



CONFIDENTIAL
INTERNAL USE
PUBLIC UPON APPROVAL

DOCUMENT OF THE INDEPENDENT CONSULTATION
AND INVESTIGATION MECHANISM

BR-MICI006-2011

COMPLIANCE REVIEW REPORT

SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM

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

This document was prepared by Arantxa Villanueva, Compliance Review Phase Coordinator, and Ashley Morse, Case Officer, with input from experts Philippe Hanna and Guillermo Tejeiro, under the supervision of Victoria Márquez-Mees, MICI Director.

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.

ABOUT THE MICI'S COMPLIANCE REVIEW PROCESS

The purpose of a Compliance Review is to investigate allegations by Requesters that their rights or interests have been and/or could be directly infringed by actions or omissions by the Inter-American Development Bank in connection with an operation, in possible noncompliance with one or more of its Relevant Operational Policies. A Compliance Review investigation therefore aims to determine whether a given action or omission by the Bank in connection with a Bank-financed operation has resulted in noncompliance with its Relevant Operational Policies and has caused or could cause material, direct harm to the Requesters.

A Compliance Review is a fact-finding exercise that seeks to help the Board of Executive Directors promote compliance with the Bank's operational policies, support the positive development outcomes of Bank-financed operations, and foster institutional learning. A Compliance Review addresses only the Bank's compliance with the Relevant Operational Policies and does not involve any conclusion with respect to the actions of any other party in connection with the corresponding Bank-financed operation.

ACKNOWLEDGEMENTS

The Independent Consultation and Investigation Mechanism (MICI) is grateful for the support provided by the Requesters, the Municipal Government of São José dos Campos, and the IDB's Management and Board of Executive Directors throughout this investigation. This effort would not have been possible without the collaboration of all the Parties.

We thank the Requesters and their representatives for their trust, availability, and cooperation throughout the process. In particular, we would like to highlight the openness of the Requesters and other Banhado community members and the help we received from them, especially during the Compliance Review Panel's fact-finding mission. We also acknowledge the other institutions that assisted the Requesters during the process, especially the team from the São Jose dos Campos Office of the Public Defender, which supplied valuable information and worked with the MICI to contact Banhado area residents who had already been resettled elsewhere in the city.

We thank IDB Management and current and former project team members for their willingness to respond to information requests throughout the process and to meet with us to share their views on the Program.

We are grateful for the strong support of the São José dos Campos officials, who amenablely cooperated with the fact-finding mission and helped the MICI team to gather information and obtain the different perspectives of the stakeholders involved in the Program over time. Similarly, we thank the officials at the São Paulo Environmental System for their availability and assistance in providing information. Our thanks go also to the independent consultants who provided Program technical support, for their willingness to speak with us and share their thoughts.

We acknowledge the Chair for Brazil at the Inter-American Development Bank for its support during this process.

In sum, the MICI acknowledges the environment of collaboration, support, and institutional maturity at the Bank that enabled it to conduct this investigation and hopes that its findings further enrich the Bank's contributions to the region of Latin America and the Caribbean.

CONTENTS

EXECUTIVE SUMMARY	1
A. The Program	1
B. The Request.....	2
C. The MICI process	3
D. Findings of the investigation	4
E. Connection between alleged harm and noncompliance with the Relevant Operational Policies	9
F. Recommendations.....	10
I. INTRODUCTION AND BACKGROUND	13
A. Introduction.....	13
B. The Program	14
C. The Request.....	17
D. Background on the area and the Banhado community	18
E. The São José dos Campos municipal government and its housing policy ..	20
II. THE INVESTIGATION	22
A. The Bank's involvement.....	23
B. Findings of the investigation	24
1. Operational Policy on Involuntary Resettlement (OP-710).....	25
2. Environment and Safeguards Compliance Policy (Operational Policy OP-703)	53
3. Disclosure of Information Policy/Access to Information Policy (Operational Policy OP-102)	71
III. CONCLUSIONS	77
A. Conclusions regarding compliance with Operational Policies OP-710, OP-703, and OP-102.....	77
B. Conclusions regarding the connection between the alleged harm and the findings of noncompliance	78
IV. RECOMMENDATIONS	81
A. Recommendations specific to the case.....	81
B. General recommendations for the Bank	83

ANNEXES	
Annex I	Management Comments on the Preliminary MICI Compliance Review Report on the São José dos Campos Urban Structuring Program (operation BR-L1160) in Brazil

ELECTRONIC LINKS	
1.	Case record in the MICI Public Registry http://www.iadb.org/en/mici/complaint-detail-2014,1804.html?ID=BR-MICI006-2011
2.	Original Request http://www.iadb.org/document.cfm?id=37425538
3.	Project Profile http://www.iadb.org/Document.cfm?id=1195893
4.	Environmental and Social Management Report http://www.iadb.org/Document.cfm?id=40276798
5.	Integrated Social Action Plan http://www.iadb.org/Document.cfm?id=37344582
6.	Loan Proposal http://www.iadb.org/Document.cfm?id=39530006
7.	Loan Contract http://www.iadb.org/Document.cfm?id=37344555
8.	List of meetings held by the investigation team http://www.iadb.org/Document.cfm?id=40874377
9.	Bibliography http://www.iadb.org/Document.cfm?id=40874378

ABBREVIATIONS

APA	Área de proteção ambiental [environmental protection area]
Bank or IDB	Inter-American Development Bank
Board of Executive Directors	Board of Executive Directors of the Inter-American Development Bank
Borrower	Municipal Government of São José dos Campos
CESI	Committee on Environment and Social Impact (IDB)
CONAMA	Conselho Nacional do Meio Ambiente [National Environmental Council]
CONSEMA	Conselho Estadual do Meio Ambiente de São Paulo [São Paulo State Environmental Council]
EAR	Environmental assessment report
EIA	Environmental impact assessment
ESG	Environmental and Social Safeguards Unit (IDB)
ESMP	Environmental and social management plan
ESMR	Environmental and social management report
ESR	Environmental and social impact review
ESS	Environmental and social strategy
Executing agency	Municipal Government of São José dos Campos
FUNDHAS	Fundação Hélio Augusto de Souza
MAC	Manual Ambiental de Construção [Environmental Construction Manual]
Management	The Bank Manager(s) responsible for the São José dos Campos Urban Structuring Program (operation BR-L1160) or their delegate(s)
MICI Policy	Policy of the Independent Consultation and Investigation Mechanism (document MI 47 6)
MICI	Independent Consultation and Investigation Mechanism
Município	Municipal Government of São José dos Campos
OP-102 of 2006	Disclosure of Information Policy
OP-102 of 2010	Access to Information Policy
OP-703	Environment and Safeguards Compliance Policy
OP-710	Operational Policy on Involuntary Resettlement
Operation	Operation BR-L1160, “São José dos Campos Urban Structuring Program” (financed by IDB loan 2323/OC-BR)
Panel	Compliance Review Panel
PIAS	Plano Integral de Ação Social [Integrated Social Action Plan]
POD	Proposal for operational development
Program	São José dos Campos Urban Structuring Program (operation BR-L1160)
Project team	Bank staff involved in the design, preparation, and execution of the São José dos Campos Urban Structuring Program (operation BR-L1160)
RIMA	Relatório de impacto ambiental [environmental impact report]
SSF	Safeguard screening form
ZEIS	Zona especial de interesse social [special social interest zone]

EXECUTIVE SUMMARY

A. The Program

On 12 May 2010, the Board of Executive Directors approved a specific investment loan via simplified procedure¹ for the “São José dos Campos Urban Structuring Program” (operation BR-L1160) in the amount of US\$85.67 million, backed by the sovereign guarantee of the Federative Republic of Brazil. The recipient and executing agency is the Municipal Government of São José dos Campos.

The Program’s objective is to contribute to the Município’s sustainable development so as to strike a better balance among economic, environmental, and social considerations, by improving and strengthening the Município’s physical infrastructure and urban management. The Program has three components:²

- a. **Urban environmental improvements**, to consolidate the integration between the urban space and the conservation zone and improve the urban environmental quality of the Município through activities including: (i) installation of urban parks to increase green space; (ii) resettlement of families who occupy an environmental conservation area (Banhado), to improve their housing conditions;³ (iii) regularization of illegal subdivisions where families live with deficient infrastructure (some 2,000 lots); (iv) installation of sites for voluntary recycling of construction waste; and (v) execution of works for stormwater drainage.
- b. **Improvements in urban mobility**, including (i) works on two road corridors (Banhado and Cambuí); (ii) construction of up to 13 bus transfer stations; (iii) modernization of the traffic signal system and its operations control center; (iv) development of an urban transportation master plan; and (v) execution of an alternatives analysis for a mass rapid transit system.
- c. **Institutional strengthening**, to increase public sector efficiency and effectiveness through: (i) information technology management in the municipal government; and (ii) electronic records and services management.

The Program’s starting point was an Integrated Development Master Plan, approved by the Município in November 2006. The municipal authorities sought the IDB’s support in financing the implementation of several of the activities under that plan, prompting the Bank to begin to develop the operation in 2007. Among other objectives, the Program sought to mitigate the following problems: (i) the lack of clear separation between urban spaces and environmental protection areas, in both physical and regulatory terms; (ii) the existence of “urban-social liabilities” (families located in hazardous areas and on irregular lots); (iii) hampered mobility for individuals and businesses, caused mainly by deficiencies in the road and transportation system; and (iv) insufficient institutional management capacity, obsolescent technology infrastructure, and the lack of data integration across

¹ Under the Bank’s simplified procedure, documents are included on the agenda of the Board of Executive Directors without prior consideration by the Committee of the Whole. A document submitted by simplified procedure may be included on the agenda of the Committee of the Whole for consideration at the request of any Executive Director, upon written request to the Office of the Secretary at least three business days in advance of the date of the respective meeting.

² Loan proposal, paragraphs 1.17 through 1.25.

³ This section is underlined to highlight the Program activities that prompted the Request.

the various municipal systems.⁴ Program targets, as listed in the Results Matrix, included: (i) elimination of a favela and six illegal subdivisions; (ii) the resettlement of 399 families from the Banhado community in the first year; (iii) construction of two express roads (Banhado and Cambuí); and (iv) an expansion of the city's green spaces.⁵

In the approval process, the following operational policies were identified as applicable: the Operational Policy on Involuntary Resettlement (Operational Policy OP-710); the Environment and Safeguards Compliance Policy (Operational Policy OP-703); and the Access to Information Policy (Operational Policy OP-102). Pursuant to Operational Policy OP-703, the program was classified as a category "B" operation, regarded as medium risk.

According to the loan contract, the loan proceeds for the Program would be disbursed over a period of five years and six months from the date that instrument entered into force, with February 2017 as the projected date of the last disbursement. For a number of reasons, such as changes within the Program Management Unit and delays in the planning and implementation of the resettlement components and the Banhado road, the Program fell behind schedule several times, which directly slowed its pace of implementation (*infra* paragraph 1.12). In June 2015, with the end of the disbursement period drawing near, and considering the time it would take to carry out certain activities, the borrower asked the Bank to remove construction of the Banhado road and resettlement of the Banhado community from the Program, and redirect those resources toward implementation of other activities. In response to that request, these activities were removed from the scope of the Program on 2 August 2016. According to the most recent public information, as of December 2016 the Program reported having executed 41.63% of the approved resources, and is still being actively implemented at the time of completion of this document (March 2017).

B. The Request

On 10 June 2011, the Independent Consultation and Investigation Mechanism (MICI) received a Request pertaining to the Program, submitted by Mr. Cosme Vítor of the Central de Movimentos Populares on behalf of a group of residents of the Jardim Nova Esperança community (also known as the Banhado community or Banhado favela) in the city of São José dos Campos, with assistance from the World March of Women, the Centro Dandara de Promotoras Legais Populares, the Movimento Ambientalista, and the São José dos Campos Office of the Public Defender.

In both the Request and the interviews held during the fact-finding mission and during other stages of the MICI process, the Requesters have referred mainly to potential socioeconomic and environmental impacts that they might suffer as a result of their resettlement and construction of the Banhado road, which would be built where the community is currently located. Specifically, the Requesters assert the following:

- The residents of Banhado were not consulted regarding the Program nor were they informed of the reasons for resettlement, the options for compensation, or the resettlement plan. They add that the Program was not submitted for public

⁴ Project Profile, paragraph 2.6.

⁵ Loan proposal, Annex II.

consultation as regarded the Banhado road, for which the necessary environmental impact assessments were not done;

- The only resettlement option offered to them consisted of purchasing an apartment in housing complexes far from the city center, which in their opinion would not ensure their continued ability to make a living; and
- The government service facilities previously available to the community were systematically closed down, and their living conditions have worsened considerably as the operation has been implemented.

C. The MICI process

The Request was initially processed under the MICI Consultation Phase, having been declared eligible for that phase on 22 August 2011,⁶ pursuant to the MICI Policy in effect at that time.⁷ As the result of the assessment⁸ performed in February 2012, the then MICI Project Ombudsperson concluded that it would be feasible to carry out a dialogue. At that time, the Municipal Government was already involved in a MICI process with members of another community in connection with the Habitar Brasil Neighborhood Improvement Program (operation BR-0273; case BR-MICI004-4011), a case submitted to the MICI at the same time by the same representative. In view of the urgent need to find a solution to the Requesters' issues in the Habitar case, because of the makeshift conditions in which they were living, and to ensure effective management of both cases under the Consultation Phase, the Municipal Government and the Requesters agreed to start the dialogue process concerning the Urban Structuring Program once progress had been made toward identifying a solution for the Habitar case. In May 2014 an agreement was signed in the Habitar case, triggering the start of the formal Consultation Phase dialogue for this case. This dialogue process lasted one year, concluding without an agreement in May 2015, when the Requesters decided to withdraw from it and requested to have their case transferred to the Compliance Review Phase.⁹

On 11 May 2016 the Bank's Board of Executive Directors approved the MICI Recommendation for a Compliance Review, whose terms of reference focused on determining whether or not the Bank had complied with Operational Policies OP-710, OP-703, and OP-102 in the context of the operation and whether there was a connection between any noncompliance and the harm alleged by the Requesters.

The investigation, which began on 13 June 2016, was carried out pursuant to the MICI Policy currently in effect (document MI-47-6) by a Panel consisting of Compliance Review Phase Coordinator Arantxa Villanueva, serving as chair, and independent experts Philippe Hanna and Guillermo Tejeiro. Local consultant Ione Jezler and Case Officer Ashley Morse assisted with the investigation process.

The preliminary version of this report was circulated to both Management and the Requesters for their comments. Once their input was received, the MICI made the

⁶ Case BR-MICI006-2011, São Jose dos Campos Urban Structuring Program, Brazil, Memorandum, Consultation Phase, Determination of Eligibility, document MI-21-1.

⁷ Document GN-1830-49 approved by the Board of Executive Directors in February 2010.

⁸ Case BR-MICI006-2011, Assessment Report. São Jose dos Campos Urban Structuring Program, document MI-21-2.

⁹ Case BR-MICI006-2011, Consultation Phase Report, São Jose dos Campos Urban Structuring Program (operation BR-L1160).

adjustments it considered appropriate. This document, the final version, includes an annex containing the comments received from Management only, as the Requesters said they had no comments on the preliminary version. The Compliance Review Report on the São José dos Campos Urban Structuring Program is distributed to the Board of Executive Directors of the IDB for consideration via the standard procedure.

D. Findings of the investigation

The findings of the investigation are presented in detail in section II of this report. Actions and omissions in connection with the São José dos Campos Urban Structuring Program (operation BR-L1160) were found to constitute noncompliance with the obligations of Operational Policies OP-710, OP-703, and OP-102 (2006 and current version). The findings are summarized in the table below.

Table 1. Investigation findings with regard to compliance with Operational Policies OP-710, OP-703, and OP-102

Requirements of the Relevant Operational Policies	Conclusion as to compliance
OP-710 – Operational Policy on Involuntary Resettlement	
Participation and consultation with the affected population	The Bank failed to comply with the requirements regarding participation of and consultation with the community affected by the resettlement, as only two meetings were held with a small number of Banhado residents when the Integrated Social Action Plan (PIAS) was being developed. The purpose of these two meetings was to make initial contact and learn more about the area. This does not constitute a robust, timely consultation and participation process with a representative cross-section of persons affected.
Determination of compensation and rehabilitation options	The Bank failed to comply with the requirements regarding compensation and rehabilitation options, because it did not specify concrete, appropriate compensation and rehabilitation alternatives that took into account the characteristics and needs of the affected community, particularly the risk of impoverishment faced by its vulnerable members.
Specific requirements for a final resettlement plan	The Bank failed to comply with the requirements for a final resettlement plan when it validated the PIAS as that plan, although it did not meet all the requirements set out in Operational Policy OP-710.
Minimize disruption of the affected population	The Bank failed to comply with Operational Policy OP-710 in that it did not ensure that the families of Banhado were attended to fairly and adequately under the resettlement plan, within a reasonably short time and taking into account their vulnerability. The MICI found in this investigation that living conditions in Banhado deteriorated, over the nine years of the IDB's involvement in the resettlement.
OP-703 – Environment and Safeguards Compliance Policy	
Directive B.3: Screening and classification	The Bank failed to comply with Directive B.3 in that it considered the Program's impacts to be local and short-term, although its components and subcomponents included two large-scale road construction works, one of them on the edges of an 11,000 hectare protected natural area, which would also necessitate the resettlement of approximately 700 families, some 300 of which were living in vulnerable circumstances. There is no evidence that effective mitigation measures were in place for the specific impacts expected to be caused by those components.
Directive B.5: Environmental assessment requirements	The Bank failed to comply with Directive B.5 in that it did not insist on having all the required environmental assessments for the Program at the time established by this directive, so as to be able to determine its specific impacts and develop appropriate mitigation measures in due time and manner.

Requirements of the Relevant Operational Policies	Conclusion as to compliance
Directive B.6: Consultations	The Bank failed to comply with Directive B.6 in that it did not ensure that the affected parties were consulted when and as required, in order to consider their views on the Program and the proposed course of action.
Directive B.1: Bank policies	The Bank failed to comply with Directive B.1 in financing an operation that did not comply with directives B.3, B.5, and B.6 of Operational Policy OP-703 and was inconsistent with several provisions of Operational Policies OP-710 and OP-102 (2006 and 2010 versions).
OP-102 – Disclosure of Information Policy (2006) and Access to Information Policy (2010)	
OP-102 of 2006	The Bank failed to comply with Operational Policy OP-102 of 2006 because not all documents subject to mandatory disclosure pursuant to that policy were made public on time.
OP-102 of 2010	The Bank failed to comply with Operational Policy OP-102 of 2010 because it did not make the Environmental Impact Assessment (EIA) and the Environmental Impact Report (RIMA) for the Banhado road public. These documents do not fit any of the exceptions under Operational Policy OP-102 and should have been disclosed by the Bank in keeping with the principle of maximizing access to information.

To highlight some main investigation findings, the MICI believes that the Bank erred in classifying the Program as a category “B” operation under Operational Policy OP-703, when it should have been classified as category “A.” Category “B” applies to operations with local, short-term impacts for which effective mitigation measures are readily available. In this case, the Program consisted of multiple activities and interventions, some with the potential to produce significant negative environmental and social impacts in terms of magnitude and duration. Among the factors that the MICI believes would have made the Program a category “A” operation are:

- (i) The construction of two large roads, one alongside a protected natural area of more than 11,000 hectares, which entailed potential irreversible impacts associated with the construction and long-term operation of a major infrastructure work in an environmentally sensitive area.
- (ii) The siting of two sections of the Banhado road in areas known to be inhabited by vulnerable, low-income groups, which had the potential to result in a larger impact on these local communities in terms of their health, safety, and other areas.
- (iii) The need to relocate more than 700 families for the Program as a whole, among them about 300 families from Banhado, an older community (dating back to 1930) where the majority of residents had lived for decades, and home to a vulnerable population.

The MICI believes that this set of adverse impacts, of which the Bank was aware¹⁰ during the process of Program classification, did not strictly satisfy the description of local, short-term impacts established in Operational Policy OP-703 for category “B” operations. It is important to note that classification has a direct impact on the process of environmental and social risk evaluation to follow under Bank policies, in terms of requirements during the preparation process as well as in the implementation stage. An incorrect classification

¹⁰ See loan proposal, paragraphs 2.5 and 2.6.

therefore has ramifications for the conduct of the operation and can potentially undermine its environmental and social sustainability.

Additionally, the MICI found that the Integrated Social Action Plan, the resettlement plan known by its Portuguese-language acronym PIAS, which was developed in 2008 and cited in the loan proposal, did not satisfy all the requirements for a final resettlement plan pursuant to Operational Policy OP-710, because, among other reasons, it: (i) lacked well-defined compensation and rehabilitation options that reflected the needs of the affected community; (ii) did not provide a reasonably accurate estimate of the number of people that would receive each option or combination; (iii) did not evaluate the risk of impoverishment of this community, with a view to developing appropriate compensation and rehabilitation measures, even though the Program had identified the community as being “extremely poor” with high illiteracy rates and at risk of unemployment and underemployment; (iv) did not include an execution timetable for resettlement activities; (v) did not include any type of dispute settlement mechanism; and (vi) included no provision for participatory supervisory arrangements. Furthermore, despite the requirement of Operational Policy OP-710 that any final resettlement plan must include a final budget funded within the overall project budget, the main PIAS document has no final budget and does not mention the overall Program budget.

The MICI also believes that the Bank failed to verify that the affected community had had the opportunity to be consulted and to participate in the design of the resettlement plan, as required by Operational Policy OP-710. The MICI found that the PIAS had been developed without any community participation whatsoever, other than prior contact made by municipal social workers to approach certain community leaders. It bears noting that community participation and consultation are required, so that the plan can be adjusted based on the duly informed opinions of the individuals affected and thereby ensure that the compensation and rehabilitation options fit their needs.

In the Program’s execution stage, when activities took place to adjust the resettlement plan but it was ultimately not implemented, the MICI found that the Bank failed to comply with Operational Policy OP-710 by not following the policy’s guiding principle of minimizing disruptions to the livelihood of the people to be affected by resettlement. In this case, the families in the Banhado community, aware that there were plans for their resettlement since the first community cadastral survey was conducted in 2002, remained in a state of uncertainty, without specific information as to their status and the resettlement process that was going to affect them. Meanwhile, their quality of life deteriorated over the nine years the IDB was involved in the resettlement process, as a result of the “freeze”¹¹ placed on the area, the debris left uncleared after houses were demolished, and the termination of the social services that they had enjoyed in Banhado.

As regards Operational Policy OP-703, the MICI found that the shortcomings in terms of consultation processes were repeated with regard to the Banhado road and to the Program as a whole. Directive B.6 of Operational Policy OP-703 stipulates that for category “B” operations, affected parties must be consulted at least once during the environmental assessment, preferably during the preparation or review of the Environmental and Social Management Plan (ESMP). The MICI found no evidence that consultations were in fact carried out during program preparation, neither with respect to the Program as a whole, nor

¹¹ The purpose of a “freeze” is to avoid an influx of new residents and/or new building in the area, and is carried out by “sealing” the houses (marking the outside of a house with its cadastre number), posting signs announcing that the area is “frozen,” and having periodic monitoring performed by inspectors.

specifically with respect to the Banhado road component when and as required by Operational Policy OP-703. As specifically regards the Banhado road, although two public hearings consistent with Brazilian law did take place in June 2015, the MICI verified that they were not consistent with the scope of consultations or the timing established in Operational Policy OP-703. This determination was made because these hearings were informational in nature and as such cannot be equated with a consultation as defined in Directive B.6, and also because they took place seven years after the time consultations are required to be held under the directive for category “B” operations.

In terms of the environmental assessments required for the Program, the MICI notes that Directive B.5 stipulates that the Bank will require the borrower to prepare the assessments needed in order to expose potential environmental, social, health, and safety impacts and risks associated with the operation and provide an indication of the measures foreseen to control these risks and impacts. Environmental assessments have to be ready during a project’s preparation stage so that the operation’s approval by the Bank can consider the quality of the assessment process and documentation. In this case, the MICI found that the operation had just one generic environmental study for the Program as a whole, the environmental assessment report (EAR), done during the preparation stage, and with which the operation was approved. The EAR essentially identifies the main local environmental problems associated with the Program’s proposed interventions and the foreseeable environmental impacts, in addition to describing the characteristics of Brazil’s environmental permitting processes. However, the MICI did not find the EAR to spell out the specific environmental and social impacts and risks associated with the Banhado road, thereby making it impossible to learn whether adequate mitigation measures were in place. Also, the EAR and other documents from this same time and stage generally recognized the need for an environmental assessment and impact report (EIA-RIMA) for the Banhado road, not only because an environmental permit was required for the road under Brazilian law, but also because the EIA-RIMA would have made it possible to conduct a comprehensive, in-depth study to determine its impacts. Among other things, the EIA-RIMA would have identified alternatives for the siting and routing of the road, the design of the drainage systems, and the more lasting impacts of the works, which are essential to determining the environmental and social feasibility and sustainability of one of the Program’s main projects. The MICI notes that Operational Policy OP-703 clearly stipulates that the Bank must require any environmental assessment necessary to ensure that the operation is approved with complete information, thereby enabling the Bank to ensure the project’s feasibility and minimizing the operation’s adverse impacts and risks. Postponing this key study until the post-approval stage of the operation is a clear case of noncompliance with that aspect of the policy.

As regards compliance with the Disclosure of Information Policy (Operational Policy OP-102 of 2006), the MICI found during its investigation that three of the five documents for which disclosure was mandatory under the policy were not disclosed. Additionally, the MICI found that the Bank failed to disclose the Program’s resettlement plan. Although not part of the positive list of documents to be disclosed, the resettlement plan did constitute an essential part of the framework for analyzing the impacts and management plans of one of the Program’s main activities. The MICI notes that Operational Policy OP-102 of 2006 provided the principle that “Information concerning the Bank and its activities will be made available to the public in the absence of compelling reasons for confidentiality.” The MICI believes it would be difficult to identify a compelling reason for keeping confidential a resettlement plan that, by its very nature and pursuant

to Bank requirements, primarily Operational Policy OP-710, must be developed in consultation with, and with the participation of, the people affected. The consultation requirement implies that the contents of the resettlement plan must be disclosed, so that affected persons understand it, can form an opinion, and can make comments to help improve it and ensure that it meets their needs with respect to resettlement. In view of all the above, the MICI believes that the PIAS should have been disclosed by the Bank consistent with Operational Policy OP-102 of 2006.

Table 2. Information relating to sovereign guaranteed operations to be disclosed pursuant to the Disclosure of Information Policy (Operational Policy OP-102 of 2006)

Type of public document	Target disclosure date under Operational Policy OP-102 of 2006	Name of document for the São José dos Campos Urban Structuring Program (operation BR-1160)	Language	Date posted on Bank website	Compliance with policy
Loan proposal	Approval of operation by the Board of Executive Directors: <i>12 May 2010</i>	Loan proposal for the "São José dos Campos Urban Structuring Program"	Spanish (original); English	Not disclosed	No
Project concept documents, profiles, abstracts or eligibility memos	Once approved by the relevant Management committee (or sent for information): <i>date unknown</i>	<i>Perfil de Proyecto</i>	Spanish	29 October 2007 ¹²	Could not confirm
Environmental impact assessments, strategic environmental assessments, or other environmental analyses	Prior to the analysis mission: <i>11-19 March 2008</i>	<i>Relatório de Avaliação Ambiental</i>	Portuguese	Not disclosed	No
Environmental and Social Strategy	After the recommendations of the Committee on Environment and Social Impact (CESI) and of the loan committee have been incorporated: <i>date unknown</i>	Environmental and Social Strategy (ESS), included as an annex to the Project Profile	Spanish	29 October 2007	Unable to confirm
Environmental and Social Management Report	No later than the time at which the loan proposal has been cleared by the Executive Vice President for distribution to the Board of Executive Directors: <i>date unknown</i>	<i>Relatório de Gestão Ambiental e Social</i>	Portuguese	Not disclosed	No

Source: Prepared by the authors based on several documents obtained during the investigation.

¹² Bank records show that the Project Profile was approved the Vice Presidency for Countries and published on this date. The MICI has been unable to verify whether the document underwent any other approval process by a "Management committee" as specified in Operational Policy OP-102 of 2006.

Some Program documents were produced after the 2010 version of Operational Policy OP-102 entered into force, so that version of the policy applies to those documents. The MICI found, however, that the EIA and its respective RIMA for the Banhado road, completed in May 2015, were not disclosed by the IDB. The MICI believes that these documents do not fall under any of the ten exceptions set out in Operational Policy OP-102 of 2010 and, therefore, in keeping with the principle of maximizing access to information produced or received by the Bank, that the Bank should have disclosed these documents.

