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DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

BR-MICI003-2011

RODOANEL MÁRIO COVAS – NORTHERN SECTIONS 1 (BR-L1296) AND 2 (BR L1302)

This document was prepared by the Project Ombudsperson for the consultation phase.

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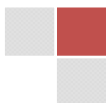
CONSULTATION PHASE
DETERMINATION OF ELIGIBILITY

TO: Victoria Márquez-Mees, Executive Secretary
FROM: Isabel Lavadenz Paccieri, Project Ombudsperson
CC: Independent Consultation and Investigation Mechanism
REFERENCE: Rodoanel Mário Covas – Northern Sections 1 (BR-L1296) and 2 (BR-L1302)
COUNTRY: Brazil
DATE: 22 August 2011
DECISION ON ELIGIBILITY: The Request is **Ineligible** for the Consultation Phase

I. Summary of request

- 1.1 On 13 May 2011, the Independent Consultation and Investigation Mechanism (ICIM)¹ received a Request from Mauro Antonio Moraes Victor and Marco Antonio Garcia Martins, for and on behalf of themselves and a number of nongovernmental organizations (NGOs) belonging to the Colectivo de Entidades Ambientalistas [Collective of Environmental Organizations], regarding potential social and environmental impacts from the future construction of the northern section of the Rodoanel Mário Covas (Mário Covas Beltway) (the “project”). The project finances the construction of the final section of the beltway that encircles metropolitan São Paulo in Brazil.
- 1.2 The Request alleges, among other things, that the Environmental Impact Assessment (EIA) for the project does not include or underestimates certain types of social and environmental impacts, which, if properly taken into consideration, would justify choosing the “no project” alternative. The main impacts described by the Requesters include:
- 1.3 **Impact on water resources:** According to the complaint, the beltway will pass over the São Paulo City Green Belt Biosphere Reserve and Cantareira State Park,

¹ The terms Mechanism, Management, Executive Secretary, Project Ombudsperson, Panel, Mechanism Policies, Eligibility, Consultation Phase, Evaluation and all other relevant terms used in this memorandum shall be construed according to the meaning ascribed to them by the Policy Establishing the Independent Consultation and Investigation Mechanism approved on 17 February 2010 and available at: www.iadb.org/icim.



two areas that are extremely important for the catchment and conservation of the city's water resources. According to the Requesters, the water resources in this zone are beginning to show signs of over-development, and construction and operation of the highway will expand the area of human activity in the natural springs and aquifers protection area, negatively impacting São Paulo's main sources of water. They allege that the impact on these water sources was not sufficiently identified in the EIA, was inefficiently addressed, or was referred to future studies.

- 1.3.1 **Increased risk of flooding and natural disasters:** According to the Requesters, the construction of the highway would increase the impact of floods and natural disasters due to massive earthworks, changes in run-off, sedimentation of rivers, and changes in mountain contours. These changes are allegedly underestimated in the EIA and could have a significant impact on the adjacent population and urban downtown São Paulo.
- 1.3.2 **Increased soil and water pollution:** Construction and operation of the highway would increase the risk of fuel and hazardous substance spills in an area of great environmental importance. The conclusions and general recommendations made in the EIA would not be sufficient, the Requesters say, to prevent impacts and/or ensure the least environmental impact.
- 1.3.3 **Incremental impact on natural habitats:** The impact on flora and fauna, some species of which are endangered, was allegedly insufficiently inventoried in the EIA, which lacks specific mitigation and compensation measures. Furthermore, according to the Requesters, the EIA does not include the direct or indirect impacts of construction of the northern segment of the beltway on the ecosystem and environmental services provided by the São Paulo City Green Belt Biosphere Reserve and Cantareira State Park. The Requesters allege that these impacts would be significant, and many would be irreversible.
- 1.3.4 **Impact on climate:** According to the Request, the Biosphere Reserve sequesters carbon produced in the city. The EIA does not address the project's impact on climate change.
- 1.3.5 **Impact on health:** The Requesters claim that the analysis of the beltway's impact on health caused by pollution levels used local standards that are not as strict as those used by the World Health Organization. In addition, the EIA does not include an inventory of phytotoxic gases or their effects.



