resettlement alternatives available to affected groups beyond the purchase of an apartment in a housing complex far from the city center. They expressed their initial opposition to being removed from Banhado, where they have lived for a long time and have established their lives. Nevertheless, if in fact it is impossible for them to remain in the Banhado area, they contend that there must be a participatory Resettlement Plan that will guarantee conditions equal to or better than the ones in Banhado. They allege that no resettlement plan has been presented to or discussed with the community to date, nor has there been any public hearing on the matter.
- 5.7 The objective of OP-710 is to minimize harmful changes to the living standards of persons residing in the project's area of influence, preventing or decreasing the need for physical displacement, and ensuring that, if displacement is necessary, there is a resettlement plan to ensure that those persons will be compensated and rehabilitated fairly and appropriately. A number of criteria must be met in drafting such a plan, including the participation of the community through consultations on the plan's design

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<sup>16</sup> Aide Memoire-Office Revision, November 2015. São José dos Campos Urban Structuring Program, FMM-CBR (2323/OC-BR-BR-L1160). Confidential document. The MICI received confirmation of this information from Management.

and during its execution and monitoring.<sup>17</sup> OP-710 further establishes that the resettlement plans must include the results of consultations carried out in a timely and socio-culturally appropriate manner with a sample of people representing the displaced and host communities. For its part, OP-102 contains the general principle that information concerning the Bank and its activities should be publicly disclosed in a timely and appropriate way in order to improve the transparency and quality of its activities, provided that there are no compelling reasons to keep it confidential. The policy lists the project documents that must be available to the public.

- 5.8 In 2008, the executing agency drafted a comprehensive social action plan to be developed with the families residing in the *Jardim Nova Esperança* community, which forms part of the technical documentation required for the Program's financing. The PIAS states that the occupied area is an Environmental Protection Area under Municipal Law No. 2792/84 and State Law No. 11.262/02, and therefore the urban development of the Banhado *favela* is not possible.
- 5.9 The PIAS is presented in the Program's documentation as the equivalent of the Resettlement Plan required by OP-710. With respect to "participatory diagnostic" with the community, the document states that on January 3, 2008, a meeting was held with the oldest residents, merchants, and representatives from the "social facilities," solely to learn about the area and begin field work. Another meeting was held on January 8, 2008 with older residents in order to learn about the social, historical, and cultural conditions in the area. It mentions that the diagnostic of the areas and project intervention would be presented at a future meeting open to the community in the Municipal Assembly or the Auditorium of the Prefecture, although as a preliminary matter it has not been possible to verify whether such meeting has in fact been held. It further states that the Municipality's program to remove the *favelas* was working well because the communities involved were supporting the Prefecture's efforts, and it states that the project was discussed at length with the community of *Jardim Nova Esperanza* prior to its implementation.<sup>18</sup> It also documents the fact that the resettlement of the residents of the Banhado *favela* had been planned since 2002, when there was a freeze on the area within the Municipality's program to remove the *favelas*; but that the financing of the Program would allow for the removal to be expedited. The ESMR stipulated that said financing would be conditioned upon "the Bank's review of the final outcomes with respect to the solutions chosen by the families and the public consultation on the project, which would take place in the Chamber of Councilors."<sup>19</sup> Finally, the loan agreement establishes that the resettlement must be conducted in keeping with the Bank's resettlement procedures and the municipal housing policy, which are said to be already provided for in the Municipality's Comprehensive Social Action Plan.<sup>20</sup>

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<sup>17</sup> OP-710, sections III.1, III.2 and V.2

<sup>18</sup> PIAS, paragraphs 4.4 and 5.2.1.

<sup>19</sup> ESMR, annex VI, section X, paragraph 9.2.

<sup>20</sup> Loan Agreement, sole annex, clause 4.07.

- 5.10 The Requesters nevertheless challenge the notion of a resettlement plan formulated with the participation and consultation of the community, and assert that it is an imposition of the Prefecture. In addition, they reiterate that they lack access to information on the subject.
- 5.11 The MICI finds that an investigation would make it possible to determine whether the Bank met the requirements established in OP-710 and OP-102 with respect to consulting and informing the affected population with respect to the involuntary resettlement process provided for in the program.

***Compliance with the Policies on Involuntary Resettlement (OP-710) and Environment and Safeguards Compliance (OP-703) in terms of the identification and mitigation of negative impacts on the living conditions of the Requesters.***

- 5.12 The Requesters allege that the only resettlement option they had been offered was to purchase housing in housing complexes far from the city center, which is where *Jardim Nova Esperança* is located. From their perspective, the option that was offered would have adverse effects on their current living conditions, because they would no longer have access to the public services or the employment opportunities and sources of income they currently enjoy living in the city center. The move would also create additional costs for them in terms of transportation and other services, in addition to their housing payments. In particular, they mention the negative experiences of prior resettlements conducted under Bank-financed projects.
- 5.13 They further state that they have already suffered specific adverse effects, given that within the framework of its resettlement plan the Prefecture had discontinued certain public services previously available in the Banhado community, including an early childhood education center, without notifying the residents of the reasons for the closure. In addition, they assert that the Prefecture has left the debris from the demolished houses of those residents who have already been resettled.
- 5.14 With respect to the identification of impacts, different project documents indicate that the Program will not have significant adverse effects and that those created by the involuntary resettlement will be minor and resolvable through a resettlement plan.<sup>21</sup> Other documents echo certain risks posed by the resettlement, such as the heightened vulnerability of the residents and the volume of removals, the potential impoverishment of the families due to their displacement to areas far from their workplaces, and the inability of the families to assume their new “social duties.”<sup>22</sup>
- 5.15 With respect to the housing options, the Loan Proposal states that the PIAS contains all of the necessary actions for the removal and resettlement of the families from the Banhado, and meets all of the requirements of OP-710. Nevertheless, the PIAS only mentions as alternatives for the residents the letter of credit, or the transfer to areas in

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<sup>21</sup> ESMR, pp. 17, 29 and 30.