E. Connection between alleged harm and noncompliance with the Relevant Operational Policies

As regards the connection between the harm alleged by the Requesters and the findings of noncompliance, the MICI believes that there was both actual and potential harm in this case, stemming from the particular conditions and circumstances of the planned resettlement during the years of the IDB's involvement.¹³

In terms of actual harm, the MICI found that the Bank did not ensure a process of meaningful consultation with the affected population regarding the Program and its components or regarding the resettlement in particular, as required by Directive B.6 of Operational Policy OP-703 and by Operational Policy OP-710, respectively. The MICI believes that this did in fact lead to great uncertainty about the future among the Requesters, who had been aware that they might be resettled at some point since the first community cadastral survey was conducted in 2002, but never had access to specific information on the resettlement plan or when it was going to be implemented. Thus, the lack of a participatory process with regard to the Program overall and the resettlement and the Banhado road construction in particular prevented the communities from gaining access to accurate, relevant information on the Program and on the design and implementation of the resettlement plan, including the plans for their compensation and rehabilitation. They were also denied the opportunity to participate meaningfully in decisions affecting their own lives, their future, and their economic welfare. In that connection, the MICI believes that the great uncertainty and insecurity felt by the Banhado residents regarding their future over the nine years the IDB was involved in the resettlement plans, during which they were not attended to adequately in accordance with the Relevant Operational Policies, constitutes moral harm linked to the Bank's noncompliance. Also, the fact that some Banhado residents were resettled under local government housing programs, and not under the resettlement plan as foreseen, meant they were not given the opportunity to access the benefits and environmental and social protections of the IDB's Relevant Operational Policies, and so were not offered an informed choice of the resettlement package that best fit their needs.

Additionally, the closure of some services previously available to the community; the lack of public utility services; the "freeze" imposed on the area intermittently over the years of the IDB's involvement, during which it was not permitted to make repairs or do any kind of work on the houses; and the accumulation of debris from demolished homes to a significant extent resulted in real impacts and a worsening of the quality of life of Banhado residents during these years. In particular, the MICI notes that imposing a freeze and leaving debris in the community were part of a strategy to prevent an influx of new residents and/or new construction in the community, and so keep the cadastral survey

¹³ The MICI Policy defines harm as "[a]ny direct, material damage or loss. Harm may be actual or reasonably likely to occur in the future."

data unchanged; this was part of the Program's planned resettlement process and is therefore related to the operation. The MICI believes that these circumstances arose in the community over the nine years of IDB involvement in the resettlement in part because they were not properly addressed within a reasonable time, in violation of Operational Policy OP-710.

In terms of potential harm, the MICI believes that the instances of noncompliance identified in this report that relate to the lack of a resettlement plan that fully met the requirements of Operational Policy OP-710 entailed potential harm to the Requesters. Operational Policy OP-710 sets out specific criteria to be followed in any case of involuntary resettlement, and compliance ensures that the resettlement will entail the least possible negative impact on the community. Accordingly, failure to adhere to these standards increases the social risks and has the potential to cause potentially irreversible adverse impacts on the lives of people resettled involuntarily in the context of a Bank-financed operation. In this case, The MICI believes that the potential resettlement of a vulnerable community with a significant percentage of people living in extreme poverty and at risk of impoverishment, with no resettlement plan in compliance with Operational Policy OP-710, and with no definite compensation and rehabilitation options suited to their needs and characteristics, had the potential to adversely affect the livelihood of those being resettled, and risked making their already vulnerable situation more fragile.

F. Recommendations

Taking into consideration the MICI's findings regarding noncompliance with the Relevant Operational Policies as laid out in this report and the particular circumstances of the case, especially the fact that the activities involving resettlement of the Banhado families and construction of the Banhado road were removed from the scope of the Program, and the fact that the Bank is no longer involved in implementing those components, the MICI submits the following recommendations for consideration by the Board of Executive Directors:

Recommendations specific to the case

This report has found that not all documents subject to mandatory disclosure under the previous 2006 version and the current 2010 version of Operational Policy OP-102 have been made available on the IDB's website when and as required. This omission has been noted in the context of several different MICI investigations involving private-sector operations, and now this investigation is yielding similar findings for a public-sector operation. It is important to note that the MICI performed a final review of the Bank's website on 31 March 2017 and found that several documents had been posted there; the MICI thanks and acknowledges Management for having disclosed the remaining documents, notwithstanding their untimeliness. The MICI also recognizes that Management is making efforts to strengthen compliance with regard to information disclosure. Nevertheless, it must be stressed that it is very important for communities impacted by IDB Group operations to be able to have timely access to clear, robust information regarding what environmental and social impacts they will experience and how the IDB Group is ensuring that those impacts will be eliminated, mitigated, or offset. In this connection, it should also be noted that affected communities in the Region do not always have the opportunity to understand other languages; therefore, while it is not a policy requirement, it would be important for the IDB Group to make efforts to disclose information in the language of the country in which the operation is being implemented. In

this case in particular, several of the documents recently released are now available in Portuguese, for which the MICI also thanks Management.

Recommendation 1.	Post all program documents subject to mandatory disclosure on the Bank's website, preferably in Portuguese.
--------------------------	---

Given that the components cited in the Requesters' complaint were eliminated from the Program, the MICI recommends that the Bank inform the community, in whichever way it deems most appropriate, that it is no longer financing these components. The MICI believes that this will reduce the reputational risk to the IDB that could result if the community continues to associate the two components with the Bank's operational policies.

Recommendation 2.	Inform the community, in whichever way deemed most appropriate, that the resettlement of families from Banhado and construction of the Banhado road are no longer being financed by the IDB.
--------------------------	--

The MICI suggests, as part of the ongoing strengthening of compliance with the Bank's policies, that this Compliance Review Report be distributed among Bank staff, with a special focus on those responsible for the design, execution, and supervision of operations. It is the MICI's view that its contents may contribute to the success of future projects involving the financing of urban improvements and may serve also as an illustration with specific regard to: application of policies to involuntary resettlement processes involving vulnerable groups; methods for validating whether consultation and citizen participation processes are robust enough to meet Bank standards; and consideration of such factors as the negative impact that the passage of time can have on the success of a project and the benefits that can be obtained by developing preventive action measures for scenarios such as changes in government or in national or local processes for approving Bank-financed projects.

Recommendation 3.	Distribute this Compliance Review Report among Bank staff, with a special focus on those responsible for the design, execution, and supervision of operations.
--------------------------	--

General recommendations for the Bank

The MICI recommends that the Bank explicitly state in the guidelines for the Access to Information Policy that resettlement plans are subject to mandatory disclosure, as they are part of the framework for evaluating the environmental and social impacts of operations including resettlement, and that the required time frame for disclosing those plans be made clear, so that they can complement the process of consultation and informed participation of the affected community regarding the resettlement, consistent with Operational Policy OP-710.

Recommendation 4.	Explicitly state in the implementation guidelines for the Access to Information Policy that disclosure of resettlement plans is mandatory in all operations involving involuntary resettlement, and stipulate the time frame for such disclosure.
--------------------------	---

In view of the potential adverse social impacts that significant delays in program implementation can create for a community awaiting resettlement, the MICI recommends that in cases where this situation is becoming apparent, the Bank anticipate needs and work with the executing agency to swiftly take mitigation measures, including disseminating timely, up-to-date information to groups to be resettled, updating diagnostic assessments, and reviewing and/or making any necessary adjustments to impact management and resettlement plans, or other plans.

Recommendation 5.	In the case of significant delays in the execution of projects involving resettlement, establish clear procedures for anticipating needs and swiftly implementing mitigation measures, including dissemination of timely information to groups to be resettled, updating of diagnostic assessments, and any necessary review and/or adjustment to key environmental and social management plans for the operation.
--------------------------	--

As the case was being processed, in both the Consultation and Compliance Review phases, the MICI heard different program stakeholders located in Brazil say they did not have Portuguese versions of the Relevant Operational Policies. This remark was frequently heard with regard to Operational Policy OP-710. The MICI believes that this presents an obstacle to compliance with those policies by the agencies responsible for executing operations. The officials involved need to be familiar with these policies so that they can meet the contractual obligations assumed by the Bank, but they are not obligated to know another language in order to do so. Further, project-affected parties and other stakeholder groups will have a lesser chance of understanding the environmental and social safeguards provided by the Bank's Relevant Operational Policies in its operations if those policies are not available in their language. The MICI therefore recommends that Management make official versions of the Relevant Operational Policies publicly available in the Bank's four official languages.

Recommendation 6.	Ensure the availability and disclosure of the Relevant Operational Policies in the Bank's four official languages.
--------------------------	--

Lastly, based on its experience with this investigation process, the MICI recommends that the Board of Executive Directors instruct Management to grant the MICI unrestricted access to all operational files. The MICI believes that this will make the investigation process more efficient, involving fewer delays and less work for Management and for the MICI itself. This is particularly important now that the Bank is changing its records system to one that requires specific permissions for access, which could leave the MICI without timely, full access to the documents it needs in order to process a case.

Recommendation 7.	Instruct Management to ensure that the MICI has expedited, direct access to all operational files relevant to the MICI's mandate.
--------------------------	---

I. INTRODUCTION AND BACKGROUND

A. Introduction

- 1.1 On 10 June 2011, the Independent Consultation and Investigation Mechanism (MICI) received a Request pertaining to the São José dos Campos Urban Structuring Program, a sovereign guaranteed loan operation approved by the Board of Executive Directors via its simplified procedure¹⁴ on 12 May 2010. The Program involves urban interventions and projects in various sectors of public investment in the city of São José dos Campos, state of São Paulo, Brazil, including the construction of two new roads, the creation of green spaces, the resettlement of a community living in an irregular settlement (favela), and municipal institution-strengthening activities.
- 1.2 The Request¹⁵ was submitted by Mr. Cosme Vítor, of the Central de Movimentos Populares, on behalf of a group of inhabitants of the Jardim Nova Esperança community (also known as the Banhado community or Banhado favela) in the city of São José dos Campos, with assistance from the World March of Women, the Centro Dandara de Promotoras Legais Populares, the Movimento Ambientalista, and the São José dos Campos Office of the Public Defender.¹⁶ The Request stated that the Program could result in potential adverse socioeconomic impacts for the families as well as potential adverse environmental impacts.
- 1.3 At the time the Request was received, the Policy Establishing the Independent Consultation and Investigation Mechanism (document GN-1830-49), approved by the Board of Executive Directors in February 2010, was in effect. It was declared eligible for the Consultation Phase in August 2011 and processed under that phase until 2015. On 17 December 2014 the Board of Executive Directors approved the new MICI Policy and, pursuant to the Transition Plan approved 4 February 2015, from that date onward the Request was processed according to the new MICI Policy.¹⁷ In late May 2015 the Requesters decided to discontinue their participation in the dialogue process of the Consultation Phase, because a public hearing on the environmental impact assessment for the Banhado road had been announced that month. The Requesters maintained that it was not appropriate to move ahead with the environmental licensing process for works that necessitated their prior resettlement, when the affected community had not yet agreed to the resettlement plan. Given that the Consultation Phase is voluntary in nature, it was deemed to have concluded.

¹⁴ Under the Bank's simplified procedure, documents are included on the agenda of the Board of Executive Directors without prior consideration by the Committee of the Whole. A document submitted by simplified procedure may be included on the agenda of the Committee of the Whole for consideration at the request of any Executive Director, upon written request to the Office of the Secretary at least three business days in advance of the date of the respective meeting.

¹⁵ The original Request is available in the MICI Public Registry, which can be accessed from the electronic links section of this document.

¹⁶ These organizations have been providing support to the Central de Movimentos Populares and to the Requesters throughout the MICI's processing of the Request, especially during the Compliance Review Phase, according to an email to the MICI dated 28 January 2017.

¹⁷ Transition Plan (document MI-48-1), paragraph 2.3.2.

- 1.4 In response to the Requesters' wishes, the Request was transferred to the Compliance Review Phase on 14 August 2015. Once the governance structure under the current Policy was established, the MICI submitted to the Board of Executive Directors its Recommendation for a Compliance Review and Terms of Reference (document MI-21-3). The Board approved the Compliance Review on 11 May 2016. In accordance with the current Policy, Mr. Philippe Hanna and Mr. Guillermo Tejeiro, members of the Roster of Independent Experts of the MICI, were identified and hired in mid-June 2016 to round out the Compliance Review Panel chaired by Ms. Arantxa Villanueva, Compliance Review Phase Coordinator.
- 1.5 This report presents the findings of the investigation conducted pursuant to the Terms of Reference approved by the Board of Executive Directors. The MICI Compliance Review team was responsible for drafting the report, which is the result of the work of the MICI team and input from the independent experts. Its focus is to determine, based on the evidence found, whether the Bank complied with its Relevant Operational Policies in designing and implementing the operation in question, in light of the allegations of harm and noncompliance raised in the Request. Where noncompliance is identified, it determines whether the noncompliance caused or could have caused the actual or potential harm alleged by the Requesters. Lastly, the report presents recommendations with the aim of strengthening compliance with the Relevant Operational Policies in the design, preparation, implementation, and supervision of Bank-financed projects.
- 1.6 The report is organized as follows: Section I provides a general introduction to the process, describes the Program, summarizes the Requesters' allegations, offers contextual information about the Banhado community, and presents background on the Program; section II covers the Bank's involvement in the Program, the findings of the investigation, and the MICI's determination regarding compliance with the three Relevant Operational Policies analyzed; section III summarizes the general conclusions regarding compliance and any connection to the alleged harm; and section IV presents the recommendations being made by the MICI as a result of its findings. The annexes section includes Management's comments on the preliminary draft version of this report, which was distributed to the Parties on 6 January 2017, after which, pursuant to the MICI Policy, they had a maximum period of 21 business days to submit comments in writing to the MICI for consideration.¹⁸

B. The Program

- 1.7 The São José dos Campos Urban Structuring Program is a US\$85.67 million specific investment loan to the Municipal Government of São José dos Campos, guaranteed by the Federative Republic of Brazil.¹⁹ The Program's overall budget, including counterpart resources, came to US\$178,026,000.²⁰ The Municipal Government of São José dos Campos is the executing agency. As part of the Bank's identification process, the operation was included in the report on lending programs

¹⁸ This document does not include comments from the Requesters, who informed the MICI that they agreed with the content of the document and did not have comments on it.

¹⁹ Loan proposal, Project Summary.

²⁰ Loan proposal, paragraph 1.26. Counterpart resources are the project costs covered by the borrower; they are also known as local counterpart funding or the local contribution.

for 2008 and 2007,²¹ in the portfolio of projects to be submitted for approval by the Board of Executive Directors via the simplified procedure in 2008. On 12 May 2010, the Board approved the Program under that procedure.²²

- 1.8 The Program's objective is to contribute to the Municipio's sustainable development so as to strike a better balance among economic, environmental, and social considerations, by improving and strengthening the Municipio's physical and urban management infrastructure. The Program has three components:²³
- a. **Urban environmental improvements**, to consolidate the integration between the urban space and the conservation zone and improve the urban environmental quality of the Municipio through activities including: (i) the installation of up to six urban parks, with an increase in the percentage of green space, and protection of the permeability of the urban soil; (ii) the resettlement of families who occupy an environmental conservation area (Banhado), to improve their housing conditions;²⁴ (iii) regularization of illegal subdivisions where families live with deficient infrastructure (some 2,000 lots) and steering of the respective processes to the responsible agencies for legalization; (iv) installation of up to 21 sites for voluntary recycling of construction and demolition waste; and (v) execution of works on an open storm drainage channel.
 - b. **Improvements in urban mobility**, by configuring a number of 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. The component includes: (i) works on two road corridors (Banhado and Cambui); (ii) construction of up to 13 bus transfer stations; (iii) modernization of the traffic signal system and its operations control center; (iv) development of an urban transportation master plan; and (v) execution of an alternatives analysis for a mass rapid transit system.
 - c. **Institutional strengthening**, to support the municipal government's strategic objective of increasing public sector efficiency and effectiveness by enhancing municipal public services, public administration, and land management. This component is organized into two subcomponents: (i) information technology (IT) management in the municipal government; and (ii) electronic records and services management.
- 1.9 The Program was classified as a category "B" operation under Operational Policy OP-703²⁵ because it would pose "minor risks to the health and safety of the local communities associated with infrastructure or equipment" and any "impacts leading to involuntary resettlement or economic displacement... are minor in

²¹ IDB, Portfolio Monitoring Unit. *Report of the 2008 and 2007 Lending Programs and the Lending Program Updates* (document GN-2477). March 2008.

²² Operation Profile Validation Report.

²³ Loan proposal, paragraphs 1.17 through 1.25.

²⁴ This section is underlined to highlight the planned program activities that prompted the Request.

²⁵ Safeguard Screening Form.

municipal departments involved in the Program, was not always fully staffed. The two roads included in the Program, which accounted for a large part of the investments to be made, experienced delays that adversely affected Program execution. For example, in November 2014, more than four years into the Program's execution period, [REDACTED]

[REDACTED]

³⁵

- 1.13 Ultimately, on 10 June 2015, more than five years after the Program was approved, the borrower asked the Bank to remove the construction of the Banhado road and the resettlement of the families from the Jardim Nova Esperança community from the Program financing. Then, according to Management, in November 2015 the borrower submitted a program modification proposal to the Bank, requesting that the resources originally allocated for resettlement of families and for the Banhado road works be redirected toward other activities.³⁶ The borrower and the IDB signed the amendatory contract that put these program changes into effect on 2 August 2016.³⁷ Despite this amendatory contract, only 41.63% of the Program's resources had been disbursed before the end of the disbursement period.³⁸

C. The Request

- 1.14 On 10 June 2011, Mr. Cosme Vítor of the Central de Movimentos Populares submitted a Request to the MICI on behalf of a group of residents of the Jardim Nova Esperança community in São José dos Campos. The Request was endorsed by the World March of Women, the Centro Dandara de Promotoras Legais Populares, the Movimento Ambientalista, and the São José dos Campos Office of the Public Defender.³⁹
- 1.15 Both in the Request and in the interviews held during the fact-finding mission, and as the case was processed through the other stages of the MICI process, the Requesters alleged that the resettlement envisaged in the program would cause their quality of life to deteriorate significantly, since the only resettlement option they had been offered did not guarantee that they could maintain their current livelihoods. They also asserted that in the process they had already lost access to government services that had previously been available to the community. They further alleged that they were not duly consulted nor informed as to the resettlement plans or the options for compensation, nor as to the construction of the future Banhado road,

³⁵ São José dos Campos Urban Structuring Program (loan 2323/OC-BR), Technical mission, 24-25 November 2014, Aide-mémoire, paragraphs 2.1, 2.2, and 2.6.

³⁶ Management's comments on the preliminary version of the Recommendation for a Compliance Review, paragraphs 54-57.

³⁷ Loan contract 2323/OC-BR, Amendment No. 1, 2 August 2016.

³⁸ [REDACTED] It is also available on the IDB website: <http://www.iadb.org/es/proyectos/project-information-page.1303.html?id=BR-L1160>.

³⁹ *Supra* footnote 16.

which was to be routed alongside the community.⁴⁰ The chapter on the investigation's findings will reproduce the more specific allegations in the different sections corresponding to the various issues under review.

D. Background on the area and the Banhado community

- 1.16 The Banhado community is an old neighborhood of São José dos Campos that sprang up in the 1930s as the result of unregulated settlement. From its establishment through today there has been great diversity among the residents of Banhado. Some of its residents came from the countryside, while others came from cities in other states of Brazil.⁴¹ Its growth was spurred by migrants who arrived seeking new opportunities, attracted by its proximity to the city center, which increased the likelihood of access to informal jobs and government services.⁴² Some residents of Banhado own farmland within the community; about 10% of families living in the area are involved in some type of agricultural production, while another 10% say they raise animals. Based on data obtained in 2014, 109 heads of household said they worked in the formal labor market, while 135 reported working in the informal labor market and 27 said they had retired.⁴³ It is an old community—most residents have been in Jardim Nova Esperança for more than 10 years, and over 50% say they have lived in the neighborhood for more than 20 years.⁴⁴
- 1.17 The 2007 update to the socioeconomic cadastral survey of the area indicated that some 399 families were living in Banhado, with a total population of approximately 1,440 persons. The socioeconomic diagnostic assessment conducted in 2014 yielded different figures: 461 families comprising 1,284 people.⁴⁵ According to the Program's Environmental and Social Management Report (ESMR), "the population of the area is extremely poor, which fully justifies the investments to be made."⁴⁶ This information is confirmed by the data collected in the most recent socioeconomic cadastral survey,⁴⁷ which pointed to a situation of "extreme vulnerability of the people living in the Program's impact area today. Nearly all residents live and work in almost

⁴⁰ The Requesters also claimed that one of the reasons for resettling the families of Jardim Nova Esperança was the establishment of the Banhado Municipal Nature Park on the site where the community was located. They allege that the creation of this park was not duly discussed with the residents at public hearings. Nevertheless, given that the creation of the Nature Park was not part of the Bank-financed operation, the MICI believes that this matter falls outside of its scope, and therefore specified in the Terms of Reference that it would not be part of the investigation. See: Recommendation for a Compliance Review and Terms of Reference for Case BR-MICI006-2011, paragraphs 5.24-5.25.

⁴¹ PIAS, section 3.2.

⁴² [REDACTED]

⁴³ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 13. No information was available for the 190 families.

⁴⁴ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 5. The numbers gathered in the 2014 cadastral survey are similar to those of the 2007 survey, which found that 52% of families had lived in the favela for over 20 years. [REDACTED]

⁴⁵ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 2. It is important to note that between 2007 and 2014, 128 families were resettled through other municipal housing programs, meaning that 190 new families moved into the area in the intervening years.

⁴⁶ ESMR, Annex VI, section VII, p. 33.

⁴⁷ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014.

entirely unstable conditions.” In terms of age distribution, the community consists mostly of young people (about 53% are under 24). The diagnostic assessment also found that educational levels are generally very low: approximately 79% of heads of family and their spouses are illiterate or did not complete primary school. Regarding the status of occupied properties, a significant majority—about 73% of homes—were declared to be owned by their occupants, but just 12% reported having any kind of document proving ownership.⁴⁸

- 1.18 Banhado lies in a valley alongside the old Central Railway of Brazil and is part of the floodplain of the Paraíba do Sul River. The community borders the city center, and many residents and Requesters stress the importance of being able to walk downtown to access work and social services. The vast majority of homes in Banhado are built of what the Brazilian Geography and Statistics Institute (IBGE) characterizes as “substandard fiberboard.” There is no sanitation system, so wastewater is dumped into channels and ditches, which are sometimes full of refuse, contaminating the water and soil and becoming a breeding ground for mosquitos and other disease carriers and crop-damaging pests. All of this contributes to tremendously unsanitary conditions. Because Banhado lies in a valley, families experience flooding of streets and homes in low-lying areas during the rainy season.⁴⁹



Map showing the Banhado area and the planned route of the Banhado road (in yellow). Jardim Nova Esperança is shown in light gray to the left of the road, and the city center is shown in light purple to the right.

Source: RIMA.

⁴⁸ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 18.

⁴⁹ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 7.



Residents burn their refuse in the absence of refuse collection services; wastewater runs along ditches.
Source: MICI.

E. The São José dos Campos municipal government and its housing policy

- 1.19 The Municipal Government of São José dos Campos has a long history of removing favelas in order to resettle their inhabitants in better housing. Its housing policy, in place since 1999, gives priority to dealing with the favelas and regularizing illegal subdivisions; under its *Programa Habitacional de Desfavelização*, it has conducted family censuses, imposed freezes⁵⁰ on areas, carried out resettlements, and/or urbanized favelas for many years. From 1999 to 2008, the Município removed 15 favelas and developed another two, with a direct impact on some 7,000 residents. According to the ESMR, at the time the Program was identified, Banhado was the last remaining nucleus of substandard housing in the city's urban area.⁵¹
- 1.20 The Banhado resettlement had been in the works long before it was included in the Bank-financed Program. In 2002, municipal social workers conducted a cadastral survey of Banhado, after which the area was frozen under the local procedures for communities to be resettled, and then monitored by inspectors from the Works and Housing Department to ensure that the freeze was maintained and that no new structures were built. As part of the process, the houses were marked on the outside with the cadastre number they had been assigned.⁵²

⁵⁰ The purpose of a "freeze" is to avoid an influx of new residents and/or new building in the area, and is carried out by "sealing" the houses (marking the outside of a house with its cadastre number), posting signs announcing that the area is "frozen," and having periodic monitoring performed by inspectors.

⁵¹ ESMR, pp. 30 and 31.

⁵² PIAS, pp. 15 and 16.

**Sign at the entrance to the Banhado community:
"Area frozen on 10 August 2002 - Sale and construction of new dwellings prohibited."**
Source: PIAS.



Example of a "frozen" home, marked with its corresponding cadastre number.
Source: PIAS.

- 1.21 Banhado is located in an area that is regulated by several environmental laws. It was designated an *área de proteção ambiental* [environmental protection area] (APA) by Municipal Law 2792/84 in 1984, and later by State Law 11262/02. In June 2012, the Banhado Municipal Nature Park was established under Law 8756/12, which turned part of the area into a Fully Protected Conservation Unit.⁵³
- 1.22 This decision dated back to the 2006 approval of the Municipal Government's proposal to establish a new municipal nature park in Banhado, turning the municipal APA into a conservation unit. The park was to be financed with resources contributed by Petrobras as environmental compensation for the expansion and modernization

53

of the Henrique Lage refinery in São José dos Campos. The condition established in order for the Municipal Government to receive the funds from Petrobras was that it would have to vacate the area and build the park. The Banhado Municipal Nature Park was ultimately created in 2012 pursuant to Law 8756/2012.⁵⁴

II. THE INVESTIGATION

- 2.1 The Bank's Board of Executive Directors approved⁵⁵ the MICI Recommendation for a Compliance Review of this operation, based on terms of reference that focused on determining whether or not the Bank had complied with Operational Policies OP-710, OP-703, and OP-102 in the context of the operation financed by loan 2323/OC-BR, and whether there was a connection between any noncompliance and the harm alleged by the Requesters.⁵⁶
- 2.2 The investigation was carried out pursuant to the MICI Policy approved on 17 December 2014 by the Board of Executive Directors, as stipulated in the Transition Plan approved by the Board on 4 February 2015. The review was performed from June to December 2016 by a panel consisting of Compliance Review Phase Coordinator Arantxa Villanueva, acting as Panel Chair, and independent experts Philippe Hanna, from Brazil, and Guillermo Tejeiro, from Colombia. Case Officer Ashley Morse and local consultant Ione Jezler assisted the Panel during the process.
- 2.3 According to section 43 of the MICI Policy, the review process is to take six months; accordingly, the MICI sent the draft report to the Requesters and to the Bank's Management for their comments in early January 2017.⁵⁷ The Requesters said they had no comments; Management's comments can be found in Annex I of this document.
- 2.4 The investigation involved a thorough examination of Bank documents relating to the Program, interviews with Bank staff at Headquarters and at the IDB's Country Office in Brazil, as well as the review of other documents relevant to the case, from both in and outside the Bank.⁵⁸ The investigation team also undertook a mission to São José dos Campos from 26 to 30 July 2016. This mission included visits to Program-related areas such as Jardim Nova Esperança and one of the housing complexes where some residents of the Banhado community had already been resettled through other housing programs offered by the Municipal Government. The mission also included meetings with Requesters, their representatives, and other groups with a stake in development of the Banhado road, as well as with Municipal

⁵⁴ Law 8756, of 28 June 2012 established the Banhado Municipal Nature Park and included other provisions.

⁵⁵ Report of the Chairperson of the Policy and Evaluation Committee on the meeting to consider the MICI Recommendation for a Compliance Review and Terms of Reference for loan 2323/OC-BR for the "São José dos Campos Urban Structuring Program" (document MI-21-3) <http://www.iadb.org/document.cfm?id=40287758>.

⁵⁶ Recommendation for a Compliance Review and Terms of Reference for Case BR-MICI006-2011 (document MI-21-3).

⁵⁷ The MICI completed the investigation in mid-December, but additional time was needed to translate the preliminary report before sending it to the Parties.

⁵⁸ The bibliography, which can be viewed via the electronic links section of this document, provides a complete list of documents consulted as part of the investigation.

Government officials from different departments, local and state government officials who were involved in some way or had perspectives relevant to the investigation and, lastly, with a consulting firm hired to develop some of the environmental impact studies for the Program.⁵⁹

A. The Bank's involvement

- 2.5 The Bank's involvement with the Program began in 2007. Table 3 gives a timeline of the Bank's main actions (in black) from 2007 through August 2016, at which time the borrower and the IDB signed the amendatory contract to remove the resettlement and the Banhado road from the Program. It also includes other Program-related events that have a bearing on the issues raised by the Requesters in the Request (in blue).

Table 3. Timeline of events 2002-2016⁶⁰

2002	
10 August	The first socioeconomic cadastral survey of families in Banhado is conducted and a freeze is placed on the area.
2007	
21 January	The IDB hires a consultant to help with certain resettlement preparations, including reviewing the PIAS against the standards of Operational Policy OP-710.
10 August	The Program enters the IDB's project pipeline.
17-21 September	The project team conducts the identification mission.
28 September	The environmental and social Safeguard Policy Filter report and Safeguard Screening Form are completed.
20 October	The Environmental and Social Review (ESR) meeting is held.
29 October	The Project Profile is approved by the Vice Presidency for Countries.
November	The socioeconomic cadastral survey of Banhado families is updated and the area is again placed under a freeze.
2008	
11-19 March	The Bank's analysis mission is conducted.
April	The PIAS is completed.
April	The final version of the EAR is completed.
14 April	The operation is cleared through the Bank's ESR process.
25 April	The POD is approved by the Vice Presidency for Sectors and Knowledge.
2010	
27 April	The Program loan proposal is completed.
12 May	The Board of Executive Directors approves the Program by simplified procedure.