- 1.3.6 **Impact from population resettlement:** According to the Requesters, the beltway would cause the resettlement of 10,000 or possibly up to 20,000 residents. The Requesters claim that the EIA does not include details on the effects that the resettlement caused by the project will have on the surrounding population, or the respective mitigation measures.
- 1.37 **The Request also alleges a lack of civil society participation** in the project preparation process and in access to information.
- 1.38 **Lastly, the Requesters are asking for the Compliance Review process,** because they feel, among other reasons, that the alternatives included in the EIA are not sound or have not been duly studied, particularly the “no project” alternative, which is why they are requesting “a full investigation.”
- 1.4 The Requesters point out that the aforementioned damages would result from a violation of the IDB’s Environment and Safeguards Compliance Policy (OP-703) and Policy on Involuntary Resettlement (OP-710), although some of their claims also fall under the Access to Information Policy (OP-102).²

II. Background

- 2.1 The specific objective of the Rodoanel Mário Covas Project – Northern Section is to improve mobility, connectivity, safety, and convenience for users of the regional road system. The project, which is currently in preparation, will be financed through two loan operations:
- a. Northern Section 1 (BR-L1296), in the total amount of US\$1,049,870,000, with US\$400 million financed by the Bank. This part of the project includes the following components: (i) engineering and administration; (ii) civil works and their technical and environmental supervision; and (iii) socioenvironmental viability. With the exception of right-of-way acquisition, the activities under components 1 and 3 will correspond to the entire Northern Section; and
 - b. Northern Section 2 (BR-L1302), in the total amount of US\$1,965,363,000, with US\$748,633,000 financed by the IDB. This part of the project has two components: (i) civil works; and (ii) institutional strengthening.

² The Disclosure of Information Policy (OP-102) approved in 2006 refers to information and documents prepared between 1 January 2004 and 31 December 2010. The Access to Information Policy (OP-102) approved in 2010 applies to information and documents produced after its effective date of 1 January 2011.



The loan proposals for Northern Sections 1 and 2 are scheduled to be presented to the Board of Executive Directors in November 2011 and February 2012, respectively.

- 2.2 For purposes of this Request, we will refer only to Northern Section 1, which contains a component on socioenvironmental viability that applies to the entire project.
- 2.3 This nearly 175 km-long beltway will form a circumferential road around the metropolitan region of São Paulo, interconnecting the 10 major roadways in the region. The beltway is comprised of four sections: the Western Section, covering 32 km, which has been in operation since 2002; the Southern Section covering 61 km, which became operational in 2010; the Eastern Section, construction of which has been concessioned and is slated to begin this year; and finally the 43-km Northern Section, which is the topic of the Request. Competitive bidding for construction of this segment is scheduled for 2011-2012.
- 2.4 According to the project documents, when completed, the beltway will significantly reorganize traffic flows and improve the distribution of vehicle loads in the State of São Paulo. The Northern Section is expected to help directly link any part of the State of São Paulo to the main airport in Brazil (Guarulhos), by preventing the need to travel through the urban area using highly congested local roads. This improved connection capacity will play a key role in several areas, including the logistics for the 2014 Soccer World Cup.
- 2.5 The executing agency will be the Secretaria Estatal de Logística y Transportes [State Logistics and Transportation Department] (SLT) through Desenvolvimento Rodoviário S.A. (DERSA), a semipublic company affiliated with the SLT. DERSA designed and built the existing sections of the beltway, which will facilitate incorporating the lessons learned during the design and implementation of the project.
- 2.6 The Rodoanel Project – Northern Section is a **Category A** project according to the Bank's Operational and Safeguards Policies. During the design stage, a Strategic Environmental Assessment was conducted in 2004, with an Environmental Impact Study on the section completed in 2010, along with several additional analyses and complementary studies, as called for by the national environmental licensing process. In the design and documentation reviewed by the Ombudsperson, it says that several alternatives were analyzed and the option considered to have the least environmental impact according to the Bank's Operational Policies was selected, resulting in an engineering design that provides for the construction of around 22 viaducts/bridges and six tunnels (representing



more than 30% of the section's total length) in order to minimize impact on natural resources and human activity.