<sup>22</sup> PIAS, p. 31.

the north (to the *Jardim Bom Vista* area), south or east, without specifying anything about the housing options said to exist in those areas or the socioeconomic opportunities they would provide for resettled individuals.<sup>23</sup> It also asserts that the Prefecture has “successful” experience from other Bank-financed projects that will be replicated for the Program.<sup>24</sup> However, there is documentation from the Bank that presents a different view of the sufficiency of the PIAS and another that requires an evaluation of the Prefecture’s performance in the resettlement area.<sup>25</sup>

- 5.16 The social services that the Requesters say were discontinued are documented in the PIAS as services used by the residents of the *Banhado*;<sup>26</sup> however, this plan does not state when or under what circumstances they would be stopped.
- 5.17 OP-703 establishes criteria for the consideration of the potential impacts of an operation, to be taken into account during the screening stage of an operation, which requires, for example, determining whether the impacts are significant or local and short-term. It is also necessary to examine whether such impacts already have effective mitigation measures. The specific category assigned to the Program depends, among other things, upon the identification of those impacts and the existence of mitigation measures.<sup>27</sup>
- 5.18 In addition, according to OP-710, involuntary resettlement should disrupt the affected population as little as possible and ensure that displaced persons have access to employment opportunities and urban services that are the equivalent or better. It establishes a number of specific criteria regarding compensation and rehabilitation options and standards to be met with regard to housing and services to be provided to the affected persons. It also contains a set of minimum requirements that must be reflected in both the preliminary and final resettlement plans.<sup>28</sup> According to this policy, the final resettlement plan, which must be ready prior to the distribution of the project documents for approval by the Board of Executive Directors, must include, among other items, the identification of the final set of compensation and rehabilitation options; the eligibility criteria for each option; and a reasonably accurate estimate of the number of individuals subject to each option or a combination thereof.<sup>29</sup>
- 5.19 The MICI is of the opinion that an investigation would make it possible to verify whether the program included a detailed analysis to properly assess the risks and impacts of the resettlement and design preventive measures to reduce them to the greatest extent possible, in keeping with the guidelines established in OP-710 and OP-703. More specifically, it would help determine whether there was a resettlement plan that met the requirements of OP-710 regarding the identification of resettlement alternatives in light of

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<sup>23</sup> PIAS, p. 37. Similarly, see ESMR, p. 32.

<sup>24</sup> Loan Proposal, paragraph 2.8; ESMR, pp. 31-32.

<sup>25</sup> Environmental and Social Strategy, paragraphs 4.5 and 4.6.

<sup>26</sup> PIAS, p. 25.

<sup>27</sup> OP-703 Directives B.3 and B.5.

<sup>28</sup> OP-710 Section IV.2 and 3, and Section V, point 3.

<sup>29</sup> OP-710 Section V, point 6.

the particular circumstances of the affected persons. It would also make it possible to investigate the circumstances of the discontinuation of the social services previously enjoyed by the residents of the Banhado, and ascertain whether that created a disruption in the community within the framework of the involuntary resettlement program that was inconsistent with the aforementioned policies. Finally, an investigation would allow for the verification of the circumstances related to the continued presence of debris in the area, as the documents examined at the preliminary stage do not contain any information on the matter.

**Observance of the Policies on Environment and Safeguards Compliance (OP-703) and Disclosure of Information (OP-102) with respect to information and studies on the construction of the Banhado Highway.**

- 5.20 The Requesters state generally that the program was not the subject of public consultation. However, they specified that their main concern is related to the sub-component of the construction of the Banhado Highway, and they question whether there is an Environmental Impact Assessment that includes public consultations with the affected population. They additionally assert that the documents related to the construction of this roadway should be publicly accessible, because they believe that it is the reason for the resettlement.
- 5.21 It follows from the project documents that the removal of the Banhado *favela* is a prerequisite for the construction of the Banhado Highway. The ESMR indicates that an Environmental Impact Assessment was to be conducted for the construction of the Banhado Highway, in order to allow for a more in-depth study as well as for public hearings to be held for the residents to learn about and participate in the project.<sup>30</sup>
- 5.22 OP-703 establishes that category “B” projects will normally require an environmental and social assessment that focuses on specific issues identified during the screening process, as well as an Environmental and Social Management Plan (ESMP). The ESMP should include the consultation or participation program agreed upon for the project.<sup>31</sup> It specifies that the environmental assessment processes will require consultations with the affected parties and the consideration of their points of view. Finally, the environmental impact assessments and other relevant analyses must be made public in keeping with the Disclosure of Information Policy (OP-102).<sup>32</sup> This requires, among other things, that the loan proposal is made available to the public once the Board of Executive Directors has approved the operation;<sup>33</sup> that the environmental impact assessments or other environmental analyses are available to the public in the borrower country and at the Bank’s headquarters before it carries out the analysis mission for the respective operation,<sup>34</sup> and that the environmental strategies—which form part of the

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<sup>30</sup> ESMR, pp. 38.

<sup>31</sup> OP-703, Directive B.5.

<sup>32</sup> OP-703 Directive B.6.

<sup>33</sup> OP-102 Section III, part A, point 5.

<sup>34</sup> OP-102, Section III, part A, point 8.

project's concept document—are available to the public after the recommendations of the Bank's Committee on Environmental and Social Impact and Loan Committee have been incorporated. Finally, it requires that the environmental and social management reports be released to the public, at the very latest, once approval has been given to distribute the loan proposal to the Board of Executive Directors.<sup>35</sup>

- 5.23 The MICI is of the opinion that a Compliance Review will make it possible to determine whether the project had the necessary environmental impact studies and whether consultation processes with the affected community regarding the construction of the Banhado Highway were in fact conducted in line with OP-703. It would also serve to verify whether the pertinent project documentation was available to the public in accordance with policies OP-703 and OP-102.

**The alleged lack of public consultations with the affected population on the creation of the Banhado Park.**

- 5.24 The Requesters allege that the residents were not duly consulted with regard to the creation of the nature park in the Banhado area.
- 5.25 The MICI has verified from the project documents that, even though the viability of the park depends upon the resettlement of the families from *Jardim Nova Esperança*, the plan was for it to be financed by another institution (Petrobras), and therefore it is not part of the Bank-financed program. Accordingly, the MICI is of the opinion that any investigation regarding the process for the park's creation is outside its purview.

**B. Scope**

- 5.26 This recommendation proposes to the Board of Executive Directors an investigation of the São José dos Campos Urban Structuring Program (BR-L1160), focused on verifying the Bank's compliance with Policies OP-710, OP-703, and OP-102.
- 5.27 This investigation will result in a Compliance Review Report on the Program, which will detail the investigation process, its findings, and conclusions based on the evidence of compliance or noncompliance with the ROPs and the link, if any, between potential noncompliance and the harm alleged by the Requesters.
- 5.28 In view of the Requesters' assertions, the program-related acts or omissions of the Bank, and the content of the ROPs, the investigation will focus on answering the questions below as they relate to the ROPs and the following issues:
- 5.29 ***Lack of information on the reasons for the resettlement and the alternatives for those affected, as well as the lack of community participation with regard to the application of OP-710.***

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<sup>35</sup> OP-102, Section III, part A, point 9.

- Were timely and socially appropriate consultations conducted with the affected persons in accordance with OP-710? If so, was there a resettlement plan that included the outcomes of the consultations held? Did the affected persons have access to the resettlement plan?
- Were the most vulnerable sub-groups carefully identified to ensure that their interests were duly represented in the resettlement process?
- Were consultations held during the execution of the plan, and were the affected persons properly informed of the reasons for the resettlement?
- In the event that the consultations were not held in accordance with the criteria set forth in OP-710, was harm caused to the Requesters?