⁵⁹ The electronic links section provides access to a list of meetings held by the investigation team.

⁶⁰ The ESMR is not included in the table because the document has no date and the MICI has not received confirmation of the date it was completed.

2011	
10 June	The MICI receives the Requesters' complaint.
18 August	The contract for loan 2323/OC-BR is signed.
18-21 October	The IDB startup mission takes place, [REDACTED]
October	The IDB engages a consultant to assist the Municipal Government with a technical review of the involuntary resettlement and development of a resettlement plan.
2012	
10 January	The first disbursement is made.
October	Municipal elections result in a change of administration.
2013	
1 January	The new mayor (<i>Prefeito</i>) takes office.
31 January	The consultant hired by the IDB completes the eleventh version of the resettlement plan, which is forwarded to the IDB's Environmental Safeguards Unit (ESG) for comments.
2014	
11-12 January	The Municipal Government conducts a new socioeconomic cadastral survey of the Banhado families, with support from the MICI Consultation Phase.
March	The Municipal Government engages a consultant to develop a socioeconomic diagnostic assessment of the Banhado families and a new resettlement plan.
9 June	The socioeconomic diagnostic assessment of the Banhado families is released.
2015	
May	The Municipal Government announces public hearings on the EIA for the Banhado road.
18 May	The Requesters decide to stop participating in the dialogue process under the MICI Consultation Phase and ask that their Request be transferred to the Compliance Review Phase.
End of May	The Municipal Government receives a preliminary version of the resettlement plan from the consultant it hired.
June	The borrower asks Management to eliminate the resettlement and Banhado road implementation activities from the Program.
9-10 June	Public hearings are held on construction of the Banhado road pursuant to environmental permitting requirements.
2016	
2 August	The borrower and the IDB sign the amendatory contract to remove resettlement and the Banhado road from the Program, among other modifications.

Source: Prepared by the authors based on several documents obtained during the investigation.

B. Findings of the investigation

2.6 This section presents the findings of the investigation performed by the MICI based on the Terms of Reference approved by the Board of Executive Directors. The three subsections below review the Relevant Operational Policies for this investigation: policies OP-710, OP-703, and OP-102. Each subsection will restate the relevant

allegations made by the Requesters, give the specific requirements of the operational policy, analyze the facts, and explain the MICI's determination as to compliance.

1. Operational Policy on Involuntary Resettlement (OP-710)

a. The Requesters' allegations

- 2.7 The Requesters state that they are generally concerned about the resettlement and the impacts it could have on their lives. They emphasize that the lack of information and participation has forced them to live with uncertainty over the years, as they do not know how this might impact their way of life. They specifically assert that:
- (i) The residents of Banhado were never consulted regarding the resettlement envisaged under the Program. They say they were not informed of the reasons for resettlement or the housing alternatives, and at no time were they aware of the existence of a resettlement plan, or of the opportunity to participate in developing any such plan, were it to exist.
 - (ii) The only housing option offered to them was apartments in remote housing complexes. They, however, are accustomed to living in individual homes, some with a plot of land of their own that provides them with a means of subsistence (some farm or raise livestock, while others run businesses out of their homes). They say relocation would mean living far from the city center, in areas without adequate infrastructure, such as social services, access to schools and day care centers, and transportation options. The Requesters also fear having to absorb the cost of purchasing a home in a housing complex, along with the associated expenses, such as electricity, water, and transportation, which would exacerbate their vulnerability. They say their chances of keeping and/or finding work, in both the formal and informal sector, are better if they live in the city center, and that they would face the risk of unemployment if they had to move to the outskirts of town.
 - (iii) They have suffered and are currently suffering a number of impacts resulting from the government's abandonment of the area and of the Banhado community. They say this is a strategy to pressure them to leave. For instance, the debris resulting from demolition of the homes of families who chose to relocate under other housing programs offered by the Município, which has been left in the area to prevent new construction, attracts pests and causes other health issues, in addition to posing a danger, especially to children. They also say that certain government services that were previously available to the community, such as an early childhood education center, a FUNDHAS unit,⁶¹ and a dental clinic, were closed by the Municipal Government without prior notice to the community.

⁶¹ FUNDHAS (Fundação Hélio Augusto de Souza) is a nonprofit organization in São José dos Campos that provides social services for at-risk, socially vulnerable children from 6 to 18 years of age. FUNDHAS currently has 19 units in São José dos Campos.

b. Prior considerations for analysis of Operational Policy OP-710

- 2.8 The Operational Policy on Involuntary Resettlement (Operational Policy OP-710), approved by the Board of Executive Directors in July 1998, is one of the oldest Bank safeguard policies still in effect. The objective of policy OP-710 is to “minimize the disruption of the livelihood of people living in the project's area of influence, by avoiding or minimizing the need for physical displacement, ensuring that when people must be displaced they are treated equitably... .”⁶²
- 2.9 The Bank's guidelines for involuntary resettlement recognize that it “can have a dramatic impact on the lives” of people who are displaced, which “represents a sudden break in social continuity and can result in impoverishment of the people who are relocated.” They add that “[t]he difficulties inherent in displacing social groups are compounded by those of relocating them at new sites and reestablishing sustainable social and economic systems.”⁶³
- 2.10 The main tool for addressing the risks and challenges associated with resettlement, according to policy OP-710, is the timely development of a resettlement plan that: (i) takes into account the views of the affected population; (ii) represents a rigorous analysis of the socioeconomic status of the people who will have to be resettled; (iii) indicates which new housing options and employment opportunities and services can be offered to each person; and (iv) establishes how those affected are expected to regain and even improve their standard of living in their new location.⁶⁴
- 2.11 Accordingly, under Operational Policy OP-710, the preparation stage of a project involving resettlement is expected to include initial contact and consultation with the affected communities, and the gathering of all necessary baseline data on the persons to be resettled, with a view to determining eligibility criteria and the requirements for compensation and rehabilitation. A preliminary resettlement plan needs to be developed, for consultation with the affected communities, followed by the final plan. The final resettlement plan is the culmination of all the work done in preparation for a resettlement, and reflects the outcomes of the consultation and the final provisions for resettlement.
- 2.12 Operational Policy OP-710 also calls for monitoring and evaluation of the resettlement component during a program's execution period, to verify compliance with the plan and thereby ensure that the socioeconomic conditions of the people who were resettled remain stable or improve.
- 2.13 In this case, the MICI found that the Program had several resettlement plans produced at different times throughout the operation. It must be noted, however, that at the time the Program was approved, both the loan proposal and the ESMR and other documents specified that the PIAS, which was finalized in April 2008, was the Program's final resettlement plan and, according to Management, met all the requirements of a resettlement plan under Operational Policy OP-710.⁶⁵ Figure 1

⁶² Operational Policy OP-710, section II. Objective.

⁶³ Involuntary Resettlement in IDB projects: Principles and Guidelines, November 1999, section I. Principles and Objectives.

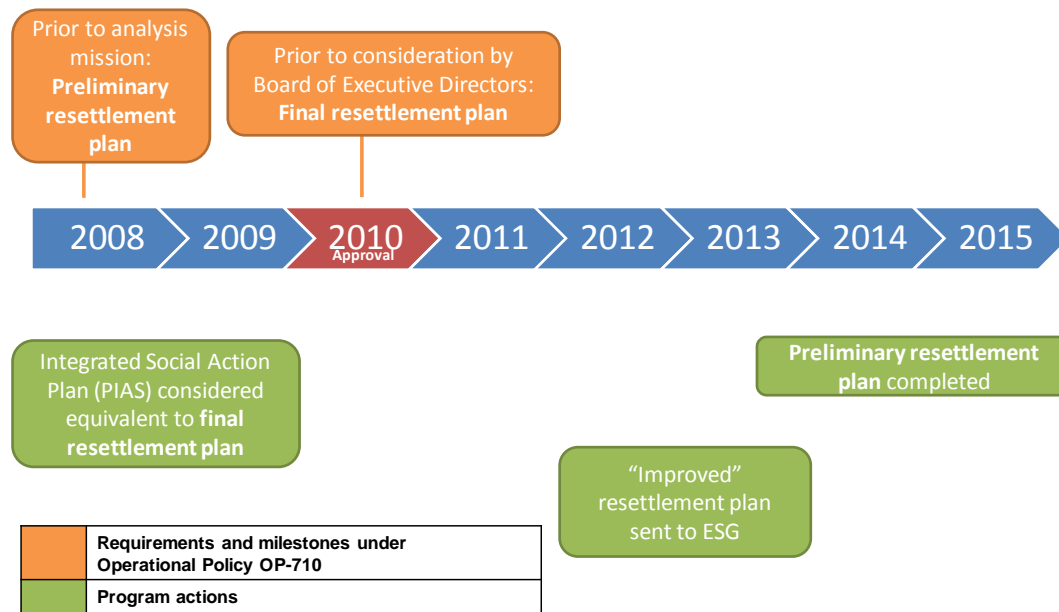
⁶⁴ Operational Policy OP-710, section IV, point 2, and section V, points 1, 2, and 3.

⁶⁵ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraphs 24 and 30.

shows the various plans produced over the course of the Program's preparation and implementation stages, through the end of 2015.

- 2.14 Nevertheless, although the PIAS was validated by the Bank, and the document did not indicate that its contents needed to be developed further to comply with Operational Policy OP-710, Management later asserted that the intention had been to continue working on improving that plan during the Program's execution,⁶⁶ which it states is a "common practice" in IDB operations.⁶⁷ The final documents at the time of the Program's approval called for the resettlement of all 399 Banhado families to be completed in the first year of the Program, i.e. in 2011.⁶⁸ The MICI found, however, that the resettlement did not take place in 2011, or subsequently. Instead, in late 2011, after the date on which the MICI received the Request, work was begun on drafting a new resettlement plan, and between that time and 2015, when the subcomponent was removed from the Program, the executing agency, under the guidance of the project team and several consultants, conducted a number of activities with a view to reworking the resettlement plan.

Figure 1. Timeline of requirements under Operational Policy OP-710 and actions under the Program



Source: Prepared by the authors based on several documents obtained during the investigation.

⁶⁶ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 30.

⁶⁷ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 30.

⁶⁸ Loan proposal for the "São José dos Campos Urban Structuring Program," Annex II, Results Matrix.

- 2.15 In determining compliance with the requirements of Operational Policy OP-710, the MICI will focus on the PIAS, since it came to serve as the final resettlement plan, while still recognizing that Management later encouraged steps to improve and reformulate the resettlement plan. The MICI's analysis will aim to determine whether the PIAS: (i) was developed using a process of participation and consultation with the affected population; (ii) met the requirement to establish compensation and rehabilitation options for the affected population; and (iii) met the 10 specific requirements set out in Operational Policy OP-710 for final resettlement plans.

c. The requirement regarding participation and consultation with the affected population during development of the resettlement plan

What does Operational Policy OP-710 establish regarding participation and consultation with the affected population?

- 2.16 According to Operational Policy OP-710, when the primary objective of an operation is to move people from areas that are unfit for human habitation or, as in urban upgrading projects, to provide basic infrastructure, the guiding principle will be to minimize the disruption of the affected population, taking into account the views of the affected population in the design and execution of the resettlement plan.⁶⁹ Additionally, "[t]he resettlement plan will include the results of consultations carried out in a timely and socioculturally appropriate manner with a representative cross-section of the displaced and host communities. Consultations will take place during the design phase.... Care will be taken to identify the most vulnerable subgroups and to ensure that their interests are adequately represented in this process."⁷⁰

MICI findings regarding compliance with the requirement for participation and consultation with affected communities

- 2.17 With regard to the consultations carried out during development of the PIAS, the MICI found that the PIAS states, in general terms, that the resettlement project was discussed exhaustively with the community.⁷¹ Specifically, the document indicates that two participatory preparatory meetings, called by the Housing Department's Social Services team, were held with residents of the Banhado community: (i) one meeting on 3 January 2008 with older residents, merchants, and representatives of some of the community social services, to "get to know the area and begin field work," and (ii) a second meeting on 8 January 2008 with a group of longtime residents, to learn about the community's "social-historical-cultural" reality.⁷²
- 2.18 In interviews conducted by the MICI during the fact-finding mission (2016), Municipal Government officials who worked on the PIAS remarked that at the time, only initial conversations took place with some community residents, specifically with "key residents" (older ones, or those who had some political and/or social representation). They confirmed that the aim of these conversations was solely to make initial contact and learn about the community's history. During the investigation period, the MICI requested documentation pertaining to these meetings or others that might have

⁶⁹ Operational Policy OP-710, section IV. Special considerations, point 2: Relocation as a project objective.

⁷⁰ Operational Policy OP-710, section V. Criteria for design and appraisal of the resettlement plan, point 2: Community participation.

⁷¹ PIAS section 5.2.1.

⁷² PIAS section 4.4.

taken place during development the PIAS, and received just one report—on the 8 January 2008 meeting—that shows that only five community members participated.⁷³

- 2.19 The PIAS also proposed a number of information-sharing and community consultation activities to be carried out as part of the resettlement process, in order to avoid the risk of disinformation regarding the project and its benefits. The activities include: establishment of community participation mechanisms; “social communication” activities involving the use of monthly newsletters; posters with project information; actions to be carried out prior to the start of works, such as meetings with “key, significant” community leaders in Banhado and in Jardim Boa Vista; presentation of the diagnostic assessment to the community at an open meeting; development of a social work plan in conjunction with the families; and open community meetings to present the “Social and Technical Project.”⁷⁴ The MICI has found no information in the Program documents enabling it to corroborate that these activities took place, or that informational and/or additional consultation processes were carried out with the Banhado community during the development of the PIAS.

Determination of compliance with Operational Policy OP-710 as regards the requirement to ensure participation and consultation with affected communities

- 2.20 In view of the requirements of Operational Policy OP-710, a resettlement of this kind must involve a robust consultation process during development of the resettlement plan, in order to factor the needs and expectations of the affected community into the plan’s final version. In principle, community participation helps ensure that compensation measures, relocation options, economic rehabilitation projects, and social service provision reflect the needs of the people affected, and thus ensures that their living conditions will be the same or better. It can also facilitate greater transparency around resettlement plans and procedures and the related compensation.⁷⁵ In this case, there is no evidence that a robust consultation and participation process that could have accomplished these goals was carried out during development of the PIAS.
- 2.21 On this point, Management asserts “there was a broad participatory process in which representative members of the community were consulted for purposes of drafting the [PIAS].”⁷⁶ However, the documents examined by the MICI mention only the two meetings previously described (*supra* paragraph 2.17). The officials in charge later corroborated what the documents show: the objective of these meetings was not to enable the affected population to participate in the design of the resettlement plan *per se*, but only to learn about the area and its sociocultural reality as a basis for beginning the work of the Social Services team. The MICI therefore considers that

⁷³ [REDACTED]

⁷⁴ PIAS, sections 6.2, 6.3, and 6.5.

⁷⁵ Involuntary Resettlement in IDB Projects, Principles and Guidelines, November 1999, p. 18.

⁷⁶ Management comments on the draft version of the “Recommendation for a Compliance Review and Terms of Reference.” Case BR-MICI006-2011, paragraph 30.

these meetings cannot be characterized as proper consultation under the terms of Operational Policy OP-710.

- 2.22 The findings also lead the MICI to conclude that the requirement to consult with a *representative cross-section of persons* from the displaced and host communities was not met, either. The MICI found that the Program planned to resettle 1,440 people from the Banhado community, yet the records show only that five Banhado residents attended the 8 January meeting called by the Municipal Government, for which there are minutes reflecting the topics discussed (see visual evidence below). The PIAS itself reports that only older residents, merchants, and representatives of some of the community social services were invited to the meeting. The plan does not, however, reflect that any analysis of the community was performed in order to identify the different groups making up the Banhado community and their social, ethnic, and gender characteristics, or that the most vulnerable groups, e.g., female heads of household, children, or older adults, were identified in order to ensure that their interests were adequately represented via a participatory consultation process with each group. Further, based on available information, there is no evidence that people from the host communities were invited to the meetings, as also required by Operational Policy OP-710.



Meeting with five Banhado community residents, held in Municipal Government offices on 8 January 2008. Source: PIAS.

- 2.23 As regards the information-sharing and consultation activities set to take place during the Program's execution under the PIAS, the MICI has found no evidence that such activities occurred, and even if they did, the MICI does not regard scheduling community consultation and information activities to be held after approval of the final resettlement plan as constituting compliance with the requirements of Operational Policy OP-710. It is worth recalling that policy OP-710 requires that consultations be carried out in a timely manner during the design phase of the plan, for the purpose of taking into account the input and views of affected persons in developing the final plan, so that it will effectively reflect their particular interests and needs.
- 2.24 In view of the above, the MICI finds that the requirements of Operational Policy OP-710 regarding participation and consultation with the community affected by involuntary resettlement during the project preparation stage were not duly met,

given that adequate, timely consultations were not conducted with the affected population during the development of the Program's resettlement plan, as stipulated by that policy.

d. The requirement regarding compensation and rehabilitation options

What does Operational Policy OP-710 establish regarding compensation and rehabilitation options?

- 2.25 For Bank-financed operations involving resettlement, Operational Policy OP-710 requires the resettlement plan to contain compensation and rehabilitation options that provide a fair replacement value for assets lost, and the necessary means to restore subsistence and income, in order to rebuild the social networks that support production, services, and mutual assistance, and to compensate for transitional hardships (such as crop losses, moving costs, interruption or loss of employment, lost income, and others). It also establishes that the options that are offered should be appropriate for the people affected, and should reflect their capabilities and realistic aspirations. Housing and service options, when included, are to be appropriate for the social and cultural context and, at the very least, meet minimum standards of shelter and access to basic services, regardless of conditions prior to resettlement. It adds that the design of compensation packages, as well as the community consultation and decision-making mechanisms included in the resettlement program, are to take into account the characteristics of the resettled population as identified in the disaggregated baseline data with respect to gender, ethnicity, age, and any other factors pointing to special needs and/or vulnerability.⁷⁷
- 2.26 Furthermore, when a resettlement is going to affect marginal or low-income groups, Operational Policy OP-710 requires that special consideration be given to the risks of impoverishment to which they may be exposed as a result of resettlement, through circumstances such as loss of employment, loss of access to means of production, breakdown of social networks, and loss of access to education, among others. A detailed analysis is to be carried out at the earliest opportunity, covering gender, ethnicity, income, and other socioeconomic factors, in order to determine the risks and design preventive measures to minimize them.⁷⁸

MICI findings regarding compliance with the requirements relating to compensation and rehabilitation options

- 2.27 The MICI found that the PIAS took as its starting point a survey of the residents of Banhado, according which just 2.1% did not wish to leave the area, 3.7% did not respond, and the majority—94.1%—accepted leaving. It showed that 99% would accept a housing alternative in lieu of compensation. The PIAS included statistics on the zones or areas preferred by the affected community, as shown below:⁷⁹

⁷⁷ Operational Policy OP-710, section V, Criteria for design and appraisal of the resettlement plan, point 3, Compensation and rehabilitation package.

⁷⁸ Operational Policy OP-710, section IV, Special considerations, point 3, Impoverishment risk analysis.

⁷⁹ PIAS, pp. 38 and 39.

Table 4. Preferred areas as presented in the PIAS

Region	1st choice	2nd choice
Center	68.5%	20.1%
North	20.6%	57.6%
South	4.3%	11.5%
East	2.6%	6.9%
None	4.0%	4.0%

Source: PIAS.

- 2.28 The PIAS notes that, because the central area would not be able to accommodate the expressed level of demand, efforts would focus on the second choice, the northern part of the city.⁸⁰
- 2.29 In regard to housing alternatives, the loan proposal specified that families would be resettled in accordance with the PIAS. It indicated that the intervention included options for housing in the different parts of the city listed above, as well as the option to receive compensation to purchase housing on the market, indicating that this would meet all the requirements of Operational Policy OP-710.⁸¹ Specifically, according to the PIAS, the Município planned to offer four options to Banhado residents: (1) relocation to the Jardim Boa Vista area in the north, already acquired by the Município; (2) relocation to the east, in accordance with residents' preferences; (3) relocation to the south, in accordance with residents' preferences; or (4) compensation, in the form of a letter of credit in the amount of the cost of a housing unit, estimated at 38,000.00 reais, enabling recipients to purchase a property in the place of their choosing, provided that it was or could be regularized.⁸²
- 2.30 In the north, the PIAS anticipated the construction of a housing complex with 280 units in two-story duplexes grouped in clusters of four. That area, according to the PIAS, had received investments that were already being executed (the Norte road, a theater, a hospital, a new day care center, etc.) and already had public transportation that could serve the proposed complex with a mere adjustment to the number of transit units. The complex would have all the necessary infrastructure, such as water, electricity, asphalt paving, and wastewater collection and treatment.⁸³
- 2.31 In the east, according to the PIAS, there were plans to build a housing complex called Frei Galvão, pending approval from the Housing Project Analysis and Approval Group of the State of São Paulo. The design included 412 one-story units, of which 60 would be set aside for Banhado residents. The area had education and health facilities capable of meeting the increased demand from the arrival of these families. The PIAS noted that, although the area had public transportation, it would need to be augmented in order to meet the additional demand.⁸⁴

⁸⁰ PIAS, pp. 36-38.

⁸¹ Loan proposal, paragraph 2.8.

⁸² PIAS, p. 37.

⁸³ PIAS, pp. 45-47.

⁸⁴ PIAS, pp. 47-49.

- 2.32 It must be noted that the PIAS makes reference to a number of annexes having to do with the resettlement options, which would have provided further information regarding the northern and eastern areas (annexes 31-45). The project team did not have these annexes, however, so the MICI had no access to them and could not verify their content.⁸⁵
- 2.33 The PIAS provides no details regarding the southern option, as the Municipal Government was at that time still in the process of negotiating the purchase of property there for purposes of implementing a resettlement option.⁸⁶
- 2.34 The PIAS provides an assessment of the characteristics of the Banhado residents needing to be resettled, based on the socioeconomic cadastral survey conducted in 2002 and updated in 2007. The cadastral survey indicated that the population of Banhado consisted of 399 families and a total of 1,440 people.⁸⁷ According to the PIAS, Banhado could be divided into two types of settlement: rural, with 95 families, and clusters of homes, with 304 families.⁸⁸ It was reported that the vast majority of families (94.6%) had up to six members, and 51.8% had been living in the neighborhood for more than 21 years. This, according to the PIAS, meant that a significant percentage were residents with “generations-old ties to the city and the neighborhood.”⁸⁹ Additionally, based on information in the PIAS, close to 38% of the people to be resettled were living in extreme poverty, as shown in Table 5.

Table 5. Family income

Family income⁹⁰	Percentage
No income	13.4%
Income up to one minimum wage	24.4%
Income up to two times minimum wage	35.8%
Income up to three times minimum wage	17.4%
Income above three times minimum wage	9.0%

Source: PIAS.

- 2.35 As regards the risks that the affected community would face as a result of resettlement, the ESMR indicated that the impact of involuntary resettlement would be minor, owing to existing municipal housing programs and to the Município’s “successful” track record in this area.⁹¹ It adds that to mitigate the situation and the risk of loss of income for families to be removed from proximity to the city center, the Municipal Government would begin to work individually with each family (home visits) to determine the options more precisely, and would submit a specific report

⁸⁵ The MICI asked Management for all 46 annexes of the PIAS, in order to review them, but Management did not have them. After requesting them from the Municipal Government, it sent the MICI just 21 of the annexes, four of which had no content other than the title.

⁸⁶ PIAS, p. 49.

⁸⁷ PIAS pp. 15-21.

⁸⁸ PIAS, p. 16.

⁸⁹ PIAS, p. 18.

⁹⁰ PIAS, p. 21.

⁹¹ ESMR, p. 30.

on the results.⁹² The MICI found no additional information in the ESMR as to who was responsible for drafting the report, or when the Bank expected the results. As mentioned previously, the PIAS envisaged completion of the resettlement by 2011, in the first year of Program execution.

2.36 The PIAS does specifically mention risks that could arise as a result of the resettlement, including:

- Impoverishment of the families owing to their removal to areas far from their place of work (formal and informal) or their inability to cover the cost of their new social benefits contributions (*encargos sociais*).
- A continuation or exacerbation of their level of poverty (extreme), due to the lack of services (school, in particular) mainly for the younger community members, who account for a large majority of Banhado's residents.⁹³

2.37 In terms of the necessary means to restore subsistence and income, and to mitigate these risks in general, the PIAS offers only a few ideas for future actions, such as: implementing income-generating activities in the new area, with a special focus on families finding it difficult to pay their bills; ensuring placement in schools close to the resettlement areas; and facilitating the introduction of a community development program at the complex's Community Center aimed at providing young people with special job training courses. It also mentions that partnerships could be established with different departments of the Municipal Government to enable people who were resettled to participate in certain programs, such as income transfer, guaranteed minimum income, and income generation programs.⁹⁴

Determination of compliance with Operational Policy OP-710 as regards the requirements relating to compensation and rehabilitation options

2.38 The MICI found three main deficiencies as regards compliance with the requirements for compensation and rehabilitation options and measures to avoid adverse impacts under policy OP-710. Each of the three is analyzed below.

2.39 First, **the PIAS presents data on the percentage of Banhado residents who would accept having to go to other areas, and on the areas to which they would prefer to move, based on a merely indicative survey that did not meet the requirements of Operational Policy OP-710.** According to the Panel's interviews with Municipal Government officials and the supporting documents it was provided with, when the socioeconomic cadastral survey was updated in 2007, the residents of Banhado were asked the following hypothetical question: "If you had to leave, which area [of the city] would you prefer?"⁹⁵ This question was not posed for the purpose of determining whether or not the residents of Banhado wished to leave, nor to identify the preferences of each resident and determine the number of families who preferred each option. The purpose had been to get a general sense of the outlook of the residents of Banhado. They were not presented with any details at that time regarding the housing and rehabilitation options that might be offered in

⁹² ESMR, p. 33.

⁹³ PIAS, pp. 31 and 32.

⁹⁴ PIAS, pp. 31 and 32.

⁹⁵

each place, for example; they had not even been informed of the existence of a plan to resettle them, the reasons for resettlement, or the conditions under which this would occur, which would have been crucial for the people affected to be able to make an informed decision as to the alternative that best fit their needs. The information presented in the PIAS therefore cannot be seen as research findings that reflected the aspirations of the affected population nor any acceptance on their part of clear options appropriate to their circumstances and their social and cultural context. The MICI notes that Operational Policy OP-710 clearly establishes that the design of compensation packages, as well as the community consultation and decision-making mechanisms included in the resettlement program, will take into account the characteristics of the resettled population. The PIAS does not contain the type of specific information on which to base resettlement alternatives to be considered by the Municipal Government and validated by the Bank.

- 2.40 **Second, the resettlement plan did not spell out specific compensation and rehabilitation options that met the requirements of Operational Policy OP-710.** The MICI determined that the PIAS did contain certain information on several housing options, giving an initial idea of the types of housing the Município was planning at that time, in general terms, and might be able to offer in the future as part of the Program. Nevertheless, Operational Policy OP-710 requires the final resettlement plan, in this case the PIAS,⁹⁶ to include the definition of the final package of compensation and rehabilitation options, and that those options take into account the characteristics of the resettled population as identified in the disaggregated baseline data with respect to gender, ethnicity, age, and any other factors pointing to vulnerability and/or special needs. The PIAS only mentions 60 units in a new housing complex to be built in the eastern part of the city, which could be used for people from the Banhado community, and another 280 that the Municipal Government had slated for construction in the north. Moreover, since these proposed options did not exist at the time, and there was no timeline indicating when the homes would be available for the Banhado residents, the PIAS did not reflect how the units would be assigned in order to accommodate the families' socioeconomic profiles. Similarly, there were no details regarding the housing options in the south, since the Municipal Government was still in the process of negotiating purchase of the properties. The PIAS makes no mention of how the options would be geared to the specific characteristics of the population, e.g., which options would be for the 95 families that were living in a rural setting or for the 5% of families with seven or more members, etc. So, at the time the PIAS was finalized, there was no completed, definitive infrastructure that could offer the affected population clarity regarding the compensation and rehabilitation options to be provided based on their particular needs and circumstances. Along these same lines, the lack of clearly defined housing options or a reasonably accurate estimate of the number and composition of families to receive each option would make it impossible to identify, and therefore mitigate, the main factors that can lead to impoverishment after resettlement. As will be shown below, a conceptually reasonable approach to mitigating and minimizing the risk factors for the affected population was not applied.

⁹⁶ Operational Policy OP-710, section V. Criteria for design and appraisal of the resettlement plan, point 6. Timeliness.