- 2.7 There was extensive public consultation regarding the EIA, as shown in the corresponding meeting minutes and reports.^{3,4} The project's environmental license was granted by the environmental authority, Companhia Ambiental do Estado de São Paulo (CETESB), on 28 June 2011, and includes a number of additional actions to improve the environmental and social performance of the project. The environmental license includes and compiles numerous comments and studies required by other environmental institutions, such as the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis; the Instituto Florestal; the Câmara Técnica da Fundação Florestal; the Secretaria de Obras e Serviços Públicos de Arujá, the Secretaria do Verde e do Meio Ambiente de São Paulo; the Secretaria de Meio Ambiente de Guarulhos; the Instituto Nacional do Patrimônio Histórico, Artístico, e Turístico do Estado de São Paulo, as well as various technical departments of the CETESB. Licenses covering installation and operation still need to be obtained.

III. Eligibility analysis

- 3.1 The Request includes several social and environmental impacts with a general causal link, and points out a number of local administrative errors that could fall within the exception set forth in Section 37.a of the Policy Establishing the ICIM (the "Policy"),⁵ which are formally outside the Mechanism's sphere of competence. However, pursuant to the Policy, the Ombudsperson gave the Requesters the opportunity to clarify and correct their Request by telephone and in writing. The Requesters took advantage of this opportunity.
- 3.2 Given the complexity of the project and the alternative Environmental Impact Study⁶ submitted by the Requesters, the Ombudsperson felt that an in-depth analysis of the Request, the Counter Rima (Environmental Impact Report), as well as the project design and the most relevant environmental studies needed to

³ Document containing comments on the questions and suggestions received during the EIA/RIMA Public Hearings held by

CONSEMA - Contract 3934/09 - Beltway, Northern Section - May 2011.

⁴ The ICIM has not been able to find any record of the Requesters' attendance at the public meetings held in conjunction with the EIA consultation. However, the ICIM was able to find information on the comments made by at least one of the NGOs represented by the Requesters.

⁵ Neither the Consultation Phase or the Compliance Review Phase will apply to [...] a. actions that are the responsibility of parties other than the Bank, such as a borrower/recipient, technical cooperation beneficiary, or executing agency, and do not involve any actions or omissions of the Bank.

⁶ The Requesters are the authors of a Counter Rima dated Fall 2011.



be conducted in order to better understand the allegations made regarding the possible effects and potential damages resulting from a failure to follow the IDB's Operational Policies due to acts or omissions of the Bank.

- 3.3 In addition, at the request of the project team pursuant to Sections 40 and 91 of the Policy, a new period was opened starting 23 May 2011 (the date on which the Executive Secretary acknowledged receipt of the request) to allow the parties to enter into a direct dialogue. According to the minutes received by the ICIM, the project team and the Requesters as well as other civil society organizations met on 12 July 2011, and agreed to continue exchanging information, although no other actions or subsequent steps were specified.
- 3.4 Section 38 of the Policy states that *“The Consultation Phase is designed to provide an opportunity, applying consensual and flexible approaches, to address the concerns of a party that believes it has been or could reasonably be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-financed Operation.”*

Results of the eligibility analysis

- 3.5 The Eligibility Analysis was conducted based on the eligibility and exclusion criteria set forth in Sections 40 and 37 of the Policy, as well as interviews with the Requesters, the project team and executing agency, followed by an extensive review of the relevant documentation. The main outcomes of this analysis are set out in the following subparagraphs:

3.51 Analysis of damages (Section 40.f)⁷

The Ombudsperson considers that the damages were described by the Requesters in general terms for purposes of the Declaration of Eligibility, which would allow them to—at least partially—comply with the provisions of Section 40.f of the ICIM Policy. However, a careful analysis of the description of the alleged damages vis-à-vis the design characteristics of the project resulted in the identification of certain ambiguities and limitations in the Request in terms of full compliance with Section 40.f. These ambiguities and limitations refer to: (i) a weak causal link between the future general effects alleged by the Requesters and the

⁷ Section 40.f. The Requester has reasonably asserted that it has been or could be expected to be directly and materially adversely affected by an action or omission of the IDB in violation of a relevant Operational Policy in a Bank-financed operation, and has described in at least general terms the direct and material harm caused or likely to be caused by said Bank-financed operation.



project, (ii) failure to specify any possible action or omission by the IDB (in the present and/or in the future), and (iii) a specific violation of the IDB's Operational Policies is not evident.

- a. Weak causal link: The Requesters generally describe the social and environmental effects the project may cause. These general effects are addressed in the project, not in a general manner, but: (i) with relatively specific mitigation measures for the project's design phase, (ii) with an environmental management plan that includes the identification of impacts and mitigation measures throughout the design, construction, and operation of the project.
- b. Failure to identify an action or omission of the IDB: Based on the information available to date that was received from the Requesters, the project team, the executing agency, and other primary and secondary sources, and considering that the project is still in the design phase, it may be concluded that the project includes (i) mitigation measures that address the direct impacts of construction and operation of the beltway; (ii) a strategy for using the beltway as a barrier to urban expansion toward fragile ecosystems; and (iii) a social and environmental management system that would address the issues brought up in the Request.
- c. Violation of the IDB's Operational Policies: When comparing the complaint and its clarifications (including the Counter Rima) with the responses, activities, and design of the project, it was found that at a more specific level, and due to the early stage of the operation (with only a few studies and plans in progress), it is difficult to irrefutably establish at the time of the ICIM's Eligibility Analysis that the alleged damages were caused or could be caused by the violation of one of the IDB's policies in the preparation and design of this operation. Moreover, it was found that the social and environmental management plans include the necessary mitigation and compensation measures to prevent, mitigate, or reduce these impacts.



3.52 Application of Section 37, exclusion criteria (Sections 37.a, b, and c)⁸

Among other things, the complaint mentions actions that are the responsibility of parties other than the Bank, makes requests related to the policies of the host country, and refers to actions or omissions that are not related to the Bank's relevant Operational Policies:

- a. The issues mentioned in the complaint are part of historical trends and the urban growth dynamics of an area such as São Paulo. Therefore, rather than a compliance approach at the level of a specific project, they merit a strategic national policy analysis (federal or state), which goes beyond the ICIM's mandate.
- b. Another, more obvious discrepancy between the complaint and the project proposals is the idea that the beltway will act as a "physical barrier" to the urban expansion of the Metropolitan Region of São Paulo toward the Green Belt. This view of the beltway as a structural element of land use is not shared by the Requesters, who instead claim that the beltway will not serve as an urban space restructuring element, since among other reasons it is not associated with any effective metropolitan management, which does not currently include any systems or tools for controlling land use or have the necessary support to ensure that the municípios properly manage impacts. On the other hand, the project claims that the main principle guiding the layout of the northern section of the beltway was the "least effect on protected areas in the Green Belt."

3.5.3 Areas of agreement between the Request and the concerns addressed in the EIA

The main area where the Request and the EIA agree is the long-term sustainability of the Green Belt. Accordingly, the project includes mechanisms and plans that seek to guarantee that this concept will be successful by turning the beltway into an essential factor contributing to such sustainability. This is also confirmed through certain more specific additional measures proposed by the beltway that have the same purpose,

⁸ Section 37.a, b, c: The Consultation Phase will not apply to [...] a. actions that are the responsibility of parties other than the Bank, [...] b. requests related to the policies of the host country, the borrower/recipient, or the executing agency; and [...] c. actions or omissions that do not relate to the Bank's relevant Operational Policies.



such as role of the beltway's northern section in establishing the parks comprising the "Bordas da Cantareira" project, which, according to the project design, constitutes a significant contribution by the beltway toward controlling urban expansion and pressure on the boundaries of the areas with higher environmental risk.