**5.30 *Negative impacts on the living conditions of the Requesters in relation to OP-703 and OP-710:***

- Did the Bank correctly identify the potential social impacts of the Program in terms of the resettlement, in accordance with OP-703? Were effective mitigation measures provided?
- Was a detailed analysis of the resettlement risks performed with sufficient advance notice, and were preventive measures identified to reduce them to a minimum, consistent with OP-710?
- Did the program have resettlement plans that met the requirements of OP-710?
- Were the Requesters offered options that were appropriate to their circumstances, and that met the standards of OP-710?
- Did the framework of the resettlement sub-program consider the potential impacts on the community of the discontinuation of social services in the Banhado area prior to the resettlement of the residents? And if so, were mitigation measures established consistent with the requirements of OP-703?
- Did the framework of the resettlement sub-program consider the potential impacts on the community of leaving the debris from the vacant houses? If so, were mitigation measures established in keeping with the requirements of OP-703?
- In the event that the requirements of OP-703 and OP-710 were not met with respect to the identification of impacts and the development of mitigation measures, and with respect to the availability of resettlement plans that offer appropriate alternatives to the affected persons, did such noncompliance cause harm to the Requesters?

**5.31 *Absence of public consultations, environmental impact studies, and a Master Transportation Plan for the program, in connection to OP-703 and OP-102:***

- Did the Banhado Highway construction project have the proper environmental impact studies according to OP-703?
- Were public consultations and citizen participation processes carried out with the affected parties as established in OP-703? Were their viewpoints taken into account? If not, did that cause harm to the Requesters?

- Were the project documents that must be publicly disclosed according to OP-102 and OP-703 made available to the public in general and to the affected persons in particular?

### **C. Proposed Methodology**

5.32 The proposed investigation would use document review and focused interviews as the primary method of inquiry. The findings would be checked against the requirements of the ROPs to determine compliance or noncompliance and, in the event of noncompliance, its connection to the harm alleged.

5.33 Based on the above, the MICI would conduct the following activities:

#### **1. Preparation terms of reference for the experts.**

#### **2. One-on-one interviews with the following actors:**

- Bank staff at Headquarters and at the Brazil Country Office involved in the operation at one time or another.
- Requesters.
- Other actors identified during the investigation as pertinent.

#### **3. Document review:**

- Review of the documentation referring to the operation that has been created during the preparation and execution period and that is pertinent to the scope of the investigation.

**4. Mission to São José dos Campos and Brasília, Brazil,** by the Investigation Panel for purposes of context and contact with the Requesters. The mission would also include meetings with the Project Team and executing agency staff members connected to the issues raised in the Compliance Review.

#### **5. Review of reports by experts from the Roster.**

#### **6. Contrast analysis and determination of principal findings.**

#### **7. Preparation of the Draft Report.**

### **D. Timeline and Team**

5.34 In accordance with the MICI Policy, the proposed investigation would be carried out over a maximum time period of 6 calendar months from the establishment of the Compliance Review Panel.

[illegible]

- Arantxa Villanueva, Compliance Review Phase Coordinator
- Expert 1<sup>36</sup>
- Expert 2
- Ashley Morse, Case Officer

[illegible]

<sup>36</sup> The names of the experts are to be determined, as the Roster is in the process of being composed at this time.

## Annex I

### Management Comments on the Preliminary Version of the Recommendation for a Compliance Review



#### MEMORANDUM

**File classification:** PO-BR-L1160-Adm

IDBDOCS#40123757

**Date:** February 17, 2016

**To:** Victoria Márquez-Mees, Director of the MICI

**From:** Vicente Fretes, Chief of the Fiscal and Municipal Management Division

**CC:** Vice President of Countries, Vice President of Sectors and Knowledge, Manager of the Institutions for Development Sector, Manager of the Infrastructure and Environment Sector, Manager of the Southern Cone Countries, Country Representative for Brazil, Chief of the Environmental Safeguards Unit, Chief of the Transportation Division

**Re:** Management comments to the draft document "Recommendation for a Compliance Review and Terms of Reference." Case BR-MICI006-2011. Brazil "São José dos Campos Urban Structuring Program" (BR-L1160, Loan Agreement No. 2323/OC-BR)

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#### I. Introduction

1. The purpose of this memorandum is for the Bank's Management, hereinafter Management,<sup>1</sup> to comment on the draft document "Recommendation for a Compliance Review and Terms of Reference," hereinafter "the document," submitted to Management by the MICI in an email dated January 15, 2016, in reference to Case BR-MICI006-2011 on the "São José dos Campos Urban Structuring Program" (BR-L1160, Loan Agreement No. 2323/OC-BR), hereinafter "the program."
2. Management thanks the MICI for the opportunity to comment on the document, and highlights the degree of communication and cooperation that the MICI and Management

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<sup>1</sup> The comments were prepared by the Fiscal and Municipal Division (IFD/FMM), in conjunction with the Transportation Division, the Legal Department, and the Environmental Safeguards Unit (ESG).

have maintained throughout the processing of Case BR-MICI006-2011, which began concurrently with the entry into force of the loan agreement 2323/OC-BR, signed between the Bank and the Municipality of São José dos Campos to finance the Program. The Request in the case was deemed eligible for the Consultation Phase on August 22, 2011, and Loan Agreement 2323/OC-BR was signed and entered into force on August 18, 2011.

3. This memorandum is structured as follows: In Section II, Management presents the context of the activities at issue in the complaint before the MICI, from the preparation of the operation to the present.
4. In Section III, Management presents an analysis of the actions taken during the program's design in order to adhere to Operational Policies OP-710, OP-703, and OP102. This section follows the order of arguments set forth in the Document, which according to the MICI justify the investigation.
5. In Section IV, Management describes the actions taken during the execution of the program to improve the documents and operational plans prepared at the design stage and to address the Requesters' claim.
6. In Section V, Management reports on the current status of the financing of the activities at issue in the complaint before the MICI, including relevant information about the request submitted by the Borrower to eliminate those activities from the Program. In addition, Management presents specific information about the Bañado Highway and the current status of the resettlement activities. It stresses that these activities have been developed outside the Program with public housing programs sponsored by the state and federal government.
7. Section VI summarizes Management's position on the undertaking of a Compliance Review in this case.
8. Finally, Management's Memorandum with its comments on the Consultation Phase Report is included as an Annex.

## **II. Context of the activities at issue in the complaint before the MICI from the preparation of the operation to the present**

9. The Municipality of São José dos Campos, the borrower in this operation (hereinafter the Borrower) has had a housing policy since 1999 that gives priority to the treatment of *favelas* and the regularization of illegal settlements. Between 1999 and 2008, the Municipality resettled approximately 7,000 *favela* residents in housing complexes equipped with an infrastructure of essential services and community facilities.
10. The Bañado *favela* (*Jardim Nova Esperança*) is one of the oldest irregular settlements in the city's urban center. The site where it is located has been legally declared an environmental protection area, unfit for urban development, with fire and flood risks and hazardous living conditions.
11. In May 2010, the Bank approved the São José dos Campos Urban Structuring Program (BR-L1160), which includes, among other activities, the resettlement of the families of the Bañado *favela* and the construction of the Bañado Highway.
12. For the resettlement of the families, the Borrower drafted a Comprehensive Social Action Plan (resettlement plan) during the preparation of the Program with the guidance of the Project Team and based on consultations with representative members of the community. The Borrower also prepared an environmental assessment that was disseminated and

made available to the public. For its part, the Project Team drafted an Environmental and Social Management Report for the Program.