- 2.41 **Third, the resettlement plan did not give special consideration to the risk of impoverishment of the people of Banhado, despite having identified that they belonged to vulnerable groups, in violation of Operational Policy OP-710.** During program preparation, the residents of Banhado were identified as being extremely poor, with almost 38% living in extreme poverty (zero income or up to one minimum wage), and a large majority, 91%, having income of less than three times the minimum wage.⁹⁷ In other words, theirs was a socioeconomically fragile situation. Operational Policy OP-710 requires special consideration to be given to the risks of impoverishment to which people might be exposed as a result of resettlement, and adequate measures to be designed to minimize the identified risks.⁹⁸
- 2.42 During the fact-finding mission to São José dos Campos, in interviews with members of the Banhado community, many residents stressed the importance of living in the city center, saying they found it essential to ensuring their socioeconomic welfare. The socioeconomic diagnostic assessment of the families of Banhado, completed in June 2014, found that one third of residents worked in their home or nearby, in the city center, and that 43.7% reported going to work on foot, by bicycle, or by cart.⁹⁹ The MICI believes that a resettlement to different parts of the city, especially places far from the center, without the respective process to identify specific risks of impoverishment and develop concrete mitigation measures to minimize them, would increase the likelihood of impoverishment for a community that was already vulnerable.
- 2.43 With specific regard to the risk of losing access to education, the PIAS states that the strategy to address this risk would be to “ensure placement in schools close to the resettlement areas.”¹⁰⁰ However, the education options in each area of the city were not specifically identified, nor were the number and composition of the families who would be going to each area. This information was necessary to determine how many children would need to attend schools in each area, and whether there was already enough capacity or if other options would be needed, along with other services, such as transportation, to provide access to the schools, and thus ensure that this risk was minimized as required by Operational Policy OP-710.
- 2.44 With regard to the risk of losing access to means of production, a significant number of Banhado residents live off specific productive activities carried out within Banhado, e.g., farming, collecting and selling recyclables, and running small businesses such as bars, shops, and hair salons in Banhado, many of them out of their own homes. Despite this fact, the PIAS did not call for specific activities designed to mitigate the impact of resettlement on these groups, to ensure that they could continue with their economic activities or immediately access other alternatives that fit their circumstances and would restore, or even improve, their standard of living after resettlement.

⁹⁷ In São José dos Campos, three times the minimum wage is considered a very low level of income. According to the Município's housing policy, families with no more than up to three times the minimum wage qualify for mandatory housing assistance involving direct subsidies.

⁹⁸ Operational Policy OP-710, section IV. Special considerations, point 3. Impoverishment risk analysis.

⁹⁹ Socioeconomic diagnostic assessment of the families of Banhado, pp. 14 and 15.

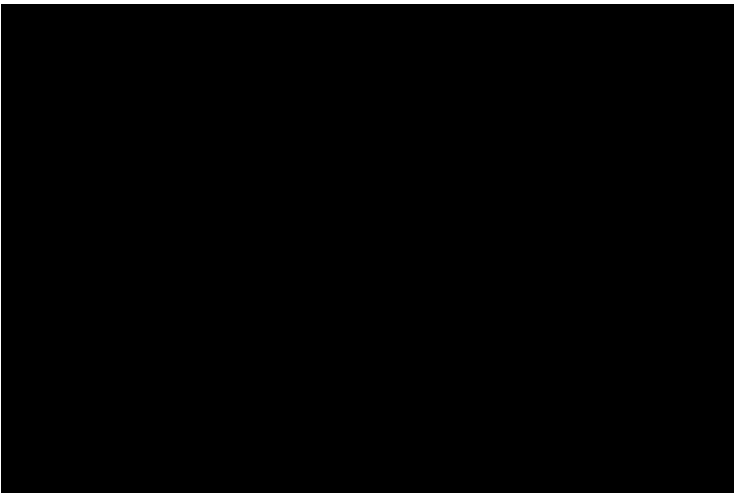
¹⁰⁰ PIAS, p. 32.

***Shop adjacent to
owner's home.***
Source: MICI



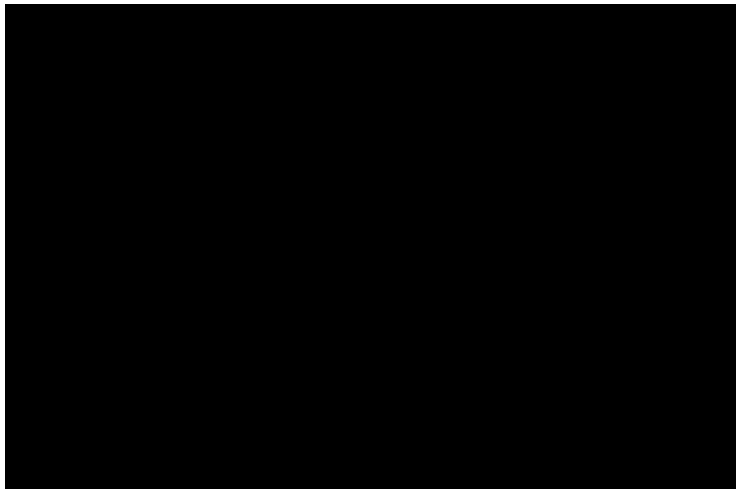
***Cart used to haul
recyclable
material.*** Source:
MICI.

***Recycling collector
sorting materials.***
Source: MICI.





Land used for raising livestock.
Source: MICI.



Barber shop.
Source: MICI

- 2.45 In general terms, potential partnerships with the existing programs mentioned in the PIAS could eventually have served to mitigate the risk of loss of employment. However, there was no detailed information as to whether these programs would be able to directly meet the specific needs of the people of Banhado, how they would do so, or the number of beneficiaries, among other questions. Consequently, it is impossible to confirm that the resettlement plan contained appropriate measures to mitigate the risk of impoverishment in the context of the Program.
- 2.46 In sum, the MICI finds that the compensation and rehabilitation options and the means to restore subsistence and income presented during Program preparation and documented in the PIAS did not meet the requirements of Operational Policy OP-710, especially in view of the risks of impoverishment faced by the Banhado community. No proper studies were conducted to determine the preferences of the people affected. The housing options presented were still preliminary, and did not specify the type of housing, how many units would be available, or when they would be available under the Program. Furthermore, the

PIAS had not outlined the options for mitigating the risks associated with the families' displacement from the city center, which is inconsistent with OP-710, which stipulates that the final package of compensation and rehabilitation options is to be established in the final resettlement plan before the operation is submitted for consideration by the Board of Executive Directors.

e. Requirements for considering the PIAS to be the Program's final resettlement plan

Requirements of Operational Policy OP-710 for final resettlement plans

- 2.47 Operational Policy OP-710 expressly lays out specific criteria that resettlement plans must meet in each stage of the project cycle. In particular, the policy distinguishes between the preliminary resettlement plan and the final resettlement plan. In this case, the MICI is analyzing the PIAS. Since the PIAS served as the Program's final resettlement plan, the policy's criteria for final plans will be the criteria used in the analysis below. In terms of the timing of completion, OP-710 requires a final resettlement plan to be presented for approval to Bank Management prior to distribution of the operation documents for consideration by the Board of Executive Directors. Under Operational Policy OP-710, the final plan must include ten elements: (i) definition of the compensation and rehabilitation options; (ii) the eligibility criteria for each option; (iii) a reasonably accurate estimate of the number of people that will receive each option; (iv) institutional arrangements and/or an execution mechanism that provides for the implementation of applicable local laws and regulations; (v) the final budget funded within the overall project budget; (vi) an execution calendar; (vii) provisions for consultation and involvement of local entities (public or private); (viii) provisions for monitoring and evaluation, including funding; (ix) provision for participatory supervisory arrangements; and (x) a mechanism for the settlement of disputes.

Findings regarding the PIAS as the Program's final resettlement plan

- 2.48 Based on Panel interviews during the fact-finding mission with Municipal Government staff who had been involved in developing the PIAS, it appears to have been developed following the Municipio's own procedures for irregular settlements, as reflected in its Housing Policy. To verify that the PIAS was consistent with Operational Policy OP-710, the IDB hired a social consultant in early 2007 to review the intervention planned for the Banhado community against the standards of policy OP-710, among other activities. According to the project team, once the PIAS was validated by the consultant and the Project Team Leader, it was formally approved by the Bank's Management through the ESR process on 14 April de 2008.¹⁰¹
- 2.49 The MICI carefully reviewed the PIAS, to determine whether it effectively complied with Operational Policy OP-710, based on the policy's specific requirements for final resettlement plans. A description of the points reviewed is given in the next section, along with a determination of compliance with the policy in each area.

101



Determination of compliance of the PIAS with the criteria set by Operational Policy OP-710 for a final resettlement plan

- 2.50 Below, the MICI analyzes the PIAS with respect to the ten elements that should be reflected in a final resettlement plan as set out in Operational Policy OP-710. In addition, the MICI assesses whether the policy's requirements regarding the timing of resettlement plan approval were met.
- 2.51 **Definition of the final package of compensation and rehabilitation options.** See the MICI's analysis and determination on this point in paragraphs 2.27 through 2.46.
- 2.52 **Inclusion of eligibility criteria for each compensation and rehabilitation option.** The MICI found that the PIAS mentions three eligibility criteria that were developed by the Município in other housing programs, and could be replicated for the Banhado community: (i) inclusion in a socioeconomic census/cadastral survey, (ii) no ownership of property/land in the Município (or ownership by spouse), and (iii) no previous benefits under municipal housing programs.¹⁰² These criteria were used to establish the right to a housing unit under local programs. However, the MICI finds that they are general and do not fully meet the need to determine a methodology or criterion for deciding when a person affected by involuntary resettlement is eligible for a given rehabilitation option—such as the right to participate in the economic rehabilitation program—or how to determine which families might be eligible for an available housing option, depending on the characteristics of the home itself and on the needs of the family in question.¹⁰³ Additionally, the PIAS does not address what happens to those affected parties who do not meet any of these criteria, e.g. people who took part in a municipal housing program in the past. For this reason, the MICI believes that the PIAS does not meet the requirement of defining eligibility criteria for each compensation and rehabilitation option.
- 2.53 **Establishment of a reasonably accurate estimate of the number of people that will receive each option or combination.** As previously stated, the PIAS had general cadastral survey information on the Banhado community, updated in 2007, which revealed that 399 families, representing a total of 1,440 people, would need to be resettled. It did not, however, include an estimate of the number of people who would receive each option or combination of options based on the particular needs of each family and/or person, as required by Operational Policy OP-710. For this reason, the MICI believes that the PIAS does not meet this specific requirement for final resettlement plans, either.
- 2.54 **Inclusion of institutional arrangements and/or an execution mechanism for local regulations and coordination with other project components.** Operational Policy OP-710 requires arrangements or execution mechanisms that provide for implementation of applicable local laws and regulations dealing with expropriation, rights to property, and the management of resettlement activities in a timely manner,

¹⁰² PIAS, p. 40.

¹⁰³ For instance, as reflected in the PIAS, there is diversity among the residents of Banhado. Since a small but significant percentage (more than 5%) of the families have seven or more members, one eligibility criterion could consider family size, so that larger units could go to larger families. The PIAS also identified that 95 families were living in rural settings in Banhado; it might be necessary to establish criteria that take into account which options would be better suited to rural families as opposed to those living in clusters of houses.

assign clear responsibilities for the execution of all elements of the resettlement plan, and provide for proper coordination with other project components.

- 2.55 Here, the MICI found that the PIAS mentions a number of programs already under way and potential partnerships with local, state, and federal government programs, as well as some laws that would be applicable to the resettlement envisaged by the Program. Nevertheless, the document does not clearly spell out the responsibilities for execution of the different elements of the resettlement plan, such that one could confirm the existence of a framework for implementing the applicable laws and managing all the components and activities contained in the resettlement plan. Specifically, in relation to the framework for expropriation and property rights, it is important to note that, while the majority of Banhado residents were living in irregular settlements in public areas, some inhabitants of the area did hold title to their property, and with it other rights. The PIAS presents no information regarding the existence of different statuses of land tenure and property ownership within the affected group, nor does it indicate what the plans were for managing the resettlement of those Banhado residents who hold property titles.
- 2.56 Furthermore, although the main reason for resettling the Banhado residents was that they were living in an environmental protection area unsuited to human habitation, the resettlement was also necessary to enable construction of the Banhado road, as is acknowledged in the Program documents.¹⁰⁴ The PIAS does not, however, make any mention of the Banhado road or of the other Program components, and there is no record of any effective coordination between the resettlement planning and the implementation of other Program components, especially the Banhado road. For all these reasons, the MICI believes that the PIAS did not meet the fourth requirement for all final resettlement plans.
- 2.57 **Inclusion of the final budget funded within the overall project budget.** The Program included a total resettlement cost of approximately US\$14.3 million.¹⁰⁵ The MICI found that the PIAS had a section devoted to the “total cost of the social project,” with a breakdown of the costs anticipated for certain social-work-related materials and services, specifically, educational and communication materials, consumables, transportation, and human resources. In the MICI’s view, these listed costs do not constitute a final resettlement budget. The PIAS includes a section for “works” costs (section 8.4) and refers to an annex (Annex XLV) containing a physical and financial timetable. However, though the two sections might have provided further information on the budget for resettlement, section 8.4 is blank in the documents received by the MICI, and neither the Bank nor the Municipal Government has the financial timetable annex.¹⁰⁶ Consequently, the MICI was unable to verify whether the resettlement costs are adequately reflected there.
- 2.58 **Calendar for execution of activities.** Operational Policy OP-710 requires the resettlement plan to include a calendar of activities required to provide the goods and services that comprise the compensation and rehabilitation package, linked to

¹⁰⁴ Loan proposal, paragraph 2.8.

¹⁰⁵ Program Execution Plan, included in the loan proposal as an electronic link, p. ii.

¹⁰⁶ See footnote 85.

landmarks of the overall project so that relocation sites (or other services) are available in a timely manner.

- 2.59 The PIAS presents a 20-month timeline for the main resettlement-related social activities to be carried out in 2008-2009.¹⁰⁷ It should be stressed that the most important aspect of the compensation and rehabilitation options was to be resettled in a dwelling. The MICI notes that none of the options included in the PIAS as places to resettle the Banhado families was ready to receive occupants at the time the PIAS was finalized.¹⁰⁸ The MICI believes that the PIAS therefore should have given detailed plans for construction and/or purchase of these homes by the Município, along with a timetable to ensure that homes and services would be available in time.
- 2.60 Similarly, there is no reference to the planned means of rehabilitation, especially those designed to reduce the risk of impoverishment, activities which, in theory, would be carried out in partnership with other municipal departments.¹⁰⁹ In that regard, the timeline contained in the PIAS mentions only that the “implementation of integrated actions with governmental and nongovernmental entities in the area”¹¹⁰ would take place over a three-month period. The PIAS also fails to mention the overall Program, such that no link is established between the main landmarks of the overall project and the execution of specific activities having to do with providing the goods and services that comprise the compensation and rehabilitation package.
- 2.61 The MICI believes that, while the PIAS did contain some general guidelines for the chronology of certain actions, it did not establish an actual calendar of activities. In particular, the MICI notes that the absence of specific criteria for compensation and rehabilitation in the PIAS, beyond generic references, makes it practically impossible for the resettlement plan to include a specific implementation timetable. In view of the above, the MICI finds that the requirement to include a calendar of execution in the resettlement plan, as stipulated in Operational Policy OP-710, was not met.
- 2.62 **Provisions for consultation and involvement of local entities (public or private) that can contribute to execution and assume responsibility for the operation and maintenance of programs and infrastructure.** The PIAS indicates that some existing programs and government institutions and other entities could collaborate with the Program and play a role in connection with the resettlement. Some examples include: (i) Pre-works: meeting with residents, area partners, nongovernmental organizations, and relevant municipal departments; (ii) During works execution: support for social services and engineering teams of the Housing Department and other departments in the transfer of families; sending data to the responsible agencies to enable the municípios to prepare funding contracts for water and power services (with Companhia de Saneamento Básico do Estado de São Paulo S.A. and Empresa Bandeirante de Energia); and (iii) Post-works: implementation of integrated actions with governmental and nongovernmental

¹⁰⁷ PIAS, Annex XXIX.

¹⁰⁸ For instance, construction of the Frei Galvão housing complex apparently did not begin until late December 2008, after the PIAS was finalized. See: http://www.sjc.sp.gov.br/secretarias/habitacao/noticia.aspx?noticia_id=8329 *Notícias Habitação* [Housing News], Municipal Government of São José dos Campos, 4 August 2010.

¹⁰⁹ PIAS, p. 31.

¹¹⁰ PIAS, Annex XXIX.

agencies, forming partnerships with the social organizations that serve or could serve the resettled families, as a way to leverage investments; and encourage a positive attitude toward the environment through health and environmental education efforts in partnership with Urbanizadora Municipal S/A and the Municipal Department of the Environment.¹¹¹

- 2.63 As the MICI understands it, once one has determined which local public or private entities could help execute a resettlement and assume some responsibility for the operation and maintenance, a way can be found for the program include the possibility of their supplementing and reinforcing the operation. Prior identification, consultation, and participation of these entities ensure that the project will have them as resettlement “partners.” For example, the idea of a potential linkage with governmental and nongovernmental agencies for purposes of providing support after resettlement would be highly useful in making certain that families adapt to their new surroundings and have opportunities to restore their standard of living, or even improve it, after resettlement. However, the MICI observed that the PIAS only listed potential options, without describing concrete courses of action. The sparse details in the PIAS on these activities, in the MICI’s view, do not fully meet this requirement, which seeks to ensure that provisions for the involvement of other entities are properly defined in the resettlement plan and that the identified entities are at least informed of and, in agreement with, the support they are to contribute to the resettlement process.
- 2.64 **Inclusion of monitoring and evaluation provisions.** Operational Policy OP-710 requires the final resettlement plan to include provisions for monitoring and evaluation, including funding, from the beginning of the execution period through the target date for achievement of full rehabilitation of the resettled communities. In the PIAS, during the post-occupancy phase, equivalent to the monitoring and evaluation phase, the resettlement process is to be evaluated by measuring the efficiency and effectiveness of the transfer process, the extent to which those served have gotten established, and the residents’ degree of satisfaction through a study using appropriate indicators. The PIAS indicates that a group of professionals from within the Municipal Government would be organized for monitoring and would issue periodic reports, while the “ex post” evaluation will be performed by outside professionals, pursuant to terms of reference to be agreed upon with the IDB.¹¹² The PIAS also calls for social support services after resettlement to help people adapt and settle in their new location and to coordinate an evaluative study of the relocated families.¹¹³ The MICI believes that, although it does provide a general outline of planned monitoring activities, the PIAS does not establish a time frame for rehabilitation of the resettled population, as it should, and thus does not set a specific time frame for monitoring and evaluation, nor does it include information on the funding provided for these monitoring and evaluation activities, as required by Operational Policy OP-710.
- 2.65 **Provision for participatory supervisory arrangements, which combined with monitoring, can be used as a warning system to identify and correct problems**

¹¹¹ PIAS, pp. 31, 43, and 44.

¹¹² PIAS, p. 42.

¹¹³ PIAS, p. 44, points 1 and 6.

during execution. The MICI did not find any reference in the PIAS to activities to provide for participatory supervision by the affected community, and therefore believes that it does not meet this requirement of Operational Policy OP-710.

- 2.66 **Establishment of a mechanism for the settlement of disputes regarding land, compensation, and any other aspects of the plan.** The MICI did not find any reference to dispute settlement mechanisms in the PIAS, and therefore believes that it does not meet this requirement of Operational Policy OP-710.
- 2.67 **Timing of approval of the final resettlement plan.** In terms of the timing of approval of the final resettlement plan as stipulated by Operational Policy OP-710, the MICI found that the PIAS was approved by Management on 14 April 2008, before the operation documents were distributed to the Board of Executive Directors for approval in May 2010. Consequently, pursuant to policy OP-710, the PIAS met the timeliness requirement.
- 2.68 Based on the facts laid out in paragraphs 2.51 through 2.66, the MICI determined that the PIAS did not fully comply with the requirements for a final resettlement plan under Operational Policy OP-710.

f. The Program's execution period: Timing and consequences for the community

What does Operational Policy OP-710 stipulate regarding the execution period?

- 2.69 As already indicated, Operational Policy OP-710 states that when relocation is an objective of an IDB-financed project, "the guiding principle will be to minimize the disruption of the affected population."¹¹⁴ Therefore, when displacement is unavoidable, the resettlement plan must ensure that the affected people receive fair and adequate compensation and rehabilitation within the shortest possible period of time.¹¹⁵
- 2.70 To understand the Program activity for resettlement of the residents of Banhado, it is important to examine not only how the resettlement was prepared and planned, but also how it was managed by the Bank once the Program was approved.
- 2.71 In keeping with Operational Policy OP-710, during the execution period of a program that involves a resettlement, the resettlement component must be subject to monitoring and evaluation efforts, with a focus on monitoring whether the social and economic conditions in the resettled and host communities are being achieved or maintained as envisaged in the resettlement plan.¹¹⁶ These monitoring activities must be reflected in the project progress reports prepared by the Bank.

MICI findings relating to the Program's execution period

- 2.72 The loan proposal for the Program, dated 27 April 2010, indicates that the families would be relocated in accordance with the PIAS, which it describes as being consistent with Operational Policy OP-710. Nonetheless, the document recognizes

¹¹⁴ OP-710, section IV. Special considerations, point 2, Relocation as a project objective.

¹¹⁵ OP-710, section III. Principles, point 2.

¹¹⁶ OP-710 section V. Criteria for design and appraisal of the resettlement plan, point 7. Monitoring and evaluation.

122

- 2.75 In October 2012, municipal elections resulted in a change of administration. When the new administration took office in early 2013, it made a number of changes in the various departments that were involved in some way in the Program.
- 2.76 At the same time, although the Environmental and Social Safeguards Unit (ESG) was not part of the project team for the Program, the team forwarded the new resettlement plan to the unit to obtain its perspective on the document and opinion as to whether or not it conformed to Operational Policy OP-710.¹²³
- 2.77 ESG sent its comments in February 2013, stressing that the plan "[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ESG recommended several adjustments to the plan, among them conducting a new update of the cadastral survey of families to be affected by the resettlement."¹²⁴
- 2.78 The executing agency began to work anew on the resettlement plan based on these comments and to plan a new cadastral survey of the Banhado community. In February 2013, a new consultant was hired by the Bank to support the resettlement process [REDACTED]
[REDACTED]
[REDACTED].¹²⁵
- 2.79 A new cadastral survey was conducted on 11 and 12 January 2014.¹²⁶ This necessitated significant prior negotiation with the Banhado community, since many feared that responding would be construed to mean they accepted resettlement without knowing under what conditions they would actually have to resettle. In a

¹²² Involuntary Resettlement Plan for the families of Jardim Nova Esperança and Concha del Bnhado, Preliminary version No. 11, Program Execution Unit for the São José dos Campos Urban Structuring Program / IDB, 31 January 2013, p. 15.

¹²³ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 48. [REDACTED]

¹²⁴ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 48. [REDACTED]

¹²⁵ São José dos Campos Urban Structuring Program (loan BR-L1160), Terms of reference for the contracting of specialized consulting services to develop and/or complete the Involuntary Resettlement Plan (PDR).

¹²⁶ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 1. Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraphs 48-49.

single weekend, about 40 social workers and other Municipal Government officials succeeded in registering all the inhabitants of the affected area, to guarantee their benefits under the Program. After the socioeconomic cadastral survey, the area was once again frozen, with billboards placed at the entrances to the community, and with the area monitored by law enforcement to prevent an influx of new inhabitants.¹²⁷

- 2.80 In March 2014, at the Bank's request, the Municipal Government hired a consultant to support development of the resettlement plan. The objective of the consulting services was to [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
[REDACTED]¹²⁸

- 2.81 As a first step, the consultant drafted a "Socioeconomic diagnostic assessment of the families of Banhado," which analyzed the January 2014 socioeconomic cadastral survey data on the 461 families and a total of 1,284 beneficiaries who would be resettled. The consultant noted that from 2007 to 2014, 128 families had already been resettled through other Municipal Government housing programs, meaning that not only had families left the area subject to the Bank-financed resettlement, but 190 new families had moved in over those years.¹²⁹

- 2.82 From 2014 to 2015, the executing agency, assisted by the last two consultants to join the Program and the MICI Consultation Phase team, managed with some difficulty to hold several preliminary meetings to present the Banhado community with the socioeconomic diagnostic assessment, the rationale for resettlement, and some of the preliminary resettlement options, among other things. The installation of a local support office to help the residents of Banhado in the process of choosing alternatives and to provide information served to gather *ad hoc* information on the community, and additional families were resettled under other housing programs offered by the Município.

- 2.83 In May 2015, the consultant hired by Municipal Government finalized the preliminary version of the new resettlement plan, which was scheduled to be presented to the

¹²⁷ Consultation Phase Report, São José dos Campos Urban Structuring Program (BR-L1160), paragraphs 4.4 to 4.11.

¹²⁸ São José dos Campos Urban Structuring Program (loan BR-L1160), Terms of reference for the contracting of specialized consulting services to develop and/or complete the Involuntary Resettlement Plan (PDR).

¹²⁹ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 2.

community at the end of that month.¹³⁰ This never occurred, however, partly because the Requesters decided that they no longer wished to participate in Consultation Phase dialogues,¹³¹ dissatisfied with the fact that the São Paulo State Environmental Council (CONSEMA) had just announced a public hearing on the environmental impact assessment for the Banhado road. The Requesters felt it was inappropriate to move forward with the environmental permitting process for the works, which necessitated their prior resettlement, when the people affected had not yet agreed to the resettlement plan.

- 2.84 According to information furnished by Management, in June 2015 the borrower submitted a request to Management to eliminate the resettlement and Banhado road activities from the Program and to use the loan proceeds to fund other activities that could be executed within the loan disbursement period, which was to end on 18 February 2017.¹³² The request was granted via an amendatory contract signed by the borrower and the IDB on 2 August 2016.
- 2.85 During the time that the resettlement was not implemented, despite being part of the Program, a significant number of families—approximately 213 according to the most recent information provided to the MICI by Management¹³³—resettled outside the Program. As these families left Banhado, the Municipal Government demolished their homes, leaving the debris as part of an ongoing strategy to “freeze” the area to prevent an influx of people and the building of new structures. According to interviews held during the fact-finding mission, the debris, which in some cases accumulated over long periods of time, results in a number of hazards for the community and especially for children, including the appearance of disease-carrying animals and insects such as rats and cockroaches, which can attract snakes, exacerbating the community’s problems with unsanitary conditions. During the fact-finding mission, the MICI was able to confirm that the amount of debris left from demolished homes in the Banhado community is considerable for the area.

¹³⁰ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 50.

¹³¹ It must be noted that, although the Requesters do not represent all the affected Banhado residents, the MICI Consultation Phase process had created an opportunity for the Municipal Government and the Banhado community to develop trust and interact with one another at a time when the Municipal Government could not so much as enter the area. Beyond that, the MICI is unaware if the Municipal Government later continued with additional resettlement-related activities.

¹³² Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 20.

¹³³ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 61. The MICI has been unable to verify the accuracy of this figure. What can be verified is that between the update of the socioeconomic cadastral survey of the area in 2007 and the new cadastral survey in 2014, 128 families were resettled through Municipal Government housing programs. See: Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 2.



Debris from demolished houses in the Banhado community. Source: MICI.

- 2.86 Additionally, several social services and community facilities that were previously available to the community were closed down in the years after the PIAS was developed, including an early childhood education center, a FUNDHAS unit,¹³⁴ a day care center, and a dental clinic. The PIAS had described all of these as being part

¹³⁴ "Fundhas del Banhado demolida," Guia SJC website, 12 July 2011: <http://www2.guiasjc.com.br/noticias/fundhas-do-banhado-demolida/>

of the social safety net in the area to be vacated, and as being among the public social services utilized by the residents.¹³⁵

Determination of compliance as regards the Program's execution period

- 2.87 Since the PIAS was not implemented, and from Program approval to 2015 the resettlement activities centered on attempts to prepare new resettlement plans, the MICI's determination with respect to whether or not the Bank complied with Operational Policy OP-710 during the Program's execution period focuses on whether the policy's objective of minimizing the disruption of the livelihood of people to be affected by the resettlement was duly met.
- 2.88 During the investigation process, the MICI found evidence that in the time between finalization of the PIAS, in April 2008, and Program approval and the signing and entry into force of the loan contract, in May 2010 and August 2011, respectively, several circumstances arose that further eroded the possibility of carrying out the resettlement of the Banhado community as part of the Program. These include: (i) a significant number of Banhado residents had already been resettled through other Municipal Government housing programs; (ii) the housing options included in the PIAS were no longer available in sufficient number for the families that had not yet left; and (iii) the Municipal Government's relationship with the community was very shaky and, for a time municipal officials could not so much as enter the community. Subsequently, new circumstances arose to slow the pace of execution. In 2012, municipal elections resulted in a change in administration in early 2013, with the delays entailed by both processes. Also, because a new municipal administration was in charge, and internal institutional adjustments were made, the coordinating unit underwent a number of staffing changes, all of which caused delays in planning the resettlement as part of the Program.
- 2.89 As regards the resettlement of Banhado families through other Municipal Government housing programs, the MICI emphasizes that, although resettling this community to improve its living conditions was an objective of the IDB Program, these resettlements were not carried out under the Program. The IDB project team has said that they were voluntary relocations that the Municipal Government was able to undertake based on its own housing policy and state and federally sponsored programs targeting low-income groups.¹³⁶ Management argues that resettlement was not carried out because the loan proposal provided that "Bank review of the final results of the solutions selected by the families and of the public consultation on the program, is a condition for financing of this program."¹³⁷ This notwithstanding, the MICI found no provision of this kind in the loan contract, which is the document that sets forth the obligations between the Bank and the borrower. Moreover, even though the Bank did not ultimately finance the involuntary resettlement of the families of Banhado, the MICI underscores, as the findings presented in paragraphs 2.72 through 2.83 reflect, that the Program made numerous investments in the form of

¹³⁵ PIAS, section 4.3, pp. 24 and 25.