3.5.4 The parties agree to participate in the Consultation Phase (Section 40.g)

The Eligibility Analysis conducted by the ICIM identified the need to move forward to a dialogue process, which among other things will help: (i) achieve a better understanding of the Requesters' concerns and their relation to any actions or omissions of the project or the Bank; (ii) facilitate improved processes and help the parties find viable, comprehensive solutions, ensuring that the lessons learned in other sections of the beltway are properly incorporated; (iii) provide or strengthen a participatory platform for making decisions that are more environmentally, socially and economically appropriate; and (iv) lay the groundwork for formalizing transparent and participatory monitoring. The Project Ombudsperson expressly verified that the Requesters are not amenable or willing to participate in the Consultation Process, but have instead requested that the case be transferred to the Compliance Review Process by the Compliance Review Panel.

Summary of Eligibility Analysis

<i>Eligibility Criteria</i>	<i>DETERMINATION OF THE OMBUDSPERSON</i>	<i>Comments</i>
<i>Names and contact information of the Requester provided</i>	Yes	The names and contact information of the Requesters are registered. The Ombudsperson was not able to verify any further capacity of the Requesters to act as representatives. ⁹
Project or operation duly identified	Yes	Rodoanel Mário Covas Project– Northern Section 1 (BR-L1296) and 2 (BR-L1302)
Requester resides in the country where the operation is being implemented	Yes	The requesters reside in the State of São Paulo, Brazil.
None of the exclusions set forth in Section 37	Yes	Although the Requesters originally

⁹ The Requesters submitted a letter signed by a Brazilian NGO to the ICIM, which, as the coordinator of the Coletivo de Entidades Ambientalistas com cadastro junto ao Consema-SP [Collective of environmental organizations registered with Consema-SP], stated that they are its representatives in the ICIM process. The Ombudsperson does not have details on the number or characteristics of this Collective.



<i>Eligibility Criteria</i>	<i>DETERMINATION OF THE OMBUDSPERSON</i>	<i>Comments</i>
of the policy apply		pointed out issues that could fall under the exception set forth in Section 37.a, the thrust of their Request is broader and is based on the possible social and environmental effects of the project.
The Requester has reasonably asserted that it has been or could be directly or materially adversely affected by an action or omission of the IDB <u>in one or more relevant Operational Policies</u> .	Partially*	The Requesters have described in general terms their interpretation of the possible social and environmental impacts of the project; however, *it was not possible to establish a causal link whereby "... (the party or requesters) <i>could be reasonably expected to be directly or materially adversely affected by failure of the IDB to follow its own Operational Policies.</i> " ¹⁰
The parties are amenable to a consultation or mediation exercise (Section 40.f).	No	The Requesters have expressly requested a Compliance Review process, and although they are amenable to certain levels of dialogue, <u>they do not agree to a consultation exercise.</u>
The Requester has taken steps to bring the issue to the attention of Management.	Yes	The Requesters and Management have remained in communication.

IV. Conclusion

Based on the foregoing arguments, the Project Ombudsperson has determined that the request described herein is **ineligible for the Consultation Phase**.

This Determination of Eligibility does not imply any final judgment on the part of the ICIM regarding the basis or merits of the issues presented in the **Request**.

¹⁰ Section 40.f, ICIM Policy.



Within a reasonable period of time, the Executive Secretary will supply the official translation of this memorandum, record it in the Registry, and notify the Requesters, the Board of Executive Directors, the President, the project team, and the executing agency of this Determination of Eligibility.

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