13. One year after the program's approval, in June 2011, the group called *Central de Movimientos Populares* (CMP) (hereinafter the Requesters) filed a complaint with the MICI with respect to the Bañado *favela* resettlement activities and the Bañado Highway.
14. Loan Agreement 2323/OC-BR was signed and entered into force on August 18, 2011, concurrently with the initiation of the Consultation Phase before the MICI, which took place on August 22, 2011.
15. Municipal elections were held in October 2012, resulting in a change of government in the Municipality of São José dos Campos. This change affected the execution of the program because, even though the previous municipal government held the respective consultations with the community, the new municipal government assumed greater responsibilities, expanding and deepening the dialogue with the community of the Bañado *favela*.
16. In this context, the new municipal government ensured the continuity of the efforts to implement the program's activities, including those that were at issue in the Requesters' claim before the MICI. The borrower: (i) revised and improved the resettlement plan with the community; (ii) set up a local office to serve the community to be resettled; (iii) presented specific resettlement alternatives to the community; and (iv) presented technical arguments to support the assertion that urban development is not possible in the area of the Bañado *favela*.
17. Upon completion of the revised draft of the resettlement plan, the Borrower and the Requesters agreed that that plan would be presented first to the Requesters and then to the community of the Bañado *favela* in general. Nevertheless, five days before the agreed presentation date, the Requesters gave notice of their decision to withdraw from the dialogue process.
18. The Requesters decided not to continue with the dialogue process on the grounds that the Borrower had breached agreements made in the dialogue. This was because the State Environmental Council of São Paulo (CONSEMA) announced a public hearing on the environmental impact study of the Bañado Highway before the revised resettlement plan was discussed with the community's residents.
19. Although the Borrower had initiated the process to obtain the environmental licenses for the Bañado Highway, the announcement of the public hearing on licensing did not depend on the Borrower; rather, it was up to CONSEMA, which is the state body with the authority to issue the licenses. This situation may have caused confusion among the Requesters, resulting in their decision to discontinue the dialogue process.
20. In June 2015, the Borrower filed a request with Management to eliminate the resettlement activities and the Bañado Highway from the program, and to reallocate the loan funds to other eligible activities. Given the current national context and the difficulties of accessing funds for public investments under the financial terms of the Bank loan, the Borrower expressed to Management its interest in not losing the balance of the available funds and the possibility of using them to finance activities that could be executed within the loan disbursement period, which will conclude on February 18, 2017.

**III. Compliance with the Bank's Operational Policies during the preparation of the São José dos Campos Urban Structuring Program (BR-L1160).**

21. Loan Proposal (PR-3544) for the “São José dos Campos Urban Structuring Program” (BR-L1160), approved by the Bank's Board of Executive Directors on May 12, 2010, included the requirements of Operational Policies OP-710 (Involuntary Resettlement), OP-703 (Environment and Safeguards Compliance), and OP-102 (Access to Information) during the Program preparation process.
22. The specific documents drafted during the design that form an integral part of the Loan Proposal were: (i) [Environmental and Social Management Report](#); (ii) [Environmental Assessment Report](#), and (iii) [Comprehensive Social Action Plan](#) (name used in the Program as the equivalent to a resettlement plan).

**a. Compliance with the requirements of the Policy on Involuntary Resettlement (OP-710), in terms of information, consultation, and participatory process:**

23. The Bañado *favela* is located in an environmental protection area (declared under Municipal Law 2792/84 and São Paulo State Law 11.262/02) characterized by fire and flood risks, poor sanitation conditions, and the impossibility of urban development. The reasons underpinning the resettlement are to improve the living conditions of the families of the Bañado *favela*, prevent the pollution of waterways, define the limits of the urban perimeter in relation to an environmental protection area, and create a park in the Bañado area.
24. In order to address the requirements of the Policy on Involuntary Resettlement OP-710, the Project Team drafted the Comprehensive Social Action pPan (resettlement plan), which was finalized in April, 2008. The preparation of this Plan involved a general diagnostic of the population and the area to be affected by the resettlement, which included socioeconomic aspects, housing conditions, the social assistance network, and public facilities in the area, as well as risks and prevention measures. This diagnostic was conducted through meetings with representatives from the community, including local leaders (oldest residents and merchants) and representatives of existing social services.
25. In addition, in order to compile a registry of the area families to be resettled and draw up the respective socioeconomic cadaster (the last one being in 2007), home visits and interviews were conducted, and information was also gathered through survey forms<sup>2</sup> (Comprehensive Social Action Plan, page 16).
26. Similarly, for the preparation of the social work proposal provided for in the Comprehensive Social Action Plan—which proposes the establishment of community participation mechanisms, social communication, and monitoring—interviews were held with the residents and technicians working in the area, and visits were conducted, in addition to the abovementioned socioeconomic surveys (Comprehensive Social Action Plan, pages 40-42).
27. The community participation mechanisms anticipated for the execution of the resettlement included forming a residents' committee, conducting home visits and additional interviews, and creating individual and group service mechanisms at the Municipal Housing

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<sup>2</sup> The update to the registration conducted in 2007 showed that 94.2% of the residents agreed to resettlement, and that 2.1% did not agree (3.7% did not respond).

Department. In addition, it was foreseen there would be a public hearing in the Municipal Hall and other public consultations to be held prior to the initiation of construction works, during the execution, and after the resettlement of the families, so as to ensure the community's participation throughout the resettlement process (Comprehensive Social Action Plan, page 41).

28. With respect to the public hearings on the Bañado Highway, the program's Environmental Assessment Report, which was released to the public before the operation's analysis mission, set forth the procedure for conducting the public hearings required under the local laws for such construction works. It explained that the hearings would be held, in keeping with local law, while the environmental licenses were processing (Environmental Assessment, pages 90-99).
29. Finally, the program's Environmental and Social Management Report, which is part of Loan Proposal PR-3544, also describes the environmental licensing procedures for the Bañado Highway, specifying that it would be necessary to hold extensive public hearings during that process so the community could be informed about the project and express its opinions on the matter (Environmental and Social Management Report, pages 28-30).
30. Consistent with the above, Management finds that there was a broad participatory process in which representative members of the community were consulted for purposes of drafting the Comprehensive Social Action Plan (resettlement plan), and that provisions were made to continue working on the improvement of that Plan and to hold public hearings and additional consultations during the Program's execution. In this respect, it bears noting that it is a common practice in the Bank's operations for the design of the documents and operational project management plans to provide—and in some cases even require—that they be developed and adapted as dictated by the needs of project execution.