¹³⁶ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 60.

¹³⁷ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraph 37. Loan proposal for the "São José dos Campos Urban Structuring Program," document PR-3544 of 27 April 2010, paragraph 2.8.

hiring consultants to perform tasks in connection with the various versions of the resettlement plan during the implementation stage. The MICI believes that not having directly financed the subcomponent does not exempt Management from every responsibility that might arise from the activities carried out under the Program, e.g., the development of different resettlement plans.

- 2.90 In the MICI's view, in this case, the IDB's noncompliance with respect to Operational Policy OP-710 lay mainly in approving a resettlement plan developed in the context of the Municipal Government's general resettlement programs—the PIAS—that was not compliant with OP-710. The PIAS called for the resettlement to take place in less than a year in 2008 and 2009. However, the Program was not approved until more than two years later, in 2010. Despite the plan's late submittal for approval, its baseline data were not immediately updated nor was it improved for immediate implementation after approval. As a result, some residents of Banhado left under other housing programs outside the IDB Program, though they belonged to the community to be resettled under the Program, and those who stayed continued to live in the area's unsanitary conditions, in a state of uncertainty. For the next five years, the Program lacked a quality resettlement plan that was consistent with Operational Policy OP-710, making it impossible to carry out the resettlement in a timely manner and ensure that "affected people receive fair and adequate compensation and rehabilitation... within the shortest possible period of time"¹³⁸ as required by Operational Policy OP-710, and thereby prompting residents to leave via other alternatives.
- 2.91 It is the MICI's opinion that during the Program's execution period, as there was no final resettlement plan ready to be implemented in the shortest possible period of time, as required by Operational Policy OP-710, two realities materialized, with different impacts on the community: (i) one for people who were resettled under alternative programs offered by the Municipal Government; and (ii) one for people who stayed in the community because they opposed the resettlement or because they were waiting for the resettlement plan to be presented to them, complete with detailed options and rehabilitation measures, so that they could make a participatory, informed decision.
- 2.92 Although many Banhado residents belonging to the first group wished to leave the area for various reasons ranging from fear for personal safety, unsanitary conditions, or simply wanting to better their situation, their resettlement, despite being part of the Program, took place under Municipal Government housing programs, without the safeguards provided to affected persons by Operational Policy OP-710 and the resettlement benefits that were, in principle, to be offered as part of the Program. Examples of these benefits are the opportunity to participate in and be consulted on the resettlement process and having full knowledge of the various compensation and rehabilitation options meant to address the risks of impoverishment they might face in their new locations. Instead, in interviews held by the Panel during the fact-finding mission, many of these families said they resettled because they felt pressured to leave because of conditions in the area where they lived, and thought it would be better to accept some sort of option rather than remain in Banhado waiting indefinitely. During its fact-finding mission, the Panel had the opportunity to meet with some of the Banhado residents who resettled in apartments under other

¹³⁸ Operational Policy OP-710, section III. Principles, point 2.

- housing programs offered by the Municipal Government. Several of them described the challenges of living far from the city center without regular transportation to take them to other areas and, particularly, how this has been affecting their employment prospects. Many spoke of the difficulties they have faced in taking on new condominium and utility expenses, indicating they were behind on their payments and did not know how they might get back to where they started. Some affirmed that their quality of life was better in Banhado, because they enjoyed a better socioeconomic position there despite the area's physical conditions.
- 2.93 The second group remained in the community for the more than eight years during which the executing agency, under the IDB's guidance, continued to work on the resettlement plan without any concrete short-term actions to finally execute the resettlement as envisaged in the Program. The MICI notes that these people experienced negative consequences owing to the closure of social services and community facilities and the government's neglect in terms of providing such services as maintenance, street lighting, and clearing of drainage ditches. This was in addition to the debris left in the community for extended periods of time, which produced unsafe spaces in terms of health issues as well as of the physical safety of the area's residents. The freeze placed on the area intermittently from 2002 to 2015 also had impacts on the quality of life of people who could not repair or expand their homes or perform other types of work on it for several years.
- 2.94 It is important to underscore that both groups knew that they would be resettled starting in 2002, if not sooner, when the community was surveyed for the first time and a freeze was placed on the area. The cadastral survey was updated and the area frozen again in 2007, this time with some IDB involvement, in order to obtain baseline information for the PIAS. What is more, given the lack of participation and consultation in this stage, as identified by the MICI (see paragraphs 2.17 to 2.24), there was an information gap regarding the status of resettlement planning and what the future would hold for each of the people of Banhado. This situation made the residents of Banhado feel very uncertain and insecure regarding their future.
- 2.95 It is the MICI's conclusion that the events that took place during the implementation stage are not consistent with the objectives and principles set out in Operational Policy OP-710, given that the community members experienced significant disruptions to their lives over the nine years of IDB involvement in the planning and structuring of the resettlement. This occurred largely because issues were not effectively addressed within a reasonably short period of time. While this situation persisted, so did the negative impacts on the lives of the people affected. Although certain circumstances caused execution delays, e.g., the delay of more than three years between the completion of due diligence and the signing of the loan contract and the change in municipal administration resulting from elections, the MICI notes that it would have been common IDB practice to develop an action plan in a situation like this, to coordinate with all the stakeholders and implement the necessary measures to update and improve the resettlement plan to bring it into line with Operational Policy OP-710 and enable the resettlement to take place as soon as possible, thereby minimizing the very kinds of impacts that were found to have happened. The MICI did not find evidence that an action plan with these features was implemented in this case.

- 2.96 Consequently, the MICI believes that the circumstances described above produced a considerable detrimental impact on the population of Banhado that was not handled properly by the Bank. Specifically, the Bank approved a resettlement plan that did not meet all the requirements of Operational Policy OP-710, which unquestionably caused problems that prevented it from being implemented in a reasonable period of time. Furthermore, the Bank allowed time to pass without ensuring a satisfactory outcome for the people to be resettled, denying them a swift, effective response in keeping with the vulnerability of the families of Banhado, who remained in the area for years without being resettled, while conditions in the community deteriorated, or were resettled without the guarantees that were to be offered by the Bank. All this constitutes noncompliance with Operational Policy OP-710.

2. Environment and Safeguards Compliance Policy (Operational Policy OP-703)

a. The Requesters' allegations

- 2.97 In addition to their allegations concerning the involuntary resettlement, the Requesters regarded construction of the Banhado road, which would run next to Jardim Nova Esperança, as one of the key reasons behind the resettlement of the Banhado families. Essentially, as far as the safeguards stipulated by Operational Policy OP-703 are concerned, the Requesters claimed first that the Banhado road project lacked the necessary environmental impact studies and that, when the studies were ultimately conducted, they were not duly consulted or shared with the community, and the community's concerns were not taken into account during the environmental permitting process. The Requesters secondly alleged that the people affected had not been properly informed or consulted about the road project and that, despite the presumption that they would be resettled, their concerns had not been taken into account.

b. What does the Environment and Safeguards Compliance Policy (Operational Policy OP-703) stipulate?

- 2.98 Pursuant to Operational Policy OP-703, safeguards apply throughout the project cycle to ensure the environmental sustainability of all Bank-financed operations. The Bank takes a general precautionary approach to avoid negative environmental impacts. When such impacts are unavoidable, Bank-financed operations require mitigation measures; and for impacts that cannot be fully mitigated, compensation or offsets should be implemented. The Bank works with borrowers to manage environmental risks effectively and to help develop environmental management capacity, as agreed. Where, in the opinion of the Bank, the environmental risks are deemed too great, the Bank would support the proposed investment only once the plan for mitigation of the risks is agreed.
- 2.99 It is important to stress that Operational Policy OP-703 defines the term "environment" in its broad sense, which includes physical/chemical factors (geophysical), biological factors (biotic), and associated social factors (anthropic). Accordingly, the policy encompasses social, cultural, and economic aspects to the extent that these aspects are derived from geophysical and/or biotic changes associated with a particular operation.

- 2.100 Subsections c, d, and e below present the findings of the investigation as well as determinations of compliance with respect to the provisions of Operational Policy OP-703 applicable to the allegations made by the Requesters: directives B.3, B.5, and B.6. Each subsection shares the MICI's considerations as related to compliance with these directives.

c. Directive B.3 – Screening and Classification of Bank-financed Operations

What does Directive B.3 stipulate?

- 2.101 Directive B.3 stipulates that:

- All Bank-financed operations will be screened and classified according to their potential environmental impacts, so that the appropriate environmental safeguards and due diligence requirements can be selected.
- Screening will be carried out early in the preparation process and will consider potential negative environmental impacts, whether direct, indirect, regional, or cumulative in nature, including environmentally related social and cultural impacts of the operation and of its associated facilities, if relevant.

- 2.102 Regarding the classification of operations, the policy stipulates that any operation that is likely to cause significant negative environmental and associated social impacts, or have profound implications affecting natural resources, will be classified as Category "A." Category "A" operations are considered high safeguard risk. These operations will require an Environmental Impact Assessment (EIA) for investment operations. Operations that are likely to cause mostly local and short-term negative environmental and associated social impacts and for which effective mitigation measures are readily available will be classified as Category "B." These operations will normally require an environmental and/or social analysis focusing on the specific issues identified in the screening process, and an environmental and social management plan (ESMP).

MICI findings regarding compliance with Directive B.3

- 2.103 The information collected during the investigation in connection with the process the Bank followed during the Program's screening and classification phase and the requirements of Directive B.3 applicable to the components at issue in this Compliance Review is presented below.
- 2.104 On 28 September 2007, using the Safeguard Screening Form (SSF),¹³⁹ the project team classified the Program as a category "B" operation, determining that it would pose "minor risks to the health and safety of the local communities associated with infrastructure or equipment," particularly during the construction phase. The form indicates that the borrower could submit an "annual community risk management progress report" as a way to potentially mitigate health and safety risks. The impact associated with involuntary resettlement or economic displacement was expected

¹³⁹ The SSF aims to identify potential environmental and environmentally related sociocultural impacts and risks of the operation. Based on the SSF, project teams propose the environmental impact category. Implementation Guidelines for the Environment and Safeguards Compliance Policy, p. 23.

- to be minor and the borrower was to devise a resettlement plan that provided for effective consultation, compensation, and grievance mechanisms.¹⁴⁰
- 2.105 This classification was made based on data collected during the identification mission conducted 17-21 September 2007, and on other documents available at the time, among them a “rapid environmental analysis of the interventions planned [in the Program] seeking, specifically, to understand the impacts thereof as well as the applicable environmental permitting instruments.”¹⁴¹
- 2.106 The rapid analysis¹⁴² had been requested by the Bank for its decision-making process and required the Municipal Government to evaluate the following for each component: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
- 2.107 Although the rapid environmental analysis did not anticipate resettlement activities, other Program documents produced at the time did indeed foresee the need to relocate families. The Project Profile included, under the Program’s proposed component I, the relocation of families who occupied environmental conservation areas and were living in hazardous conditions.¹⁴³ [REDACTED]
[REDACTED]
[REDACTED].¹⁴⁴
- 2.108 Based on the “rapid environmental analysis,” the Bank concluded that the interventions would have a very significant positive social and environmental impact inasmuch as they would improve the quality of life for nearly 2,500 families, but acknowledged that, even if relocation were voluntary, there could be adverse impacts. The Bank further concluded that, because a number of the road projects would have an irreversible effect on the urban, environmental, and social structure, permitting for them could require an EIA-RIMA, which is regulated by Brazilian law.¹⁴⁵ As a result, a determination was made that, in order to ensure consistency between Brazil’s environmental permitting procedures and the IDB’s safeguard policies (Operational Policies OP-703 and OP-710), and in order to reinforce the positive impacts of the Program, the Municipal Government would be required to prepare an environmental analysis that would have to be ready and available to the public before the proposal for operational development (POD) was submitted.¹⁴⁶

¹⁴⁰ SSF.

¹⁴¹ Project Profile, paragraph 4.1.

¹⁴² São José dos Campos Urban and Environmental Development Program—Analysis of its projects and evaluation of the need for environmental permitting, *Ecociente*, São José dos Campos Municipal Government, and the Inter-American Development Bank, September 2007, pp. 2-3.

¹⁴³ Project Profile, paragraph 2.7; Safeguard Policy Filter Report; SSF, summary of project impacts and risks and potential solutions; and Environmental and Social Strategy (ESS), paragraph 2.1.

¹⁴⁴ Identification mission, 17-21 September 2007, Aide-mémoire, Annex A: Projects to be analyzed.

¹⁴⁵ Project Profile, paragraph 4.1; ESS, paragraph 2.5, [REDACTED]
[REDACTED]

¹⁴⁶ Project Profile, paragraph 4.1.

- 2.109 [REDACTED] during the environmental and social review (ESR) meeting for the Program, held on 20 October 2007, [REDACTED]

[REDACTED]

[REDACTED].¹⁴⁷

- 2.110 As far as road construction was concerned, the Project Profile stipulated that it would be necessary to conduct technical, economic, and environmental studies while the operation was being prepared in order to select, adjust the scale of, and fine-tune the Transportation Department's initial proposals. With respect to the impacts anticipated for Banhado road specifically, the preliminary assessment [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁴⁹

- 2.111 The Environmental and Social Strategy (ESS) indicated a series of both positive and negative impacts for each Program component. As to positive impacts of the resettlement of the Banhado and Orla del Rio Paraíba families, it pointed to improved quality of life for the 631 beneficiary families as well as the guarantee of legal ownership of a home. In terms of negative impacts, the ESS noted the "break in social and economic ties [and] forced solutions not appropriate for the families," and, as an environmental protection measure, included "verification of compliance with OP-710 in the policies and practices of the [Municipal Government] and, particularly, for the favela being proposed." It specified that Banhado was the last remaining favela in the município, whose housing program has, since implemented in 1998, enabled 15 communities to be relocated from at-risk areas.¹⁵⁰

- 2.112 The ESS states that the positive impacts of the road system works would include shorter travel times for people and businesses, a demarcation between the urban and conservation zones, and potential reductions in vehicle emissions. As to adverse impacts related to the road works, it indicates that there would be "irreversible impacts" and "delayed expropriations." In the case of these works, "[t]here is no need to relocate low-income families and the areas lie in the urban-conservation area interface."¹⁵¹ It states that, although the road works might have an

¹⁴⁷ Minutes of the ESR meeting held on 20 October 2007, p. 1.

¹⁴⁸ In Brazil, a ZEIS is an urban instrument generally created by municipal statute or established under a city's master plan. In São José dos Campos, Article 75 of Subsidiary Municipal Law 306 of 17 November 2006 provides that a ZEIS must comprise areas intended for projects targeting low-income communities, a category which includes areas occupied by shantytowns/favelas, illegal lots for which it might be socially important to promote urban regularization, and lots located on the outskirts of the city designed to be used in the Município's low-income housing program: <http://camara-municipal-de-sao-jose-dos-campos.jusbrasil.com.br/legislacao/709064/lei-complementar-306-06#art-75>.

¹⁴⁹ São José dos Campos Urban and Environmental Development Program—Analysis of its projects and evaluation of the need for environmental permitting, *Ecociente*, São José dos Campos Municipal Government, and the Inter-American Development Bank, September 2007, p. 9.

¹⁵⁰ ESS, paragraphs 2.1 and 2.2.

¹⁵¹ ESS, paragraph 2.4, Table of impacts, Component II: "Improvements in Urban Mobility."

irreversible impact on the urban, environmental, and social structure, it would not necessarily be negative and should be subject to specific environmental studies pursuant to existing laws.¹⁵²

- 2.113 Bearing in mind the anticipated impacts, the following elements were included in the Program's environmental and social strategy: (i) conduct an environmental assessment of the Program as a whole, with the Bank advising the Municipal Government regarding compliance with IDB requirements and procedures, which was to address the social impacts of the Program as a whole and would have to be made available to the public before submission of the POD;¹⁵³ (ii) perform a social assessment of the activities of the Municipal Government, particularly of the Housing Department, in connection with the resettlement, with a view to compliance with Operational Policy OP-710. The project team emphasized that the Housing Department had experience in this area, not just in implementing its own programs, but also in the execution of resettlement programs financed by the IDB, as in the case of the Habitar program; and (iii) use the instruments established under Brazilian law (EIA-RIMA) for the road-related components to be developed, analyzed, and implemented during Program execution, and, pursuant to Bank policies, hold timely public consultations regarding those components.¹⁵⁴

Determination of compliance with Directive B.3

- 2.114 Below, the MICI will present its analysis to determine whether the operation was screened and classified in accordance with the standards of Directive B.3. It will specifically analyze the potential impacts identified by the Bank at the outset of the preparation process and whether those impacts were consistent with the impacts of a Category "B" operation, as determined by the Bank.
- 2.115 The MICI recognizes that Directive B.3 requires the category of an operation to be determined at a very early stage based on preliminary information about the operation. This notwithstanding, in the MICI's opinion, the information available to the project team in this case, while not comprehensive, did suggest that the Program's components would have a number of variable impacts—among them, in the case of the road works, some irreversible impacts on the urban, environmental, and social structure—that would have significant associated social impacts, and for which the need to request an environmental permit was anticipated. Specifically, the Program documents identify adverse impacts tied to construction of the Banhado road (among other road interventions covered in the preliminary assessment), which was slated to be built adjacent to an environmental conservation zone and would entail the resettlement of more than 700 families in total for the Program.
- 2.116 The construction of Banhado road was expected to necessitate an EIA under Brazil's environmental permitting process. On this point specifically, it is important to note that EIAs are normally associated with procedures to obtain environmental permits and that this is seen repeatedly in the countries in which the Bank has operations. The legal basis for this lies in various international instruments, among them,

¹⁵² ESS, paragraph 2.1.

¹⁵³ ESS, paragraph 3.1 and Project Profile, paragraph 4.1.

¹⁵⁴ ESS, paragraph 3.1.

- Principle 17 of the Rio Declaration on Environment and Development,¹⁵⁵ according to which an environmental impact assessment is required for any proposed activity that is likely to have a significant adverse impact on the environment and is subject to a decision of a competent national authority.¹⁵⁶ Projects subject to this type of environmental authorization typically produce considerable or egregious impacts on the environment and the landscape. In particular, existing environmental legislation in Brazil expressly states that projects causing the aforementioned social and environmental impacts are subject to this environmental permitting procedure.¹⁵⁷
- 2.117 Regarding the types of potential impacts of Banhado road, the MICI agrees that some of the impacts associated with the laying of roads—particularly during the construction stage, when heavy vehicles are moving about and construction sites can end up being very close to local communities—might potentially be considered local and short-term impacts for which effective mitigation measures exist under the terms stipulated in Directive B.3 for Category “B” projects. The MICI nevertheless points out that there is no evidence to indicate that the Program included effective mitigation measures at this stage for the specific impacts the works would generate. In this regard, the only measures established in the ESS to mitigate the irreversible impacts identified for the road works were: Program support for the entire process, from the study of alternatives to the unveiling of the works; instruments like the EIA-RIMA or others for securing installation and operating permits; and environmental management plans.¹⁵⁸ This was more a list of options to be confirmed or developed in the future than specific mitigation measures already determined for each type of impact identified.
- 2.118 The MICI considers some of the other impacts identified by the Bank at this early stage of the operation to be significant adverse environmental impacts in terms of their magnitude and duration that would have profound associated social effects consistent with the characteristics of a category “A” operation. The MICI emphasizes that:
- (i) Most of Banhado road would run alongside an environmental protection area of more than 11,000 hectares.¹⁵⁹ There are particular considerations when it comes to the building and long-term operation of a significant work in a sensitive protected environmental area, as was

¹⁵⁵ Along with the Convention on Biological Diversity, Article 14; the United Nations Convention on the Law of the Sea (UNCLOS), Article 206; and the United Nations Framework Convention on Climate Change (UNFCCC), Article 4(f).

¹⁵⁶ The MICI clarifies that, although the Rio Declaration is a nonbinding instrument pursuant to public international law, its standards have been effectively incorporated into the domestic laws of most of the countries where Bank operations are executed.

¹⁵⁷ National Environmental Council (CONAMA) Resolution 237/97, Article 1: Definitions, paragraph II. Environmental Permit: Administrative act whereby the competent environmental entity establishes the conditions, restrictions, and environmental control measures that must be observed by the entrepreneur, individual, or corporation in locating, installing, expanding, and operating projects or activities that employ environmental resources when they are considered to be polluting or potentially polluting or might in any way cause environmental degradation.

¹⁵⁸ ESS, pp. 3 and 4, paragraph 2.4, Table of impacts, Component II: “Improvements in Urban Mobility.”

¹⁵⁹ EAR, p. 52.

noted in the preliminary assessment prepared by the Municipal Government at the Bank's request.

- (ii) Banhado road would have two stretches located in areas known to be home to vulnerable, low-income communities. This would mean that the impacts "on the health and safety of the local communities" identified in the SSF would particularly affect an at-risk population.
- (iii) The relocation of vulnerable families living in the Banhado community was a prerequisite for making implementation of the Banhado road feasible. The ESS prepared by the Bank anticipated "delayed expropriations" and that the resettlements necessary for the entire Program would have adverse impacts, namely a break in social and economic ties and the possibility of forcing solutions that were not appropriate for the families.¹⁶⁰ The SSF for the Program also confirmed that there would be "impacts leading to involuntary resettlement or economic displacement."
- (iv) Generally speaking, the road works envisaged in the Program would cause "irreversible impacts" to the urban, environmental, and social structure, as stated in the ESS.
- (v) The need for an EIA-RIMA was expected for environmental permitting for a number of the Program's components, especially Banhado road.

2.119 Considering the precautionary approach of Operational Policy OP-703, intended to avoid negative environmental impacts, the MICI is of the opinion that an operation like this one—involving a number of impacts, some of which could be classified as category "B" and others which could better be classified as category "A"—the more environmentally and socially/culturally complex criterion should be selected; in other words, preference should be given to the categorization best able to cover all of the impacts of the different works comprising the operation, including, specifically, larger scale impacts or impacts entailing greater risk to the environment or to local communities.

2.120 In view of the above, the MICI believes that a program with multiple components and subcomponents that include the construction of two large roads, one of which would necessitate the prior involuntary resettlement of some 300 vulnerable families¹⁶¹ and would be located along the edges of a protected natural area of more than 11,000 hectares, would not, in the strictest sense, fit the description of a local and short-term impact as required by Operational Policy OP-703 for category "B" projects. What is more, the documents examined reveal that no effective mitigation measures were in place, as required by Directive B.3, for the impacts and/or risks identified in this stage; rather, they describe potential activities, processes, or documents to be developed during Program execution, highlighting the expected need to conduct an EIA-RIMA pursuant to Brazil's environmental permitting requirements, which indicated the existence of at least one component that might

¹⁶⁰ ESS, paragraph 2.1.

¹⁶¹ The Program also anticipated the resettlement of 350 families who were residing in Orla de Paraíba and included the already-completed resettlement of 81 families for construction of the Norte road as counterpart expenditures incurred and to be recognized. According to documents from this stage in the operation, resettlement of a total of 712 families had been planned.

potentially have considerable or egregious impacts on the environment. Consequently, with the understanding that the Bank should have classified this as a Category “A” operation, the MICI concludes that the Bank failed to comply with the stipulations of Directive B.3.

d. Directive B.5 – Environmental Assessment Requirements

What does Directive B.5 stipulate?

2.121 Directive B.5 of Operational Policy OP-703 stipulates that:

Preparation of Environmental Assessments (EA) and associated management plans and their implementation are the responsibility of the borrower. The Bank will require compliance with specific standards for Environmental Impact Assessments (EIAs),... Environmental and Social Management Plans (ESMPs), and environmental analyses, as defined in this Policy and detailed in the Guidelines. The operation’s executing agency... is required to submit all EA products to the Bank for review. The operation’s approval by the Bank will consider the quality of the EA process and documentation, among other factors.

[...]

- For operations requiring an environmental assessment but not subject to an EIA or an SEA, an environmental analysis should be performed including an evaluation of the potential environmental, social, health, and safety impacts and risks associated with the operation, and an indication of the measures foreseen to control these risks and impacts....
- The ESMP must include: a presentation of the key direct and indirect impacts and risks of the proposed operation; the design of the proposed social/environmental measures to avoid, minimize, offset, and/or mitigate the key direct and indirect impacts and risks; the institutional responsibilities to implement these measures, including, where necessary, institutional development, capacity building and training; the schedule and budget allocated for the implementation and management of such measures; the consultation or participation program agreed for the operation; and the framework for the monitoring of social and environmental impacts and risks throughout the execution of the operation, including clearly defined indicators, monitoring schedules, responsibilities, and costs. The ESMP should be ready for, and reviewed during, the analysis/due diligence mission.

MICI findings regarding compliance with Directive B.5

2.122 As already stated, the ESS made performance of an environmental assessment for the Program as a whole a requirement. The assessment would cover the specific projects and consider the social impacts of the entire Program, and was to be ready before the POD was submitted.¹⁶² The ESS also stipulated that for certain specific projects, namely those “developed, analyzed, and implemented during execution of the Program (road corridors), the instruments provided for in Brazilian laws and regulations (a preliminary environmental report and the EIA-RIMA) will be used, and,

¹⁶² Annex IV to the Project Profile, which contained the “Sector Studies Index,” set 15 January 2008 as the deadline for finalizing the environmental assessment and indicated that the environmental assessment would be made public prior to that, on 15 December 2007, p. 2.

as per Bank policy, timely public consultations and meetings will be held.”¹⁶³ According to the Project Profile, the Municipal Government would prepare the environmental assessment¹⁶⁴ to ensure consistency between national environmental permitting processes required for road projects resulting in irreversible impacts and Operational Policies OP-703 and OP-710.

- 2.123 The Municipal Government subsequently had an external consulting firm prepare an environmental assessment report (EAR). The initial version of the EAR is dated 20 February 2008. According to the Program's loan proposal, this preliminary version of the EAR was published in *Vale Paraibano*, a local newspaper, and posted on the Municipal Environmental Department's website on 23 February 2008, where it remained available until 25 March.¹⁶⁵ The final version of the EAR was completed on 23 April 2008 and included an Environmental Construction Manual (MAC) as an annex. The project team told the MICI that this MAC was equivalent to the Program ESMP.¹⁶⁶ The EAR refers to the MAC as part of the environmental oversight of the works and indicates that “it lays out a set of activities ranging from items considered in the guidelines for the location and operation of quarries, to actions having to do with waste, health, and safety management in the works, in coordination with other social communication programs.”¹⁶⁷
- 2.124 The first version of the EAR included the resettlement of the Banhado families as a Program subcomponent; nevertheless, the analysis of this subcomponent did not go further than to stipulate that “IDB policies governing resettlement (Operational Policy OP-710) must be strictly observed, as must the other requirements of the Environment and Safeguards Compliance Policy (Operational Policy OP-703).”¹⁶⁸ The later version (April 2008) included more information, specifying, among other things, that the favela was located in an APA, and that 399 families from Banhado would have to be covered under the Program's proposed Integrated Social Action Plan (PIAS). It added that the results of cadastral surveys showed that the area's population was extremely poor, fully justifying the expenditures to be incurred, and making them essential. The EAR underscored the importance of discussing the planned interventions with the population given the environmental significance of the Banhado zone for the Município, and determined that the resettlement of these families would have a minor impact because of existing municipal housing programs, and given the examples of previous success in the area.¹⁶⁹ The document does not contain a more in-depth analysis of these examples beyond indicating that the Municipal Government had managed to facilitate development of a PIAS in 2007, to “minimize the existing favelas.”¹⁷⁰ The EAR states that this subcomponent's resettlement would produce “a mitigable adverse social impact.” With respect to the planning phase for Program-related interventions, the EAR specified that one of the relevant impacts would be the expectations of some affected families or groups,

¹⁶³ ESS, paragraph 3.1(d).

¹⁶⁴ The Project Profile calls the document the “environmental analysis.”

¹⁶⁵ Loan proposal, paragraph 2.7. The MICI lacks documentation to verify this information.

¹⁶⁶ [REDACTED]

¹⁶⁷ EAR, p. 136.

¹⁶⁸ EAR, preliminary version, p. 9.

¹⁶⁹ EAR, pp. 16-17 and 99.

¹⁷⁰ EAR, p. 87.

confirming that in the case of the Banhado community, everyone would be removed. It stated that “in order to avoid unwanted adverse impacts in connection with families’ reluctance to move, the announcement and dissemination of the São José dos Campos Urban Structuring Program by the Municipal Government should be accompanied by a proper explanation to the community regarding the homes they might be provided, the support measures planned, as well as the benefits of the works for the city as a whole.”¹⁷¹

- 2.125 According to the EAR, the Banhado road subcomponent called for the relocation of the Banhado community’s 399 families¹⁷² and was “the project that warrants the most attention because of its location on the boundaries of the APA... of great interest to the community.”¹⁷³ In addition, according to the Department of the Environment, the commissioning of an EIA and a RIMA for the road had been planned in order to enable a more in-depth study to be done and so that the community could learn about and become involved in the project.¹⁷⁴ The EAR likewise recommended that a preliminary discussion be held about the project with the community, who should also be informed about the planned public transportation uses of this road, to enhance mobility for the entire population of São José dos Campos.¹⁷⁵ The EAR affirmed that one could expect, based on legal requirements, that the permitting agency would request further environmental details about the project and would require a well-studied solution based on an analysis of options and selection of the one entailing the least possible amount of disturbance to the Banhado APA.¹⁷⁶
- 2.126 Regarding environmental impacts and mitigation measures, the EAR indicated that in general terms, the Program as a whole would have positive impacts because the negative environmental impacts generated by the road projects would be offset by the proposed urban parks, which constituted green space.¹⁷⁷ The EAR further indicated that the road works under component 2, as a whole, would have a greater impact on the environment as they would cause “inconveniences” during as well as after the works, because paving would increase the impermeable surface area, leading to larger stormwater drainage volumes. It stated that this “negative impact caused by the road works at the core of this investment program must be mitigated via the introduction of new parks that provide an increase [in the amount of] green space and ensure that permanent permeable areas are maintained.”¹⁷⁸ It added that “environmental control” would be bolstered through the creation of voluntary drop-off sites for managing the waste from the civil construction works. Another adverse impact associated with the road corridors would be a rise in noise levels as a result of increased vehicle traffic. In this connection, the document asserted that many of the areas had already been impacted and, with respect to Banhado road specifically,

¹⁷¹ EAR, pp. 105-106.

¹⁷² EAR, p. 19. The same document indicates that the works planned for Phase I and Phase II of Norte road would also require the Banhado favela to be vacated.

¹⁷³ EAR, p. 98.

¹⁷⁴ EAR, p. 99.

¹⁷⁵ EAR, p. 99. Similarly, preliminary EAR, p. 96.

¹⁷⁶ EAR, p. 99.

¹⁷⁷ EAR, p. 104.

¹⁷⁸ EAR, p. 104.

the large APA adjacent to the road, which is “an unoccupied area,” would help to diffuse the increased noise caused by traffic.

- 2.127 With the ESS and the EAR and its MAC completed, the project team proceeded to prepare an Environmental and Social Management Report (ESMR),¹⁷⁹ which provided a summary of the main environmental and social impacts and their respective mitigation measures. Like the EAR, the ESMR reiterated that an EIA was planned for the Banhado road project, in order to allow for a more in-depth study; also planned were public hearings to enable people to learn about and become involved in the project.¹⁸⁰ The ESMR contains a series of tables that present the impacts and mitigation measures for the Program’s different projects based on information from the EAR. The Bank’s summary on Banhado road is presented in Table 6:

¹⁷⁹ According to the implementation guidelines for Operational Policy OP-703, “[t]he ESMR provides a synthesis of the EA and other relevant environmental and social documents developed as part of preparation and analysis/due diligence of the operation, focusing on the environmental and social management aspects to be applied during the execution of the project. The ESMR should confirm that the relevant Bank policies will be complied with. The project report and the ESMR will clearly state the actions taken to address the relevant significant environmental risk factors that may affect the environmental sustainability of the operation.” See: Implementation Guidelines for the Environment and Safeguards Compliance Policy, p. 33.

¹⁸⁰ ESMR, p. 30.

Table 6. Adverse impacts and mitigation measures planned for Banhado road and presented in the ESMR¹⁸¹

Adverse impacts	Mitigation measures
<p>Reversible adverse impacts, during the works:</p> <ul style="list-style-type: none"> ▪ Pedestrian and vehicle traffic detours: Area already impacted by flow issues prior to the works. ▪ Risk of accidents during construction. ▪ Diversion of pedestrian traffic and access. Reversible impact will cease once the works conclude. ▪ Impairment of local commerce during construction due to truck traffic entering the works area. ▪ Impact on the vegetation in the Banhado embankment, mainly during construction. ▪ Issues with the power supply, water connections, sewer system, and refuse collection during the works. ▪ Ineffective disposal of removed earth, should there be excess material after laying the Norte and Banhado roads; this in particular may affect the environment, and will not be able to be done in the area of Banhado. Confirm interest in the reuse of this material (peat). <p>Irreversible adverse impacts:</p> <ul style="list-style-type: none"> ▪ Disturbance to Banhado APA IV, protected by law. ▪ Relocation of existing housing, which negatively impacts local residents. ▪ the works) and of users to reduce risk [sic]. ▪ Adverse impact in connection with noise produced by traffic in occupied areas. Low magnitude since these roads are being placed in urban areas already impacted by traffic. 	<p>To minimize environmental impacts:</p> <ul style="list-style-type: none"> ▪ Perform an EIA-RIMA in order to discuss execution alternatives for the works with the community (public hearings), so the community does not oppose the works during the process. ▪ Examine different siting alternatives for the works beyond the railroad berm to minimize the need for cut and fill. ▪ Protect existing stabilizing vegetation on the Banhado embankment. ▪ Examine the existing drainage system, which was created when the railroad was built, and ensure compatibility between it and the supplementary system to be installed. ▪ Reposition the vegetation on the Banhado embankment post-works. ▪ Plan for vegetation offsets proposed in the permitting process. ▪ Use environmentally approved areas for waste. ▪ Other actions to minimize reversible adverse impacts during the works should follow the Construction Manual, Annex IX to this EAR. <p>To minimize social impacts:</p> <ul style="list-style-type: none"> ▪ Discuss the project with the community. ▪ Explain the environmental benefits (creation of the park), transportation benefits (individual and collective), and promotion of tourism-related activities. ▪ Explain the housing options proposed under the resettlement program, as well as the social research conducted. ▪ Promote a planned campaign to publicize the project with the media from the “project” stage until the works are concluded.

Source: ESMR.

Determination of compliance with Directive B.5

- 2.128 The MICI’s analysis as regards Directive B.5 will focus on determining whether the Bank required environmental assessments and management plans necessary for the operation to be prepared and submitted during the Program development stage and whether these met the standards set forth in Operational Policy OP-703.
- 2.129 As used in Directive B.5, “environmental assessment” is a generic term covering various types of assessment processes.¹⁸² The types of environmental assessments and management plans for an operation depend upon the nature of the potential impacts thereof, which in turn determine how the operation will be classified, based

¹⁸¹ ESMR, p. 24.

¹⁸² Operational Policy OP-703, section VI. Definitions.

on the categories established under Directive B.3. As previously noted, during the screening and classification process, the Program was classified as a category “B” operation.¹⁸³ Consequently, the MICI’s review of compliance with Directive B.5 focuses on the requirements in place for category “B” operations. The MICI nevertheless reiterates its determination regarding noncompliance with Directive B.3 (paragraphs 2.114 through 2.120), in the sense that the nature of the environmental and social impacts and risks this Program entailed would have required it to be classified as a category “A” operation.

- 2.130 For category “B” operations, Directive B.3 requires “normally... an environmental and/or social analysis focused on specific topics identified during the selection process, as well as an Environmental and Social Management Plan (ESMP).” Directive B.5 specifies that for this type of project, an environmental analysis should be performed, including an evaluation of potential impacts and risks and an indication of the measures foreseen to control them.
- 2.131 In the case at hand, the MICI found that during this stage of the project cycle, a general environmental assessment of the Program was performed in order to characterize the environmental status of its components and actions. Among other things, the assessment identified the main local environmental issues associated with the interventions proposed under the Program and their likely environmental impacts, as well as a description of the characteristics of Brazil’s environmental permitting processes. Nonetheless, the environmental assessment failed to provide details about the specific environmental and social risks and impacts associated with each of the subcomponents targeted by this Compliance Review, or specific measures to manage those risks and impacts, as required by Operational Policy OP-703.
- 2.132 The MICI believes that, in essence, the EAR identified those components that would require an environmental permit because of their characteristics and, as a result, subsequent, more in-depth environmental impact studies; it also listed the likely potential impacts for each component. Specifically, the need for an EIA-RIMA for Banhado road had been identified from the earliest stages of the Program, not only as part of the process for securing an environmental permit pursuant to Brazilian law, but also because the EIA-RIMA would make it possible to conduct a comprehensive, in-depth study of the impacts of this works project.¹⁸⁴ In this regard, the EAR did determine that Banhado road was the project that warranted the most attention, because of its location adjacent to the APA, making it one of the Program’s highest-impact works in terms of the environment, together with Cambuí road, and because it also necessitated the prior resettlement of the Banhado community.
- 2.133 The MICI believes that Directive B.5 requires the impacts and risks of an operation, the measures to mitigate them, and a plan for implementing such measures to be established during the analysis/assessment phase, in order to ensure that the operation will be approved based on complete information that enables the Bank to ensure the project’s feasibility in environmental, social, financial, and other terms and to minimize the operation’s negative impacts and risks. In this respect, the MICI observes that this Program has the particular characteristic of including a

¹⁸³ SSF, operation BR-L1160, 28 September 2007.

¹⁸⁴ EAR, final version, p. 99.

considerable number of projects that were listed and described in the different Program documents. Nevertheless, the determination and assessment of the specific impacts of each project and the establishment of mitigation measures and their respective management plans were left to Brazilian agencies and phases subsequent to the approval of the operation, which, in the opinion of the MICI, constituted a failure to comply with Directive B.5. In fact, at this stage of the project cycle, Banhado road's route was still unknown; the environmental assessment called for a study of alternatives to be conducted *a posteriori*, given how sensitive building a road alongside the APA would be and in order to select the design offering the least amount of disturbance. This absence of a complete environmental analysis with its resulting management plan was also reflected in other areas, like the absence of a specific execution schedule and plan for the road construction works in coordination with the resettlement of the families of Banhado, and of a consultation or participation calendar for the project.

- 2.134 While the EAR was an important preliminary study of impacts and mitigation measures for the Program as a whole, in the MICI's estimation, it did not allow for a comprehensive approach to and management of the impacts of the different specific components. It is important to reiterate that the Banhado road had the potential to cause high-risk, ongoing impacts to the environment as well as associated social impacts of the same magnitude as a result of the involuntary resettlement, and thus it would have been necessary to already have the EIA-RIMA ready in the Program's preparation phase in order to determine the feasibility of the works pursuant to Operational Policy OP-703. This is why the MICI believes the approach envisaged in the ESMR, which called for an environmental impact study to be conducted in the future as a mitigation measure for the component, was flawed. Instead, the determination of impacts, alternative locations and routes for the road, the design of drainage systems, among other aspects of the road, should have been part of the environmental assessment of the Program prior to its approval, along with measures to manage their impacts.
- 2.135 In addition, what Management considers to be the Program's environmental management plan—the MAC—consisted only of an environmental oversight document for the works included in the Program and neither indicated nor included: (i) the design of specific measures to avoid, minimize, offset, and/or mitigate the key impacts and risks of each component; (ii) institutional responsibilities for implementing these measures; (iii) the schedule and budget allocated for implementation and management of such measures; (iv) a consultation or participation program agreed for each component; or (v) a framework for monitoring potential environmental and social risks associated with the construction and operation of projects and subprojects, as required by Operational Policy OP-703.
- 2.136 Consequently, the MICI has determined that the Bank failed to comply with Directive B.5 by validating only a general environmental analysis of the Program; by not conducting a specific analysis of the direct and indirect impacts of the different components—particularly Banhado road, which was one of the Program's highest-impact works—during the environmental and social assessment phase. It also failed to comply with Directive B.5 by treating the EIA-RIMA, to be conducted in the context of the local environmental permitting process after the operation had been approved, as a measure to mitigate the impacts of Banhado road. Directive B.5 clearly requires that the operation's approval by the Bank will consider the quality of the

environmental assessment process and documentation. Therefore, the lack of significant impact studies for a sensitive, large-scale component like Banhado road undermined the ability to comply with Directive B.5 for this operation. The Bank likewise failed to comply with Directive B.5 by not having an ESMP for the program, which is one of Directive B.5's requirements. This made it impossible for the Bank to ensure an effective precautionary approach to acknowledged environmental impacts, some of them irreversible and high-risk.

e. Directive B.6 – Consultations

What does Directive B.6 stipulate?

2.137 Directive B.6. stipulates:

As part of the environmental assessment process, Category “A” and “B” operations will require consultations with affected parties and consideration of their views. Consultations with other interested parties may also be undertaken in order to consider a broader range of expertise and perspectives. Category “A” operations will be consulted at least twice during project preparation, during the scoping phase of the environmental assessment or due diligence processes, and during the review of the assessment reports. For Category “B” operations, affected parties must be consulted at least once, preferably during the preparation or review of the ESMP, as agreed with the borrower. For consultation purposes, appropriate information will be provided in location(s), format(s), and language(s) to allow for affected parties to be meaningfully consulted, to form an opinion and to comment on the proposed course of action. EIAs and/or other relevant environmental analyses will be made available to the public consistent with the Bank's Disclosure of Information Policy (OP-102). During execution, affected parties should be kept informed of those project-related environmental and associated social mitigation measures affecting them, as defined in the ESMP.

MICI findings regarding compliance with Directive B.6

- 2.138 The ESMR prepared by the Bank states that the posting of the EAR on the Municipal Government's website meant “[the] public discussed the Program” and goes on to point out that the post had 590 hits and that the summarized PDF document was downloaded 394 times, in addition to being mentioned at least six times in local media.¹⁸⁵ A number of Program documents, e.g. the ESS, suggested that holding public hearings in accordance with the instruments provided for in Brazilian laws and regulations would be enough to comply with Operational Policy OP-703 regarding consultations.¹⁸⁶
- 2.139 Based on information gathered by the MICI, two public hearings were held about Banhado road in June 2015 in São José dos Campos as part of Brazil's environmental permitting process. The hearings were announced on 4 May 2015 by the São Paulo State Environmental Council (CONSEMA), the entity responsible for convening and holding public hearings in the state. The EIA-RIMA was available in

¹⁸⁵ ESMR, p. 37.

¹⁸⁶ Paragraph 3.1 of the ESS provides that for some specific projects, namely those “developed, analyzed, and implemented during execution of the Program (road corridors), the instruments established under Brazilian laws and regulations (RAP and EIA-RIMA) are to be used, and, as per Bank policy, timely public consultations and meetings are to be held.”

both electronic and hard copy form at the municipal Transportation Department between 11 May and 10 June 2015 for review and consultation by interested parties. The two public hearings took place on 9 and 10 June, 2015 in different locations in São José dos Campos; one was held at a location closer to the community in an effort to offer greater access to the residents of Banhado.¹⁸⁷

- 2.140 During the Compliance Review process, the MICI asked the project team and the Municipal Government for documents or other evidence of any participatory meeting or consultation that might have been held during Program preparation in an effort to provide information on the Program and engage in consultations with the affected community, in order to consider their points of view. However, the Panel received no information or evidence of a specific consultation on the Program.

Determination of compliance with Directive B.6

- 2.141 For purposes of this investigation, the MICI is verifying whether or not the Bank complied with the requirements of Directive B.6 with respect to category “B” projects. Nevertheless, in accordance with the MICI’s determination (paragraphs 2.114 through 2.120) as to noncompliance with Directive B.3, this operation should have had to comply with the requirements established for category “A” operations.
- 2.142 In its compliance review with respect to Directive B.6, the MICI found no evidence to suggest that consultations had indeed been held in the context of Program preparation—regarding the Program as a whole or specifically regarding the Banhado road component. There is merely mention of some dissemination of information about the EAR online and in the press and of dissemination activities in connection with the EIA-RIMA and public hearings about the road held in 2015 under Brazil’s current environmental permitting requirements.
- 2.143 It is important to point out that a consultation, as defined in Directive B.6, requires information-sharing and effective, meaningful consultation with the community affected by a project by facilitating interaction in the appropriate language, in accessible locations, and using a format that enables the community to really understand the scope of the operation and its works and activities, thus making effective dialogue based on duly informed opinions possible. Accordingly, an effective consultation enables the views of affected parties to be considered in designing measures to control and mitigate project-related impacts.
- 2.144 Below, the MICI sets out the two main reasons for its determination of noncompliance with Directive B.6 in this case.
- (i) Temporary dissemination of information online and in one local press outlet does not satisfy the requirement to consult with the parties affected by the Program.*
- 2.145 As regards information dissemination and consultations on Banhado road, Management emphasizes that the EAR was made available to the public in a timely manner when it was published in the local newspaper, *Vale Paraibano*, and posted

¹⁸⁷ Environmental permit for Banhado road, São José dos Campos, Report on Public Hearings, *Consortio Planservi-Cobrape*, pp. 4-5.

on the municipal Department of the Environment website for approximately one month.

- 2.146 The MICI believes the publication of the EAR on the municipal Department of the Environment website, with some reactions to it in the media,¹⁸⁸ and the fact that it was publicized in a local newspaper article, is one way of presenting information that enables a specific segment of the population to find out about it, but cannot be considered “consultation” under the terms of Directive B.6. The MICI firstly believes that in the context of this operation, temporary dissemination of complex technical information through electronic media and/or in the written press is not an appropriate way to convey clear information to a vulnerable community with the socioeconomic status of the families of Banhado, who had been characterized in Program documents as lacking the means to earn a basic livelihood and having very limited schooling, with high illiteracy rates and many adults without a primary school education.¹⁸⁹ It is important to bear in mind that, pursuant to Directive B.6, consultations are meant to provide appropriate information to affected parties to enable them to understand and form an opinion on the impacts and mitigation measures already identified, among other things, which also means that the information must be provided in locations, languages, and formats that allow for meaningful consultations. Consequently, consideration of the specific circumstances of the individuals to be consulted in the context of a project is essential in cases like this one, in which there should be assurances not only that the information reaches the most vulnerable communities, but also that it does so in a clear, straightforward, and understandable manner such that they may form opinions about the course of action being proposed in the project. For this reason the MICI believes that dissemination of a technical document electronically or via the written press as a means to communicate information to a considerable number of low-income individuals living in makeshift conditions, with very limited access to the Internet and with high rates of illiteracy, fails to meet the requirements of Directive B.6.
- 2.147 Secondly, Directive B.6 establishes the obligation not only to share specific information about the project, but also to consult and consider the views of the affected communities. In the case at hand, the information-sharing activities did not constitute consultations inasmuch as only the Program’s EAR was made public, without any dialogue with the affected parties or any mechanism to enable people to voice their opinions about the operation and have the executing agency or Bank take them into account. The MICI likewise believes that the fact that there were reactions to the EAR in the media is not evidence of consultation with the affected community.
- 2.148 In view of the foregoing, the MICI considers that posting the EAR on the Município’s website for several weeks and its publication in the local press does not satisfy the requirement to hold consultations with the affected parties in order to consider their points of view as stipulated under Directive B.6.

¹⁸⁸ [REDACTED] and ESMR, p. 37.

¹⁸⁹ Socioeconomic diagnostic assessment of the families of Banhado, 9 June 2014, p. 18.

(ii) The public hearings on Banhado road were not consistent with the scope of consultations or the timelines set out in Directive B.6.

- 2.149 According to Management, the EAR “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.” Management points out that this was reiterated in the ESMR, which specified “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.”¹⁹⁰
- 2.150 In this regard, the MICI believes a public hearing is not comparable in scope to a consultation as defined in Directive B.6. When ascertaining the scope of public hearings under Brazilian environmental law, the MICI found that, pursuant to Article 1 of CONAMA Resolution 009 of 3 December 1987, such hearings aim to “inform interested parties of the content of the product under analysis and of its RIMA, answering questions and receiving criticisms and suggestions from attendees.”¹⁹¹ This is, therefore, an exercise in public involvement in environmental decision-making that embodies the principle of citizen participation set forth in the 1992 Rio Declaration and the 1972 Stockholm Declaration and has become an informative and participatory exercise regulated by law. As such, it does not involve a consultative exercise in the sense laid out in Directive B.6, because it is simply a participatory and democratic exercise that is above all informational, and is not able, as a result of community participation, to prompt adjustments to a project or address the views and concerns of the affected parties via impact management plans like the ESMP.
- 2.151 Additionally, the MICI finds that the public hearings—though held within the timeframe and framework set forth under Brazil’s environmental permitting process—did not meet the requirements of Directive B.6 as regards the timing of consultations. Directive B.6 recommends that consultations be held during the preparation or review of the ESMP for category “B” projects, especially to offer the executing agency the opportunity to make adjustments to the management plans and course of action to be followed for the project so as to take into account the concerns expressed by the affected parties during the consultation. This also gives the IDB and the borrower the opportunity to ensure the feasibility of the operation and make any necessary adjustments before confirming the financial and contractual terms for approval of the operation. In this case, the public hearings were held seven years after the Program’s environmental assessment was finalized and five years after the Program was approved. Consequently, the MICI concludes that the holding of public hearings in the context of Brazil’s environmental permitting process did not meet the requirements for public consultation under Directive B.6 in terms of timing or form. On this point, the MICI emphasizes the inexorable link between the absence of timely environmental assessments for the program and the absence of information, participation, and timely consultation with the affected community.

¹⁹⁰ Management Comments on the Preliminary Version of the Recommendation for a Compliance Review, paragraphs 28 and 29.

¹⁹¹ CONAMA Resolution 009 of 1987: <http://www.mma.gov.br/port/conama/res/res87/res0987.html>.

- 2.152 The MICI also believes that, under Directive B.6, the Bank has the duty to ensure that consultations are held with the affected community, with accurate, complete, and relevant information being provided in advance, especially with regard to all the impacts of the entire Program. The MICI emphasizes that in this case, the plan to hold future public hearings on *two specific roads* was a breach of the Bank's obligation to conduct consultations about the Program as a whole, including its various components and interventions (*supra* paragraph 1.8)
- 2.153 In conclusion, the MICI has determined that the Bank failed to comply with Directive B.6 with respect to the requirement that consultations for category "B" projects be undertaken at least once during the preparation phase.

3. Disclosure of Information Policy/Access to Information Policy (Operational Policy OP-102)

a. The Requesters' allegations

- 2.154 The Requesters allege that they have not had access to information regarding the Program in general, and, especially, regarding the activities that would affect them directly, i.e. the resettlement and the Banhado road.
- 2.155 As regards resettlement, they assert that they have not had access to a resettlement plan, leading them to question whether said plan actually exists.
- 2.156 As regards the construction of the Banhado road, the Requesters question the existence of an environmental impact assessment, saying that if it does exist, they have not had access to it. Additionally, they believe that all documents related to the construction of that road should be accessible to the public.

b. Applicable version of Operational Policy OP-102

- 2.157 The IDB Group has a long history of seeking transparency and has had a policy regulating the disclosure of information to the public since 1994. This policy has been revised and updated multiple times over the years. The current Access to Information Policy (document GN-1831-28), approved by the Board of Executive Directors on 12 May 2010, applies to the information produced and received by the Bank on or after 1 January 2011. Previously, the Bank had a Disclosure of Information Policy (document GN-1831-18), updated in 2006, which applied to information produced and received after 1 January 2004.
- 2.158 Accordingly, considering the provisions of both the MICI Policy and Operational Policy OP-102,¹⁹² the factor to take into account in determining which version of the policy applies to a given document is the date its was produced or received by the Bank.

¹⁹² According to the Glossary 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, unless the relevant policy or legal documentation provides otherwise." At the time this operation was approved (12 May 2010), the Disclosure of Information Policy of 2006 was in effect, so this would be the Relevant Operational Policy pursuant to the definition contained in the MICI Policy. Nevertheless, according to the current Access to Information Policy of 2010, "The provisions of this policy will take effect on January 1, 2011 with respect to information produced on or after that date." In view of these definitions, depending on the date of receipt or production of the information, one or the other of the two versions of Operational Policy OP-102 may apply.

- 2.159 In the case at hand, most of the Requesters' allegations involve documents produced after 1 January 2004 and before 1 January 2011, so their disclosure will be analyzed based on the Disclosure of Information Policy of 2006. Some allegations involve documents produced after the Access to Information Policy of 2010 took effect, so these will be analyzed based on that policy.

c. What does the Disclosure of Information Policy (Operational Policy OP-102 of 2006) stipulate?

- 2.160 The Disclosure of Information Policy reaffirmed the IDB's commitment to transparency and accountability in all its activities and was based on several principles, among them, that in the absence of a compelling reason for confidentiality, information concerning the Bank and its activities was to be made available to the public in a form and at a time that enhances the transparency and therefore the quality of Bank activities.¹⁹³
- 2.161 The Disclosure of Information Policy consists mainly of a positive list of documents that must be disclosed by the Bank, with a general indication regarding the timing of their disclosure.
- 2.162 The policy spells out the information to be disclosed with regard to Bank operations, drawing a distinction between sovereign guaranteed and non-sovereign guaranteed operations. This case involves a sovereign guaranteed operation, for which Operational Policy OP-102 of 2006 requires the following documents to be disclosed, at the time indicated:¹⁹⁴
- (i) **The loan proposal:** will be made available to the public after the Board of Executive Directors has approved the operation;
 - (ii) **Project concept documents, profiles, abstracts, or eligibility memoranda:** will be made available to the public once the respective Management Committee has approved them, or once the document has been sent to the respective Management Committee for information, if approval is not required;
 - (iii) **Environmental impact assessments, strategic environmental assessments, or other environmental analyses:** will be made available to the public in the borrowing member country and Bank headquarters before the Bank conducts its analysis mission;
 - (iv) **The Environmental and Social Strategy:** will be made available to the public after the recommendations of the Bank's Committee on Environment and Social Impact (CESI) and of the Loan Committee have been incorporated; and
 - (v) **The Environmental and Social Management Report:** will be made available to the public no later than the time at which the respective loan or guarantee proposal has been cleared by the Executive Vice President for distribution to the Board of Executive Directors.

¹⁹³ Disclosure of Information Policy (document GN-1831-18), section II, Basic Principles.

¹⁹⁴ Operational Policy OP-102, Disclosure of Information Policy of 2006, section III. Information Available from the Bank, Part A. Operational Information, paragraphs 5(a) and (b), 8, and 9.

2.163 In addition, for the MICI to arrive at its conclusions regarding Operational Policy OP-102 of 2006, it needed to take into consideration the provisions of Operational Policy OP-703 relating to the accessibility of environmental and social information, given that the two complement each other in this regard. Consistent with Operational Policy OP-102 of 2006, Operational Policy OP-703 requires borrowers to hold public consultations on projects and indicates that “[f]or consultation purposes, appropriate information will be provided in location(s), format(s) and language(s) to allow for affected parties to be meaningfully consulted, to form an opinion, and to comment on the proposed course of action.”¹⁹⁵

d. MICI findings regarding compliance with the Disclosure of Information Policy (Operational Policy OP-102 of 2006)

2.164 Table 7 presents the MICI’s compliance analysis with respect to the disclosure of Program documents in keeping with Operational Policy OP-102 of 2006, showing the type of document, the target date for achieving each disclosure milestone under the policy, the name of the document, its language, date posted on the Bank’s website, if posted, and whether or not there was compliance with the policy provision.

Table 7. Information relating to sovereign guaranteed operations to be disclosed pursuant to the Disclosure of Information Policy (Operational Policy OP-102 of 2006)

Type of public document	Target disclosure date under Operational Policy OP-102 of 2006	Name of document for the São José dos Campos Urban Structuring Program (operation BR-1160)	Language	Date posted on Bank website	Compliance with policy
Loan proposal	Approval of operation by the Board of Executive Directors: <i>12 May 2010</i>	Loan proposal for the “São José dos Campos Urban Structuring Program”	Spanish (original); English	Not disclosed	No
Project concept documents, profiles, abstracts or eligibility memos	Once approved by the relevant Management committee (or sent for information): <i>date unknown</i>	<i>Perfil de Proyecto</i>	Spanish	29 October 2007 ¹⁹⁶	Could not confirm
Environmental impact assessments, strategic environmental assessments, or other environmental analyses	Prior to the analysis mission: <i>11-19 March 2008</i>	<i>Relatório de Avaliação Ambiental (EAR)</i>	Portuguese	Not disclosed	No

¹⁹⁵ Operational Policy OP-703, Directive B.6, Consultations.

¹⁹⁶ Bank records show that the Project Profile was approved the Vice Presidency for Countries and published on this date. The MICI has been unable to verify whether the document underwent any other approval process by a “Management committee” as specified in Operational Policy OP-102 of 2006.