**b. Compliance with the requirements of the Policy on Involuntary Resettlement OP-710, in terms of identifying and mitigating negative impacts on the families that must relocate:**

31. The Comprehensive Social Action Plan identified and prioritized the risk of lost income and/or employment for the families that would be displaced from the city center. Because the Borrower was unable to resettle the families in the city center, that Plan proposed a number of training and income generation programs to be implemented in cooperation with the Department of Social Development and the Department of Economic Development.
32. The Comprehensive Social Action Plan identified potential risks that may arise during the implementation of the Program, including problems related to political interests and drug trafficking. The Plan also mentions the risk of disinformation campaigns and the creation of expectations that are beyond the project's capabilities.
33. The Comprehensive Social Action Plan also identified potential risks according to the stage of the resettlement project, differentiating between risks during the resettlement execution period and risks subsequent to resettlement. Ten risks were identified for the resettlement execution stage, and five for the post-resettlement stage, all with the respective mitigation measures (Comprehensive Social Action Plan, pages 27-32).
34. Both the Comprehensive Social Action Plan and the Environmental and Social Management Report for the program presented the housing alternatives offered in

different areas of the city and the letter of credit option (pages 37 and 32, respectively). Both documents identified three areas: north, east, and south of the city, where apartments with independent entrances were being built in two-story blocks or duplex-type houses. The Bank recommended disseminating the letter of credit option to offer the families the opportunity to purchase houses in any part of the city. The Plan also provided social support for the families for a period of two years following relocation.

35. The Comprehensive Social Action Plan additionally provided for working individually with each family to mitigate the risks of lost income and to help the families choose among the resettlement options. That provision can be viewed in the Loan Proposal, which states that "...in order to mitigate the risk of lost income posed to the families displaced from the vicinity of the site to the city center, the prefecture will undertake to work individually with each family (home visits) to more precisely identify their options, and will present a specific report on the outcomes" (paragraph 2.7).
36. In addition to the abovementioned measures, the Comprehensive Social Action Plan included a number of actions to: (i) inform and ensure the participation of the community prior to initiating the resettlement activities; (ii) support the process and the families during the execution of the construction works; and (iii) support the families in their adaptation to their new housing after relocation (Comprehensive Social Action Plan, pages 43 and 44).
37. Finally, the Loan Proposal provided that the financing of the resettlement of the families of the Bañado favela would be subject to the Bank's review of the outcomes of the public consultations and the solutions chosen by the families (paragraph 2.8, PR-3544). Accordingly, the project has not financed any activity involving the resettlement of the families to date.
38. In conclusion, in view of the actions provided for in the Program's documents and operational plans, Management concludes that all of the mitigation measures for the negative impacts of the Program were identified and provided in accordance with Policy OP-710.

**c. Compliance with the Policies on Access to Information (OP-102) and Environmental Safeguards (OP-703) with respect to information and the undertaking of studies on the Bañado Highway:**

39. For purposes of complying with the Bank's environmental and social safeguards policy (OP-703), an Environmental Assessment Report was drafted in a timely manner during the preparation of the Program. This report presents the environmental analysis for the program and forms part of the Loan Proposal (PR-3544).<sup>3</sup>
40. The Environmental Assessment Report was made public as established by the Bank's Policy on Access to Information (OP-102). The report was published prior to the analysis mission, which took place from March 11-19, 2008.<sup>4</sup>
41. Information about the publication of the Environmental Assessment Report is mentioned in paragraph 2.7 of Loan Proposal PR-3544, which states that "The preliminary version of

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<sup>3</sup> See Proposal for Operations Development (POD) and Loan Proposal PR-3544. Document PR-3544 contains the *Relatório de Avaliação Ambiental* of February 20, 2008, published on February 23, 2008, as an annex.

<sup>4</sup> See [Analysis Mission Aide Memoire](#).

the environmental analysis report was published in the newspaper *Vale Paraibano* and made available to the public on February 23, 2008 on the web page of the Municipal Department of the Environment. The publication was extended to March 25. It was accessed a total of 703 times, and the document was downloaded more than 500 times, leading to a certain degree of coverage in the media, to which the prefecture responded. The Prefecture will maintain an updated file in the Program Management Unit (PMU) with the items that appear in the media about the program with the Bank and, when provided, the responses given by the prefecture.”

42. The details of the publication of the program’s Environmental Assessment Report are described in sections I and X of the Environmental and Social Management Report-ESMR. The local newspaper *Jornal Vale Paraibano* published six articles about the Program’s Environmental Assessment Report.
43. The environmental analysis, in compliance with Policies OP-703 and OP-102, considered the Bank-financed project as a whole, with some components that were designed in more detail than others. The environmental impact studies required by the local laws for the environmental licensing of the roadway components—including among them the Bañado Highway—were done subsequently and with a greater level of detail. This practice is consistent with the Bank’s policies, which only require the publication of the environmental analysis prior to the analysis mission.
44. In short, the Environmental Assessment Report prepared during the design of the Program contained the environmental analysis required by the Environment and Safeguards Compliance Policy for category “B” operations, and was made public prior to the analysis mission, in compliance with Bank Policies OP-703 and OP-102.

**IV. Compliance with the Bank’s Operational Policies during project execution. Actions and measures taken to address the Requesters’ complaint.**

45. Loan Agreement 2323/OC-BR was signed and entered into force on August 18, 2011, concurrently with the initiation of the Consultation Phase before the MICI, which took place on August 22, 2011. The Requesters had submitted their complaint to the MICI on June 10, 2011, prior to the effective date of the Loan Agreement.
46. In this context, the project execution began with the leadership of the Project Team, and a dialogue process was carried out through numerous missions, field visits, and meetings with representatives of the Borrower, the Requesters, and the MICI. This process entailed several actions, including: the joint preparation of work plans, the compilation of new socioeconomic cadasters, information-sharing, and the provision of information to the Requesters. The Project Team used all means available to them to contribute to the dialogue and provide their technical support to improve the Comprehensive Social Action Plan (resettlement plan).
47. Detailed information on the actions taken by the Project Team and the Borrower to address the demands of the Requesters can be viewed in Section IV of the MICI’s Consultation Phase Report (document MI-21-2; PR-3544-4). This report mentions, among other things: background on the coming together of the parties; presentations that the Borrower gave to the Requesters about the resettlement activities and the Bañado Highway construction project; updates to the socioeconomic cadaster compiled by the Borrower; the surveys conducted by the Borrower to ascertain the resettlement preferences of the families; presentations given on the alternatives offered to the

community; setting up a local office to serve the affected community, and detailed information on the efforts made to improve the Comprehensive Social Action Plan.