Type of public document	Target disclosure date under Operational Policy OP-102 of 2006	Name of document for the São José dos Campos Urban Structuring Program (operation BR-1160)	Language	Date posted on Bank website	Compliance with policy
Environmental and Social Strategy	After the recommendations of the CESI and of the loan committee have been incorporated: <i>date unknown</i>	Environmental and Social Strategy (ESS), included as an annex to the Project Profile	Spanish	29 October 2007	Could not be confirmed
Environmental and Social Management Report	No later than the time at which the loan proposal has been cleared by the Executive Vice President for distribution to the Board of Executive Directors: <i>date unknown</i>	<i>Relatório de Gestão Ambiental e Social</i> (ESMR)	Portuguese	Not disclosed	No

Source: Prepared by the authors based on several documents obtained during the investigation.

- 2.165 The information presented in Table 7 shows that of the five documents subject to mandatory disclosure under the policy, three were not disclosed.
- 2.166 The Bank therefore did not comply with its obligation to release all documents subject to mandatory disclosure at the time set out in Operational Policy OP-102 of 2006.
- 2.167 Regarding the Environmental and Social Strategy, Management has no information as to whether a CESI meeting was held for this operation, so the MICI has been unable to establish the date on which the ESS should have been disclosed pursuant to Operational Policy OP-102 of 2006. Regarding the Project Profile, the MICI could not confirm whether any process of approval by a Management committee occurred, and so could not establish when the document was to have been published. Although for both documents the MICI lacks the information to determine whether there was compliance in terms of the required timing of disclosure, it notes that the IDB did make both documents public.
- 2.168 As regards the language of disclosure, Operational Policy OP-102 does not establish a specific obligation for the Bank. However, Operational Policy OP-703 does require the Bank to see that borrowers use languages and formats that allow for meaningful consultation with the affected parties. The MICI believes that consultations are stronger when the Bank publishes information related to its operations in local languages, in this case Portuguese, because the principles of transparency and availability of information in appropriate form have a bearing on the quality of the Bank's activities, as stated in policy OP-102. To require the borrower to disclose information in languages accessible to the population, yet allow the Bank to publish information in a language foreign to the people affected, is to create a double standard. Interested individuals and entities do not exclusively use information provided by the borrowers as their source; they also turn to the Bank's records in search of information on the operations it finances in their localities or

countries, for a wide range of reasons and objectives, among them to understand the magnitude of the projects and their impacts, both positive and negative, and to learn how these impacts will be managed. To release information on a program in Brazil in Spanish only hinders peoples' access to the content and creates an unnecessary barrier for the parties to form an opinion and potentially contribute to the improvement of certain aspects of the program through the mechanisms provided by the Relevant Operational Policies.

- 2.169 Turning now to the Requesters' allegation that the Bank did not disclose the resettlement plan for the Program—in this case the PIAS—the MICI notes that the positive list of documents to be made public for sovereign guaranteed projects does not specify resettlement plans. Nevertheless, one of the principles of Operational Policy OP-102 of 2006 is that "Information concerning the Bank and its activities will be made available to the public in the absence of a compelling reason for confidentiality, in accordance with this Policy."¹⁹⁷ Accordingly, it should be noted that, while this document is not included in the aforementioned positive list, it does constitute an essential part of the framework for analyzing the impacts and management plans of one of the Program's main activities. Moreover, the MICI believes it would be difficult to present a compelling reason for confidentiality of a resettlement plan that, because of its nature and the Bank's own requirements, must be developed in consultation with, and with the participation of, the affected population, which includes both the relocated and the host communities. The obligation to consult the resettlement plan implies disclosure of its contents, so that the people affected can learn about it, form an opinion, and offer comments on it, to help improve it and ensure that it will meet their needs in the context of the resettlement.
- 2.170 Additionally, Operational Policy OP-710 stipulates that the final resettlement plan must be presented for approval to Bank Management as a supplement to the environmental and social impact report,¹⁹⁸ prior to distribution of the operation documents for consideration by the Board of Executive Directors.¹⁹⁹ The MICI believes that the fact that the final resettlement plan is, according to Operational Policy OP-710, part of the environmental and social impact report prepared by the IDB, and that the report is required to be disclosed by the Bank under Operational Policy OP-102 of 2006, constitutes another major reason to disclose the final resettlement plan at the same time as the IDB's environmental and social impact report must be made available to the public pursuant to the principles and objectives

¹⁹⁷ Disclosure of Information Policy (document GN-1831-18), section II, Basic Principles.

¹⁹⁸ The MICI notes that there is a difference between Operational Policies OP-710, OP-703, and OP-102 as regards the terminology used for the Bank-prepared report that summarizes the main environmental and social impacts of a given project and the proposed ways to manage those impacts, i.e., the report submitted during a project's environmental and social review, which the IDB drafts internally before the project is submitted for consideration by the Board of Executive Directors. Operational Policy OP-710 refers to an Environmental and Social Impact Report (ESIR), while Operational Policies OP-703 and OP-102 refer to an Environmental and Social Management Report (ESMR). The MICI has interpreted ESIR and ESMR to be two terms for the same report, given the similarities in terms of objective and the stage of the project cycle in which it is drafted.

¹⁹⁹ Operational Policy OP-710 section V. Criteria for the design and appraisal of the resettlement plan, point 6. Timeliness.

of Operational Policy OP-102 of 2006, and also sees it as a way to strengthen the consultation processes required under Operational Policy OP-710.

e. What does the Access to Information Policy (Operational Policy OP-102 of 2010) stipulate?

- 2.171 With the approval of Operational Policy OP-102 of 2010, the Bank reaffirmed its commitment to transparency in all aspects of its operations. The objective of the policy is to enhance accountability and development effectiveness. Through implementation of this policy the Bank seeks to demonstrate its transparent use of public funds, and by deepening its engagement with stakeholders, to improve the quality of its operations and knowledge and capacity-building activities.²⁰⁰
- 2.172 The principles of Operational Policy OP-102 of 2010 include maximizing access to information through simple and broad means. Policy OP-102 of 2010 is not predicated on a list of information authorized for disclosure; rather, the approach is to maximize access to information and to clearly define the information that is *not* to be disclosed in a limited list of exceptions, which include: (i) personal information; (ii) legal, disciplinary, or investigative matters; (iii) communications involving Executive Directors; (iv) safety and security; (v) information provided in confidence and business/financial information; (vi) corporate administrative information; (vii) deliberative information; (viii) certain financial information; (ix) country-specific information; and (x) information relating to non-sovereign guaranteed operations.²⁰¹

f. MICI findings regarding compliance with the Access to Information Policy (Operational Policy OP-102 of 2010)

- 2.173 To address the Requesters' allegations regarding access to information and to documents of interest to them that were produced or received by the Bank during the time that Operational Policy OP-102 of 2010 was in effect, the MICI will refer to two documents: (1) the EIA, and (2) the RIMA. Both documents have to do with the Banhado road component and were completed in May 2015.
- 2.174 The MICI has verified that the two abovementioned documents do not fit any of the ten exceptions to disclosure set out in section 4 of Operational Policy OP-102 of 2010. Accordingly, and bearing in mind the principle of maximizing access to information produced or received by the Bank, the MICI believes that both documents should have been made available on the Bank website.

Table 8. Information to be disclosed pursuant to the Access to Information Policy (Operational Policy OP-102 of 2010)

Name of document for the São José dos Campos Urban Structuring Program (operation BR-1160)	Language	Date posted on Bank website	Compliance with policy
Environmental Impact Assessment (EIA)	Portuguese	Not disclosed	No
Environmental impact report (RIMA)	Portuguese	Not disclosed	No

Source: Prepared by the authors based on several documents obtained during the investigation.

²⁰⁰ Access to Information Policy (document GN-1831-28), section I. Objectives and Scope.

²⁰¹ Access to Information Policy (document GN-1831-28), section II, Principles, and section III, Standard of Disclosure.

g. Determination of compliance with the Disclosure of Information Policy (Operational Policy OP-102 of 2006) and the Access to Information Policy (Operational Policy OP-102 of 2010)

- 2.175 Based on its analysis in terms of the requirements of Operational Policy **OP-102 of 2006**, the MICI believes that the Bank did not disclose all the documents subject to mandatory disclosure and therefore did not comply with that version of the policy.
- 2.176 Based on its analysis in terms of the requirements of Operational Policy **OP-102 of 2010**, the MICI believes that the Bank did not disclose the documents relating to the Requesters' concerns that were produced after January 2011, and therefore did not comply with that version of the policy as it relates to the release of those documents.

III. CONCLUSIONS

A. Conclusions regarding compliance with Operational Policies OP-710, OP-703, and OP-102

- 3.1 Section II presented a detailed analysis of the investigation findings, based on which the Bank was found to have failed to fulfill several obligations under Operational Policies OP-710, OP-703, and OP-102.
- 3.2 In addition to the directives analyzed in section II, Directive B.1 of Operational Policy OP-703 states that the "Bank will only finance operations and activities that comply with the directives of this policy, and are consistent with the relevant provision of other Bank policies."
- 3.3 Consequently, in view of the findings and conclusions regarding noncompliance reached by the MICI, which are reflected in Table 9, Directive B.1 was not complied with, given that the Bank failed to comply with directives B.3, B.5, and B.6 of Operational Policy OP-703, and that the Program was inconsistent with several provisions of Operational Policies OP-710 and OP-102 (2006 and 2010 versions).
- 3.4 The table below presents a summary of the conclusions with respect to compliance with the three operational policies analyzed based on the Requester allegations that prompted this investigation.

Table 9. Summary of conclusions regarding compliance with the Relevant Operational Policies

Requirements of the Relevant Operational Policies	Conclusion as to compliance
OP-710 – Operational Policy on Involuntary Resettlement	
Participation and consultation with the affected population	The Bank failed to comply with the requirements regarding participation of and consultation with the community affected by the resettlement, as only two meetings were held with a small number of Banhado residents when the Integrated Social Action Plan (PIAS) was being developed. The purpose of these two meetings was to make initial contact and learn more about the area. This does not constitute a robust, timely consultation and participation process with a representative cross-section of persons affected.

Requirements of the Relevant Operational Policies	Conclusion as to compliance
Determination of compensation and rehabilitation options	The Bank failed to comply with Operational Policy OP-710 in that it did not ensure that the families of Banhado were attended to fairly and adequately under the resettlement plan, within a reasonably short time and taking into account their vulnerability. The MICI found in this investigation that living conditions in Banhado deteriorated, over the nine years of the IDB's involvement in the resettlement.
Specific requirements for a final resettlement plan	The Bank failed to comply with the requirements for a final resettlement plan when it validated the PIAS as that plan, although it did not meet all the requirements set out in Operational Policy OP-710.
Minimize disruption of the affected population	The Bank failed to comply with Operational Policy OP-710 in that it did not ensure that the families of Banhado were attended to fairly and adequately under the resettlement plan, within a reasonably short time and taking into account their vulnerability, over the nine years of the IDB's involvement, during which time living conditions in Banhado deteriorated.
OP-703 – Environment and Safeguards Compliance Policy	
Directive B.3 Screening and classification	The Bank failed to comply with Directive B.3 in that it considered the Program's impacts to be local and short-term, although its components and subcomponents included two large-scale road construction works, one of them on the edges of an 11,000 hectare protected natural area, which would also necessitate the resettlement of approximately 700 families, some 300 of which were living in vulnerable circumstances. There is no evidence that effective mitigation measures were in place for the specific impacts expected to be caused by those components.
Directive B.5: Environmental assessment requirements	The Bank failed to comply with Directive B.5 in that it did not insist on having all the required environmental assessments for the Program at the time established by this directive, so as to be able to determine its specific impacts and develop appropriate mitigation measures in due time and manner.
Directive B.6: Consultations	The Bank failed to comply with Directive B.6 in that it did not ensure that the affected parties were consulted when and as required, in order to consider their views on the Program and the proposed course of action.
Directive B.1: Bank policies	The Bank failed to comply with Directive B.1 in financing an operation that did not comply with directives B.3, B.5, and B.6 of Operational Policy OP-703 and was inconsistent with several provisions of Operational Policies OP-710 and OP-102 (2006 and 2010 versions).
OP-102 – Disclosure of Information Policy (2006) and Access to Information Policy (2010)	
OP-102 of 2006	The Bank failed to comply with Operational Policy OP-102 of 2006 because not all documents subject to mandatory disclosure pursuant to that policy were made public on time.
OP-102 of 2010	The Bank failed to comply with Operational Policy OP-102 of 2010 because it did not make the EIA and the RIMA for the Banhado road public. These documents do not fit any of the exceptions under Operational Policy OP-102 and should have been disclosed by the Bank in keeping with the principle of maximizing access to information.

B. Conclusions regarding the connection between the alleged harm and the findings of noncompliance

- 3.5 The Requesters have stated that during the time the Bank was involved in the resettlement and the Banhado road, both of which were part of the Program from October 2007 to August 2016, they suffered distress over the lack of information and specificity regarding their situation and felt excluded from decisions relating to their resettlement and to the planned works, which had a direct bearing on the resettlement. They also mentioned a potential loss stemming from having to resettle in areas far from the city center, in apartments—a situation which was alien to their reality and with which they would have been unfamiliar, causing them stress and the

potential loss of their means of production, their community, and their social ties. They further allege that the government authorities' abandonment of the Banhado area, including the lack of services and the debris left for extended periods of time, has caused them actual harm over the years.

- 3.6 The MICI notes that the above allegations can be seen as reflecting two different types of harm: actual harm that had already materialized as a result of the Bank's Program-related acts and omissions, and the potential harm that the Requesters feared they would suffer if the resettlement took place. The MICI Policy defines harm as "[a]ny direct, material damage or loss. Harm may be actual or reasonably likely to occur in the future."²⁰² Below, the MICI will address both types of harm alleged by the Requesters and determine whether the harm can be linked to the Program.
- 3.7 With respect to the harm said to have already materialized, as the MICI showed in the investigation findings section, the Bank did not ensure a process of meaningful consultation with the people affected, as stipulated in Directive B.6 of Operational Policy OP-703 and in Operational Policy OP-710, regarding the Program and its components or regarding the resettlement in particular, respectively. In the MICI's opinion, this in fact did cause great uncertainty among the Requesters regarding their future, as they had been aware since the first cadastral survey in 2002 that they might be resettled at some point. The lack of a participatory process with regard to the Program as a whole and to the resettlement and construction of the Banhado road in particular prevented the communities from accessing precise, relevant information on the Program and on the design and execution of the resettlement plan, including the compensation and rehabilitation options planned for them, in violation of the Bank's policies. This, on the one hand, curtailed their right to access information and to effectively participate in decisions affecting their lives, their future, and their socioeconomic welfare. On the other, the lack of participation prevented a process of feedback on the plans and options, to ensure that the planned measures were appropriate in view of the needs of the people affected and reflected their capabilities and aspirations, as required by Operational Policies OP-710 and OP-703.²⁰³
- 3.8 In this respect, the MICI believes that the great uncertainty and insecurity felt by the Banhado residents regarding their future over the nine years the IDB was involved in the resettlement plans, during which they were not attended to adequately in accordance with the Relevant Operational Policies, constitutes moral harm linked to the Bank's noncompliance.
- 3.9 In addition, other issues, such as the closure of some services previously available to the community; the lack of public services, such as street lighting and refuse collection; the freeze placed on the area at intervals over the years of IDB involvement, during which resident were unable to make repairs or perform other types of work on their homes; and the accumulation of debris from demolished

²⁰² MICI Policy (document MI-47-6), Glossary.

²⁰³ It would be relevant to mention that Principle 10 of the Rio Declaration on Environment and Development, on participation involving environmental issues, sets forth that "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level" and that "each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes."

- homes to a great extent caused actual harm and a significant deterioration in the quality of life of the people living in Banhado during those years. The MICI notes that imposing a freeze and leaving debris in the community were part of a strategy to prevent the cadastral survey data from being altered by the influx of new residents and/or new construction in the community. This was part of the Program's planned resettlement process and, therefore, related to the operation. The MICI believes that these circumstances arose in the community over the nine years of IDB involvement in the resettlement in part because they were not properly addressed within a reasonable time, in violation of Operational Policy OP-710. Furthermore, the fact that many community members resettled under other housing programs meant they were denied the benefits and environmental and social protections provided under the IDB's Relevant Operational Policies. In this regard, they were not offered an informed choice of the right resettlement options based on their needs.
- 3.10 As regards the potential harm caused by the eventual resettlement of the Banhado community residents as part of the Program, the MICI notes that the PIAS, among other shortcomings, did not define concrete compensation and rehabilitation options for the Program that met the specific needs and characteristics of each family while also paying special attention to the risk of impoverishment posed by their vulnerability, as required by Operational Policy OP-710. To the contrary, it only provided generic, potential options in areas far from the city center where they lived and earned their livelihood. Additionally, owing to the major delays in structuring and implementing the resettlement under the Program, any chance of finding housing that was located closer to the city center and compatible with the realities of the community disappeared over time. Consequently, the only possible alternatives would ultimately be in housing complexes (apartments) far from the city center, as the documents analyzed suggest. For the MICI, these specific circumstances have a clear potential to adversely affect the livelihood of those resettled. Operational Policy OP-710 sets very specific criteria that must be followed in any case of involuntary resettlement; adhering to them ensures that the resettlement will involve the smallest possible impact on the community. Noncompliance with these standards, in contrast, poses risks and the potential to cause irreversible impacts on the lives of the people being involuntarily resettled.
- 3.11 The MICI itself found this to be very much the case in the site visit it conducted for this Compliance Review, as well as in the case of the Habitar program (case BR-MICI004-2011), currently in the MICI's Consultation Phase, which was portrayed by the Bank in the Program documentation as a success story that proved the borrower's ability to carry out the Banhado resettlement. There are families, some of whom previously lived in Banhado, who have been resettled to the areas named in the PIAS and have not managed to get stabilized or settled in work, social, economic, family, or even cultural terms. In its visits and interviews, the MICI found that the people who were resettled were not consulted as to the alternatives best suited to their lifestyle and circumstances, and that they currently face such problems as: (i) difficulties traveling to other parts of the city, because there is insufficient public transportation or because transit options are too expensive for them; (ii) the challenge of making monthly rent payments that are larger than what they had been told initially, increase periodically, and in many cases account for a sizeable percentage of family income; (iii) insufficient schooling options in the area for their children; (iv) buildings whose physical condition has deteriorated

considerably over time, with no clear mechanisms for building maintenance and repair, leaving them feeling abandoned and not supported by the authorities; (v) unsafe conditions because homes are located in isolated areas far away from urban centers, or because the resettlement processes did not take into prior consideration the impacts that could result from resettling people from different favelas in the same place, or include social action plans for the residents already in the area and the new arrivals.

- 3.12 In view of the above, the MICI believes that there would have been a real risk in this case of causing harm to the families of Banhado had they been resettled pursuant to a resettlement plan that did not comply with the requirements of Operational Policy OP-710 for all Bank-financed involuntary resettlements.
- 3.13 Lastly, in this case it is important to emphasize a factor that is clearly recognized in the Program documents and was confirmed by the MICI in this investigation: the majority of people in the Banhado community are extremely poor and live in highly unsanitary, makeshift conditions in an area designated as hazard-prone. The identified harm has a greater impact on the lives of these people, because of their vulnerability.

IV. RECOMMENDATIONS

- 4.1 The MICI believes that the worth of a Compliance Review process like the one presented herein does not lie solely in providing an account of the Bank's actions with respect to a specific operation. The findings also have the potential to be utilized as knowledge tools that provide lessons to support the Bank's ongoing improvement.
- 4.2 It is in this spirit that a number of recommendations are presented for the consideration of the Board of Executive Directors, along two lines: section A presents Program-specific recommendations, while section B presents general recommendations intended to promote learning that can be extrapolated to future Bank operations and also to facilitate compliance with the Relevant Operational Policies. A preliminary version of these recommendations was shared with Management and the Requesters in order to get their perspectives.

A. Recommendations specific to the case

- 4.3 The case-specific recommendations below are being offered with the understanding that the Bank is no longer financing the activities at issue in the complaint filed with the MICI; their intention is to rectify omissions relating to information disclosure, lower reputational risks, and promote learning within the Bank.
- 4.4 This report has found that not all documents subject to mandatory disclosure under the previous 2006 version and the current 2010 version of Operational Policy OP-102 have been made available on the IDB's website when and as required. This omission has been noted in the context of several different MICI investigations involving private-sector operations, and now this investigation is yielding similar findings for a public-sector operation. It is important to note that the MICI performed a final review of the Bank's website on 31 March 2017 and found that several documents had been posted there; the MICI thanks and acknowledges Management for having disclosed the remaining documents, notwithstanding their

untimeliness. The MICI also recognizes that Management is making efforts to strengthen compliance with regard to information disclosure. Nevertheless, it must be stressed that it is very important for communities impacted by IDB Group operations to be able to have timely access to clear, robust information regarding what environmental and social impacts they will experience and how the IDB Group is ensuring that those impacts will be eliminated, mitigated, or offset. In this connection, it should also be noted that affected communities in the Region do not always have the opportunity to understand other languages; therefore, while it is not a policy requirement, it would be important for the IDB Group to make efforts to disclose information in the language of the country in which the operation is being implemented. In this case in particular, several of the documents recently released are now available in Portuguese, for which the MICI also thanks Management.

Recommendation 1.	Post all program documents subject to mandatory disclosure on the Bank's website, preferably in Portuguese.
--------------------------	---

- 4.5 Given that the components cited in the Requesters' complaint were eliminated from the Program, the MICI recommends that the Bank inform the community, in whichever way it deems most appropriate, that it is no longer financing these components. The MICI believes that this will reduce the reputational risk to the IDB that could result if the community continues to associate the two components with the Bank's operational policies.

Recommendation 2.	Inform the community, in whichever way deemed most appropriate, that the resettlement of families from Banhado and construction of the Banhado road are no longer being financed by the IDB.
--------------------------	--

- 4.6 The MICI suggests, as part of the ongoing strengthening of compliance with the Bank's policies, that this Compliance Review Report be distributed among Bank staff, with a special focus on those responsible for the design, execution, and supervision of operations. It is the MICI's view that its contents may contribute to the success of future projects involving the financing of urban improvements and may serve also as an illustration with specific regard to: application of policies to involuntary resettlement processes involving vulnerable groups; methods for validating whether consultation and citizen participation processes are robust enough to meet Bank standards; and consideration of such factors as the negative impact that the passage of time can have on the success of a project and the benefits that can be obtained by developing preventive action measures for scenarios such as changes in government or in national or local processes for approving Bank-financed projects.

Recommendation 3.	Distribute this compliance review report among Bank staff, with a special focus on those responsible for the design, execution, and supervision of operations.
--------------------------	--

B. General recommendations for the Bank

- 4.7 The MICI recommends that the Bank explicitly state in the guidelines for the Access to Information Policy that resettlement plans are subject to mandatory disclosure, as they are part of the framework for evaluating the environmental and social impacts of operations including resettlement, and that the required time frame for disclosing those plans be made clear, so that they can complement the process of consultation and informed participation of the affected community regarding the resettlement, consistent with Operational Policy OP-710.

Recommendation 4.	Explicitly state in the implementation guidelines for the Access to Information Policy that disclosure of resettlement plans is mandatory in all operations involving involuntary resettlement, and stipulate the time frame for such disclosure.
--------------------------	---

- 4.8 In view of the potential adverse social impacts that significant delays in program implementation can create for a community awaiting resettlement, the MICI recommends that in cases where this situation is becoming apparent, the Bank anticipate needs and work with the executing agency to swiftly take mitigation measures, including disseminating timely, up-to-date information to groups to be resettled, updating diagnostic assessments, and reviewing and/or making any necessary adjustments to impact management and resettlement plans, or other plans.

Recommendation 5.	In the case of significant delays in the execution of projects involving resettlement, establish clear procedures for anticipating needs and swiftly implementing mitigation measures, including dissemination of timely information to groups to be resettled, updating of diagnostic assessments, and any necessary review and/or adjustment to key environmental and social management plans for the operation.
--------------------------	--

- 4.9 As the case was being processed, in both the Consultation and Compliance Review phases, the MICI heard different program stakeholders located in Brazil say they did not have Portuguese versions of the Relevant Operational Policies. This remark was frequently heard with regard to Operational Policy OP-710. The MICI believes that this presents an obstacle to compliance with those policies by the agencies responsible for executing operations. The officials involved need to be familiar with these policies so that they can meet the contractual obligations assumed by the Bank, but they are not obligated to know another language in order to do so. Further, project-affected parties and other stakeholder groups will have a lesser chance of understanding the environmental and social safeguards provided by the Bank's Relevant Operational Policies in its operations if those policies are not available in their language. The MICI therefore recommends that Management make official versions of the Relevant Operational Policies publicly available in the Bank's four official languages.

Recommendation 6.	Ensure the availability and disclosure of the Relevant Operational Policies in the Bank's four official languages.
--------------------------	--

- 4.10 Lastly, based on its experience with this investigation process, the MICI recommends that the Board of Executive Directors instruct Management to grant the MICI unrestricted access to all operational files. The MICI believes that this will make the investigation process more efficient, involving fewer delays and less work for Management and for the MICI itself. This is particularly important now that the Bank is changing its records system to one that requires specific permissions for access, which could leave the MICI without timely, full access to the documents it needs in order to process a case.

Recommendation 7.	Instruct Management to ensure that the MICI has expedited, direct access to all operational files relevant to the MICI's mandate.
--------------------------	---

MANAGEMENT COMMENTS ON THE PRELIMINARY COMPLIANCE REVIEW REPORT¹



MEMORANDUM

File classification: PO-BR-L1160-Adm
CSD/HUD/3/2013
IDBDOCS#40840360

Date: 8 February 2017

To: Victoria Márquez-Mees, Director
Independent Consultation and Investigation Mechanism (MICI)

FROM: Verónica Adler, Acting Chief
Division of Urban Development and Housing

CC: Vice President for Countries; Vice President for Sectors and Knowledge; Manager of the Climate Change and Sustainable Development Sector; Manager of the Infrastructure and Energy Sector; Manager of the Southern Cone Countries; Representative in Brazil; Chief of the Environmental Safeguards Unit; Chief of the Transportation Division; and Chief of the Sovereign-guaranteed Operations Division of the Legal Department.

RE: Management comments on the draft document “Compliance Review Report.” Case BR-MICI006-2011. Brazil “São José dos Campos Urban Structuring Program” (operation BR-L1160, loan contract 2323/OC-BR).

I. INTRODUCTION

1. The purpose of this memorandum is for the Bank’s Management, hereinafter “Management,” to comment on the draft document “Compliance Review Report,” hereinafter “the Report,” submitted to Management by the Independent Consultation and Investigation Mechanism (MICI) in an email dated 6 January 2017, in reference to case BR-MICI006-2011 on the São José dos Campos Urban

¹ The comments presented in this Annex were made in response to the preliminary Compliance Review Report, so references may not coincide with the final version of the Report.

Structuring Program (operation BR-L1160, loan contract 2323/OC-BR), hereinafter “the Program.”

2. Management believes that the Bank’s operational policies were generally followed, with the exceptions specified in Table 1. Management also finds that the majority of the MICI Report’s recommendations do not seem to be directly associated with the supposed instances of noncompliance with Bank policies, or with the supposed harm that the MICI Report attributes to the Bank. Many of the recommendations highlight current policy requirements and/or reflect practices that the Bank is already implementing.
3. It is worth pointing out that the Bank also actively supported the executing agency in taking concrete steps to address the Requesters’ complaint during the five years of Program execution, steps that were supported by the MICI as well during the case’s Consultation Phase. Another point to emphasize is that in the end, no involuntary resettlement took place, in or outside the Program, nor was any activity related to the Banhado road carried out, in or outside the Program. The activities at issue in the case were removed from the Program by an amendatory contract in 2016, when the impossibility of executing them drove the borrower to seek to redirect those resources toward other activities.
4. Section II presents a table comparing the conclusions of the MICI and of Management regarding compliance with the Bank’s operational policies. Section III provides background on the Program, from its inception to the present day. Section IV presents Management’s general comments on the MICI’s Compliance Review Report. Section V gives Management’s comments on the harm that the MICI Report attributes to the Bank. In section VI, Management offers its comments on the MICI’s specific and general recommendations. Lastly, a table with detailed comments from Management on the MICI’s conclusions regarding compliance with the Relevant Operational Policies is included as an annex.

II. TABLE 1. COMPARISON OF THE MICI’S AND MANAGEMENT’S CONCLUSIONS REGARDING COMPLIANCE WITH THE BANK’S OPERATIONAL POLICIES

MICI Report		Management’s position	
Compliance with operational policies	Conclusion as to compliance	Compliance with operational policies ²	Conclusion as to compliance
The Bank failed to comply with the requirements regarding participation and consultation with the community affected by resettlement.	Failed to comply	During the project’s <u>execution</u> , representatives of the borrower, the Requesters, and also the MICI took part in a dialogue process. A detailed account of the steps taken by the project team and the borrower to address the Requesters’ demands can be found in section IV of the MICI Consultation Phase Report (document MI-21-2; PR-3544-4).	Partially complied

² Detailed arguments supporting Management’s conclusions are presented in the Annex.