48. In December of 2012 an improved draft of the Comprehensive Social Action Plan, called PDR, was completed. That document was submitted for review by the Bank's Environmental and Social Safeguards Unit (ESG), which, in February 2013, recommended a new update of the cadaster of families to be affected by the resettlement.
49. In January 2014, the Borrower and the Project Team drew up a new socioeconomic cadaster of families, and in September 2014 the Borrower held a meeting with the residents of the Bañado *favela* to present: (i) the rationale for the resettlement; (ii) the five resettlement alternatives offered; and (iii) the creation of a local support office to help the residents choose the alternative most appropriate for them (Consultation Phase Report, MI-21-2, PR-3544-4, paragraphs 4.12 and 4.13).
50. On the eve of the presentation of the preliminary version of the PDR to the community, on May 2015, the Requesters decided to end their participation in the dialogue process and the Consultation Phase of the MICI.
51. Thereafter, in June 2015, the Borrower presented its request to the Bank asking to eliminate the resettlement activities and the implementation of the Bañado Highway from the Program, and to reallocate the funds to finance new activities that could be executed before the deadline for loan disbursements (February 18, 2017).

**V. Current status of the financing of the activities at issue in the complaint, the Borrower's request to exclude those activities from the Program, and the current status of the resettlement and the Bañado Highway**

**a. Current status of the financing of the activities at issue in the complaint**

52. Management finds it relevant to underscore that the program has not disbursed any funds from the loan or counterpart funds to finance the resettlement of the families of the Bañado *favela*, or for the construction of the Bañado Highway.
53. The activities financed by the Program to date include the creation of two parks and 11 waste collection points, the regularization of five illegal subdivisions, and the drafting of a transportation plan and a master information technology plan for the Municipality. The Project Team, aware of the Bank's policies, did not implement any of the activities objected to in the complaint before the MICI. In addition, given the Borrower's request (described in the section below), it is not expected that Program funds will be disbursed to implement them.

**b. Exclusion of activities at the request of the borrower<sup>5</sup>**

54. On June 10, 2015, the Borrower asked the Bank to exclude the resettlement of the families of the Bañado *favela* and the construction of the Bañado Highway from the program financed through Loan Agreement No. 2323/OC-BR.

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55. The Borrower stated that the anticipated delays in the initiation of the Bañado Highway project would make it impossible to execute that project by the February 18, 2017 deadline for the disbursement of the funds from the Bank loan (2323/OC-BR). The Borrower asked for the Program funds originally allocated for the resettlement of the families and the construction of the Bañado Highway to be reassigned to finance other projects provided for in the framework of the Multi-Year Plan, which would be subject to review by the Bank.
56. In November 2015, the Borrower submitted a program modification proposal to the Bank, requesting that the funds originally designated for the resettlement of the families and the construction of the Bañado Highway be used to finance the improvement and adaptation of a park, the pavement of existing roads, road works, the expansion of bike paths, as well as some institutional strengthening actions.
57. That same month, the Borrower submitted a request to the Federal Government of Brazil (loan guarantor 2323/OC-BR), requesting its consent to the proposed changes. This request already had the approval of the “External Financing Commission” (COFLEX) of the Federal Ministry of Planning, Budget, and Management, and is in the final stages of the approval process.
58. Once the Federal Government of Brazil communicates its consent to the Borrower, the Bank will continue with the internal process of analyzing and considering the program modification proposal. This process could lead to the signing of Amendment to Loan Agreement 2323/OC-BR, thereby formalizing the exclusion of the activities which are the subject of the complaint from the program and the reallocation of funds to finance the new activities proposed by the Borrower.
59. With the signature of an Modifying Contract, the Bank would no longer have a contractual relationship with the Borrower in relation to the financing of the Bañado Highway and the resettlement of the families, and therefore would not be able to ask the Borrower to implement additional actions or measures to address the interests and complaints submitted by the Requesters to the MICI.

### **c. Current status of resettlement**

60. The Borrower continues to receive housing requests from families from the community of Bañado who express their desire to voluntarily relocate to new areas, which the Borrower handles based on its own housing policy and programs sponsored by the state and federal government (e.g., *Minha Casa Minha Vida*) targeted for low-income populations.
61. It bears noting that, of the 461 families to be resettled, the last census taken during the dialogue advanced by the Borrower with the support of the Project Team showed that some 213 families have been voluntarily resettled<sup>6</sup> through social housing programs sponsored by the state and federal government, which are not part of the Bank-financed Program.
62. In conclusion, the Borrower, with the support of the Project Team, carried out all of the necessary actions to fully comply with OP-710 during the execution of the Program. This fact is acknowledged in the Consultation Phase Report (MI-21-2). In view of the Borrower’s modification request, the actions taken by the Borrower in the future, with or

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<sup>6</sup> 197 in apartments financed by the *Minha Casa Minha Vida* program, two by assisted purchase, and 14 are receiving apartment rent subsidies while waiting for the housing to be finished.

without engaging in dialogue with the Requesters, would no longer be connected to a Bank-financed operation or subject to the Bank's Operational Policies.

**d. Current status of the Bañado Highway**

63. The Borrower contracted for the drafting of the executive project and the environmental licensing for the road in 2013. The final project was not submitted to the Bank for analysis and approval. The environmental licensing process is the responsibility of the State Environmental Company of São Paulo which, in May 2015, as part of that process, announced the public hearing to inform the community and hear its comments. The process has not yet concluded.
64. The Bank did not finance, and will not finance, actions related to the construction of the Bañado Highway, for the following reasons: (i) it has neither received nor examined the executive project; (ii) the environmental licensing of the project was not completed; (iii) the families that live in the area will not be resettled; and (iv) the Borrower asked to remove the Bañado Highway and the resettlement from the Program.

**VI. Position of Management regarding a Compliance Review in this case**

65. Management finds that there are no grounds to justify carrying out the Compliance Review suggested in the "Recommendation for a Compliance Review and Terms of Reference."
66. **During the design and approval of the operation, the Bank observed the requirements of Operational Policies OP-710 (Involuntary Resettlement), OP-703 (Environment and Safeguards Compliance), and OP-102 (Access to Information).** Pursuant to the requirements of Policy OP-710, the Borrower, with guidance from the Bank, drafted a plan for the resettlement of the families of the Bañado *favela*. This plan, called the Comprehensive Social Action Plan, was prepared on the basis of consultations with representatives from the community to be resettled. In order to meet the requirements of Policy OP-703, the Borrower conducted an environmental analysis for the Program, which was released to the public in a timely manner as required by Policy OP-102, and prepared an Environmental and Social Management Report. In addition, community participation and consultation mechanisms were provided for the execution phase of the Program, both for the resettlement of the families of the Bañado *favela* and for the construction of the Bañado Highway. All of this is reflected in the documents and operational plans that form part of Loan Proposal (PR-3544) approved by the Board of Executive Directors on May 12, 2010.
67. From the time the loan entered into force, the Borrower, in dialogue with the Requesters and with the support of the Project Team and the MICI, implemented multiple actions and measures to improve the documents and operational plans drawn up during the design stage and also to address the specific claims of the Requesters. The Borrower addressed all of the Requesters' claims during the four years of the Program's execution. In addition to revising and improving the Comprehensive Social Action Plan, they gave presentations on the resettlement alternatives offered to the residents and set up local offices to serve the affected community, among other actions, which are documented in the MICI's "Consultation Phase Report" (MI-21-2; PR-3544-4).
68. **The Comprehensive Social Action Plan was revised and updated in a parallel manner to the MICI's Consultation Phase, and its results are duly documented, and even reported in the "Consultation Phase Report" (MI-21-2; PR-3544-4). The MICI's Consultation Phase was not the reason for the actions to improve that plan; rather, it**

was part of the context of the Program's execution. The Comprehensive Social Action Plan originally approved by the Bank anticipated that certain operational resettlement issues would need to be further developed after the Program's approval, and **the Bank took steps to ensure that the disbursement of the resettlement funds would be subject to the prior demonstration, to the Bank's satisfaction, that those issues had been dealt with.** Management underscores that that it is a common practice in the Bank's operations for the design of the documents and operational project management plans to provide—and in some cases even require—that they be developed and adapted according to the needs during Project execution.

69. **The resettlement of the families of the Bañado *favela*, provided for in Component 1 of the Program, has not been executed. Therefore, it is not possible to assess compliance with the actions provided for in the Comprehensive Social Action Plan, except those related to its revision and updating.** It is important to emphasize that the Comprehensive Social Action Plan was approved by the Bank with the view that work would continue on the different actions provided for therein during the execution of the Program. The Plan specified actions that should be carried out during the execution, such as updating the cadaster of the families, holding meetings with community leaders and other interested parties, and preparing a more detailed diagnostic of the affected families.
70. Management finds that the Bank has observed the requirements established in its policies and is of the opinion that the sole practical benefit of conducting a Compliance Review would be to document lessons learned. **Management finds that those lessons have already been documented, including those the MICI presented to the Board of Executive Directors in Chapter V of the "Consultation Phase Report"** (MI-21-2; PR-3544-4). Management is aware of the reflections and lessons put forward by the MICI and believes that there is no additional substantive value in making new investigation efforts.
71. **Finally, with the signature of the Modifying Contract, the Bank would no longer have a contractual relationship with the Borrower in connection with the financing of the Bañado Highway and the resettlement of the families** and therefore, would not be able to ask the Borrower to implement additional actions or measures to in response to the Requesters' complaints before the MICI. Notwithstanding the above, if the Borrower were to request the technical and/or financial support from the Bank in the future to intervene in the Bañado Highway or the Bañado *favela*, the Bank would be open to examining that request.

## Annex II

### Requesters' Comments on the Preliminary Version of the Recommendation for a Compliance Review

2.3- Since 1960, the municipality has had a Comprehensive Development Master Plan designed to regulate urban growth and the development of the Municipality. The fourth and current Comprehensive Development Master Plan was approved in 2006 through LC 306/06. It introduced urban planning instruments from the City Charter to correct distortions, providing for urban expansion areas and analysis criteria (by regions and by socioeconomic sectors). The Plan also created a hierarchy of road networks, and raised concern for the improved preservation and distribution of green areas in the city, optimizing the drainage conditions.

Item 2.3- This statement is inconsistent with the historical reality of the treatment given to the urban planning instruments contained in the City Charter.

The macro-road structure should be complemented by the respective master road plan or urban mobility plan, which do not yet exist.

Similarly, the city has no macro-drainage plan.

The Master Plan was implemented in 1997.

2.4- The city of São José dos Campos experienced a sharp population increase in the second half of the last century, owing to its strong economic development, which attracted a large number of new residents. The lack of a more effective oversight on the part of the Government allowed for environmental protection areas to be occupied, especially along the banks of some urban rivers and streams, resulting in the degradation of the environmental conditions and adversely affecting the quality of life for the entire city. The families residing in those areas generally live in constant risk of flooding.

There is no technical basis to prove the allegation made in this statement, since many of the displaced communities were not in areas prone to flooding.

2.5- In 1999, the Municipality established a housing policy that, in less than 10 years, resulted in the removal of 15 favelas and the urbanization of two others, directly serving some 7,000 residents, who were resettled in housing units under regular conditions of habitability in housing complexes equipped with complete infrastructure of essential services and community facilities (schools, basic health clinics, community centers).

This statement is inconsistent with the reality. The residents resettled in Campo dos Alemães or in Jardim São José II, for example, were resettled without the infrastructure being completely ready. This shortfall is reflected, to this day, in the lack of space in child care centers and schools, the insufficiency of health centers, public transportation, recreation, etc.

2.6 According to the ESMR, Jardim Nova Esperança (the *Banhado favela*), which is included in the Program, was recognized as the last remaining concentration of substandard housing in the city's urban center when the operation was identified. Because it was located in a flood-prone EPA with poor sanitation conditions, the need to remove and resettle 399 families was underscored in the report. According to the ESMR, in addition to providing better living conditions for those families, the removal of this settlement would allow for the establishment of the Banhado Park, was already supported by compensation funds from Petrobras. This statement is completely false.

1- Jardim Nova Esperança is neither the only nor the last remaining concentration of substandard urban housing. There are several others, such as: Favela Santa Cruz II, Jardim das Indústrias, Vila Guarani, Rio Comprido, the neighborhood of Sapê, Morro dos Macacos, and Bom Jesus, in addition to some 200 neighborhoods considered irregular or illegal.

2- The EPA was created many years after the neighborhood was established. The law cannot have a retroactive effect on the previously established rights of the population living there.

3- The poor sanitation conditions are the result of the government's refusal to carry out the necessary interventions to collect, eliminate, and treat the waste water in the area. Those conditions are the result of the public policy adopted in the area indicating that the only solution is the complete removal of the community. This position is in complete opposition to the very municipal law that classified the area as a Zone of Special Social Interest (ZEIS) in the 1990s.

3- Not all of the existing housing in the densified area is subject to flooding. Such a study was not even made available by the municipality, given that no technical study has been presented to date to support the complete removal of the community. It is important to consider that there is a luxury condominium in the same area as the community, theoretically subject to the same environmental restrictions and risks as the residents who are slated for removal.

4- There is no legal or factual impediment preventing the residents from remaining in the park area, incorporating them into the site and maintaining unity. We must consider that the Prefecture recently announced a change to the designation of the area with the creation of a "Natural Monument,"<sup>1</sup> the government's proposal for the area being patently vague. All of this has taken place without the residents being heard.

2.10 According to the Loan Proposal, the resettlement of the families removed from Jardim Nova Esperança—which dates from 1930—will not only provide better living conditions for the families that live there but will also make it possible to establish the Banhado Park, build the future Banhado Highway, and consolidate the urban and environmental perimeters. The document specifies that, in accordance with the Municipal Housing Policy and the Bank's resettlement procedures (OP-710), the families are being relocated under a comprehensive social action plan, summarized in the ESMR. It also establishes that the social intervention process includes housing options located in different parts of the city and compensation to obtain housing on the market. In order to mitigate this situation and the risk of lost income for families who are displaced from proximity of the vicinity to the city center, the Prefecture will

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<sup>1</sup> See: <http://www.ovale.com.br/nossa-regi-o/mudanca-de-regra-no-banhado-mira-r-50-milh-es-da-petrobras-1.641715>

work individually with each family (home visits) to more accurately define the options, and will submit a specific report on the results. The Bank, for its part, recommends in the Loan Proposal that the option of compensation to obtain housing be more broadly disseminated. The document also establishes that the outcomes of the public hearing for the *Banhado favela* and the agreements with the families must be submitted to the Bank prior to the start of the resettlement of the families, as a condition for the financing of Jardim Nova Esperança. The execution of this component was set to take place in the first year of implementation (2011).