MICI Report		Management's position	
Compliance with operational policies	Conclusion as to compliance	Compliance with operational policies ²	Conclusion as to compliance
The Bank failed to comply with the requirements regarding compensation and rehabilitation options.	Failed to comply	Both the Integrated Social Action Plan (PIAS) and the Program's Environmental and Social Management Report (ESMR) presented the housing alternatives offered in different parts of the city, and the option to receive a letter of credit.	Complied
The Bank failed to comply with the requirements for a final resettlement plan.	Failed to comply	The PIAS approved as part of the loan proposal explicitly identified the operational aspects of resettlement that would need to be developed further after Program approval.	Partially complied
The Bank failed to comply with Operational Policy OP-710 in the Program's execution period: timing and consequences for the community	Failed to comply	Over the five years that the MICI Consultation Phase lasted, the Bank helped the executing agency to strengthen the resettlement plan so that it would address the Requesters' complaint.	Complied
The Bank failed to comply with Directive B.3. on screening and classification.	Failed to comply	The Bank complied with Directive B.3, since the operation was prepared and approved as a category "B" operation pursuant to the Bank's policies, and had an Environmental and Social Strategy (ESS) that explained the potential social and environmental impacts of the Program at the outset of Program preparation.	Complied
The Bank failed to comply with Directive B.5. on environmental assessment requirements.	Failed to comply	An Environmental Assessment Report (EAR) was drafted during Program preparation. This report presents the environmental analysis for the Program and is part of the loan proposal (document PR-3544).	Complied
The Bank failed to comply with Directive B.6 on consultations.	Failed to comply	The obligation to hold public consultations and to disclose the information stipulated in Directive B.6 of Operational Policy OP-703 falls to the executing agency, not to the Bank. To meet the requirements of Operational Policy OP-703, the executing agency performed an environmental analysis for the Program, which it made publicly available in a timely manner. Additionally, the Bank produced an Environmental and Social Management Report (ESMR), also disclosed by the executing agency. Information on publication of the EAR is given in paragraph 2.7 of the loan proposal (document PR-3544).	Partially complied

MICI Report		Management's position	
Compliance with operational policies	Conclusion as to compliance	Compliance with operational policies ²	Conclusion as to compliance
The Bank failed to comply with Directive B.1 in financing an operation that did not comply with directives B.3, B.5, and B.6 of Operational Policy OP-703 and was inconsistent with several provisions of operational policies OP-710 and OP-102 (2006 and 2010 versions).	Failed to comply	No involuntary resettlement activities took place in or outside the Program. The only resettlements were voluntary and not part of the Program. No actions relating to construction of the Banhado road were taken either, in or outside the Program.	Complied
The Bank failed to comply with Operational Policy OP-102 of 2010 because it did not make the Environmental Impact Assessment (EIA) and the Environmental Impact Report (RIMA) for the Banhado road public. These documents do not fit any of the exceptions under Operational Policy OP-102 and should have been disclosed by the Bank in keeping with the principle of maximizing access to information.	Failed to comply	Management believes it appropriate to explain the context of the publication of the EIA and the RIMA, which the MICI fails to mention in its Report. The preliminary versions of the EIA and the RIMA were published directly by the São Paulo State Environmental Company, as part of the process of announcing the public hearing on Banhado road in May 2015.	Failed to comply
		Because of the public hearing announcement in May 2015, the Requesters decided not to continue with the dialogue on the resettlement, which led the borrower (the Municipality) to ask the Bank to eliminate the resettlement and the Banhado road from the Program in June 2015. In sum, the Bank received the request to remove the Banhado road from the Program at the same time as these documents were published by the local authorities. The Banhado road was no longer part of the Program by the time the documents in hand.	

III. BACKGROUND

5. The São José dos Campos Urban Structuring Program was prepared between 2007 and 2010.
6. The activity that gave rise to this MICI case was the resettlement of families from the Banhado favela, one of the oldest irregular settlements in the city's urban center. It is located in an area that is unfit for urban development, with fire and flood risks and

precarious housing conditions. In 2002, the area was publicly declared by the Municipality to be off-limits (“frozen”) to new homes and was legally designated an environmental protection area in 2006.

7. The Bank approved the Program in May 2010. The loan proposal and its annexes, including the ESMR and the involuntary resettlement plan (the PIAS), explicitly describe the planning of the steps to be taken by the Municipality of Sao José dos Campos to ensure compliance with the Relevant Operational Policies throughout Program execution. The strategy and plan were explicitly put to the Board of Executive Directors for consideration. At no time during the preparation stage, nor at the time the Program was submitted to the Board, was it deemed necessary to request an exception to the Bank’s policies for the project.
8. A little more than one year after the Program’s approval, in June 2011, the group called Central de Movimentos Populares (CMP) filed a complaint with the MICI with respect to the resettlement activities and to the Banhado road.
9. The MICI Consultation Phase began the same month that loan contract 2323/OC-BR was signed—August 2011.
10. The Program and the MICI Consultation Phase proceeded in parallel during the first five years of execution, during which time the executing agency continued to carry out the operation’s other investments, e.g., the creation of urban parks, urban and legal regularization of illegal subdivisions, installation of voluntary drop-off points for the recycling of waste, and improvement of the city’s urban transportation system.
11. During those years, the Bank provided technical and financial support to the Municipal Government of Sao José dos Campos by hiring consultants to fine-tune the PIAS, to ensure compliance with the Bank’s policies for the execution phase. Specifically, (i) the resettlement plan was reviewed with the community, the Bank, and the Requesters and improved; (ii) presentations were given to the community to explain why it would be impossible to develop the area and to present the five alternatives for resettlement; and (iii) assistance was provided to set up an office to support the affected community.
12. Over the five years that the Consultation Phase ran concurrently with Program execution, the MICI went on 18 missions to Sao José dos Campos, participated in meetings, and took part in the dialogue between the Municipality and the Requesters. Additionally, it was present throughout the time in which the steps mentioned in the above paragraph were taken.
13. Given how much time had elapsed and the challenges surrounding the use of the PIAS as a final resettlement plan, the Municipality decided to carry out a **voluntary** resettlement under local housing programs, with the agreement of a group of 213 families from the Banhado favela. This voluntary resettlement was not Bank-financed and was outside the control of the Bank’s project team. The Municipal Government of São José dos Campos, the borrower for the operation, has had a housing policy in place since 1999 that gives priority to dealing with favelas and regularizing illegal subdivisions.
14. Once the draft of the revised resettlement plan was completed, the Municipality was going to present it first to the Requesters, and then to the Banhado community as a whole. Five days prior to the agreed date for the presentation, in May 2015, the Requesters announced their decision to discontinue their participation in the consultation process.

15. After this latest development, the borrower, in June 2015, submitted a request to the Bank to remove the resettlement and Banhado road Program activities from the scope of the financing, and redirect the loan proceeds to other eligible activities. In August 2016, the amendatory contract that eliminated the activities at issue in the MICI case from the Program was signed.
16. Having provided this context, Management understands that the work of the MICI aims to ensure that the investigation will serve to enhance the application of the Bank's safeguard policies, and takes note of the recommendations in the MICI's draft Compliance Review Report. Management emphasizes that several of the recommendations are already incorporated into the Bank's current procedures and practices. Management, through its Environmental Safeguards Unit, is developing new guidelines for the application of Operational Policy OP-710, which will reflect the best practices currently being applied.

IV. MANAGEMENT'S GENERAL COMMENTS ON THE MICI'S COMPLIANCE REVIEW REPORT

17. The loan proposal explicitly identified the Program's special characteristics and the actions planned for the execution phase, among them the resettlement of families from the Banhado favela and construction of the Banhado road. This operation did not call for any deviations (exceptions) to the safeguards set out in Operational Policy OP-703.
18. The MICI Report's analysis and conclusions focus on the extent to which the Program documents were ready at the time the Program was approved. Management believes that the Report should take into account and highlight the steps that were taken to ensure compliance with the policies over the five years that the Program's execution period coincided with the Consultation Phase of this MICI case, many of which are documented in the MICI Consultation Phase Report (paragraph 4.6 of document MI-21-2).
19. Management also believes that the MICI Report did not take into account in its analysis that the Consultation Phase itself had an impact on the timelines and implementation progress of the activities at issue in the complaint. The dialogue carried out during the MICI Consultation Phase, which necessitated multiple missions, site visits, and meetings of representatives of the borrower, the Requesters, and the MICI over five years, was certainly a factor that affected the timelines initially envisioned for project execution.
20. The MICI attributes to the Bank the fact that the resettlement plan was not implemented according to the Program execution schedule (see paragraph 2.13). However, the Requesters' complaint was filed before the loan contract was signed, and it was not possible to implement the resettlement, since the original plan had been called into question and was undergoing a review and a dialogue process during the five-year Consultation Phase.
21. Management also underscores that actions taken by the borrower outside the Program in exercise of its legal powers cannot be attributed to the Bank. It was the Municipality that decided to close down community services in the Banhado favela, that may not have cleared the debris associated with the voluntary resettlements, and that resettled the families who left the favela voluntarily under local housing programs (see paragraphs 2.67, 2.68, 2.72, 2.73, 2.74, 2.75, and 2.77). As Management interprets

the MICI Policy (document MI-47-6, paragraph 37), these actions by third parties, taken outside the Program, fall outside the MICI's purview.

22. Management believes that the Bank has caused no material harm and cannot cause potential harm in the context of the Program, and that the MICI Report does not present solid evidence to the contrary. The reasons for these assertions are laid out in section V of this memorandum.
23. The MICI's recommendations (numbers 3, 4, 5, and 7) are relevant to Bank projects in general, and in recent years have been incorporated into the standard practices for the prevention and mitigation of adverse environmental and social impacts.
24. It would be very helpful for Management if, as a result of the MICI's involvement in the case for more than five years, the MICI Report contained a specific chapter describing its "lessons learned," thereby meeting one of the objectives that the MICI presented to the Board of Executive Directors as a benefit of its investigation (paragraph 5.5 of document MI-21-3, Recommendation for a Compliance Review and Terms of Reference).

V. MANAGEMENT COMMENTS ON THE MICI'S CONCLUSIONS RELATING TO HARM ATTRIBUTABLE TO THE BANK

25. Section III.B. of the Report contains the MICI's conclusions regarding the material and potential harm that the Bank, in its opinion, caused the Requesters.
26. In this section, Management outlines the arguments for why it believes that the MICI's conclusions do not present solid evidence of a causal relationship between the actions of the Bank and the harm being attributed to it.
27. **Material harm.** The MICI attributes two types of material harm to the Bank. The first is "*psychological harm*" and the second consists of "*harm associated with a deterioration in quality of life and access to services.*"
28. As regards the "*psychological harm*," paragraph 3.8 of the MICI Report tells us "...*the great uncertainty and insecurity felt by the Banhado residents regarding their future over the nine years the IDB was involved in the resettlement plans, during which they were not attended to adequately in accordance with the Relevant Operational Policies, caused psychological harm. It is important to stress that according to best practices and experts in this area, the social impact begins as soon as there are rumors of a project, and fear and anxiety are real social impacts experienced by individuals.*"^{192,3}
29. On this point, Management believes that the evidence on which the MICI bases its attribution of psychological (moral) harm to the Bank is not solid, as the MICI supports its conclusions only by citing literature that is not specific to the Program—"Guidance for Assessing and Managing the Social Impacts of Projects," which is not a policy instrument approved by the Bank that would be applicable to Bank-financed operations.
30. As regards the second type of material harm that the Report attributes to the Bank, the "*harm associated with a deterioration in quality of life and access to services,*"

³ Footnote 192 of the MICI Report reads: "192 Vanclay, F., Esteves, A.M., Aucamp, I., & Franks, D.M. "Social Impact Assessment: Guidance for assessing and managing the social impacts of projects," [International Association for Impact Assessment \(IAIA\), April 2015, page 2.](#)"

paragraph 3.9 of the Report reads “...the closure of some services previously available to the community; the lack of public services, such as street lighting and trash collection; the freeze placed on the area at intervals over the years of IDB involvement, during which resident were unable to make repairs or perform other types of work on their homes; and the accumulation of debris from demolished homes (...).The MICI believes that these circumstances arose in the community over the nine years of IDB involvement in the resettlement in part because they were not properly addressed within a reasonably short time frame, in violation of Operational Policy OP-710, as well as because resettlements of members of this community were allowed to proceed in parallel with the Program’s planned resettlement.”

31. On this point, Management stresses that the actions that the MICI attributes to the Bank were carried out by the Municipality of Sao José dos Campos, within the scope of its jurisdiction and powers, and not by the Bank.
32. Furthermore, Management does not consider it appropriate to attribute harm to the Bank “because resettlements of members of this community were allowed to proceed in parallel with the Program’s planned resettlement.” The Bank had no right of any kind, contractual or legal, to prevent the Municipality of Sao José dos Campos and the inhabitants of the Banhado favela from taking advantage of housing programs (such as “Minha Casa Minha Vida”) for the voluntary resettlements that took place outside of the Bank Program.
33. Management reiterates that the fact that the Bank was involved with the Program as its financier does not create sufficient causality to ascribe responsibility for harm caused by the actions of third parties to the Bank.
34. **Potential harm.** In paragraph 3.12 of the Report, the MICI concludes that “...there would have been a real risk in this case of causing harm to the families of Banhado had they been resettled pursuant to a resettlement plan that did not comply with the requirements of Operational Policy OP-710.”
35. Management stresses that in this case there is no possibility that the Bank could cause potential harm to the Requesters: First, because the Program never did finance the activities at issue in the complaint before the MICI (neither with loan proceeds nor with counterpart funds), and second, because the Program will no longer finance the resettlement of families from Banhado or the Banhado road, since those activities were removed from the Program in 2016 pursuant to an amendatory contract.

VI. MANAGEMENT COMMENTS ON THE MICI’S SPECIFIC AND GENERAL RECOMMENDATIONS

36. Section IV of the MICI Report presents several recommendations. In Management’s view, these recommendations are not clearly tied to the alleged instances of noncompliance or with the alleged harm being attributed to the Bank. Hence, the recommendations do not seem to be consistent with the MICI’s findings.
37. Management also observes that several of the recommendations point to requirements of policies currently in effect and/or reflect practices that the Bank is already implementing.
38. Management’s specific comments on each of the recommendations follow below:

39. **Recommendation 1.** The MICI's recommendation is to: *"Post all Program documents subject to mandatory disclosure on the Bank's website, preferably in Portuguese."*
40. Management will post the documents that were remaining to be released pursuant to Operational Policy OP-102 on the Bank website. However, Management will mention that while making project documents available in Portuguese for operations in Brazil may be a "best practice," Operational Policy OP-102 does not require project documents to be published in the language of the country. In fact, the internal Bank regulation that governs the languages in which documents are to be submitted to the Board of Executive Directors for approval, Regulations of the Board of Executive Directors (document DR-398-17), requires documents to be submitted to the Board in English and Spanish.
41. **Recommendation 2.** The MICI's recommendation is to: *"Distribute this compliance review report among Bank staff, with a special focus on those responsible for the design, execution, and supervision of operations."*
42. Management notes that pursuant to the MICI's own policy (paragraph 48 of document MI-47-6), MICI reports are already made available to the public, and therefore all Bank employees have access to those reports.
43. **Recommendation 3.** The MICI's recommendation is to: *"Explicitly require public disclosure of resettlement plans in all operations involving involuntary resettlement."*
44. Management notes that this requirement is already included in Operational Policy OP-710 (section V.6). Management will reiterate this requirement in the new guidelines that the Environmental Safeguards Unit is in the process of developing to facilitate implementation of Operational Policy OP-710.
45. **Recommendation 4.** The MICI's recommendation is to: *"Clarify that for operations that do not require an EIA, the preliminary resettlement plan must be finalized during preparation of the environmental assessments (EA) required for the operation, as stipulated by Operational Policy OP-703."*
46. Management agrees with this recommendation, and the guidelines being developed by the Environmental Safeguards Unit will clarify that, where a resettlement plan is needed, the preliminary resettlement plan must be available as part of the environmental assessment process required by Operational Policy OP-703, including for category "B" operations.
47. **Recommendation 5.** The MICI's recommendation is to *"[e]nsure that deviations from the safeguards set out in Operational Policy OP-703 be included in the loan proposals, along with their rationale and the strategy for correcting or mitigating the impacts of the proposed alternatives."*
48. Management clarifies that in this case, at the time it was submitted to the Board of Executive Directors, the Program was not considered to have deviations from the safeguards set out in Operational Policy OP-703, so an exception with respect to that policy did not need to be requested in the loan proposal. The recommendation therefore does not apply in this case, nor is it connected with the investigation.
49. Additionally, Management underscores that Operational Policy OP-703 already stipulates that: *"Project proposals in particular must justify deviations from the safeguards to achieve the goals of the project, include a strategy to correct or mitigate the effects of deviations, and formally request to the Board of Executive Directors the*

corresponding exception to the Policy.” Management will continue to apply this provision of Operational Policy OP-703 in those exceptional cases where it is justified.

50. **Recommendation 6.** The MICI's recommendation is to *“Refrain from using the simplified procedure for approval in cases where Management proposes a deviation from the safeguards provided in the policies.”*
51. Management clarifies, as for the previous recommendation, that at the time it was submitted to the Board of Executive Directors, the Program was not considered to have deviations from the safeguards; the recommendation therefore does not apply in this case, nor is it connected with the investigation.
52. Management also notes that in every case where it is considered necessary to propose an exception to the Bank's policies, it is submitted to the Board of Executive Directors for consideration by standard procedure. Management therefore suggests revising the recommendation in the part of paragraph 4.7 of the Report that reads: *“...the purpose being for the Board of Executive Directors to be aware of the exception to that policy and to formally approve it. In all cases where a deviation from the safeguards is proposed, the MICI suggests as a guarantee for the Board that the simplified procedure not be used for approval.”*
53. **Recommendation 7.** The MICI's recommendation is to: *“Anticipate needs and include provisions in the operation's contractual documents requiring an operation's key management plans to be updated in a timely manner in cases where they have become outdated over the years that have elapsed between the completion of due diligence and the approval and signing of the loan contract for the operation.”*
54. Management concurs with the MICI that it is important for project executing agencies to keep their operational plans up-to-date.
55. **Recommendation 8.** The MICI's recommendation is to: *“Translate and publish official versions of the Relevant Operational Policies in the Bank's four official languages.”*
56. Management notes that dissemination of the Bank's operational policies in its four official languages is not a requirement under Bank policy.
57. Nevertheless, Management understands that it would be good practice to make the Relevant Operational Policies available in all four languages. In fact, the Bank has the Relevant Operational Policies in its four official languages. Some of these are available on the Bank website, as in the case of the Access to Information Policy (Operational Policy OP-102). Management will facilitate the dissemination of those policies that are not publicly available in the four official languages of the Bank at present.
58. **Recommendation 9.** The MICI's recommendation is to: *“Require, once a MICI investigation is approved, that the Bank give the MICI full access to all records for the operation subject to investigation.”*
59. Management notes that there is no clear link between the recommendation and the findings of the investigation, since Management cooperated with the compliance review investigation, conducting numerous searches for information and documents, and furnishing the MICI with all the information and documents at its disposal in due time and form.
60. Management therefore suggests that this recommendation be reworded so as to leave no doubt as to Management's collaboration with the MICI team. Additionally, Management notes it would be good practice for Management and the MICI to

coordinate to identify the information and documentation that the MICI will need for its investigation, so that the MICI can be provided with the necessary access.

SPECIFIC COMMENTS FROM MANAGEMENT ON THE MICI'S CONCLUSIONS REGARDING COMPLIANCE/NONCOMPLIANCE WITH THE RELEVANT OPERATIONAL POLICIES

MICI's conclusions regarding compliance with the Relevant Operational Policies	Management's comments
OP-710 - Operational Policy on Involuntary Resettlement	
<p>Participation and consultation with the affected population. The Bank failed to comply with the requirements regarding participation of and consultation with the community affected by the resettlement, as there is evidence of just two meetings with a small number of Banhado residents held when the PIAS was being developed and whose purpose was to make initial contact and learn more about the area. This does not constitute a robust, timely consultation and participation process with a representative cross-section of persons affected.</p>	<p>To meet the requirements of Operational Policy OP-710, the borrower, with guidance from the Bank, developed a plan for resettling the families of the Banhado favela. This plan, called the Integrated Social Action Plan (PIAS), was prepared on the basis of consultations with representatives of the community to be resettled.</p> <p>The PIAS mentions two participatory diagnostic workshops held in January 2008 with leaders and representatives of the health and early childhood education centers and another with older neighborhood residents, which meets the requirements of Operational Policy OP-710.</p> <p>Project execution began with a dialogue process that consisted of multiple missions, site visits, and meetings involving the participation of representatives of the borrower, the Requesters, and also the MICI. Several actions were taken as part of this process, including: joint development of work plans, new socioeconomic cadastral surveys, information-sharing, and providing information to the Requesters. A detailed account of the steps taken by the project team and the borrower to meet the Requesters' demands can be found in section IV of the MICI Consultation Phase Report (document MI-21-2; PR-3544-4).</p>
<p>Determination of compensation and rehabilitation options. The Bank failed to comply with the requirements regarding compensation and rehabilitation options, because it did not lay out concrete, specific compensation and rehabilitation packages that took into account the characteristics and needs of the affected community, particularly the risk of impoverishment faced by its vulnerable members.</p>	<p>Management stresses that resettlement options were indeed presented. These options were expressly described in both the PIAS and the Program's ESMR.</p> <p>Both documents identified three areas—the northern, eastern, and southern parts of the city—where apartments with separate entrances in two-story blocks or duplex-type homes would be built.</p> <p>The Bank recommended disseminating the letter-of-credit option to offer the families the opportunity to purchase a home in any part of the city.</p> <p>In addition, considering the community's vulnerability and the importance of addressing the needs of each family, both the loan proposal and the PIAS set out measures to provide the families with two years of post-relocation support, and stipulated that each family would be worked with individually, to mitigate the risk of lost income and to help the families choose among the resettlement options.</p>
<p>The PIAS as the final resettlement plan. The Bank failed to comply with the requirements for a final resettlement plan when it validated the PIAS as the final resettlement plan for the Program, even though it did not meet five of the 10 requirements set out in Operational Policy OP-710 and only partially met four of them. The MICI did not have sufficient information to determine compliance with one of the requirements.</p>	<p>Management acknowledges that the PIAS originally approved by the Bank specifically stated that certain operational issues around the resettlement would need to be developed further after Program approval. The Bank made provisions for the disbursement of resources for the resettlement to be subject to prior demonstration, to the Bank's satisfaction, that those issues had been addressed (paragraph 2.8 of the loan proposal, document PR-3544).</p>

MICI's conclusions regarding compliance with the Relevant Operational Policies	Management's comments
<p>The Program execution period: Timing and consequences for the community. The Bank failed to comply with Operational Policy OP-710 in that it did not adhere to the policy's guiding principle of causing the least disruption to the affected population or to its objective of minimizing the disruption of the livelihood of people to be affected by the resettlement, because it did not ensure that the families of Banhado were attended to adequately, within a reasonably short time and taking into account their vulnerability, over the nine years of the IDB's involvement, while living conditions in Banhado were deteriorating.</p>	<p>Management did not disburse resources from any source to finance the involuntary resettlement envisaged under component I of the Program. In fact, the involuntary resettlement was not financed within or outside the Program. The resettlements that did occur were voluntary. Moreover, financing for the involuntary resettlement was eliminated from the Program by an amendatory contract signed in June 2016.</p> <p>In addition, the MICI Report diminishes the efforts made by the Bank over the five years that the MICI Consultation Phase for this case lasted to help the executing agency strengthen the resettlement plan in order to address the Requesters' complaints.</p> <p>This strengthening process took place in the context of a participatory dialogue between the community, the borrower, Management, and the MICI, which adversely impacted the ability of the Program to be implemented according to schedule.</p>
<p>OP-703 - Environment and Safeguards Compliance Policy</p>	
<p>Directive B.3: Screening and classification</p> <p>The Bank failed to comply with Directive B.3 when it considered the Program's impacts to be local and short-term, although it included, among other components and subcomponents, the construction of two large-scale road works, one of them on the edges of a protected natural area of more than 11,000 hectares, which would also necessitate the resettlement of approximately 300 vulnerable families amongst the more than 700 families needing to be resettled overall under the Program. There is no evidence that effective mitigation measures were in place for the specific impacts expected to be caused by each of the Program components.</p>	<p>Management reaffirms that the operation was prepared and approved as a category "B" operation.</p> <p>To meet the requirements of Directive B.3 of Operational Policy OP-703, the Bank prepared an Environmental and Social Strategy (ESS) during the design stage that explained the Program's potential social and environmental impacts.</p> <p>The Environmental Safeguards Unit reviewed the ESS on 18 October 2007 (<i>ESR review 40-07</i>) and approved it after verification, following the Bank's procedures, on 11 April 2008 via the ESRNet, as a review by the Committee on Environment and Social Impact was not necessary.</p> <p>Accordingly, the Bank complied with Directive B.3.</p>
<p>Directive B.5: Environmental assessment requirements. The Bank failed to comply with Directive B.5 in that it did not insist on having all the required environmental assessments for the interventions included in the Program at the time required by this directive, so as to be able to determine its specific impacts and develop appropriate mitigation measures to address those impacts.</p>	<p>In order to comply with the Bank's Environmental and Social Safeguards Policy (Operational Policy OP-703), an EAR was drafted in a timely manner, during the Program's preparation stage. This report presents the environmental analysis for the Program and is part of the loan proposal (document PR-3544).</p> <p>The environmental analysis, in accordance with Operational Policy OP-703, considered the project to be financed by the Bank as a whole, with some components designed with greater detail than others. The environmental impact studies required under local law for the environmental permitting of the road components—among them the Banhado road—were conducted later and in greater detail.</p> <p>This practice is consistent with the requirements of Bank policy for projects classified as Category "B" operations.</p>

MICI's conclusions regarding compliance with the Relevant Operational Policies	Management's comments
<p>Directive B.6: Consultations. The Bank failed to comply with Directive B.6 because it did not ensure that the affected parties were consulted as required by this directive in terms of timing and form, in order to consider their views on the Program and the proposed course of action.</p>	<p>The obligation to hold public consultations and to disclose the information stipulated in Directive B.6 of Operational Policy OP-703 falls to the executing agency, not to the Bank.</p> <p>To meet the requirements of Operational Policy OP-703 the executing agency performed an environmental analysis for the Program, and made it publicly available in a timely manner. Additionally, the Bank produced an ESMR, also disclosed by the executing agency.</p> <p>Specifically, information on publication of the EAR is mentioned in paragraph 2.7 of loan proposal PR-3544: "The preliminary version of the environmental analysis report was published in the newspaper <i>Vale Paraibano</i> and made available to the public on 23 February 2008 on the website of the Municipal Department of the Environment." Details on publication of the Program's EAR are also given in sections I and X of the ESMR. The local newspaper <i>Vale Paraibano</i> ran six stories on the Program's EAR.</p> <p>The document had a total of 703 hits, with more than 500 downloads, and the Municipality answered every question it received, according to information received by the borrower during the verification phase (paragraph 2.7 of the loan proposal, document PR-3544).</p>
<p>Directive B.1: Bank policies. The Bank failed to comply with Directive B.1 in financing an operation that did not comply with directives B.3, B.5, and B.6 of Operational Policy OP-703 and was inconsistent with several provisions of operational policies OP-710 and OP-102 (2006 and 2010 versions), as determined in this Report (<i>supra</i> paragraphs 3.2 and 3.3).</p>	<p>The Bank duly complied with directives B.3, B.5, and B.6, as specified in the previous sections, in accordance with the guidelines set out in Operational Policy OP-703 for investment projects classified as category "B" operations.</p>
<p>OP-102 - Disclosure of Information Policy (2006) and Access to Information Policy (2010)</p>	
<p>OP-102 of 2006. The Bank failed to comply with Operational Policy OP-102 of 2006 inasmuch as it did not disclose three of the five documents subject to mandatory disclosure pursuant to said policy.</p>	<p>Management acknowledges that some of the project documents were not made publicly available in a timely manner by the Bank. The Program loan proposal and the ESMR annex were classified as public, but the permissions were not set to start the flow, so the disclosure was left pending in the system.</p>
<p>OP-102 of 2010. The Bank failed to comply with Operational Policy OP-102 of 2010 in that it failed to publish the EIA and the RIMA for the Banhado road, documents which do not fit any of the exceptions to disclosure under Operational Policy OP-102 and should have been disclosed by the Bank in keeping with the principle of maximizing access to information.</p>	<p>Management agrees with the MICI's findings.</p> <p>Nevertheless, it believes it appropriate to explain the context surrounding the publication of the EIA and the RIMA, which the MICI fails to mention in its Report.</p> <p>The preliminary versions of the EIA and the RIMA were published directly by the São Paulo State Environmental Company, as part of the process of announcing the public hearing on Banhado road in May 2015.</p> <p>Because of the public hearing announcement in May 2015, the Requesters decided not to continue with the dialogue on the resettlement, which led the borrower (the Municipality) to ask the Bank to eliminate the resettlement and the Banhado road from the Program in June 2015.</p>

MICI's conclusions regarding compliance with the Relevant Operational Policies	Management's comments
	In sum, the Bank received the request to remove the Banhado road from the Program at the same time as these documents were published by the local authorities. The Banhado road was no longer part of the Program by the time the documents were in hand.