No such plan exists, nor was it discussed with the population. There was no public hearing with the residents.

4.2 On August 22, 2011, the Request was declared eligible for the Consultation Phase by the then-Project Ombudsperson. At the end of the assessment stage, in February 2012, it was concluded that there was an opportunity for the Parties to seek alternative solutions jointly and voluntarily. The Consultation Phase process began in March 2012. The Requesters and the Prefecture participated, while the Bank's Management also accompanied the process, helping the executing agency to improve the Resettlement Plan.

4.3 At the end of May 2015, the Requesters decided not to continue taking part in the dialogue process. Consequently, because the process is voluntary, the Consultation Phase was concluded. The Consultation Phase Report was issued the following July, and on August 14, 2015, the case was transferred to the Compliance Review Phase. When the Consultation Phase was concluded, the Municipal Prefecture was coordinating actions to disseminate the preliminary resettlement plan in order to encourage participation in its finalization and implementation.

To this day, the resettlement plan has neither been presented nor discussed with the community. The families remain beleaguered without any news of any housing option other than the provision of units in housing developments.

5.4 It is important to note that on the submission date of this Recommendation, the resettlement of the families of Jardim Nova Esperança—which in the original Program plans was slated to take place in 2008—has only involved some voluntary removals.

The verified removals, to date, were obtained through direct or veiled threats to the residents, such as leaving debris in the area, making it unbearable for them to stay.

5.5???

5.9 In 2008, the executing agency drafted a comprehensive social action plan (PIAS) to be developed with the families residing in the Jardim Nova Esperança community, which forms part of the technical documentation required for the Program's financing. The PIAS states that the occupied area is an Environmental Protection Area under Municipal Law No. 2792/84 and State Law No. 11.262/02, and therefore the urban development of the *Banhado favela* is not possible.

The rationale presented is false. See Law 11.977/09, which allows for the regularization of communities located within not only an EPA but also within a PCA.<sup>2</sup>

5.10 The PIAS is presented in the Program's documentation as the equivalent of the Resettlement Plan required by OP-710. With respect to "participatory diagnostics" with the community, the document states that on January 3, 2008, a meeting was held with the oldest residents, merchants, and representatives from the "social facilities," solely to learn about the area and begin field work. Another meeting was held on January 8, 2008 with older residents in order to learn about the social, historical, and cultural conditions in the area. It mentions that the diagnostic of the areas and project intervention would be presented at a future meeting open to the community in the Municipal Assembly or the Auditorium of the Prefecture, although as a preliminary matter it has not been possible to verify whether such meeting has in fact been held. It further states that the Municipality's program to remove the *favelas* was working well because the communities involved were supporting the Prefecture's efforts, and it states that the project was discussed at length with the community of Jardim Nova Esperança prior to its implementation. It also documents the fact that the resettlement of the residents of the *Banhado favela* had been planned since 2002, when there was a freeze on the area within the Municipality's program to remove the *favelas*; but that the financing of the Program would allow for the removal to be expedited. The ESMR stipulated that said financing would be conditioned upon "the Bank's review of the final outcomes with respect to the solutions chosen by the families and the public consultation on the project, which would take place in the Chamber of Councilors." Finally, the Loan Agreement establishes that the resettlement must be conducted in keeping with the Bank's resettlement procedures and the municipal housing policy, which are said to be already provided for in the Municipality's Comprehensive Social Action Plan.

Such statements are totally false.

5.25 The MICI has verified from the project documents that, even though the viability of the park depends upon the resettlement of the families from Jardim Nova Esperança, the plan was for it to be financed by another institution (Petrobras), and therefore it is not part of the Bank-financed program. Accordingly, the MICI is of the opinion that any investigation regarding the process for the park's creation is outside its purview.

There is a contradiction between what is stated here and the rationale presented (items 2.6, 2.9, and 2.10). In the same respect, the viability of the park does not depend upon the resettlement of the families. The issue does fall within the scope of the investigation.

**5.29 Lack of information on the reasons for the resettlement and the alternatives for those affected, as well as the lack of community participation with regard to the application of OP-710:**

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<sup>2</sup> Art. 54. The project for the regularization of social interest land must consider the characteristics of the occupation and of the occupied area in order to delimit the specific urban and environmental parameters, as well as to identify the lots, roadways, and areas designated for public use. § 1° The Municipality may, through a well-founded resolution, allow for the regularization of social interest land in Permanent Conservation Areas occupied as of December 31, 2007 and located within an established urban area, provided that a technical study proves that such intervention entails an improvement of the environmental conditions over the prior situation of irregular occupation.

- Were timely and socially appropriate consultations conducted with the affected persons in accordance with OP-710? If so, was there a resettlement plan that included the outcomes of the consultations held?
- Were the most vulnerable sub-groups carefully identified to ensure that their interests were duly represented in the resettlement process?
- Were consultations held during the execution of the plan?
- In the event that the consultations were not held in accordance with the criteria set forth in OP-710, was harm caused to the Requesters?

Were the affected persons duly informed of the reasons for the resettlement?

Were the affected persons duly informed of Bank's operational policies and the possibility of alternatives in the event that resettlement at the site was not feasible?

**5.30 *Negative impacts on the living conditions of the Requesters in relation to OP-703 and OP-710:***

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- Did the Bank correctly identify the potential social impacts of the program in terms of the resettlement, in accordance with OP-703? Were effective mitigation measures provided?
- Was a detailed analysis of the resettlement risks performed with sufficient advance notice, and were preventive measures identified to reduce them to a minimum, consistent with OP-710?
- Did the program have resettlement plans that met the requirements of OP-710?
- Were the Requesters offered options that were appropriate to their circumstances, and that met the standards of OP-710?
- Did the framework of the resettlement sub-program consider the potential impacts on the community of the discontinuation of social services in the Banhado area prior to the resettlement of the residents? And if so, were mitigation measures established consistent with the requirements of OP-703?
- Did the framework of the resettlement sub-program consider the potential impacts on the community of leaving the debris from the demolished vacant houses? If so, were mitigation measures established in keeping with the guidelines of OP-703?
- In the event that the requirements of OP-703 and OP-710 were not met with respect to the identification of impacts and the development of mitigation measures, and with respect to the availability of resettlement plans that offer appropriate alternatives to the affected persons, did such noncompliance cause harm to the Requesters?

Were funds secured within the scope the program for resettlement according to the parameters of OP-710?