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AND INVESTIGATION MECHANISM**

**BR-MICI004-2011
ASSESSMENT REPORT CONSULTATION PHASE
LOW INCOME NEIGHBORHOOD IMPROVEMENT PROGRAM - HABITAR
BRASIL**

**This documents was prepared by the (*Project Ombudsperson /Panel Chair Person*) for the
*Consultation Phase / Compliance Phase***

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Assessment Report “Habitar Brasil” Program BR-MICI004-2011



PROJECT OMBUDSPERSON

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**LOW-INCOME NEIGHBORHOOD IMPROVEMENT PROGRAM
“HABITAR BRASIL”
ASSESSMENT REPORT**

1. Background

1.1 The Request: processing and content

1. On 10 June 2011, Central de Movimentos Populares (CMP) submitted a Request to the Independent Investigation and Consultation Mechanism (“ICIM” or “Mechanism”) in connection with the Low-income Neighborhood Improvement Program – “Habitar Brasil” (“Project” or “Habitar Program”) financed by the Inter-American Development Bank (“IDB” or “the Bank”) in the município of São José dos Campos, State of São Paulo, Brazil.¹
2. The Request also related to the São José dos Campos Urban Structuring Program (PEUSJC). For that reason, on 22 August 2011 the Project Ombudsperson declared the Habitar and PEUSJC cases jointly eligible for the Consultation Phase. On 23 September 2011, however, the Project Ombudsperson issued an addendum to the Determination of Eligibility, separating the complaint into two different cases: (i) the Low-income Neighborhood Improvement Program – “Habitar Brasil” (BR-MICI004/2011); and (ii) the São José dos Campos Urban Restructuring Program (PEUSJC) (BR-MICI006/2011).
3. Following the Determination of Eligibility, the Project Ombudsperson launched the assessment stage of the case, within the Consultation Phase, to gather information on the complaint; identify the primary and secondary stakeholders in the case, and assess whether it was feasible to initiate a dialogue between the parties in an effort to address the Requesters’ concerns.
4. The Requesters alleged, in the Request and in interviews held during the evaluation process, that the resettlement under the project caused a series of significant social impacts for people living in the communities of Vila Nova Tatetuba, Caparaó, and Nova Detroit in São José dos Campos. Specifically, the Requesters allege, among other things, that:
 - a. There were irregularities in the consultation process and the adherence to the project, and the affected communities were not involved in the design and implementation of the resettlement plan. Moreover, according to the Requesters, adequate steps were not taken to avoid the physical resettlement of communities, and, once relocation was inevitable, the affected communities were not offered other housing alternatives or compensation.

¹ The terms: Mechanism, Management, Executive Secretary, Project Ombudsperson, Panel, Mechanism Policies, Eligibility, Consultation Phase, Assessment, and any other relevant term in this memorandum shall have the meaning assigned to them in the Independent Consultation and Investigation Mechanism (ICIM) Policy approved on 17 February 2010 and available at: www.iadb.org/mici.

- b. The families were forcibly removed from the irregular areas by police, and their homes were demolished on the basis of fraudulent technical reports that they were at risk.
 - c. The resettled families experienced a decline in living standards, mainly owing to the lack of work opportunities near the area where they were resettled (Jardim São José II). In addition, the fact that the three resettled communities were put together in just one neighborhood generated tension and violence in the area, owing to rivalry among the three criminal groups that had previously operated in each of those communities.
 - d. Some of the families living in Vila Nova Tatetuba rejected the resettlement terms and conditions and did not move to Jardim São José II. Some of them have been living since January 2004 in makeshift dwellings in a hangar belonging to the former Federal Rail System (RFFSA). These families lost their property and other personal belongings, which were in the custody of the Municipal Government of São José de Campos.
 - e. The women in the resettled communities, many of them heads of household, endured special difficulties such as a lack of job opportunities for women in the place of resettlement, domestic subsistence difficulties caused by distance from the central areas of the município where they worked before the resettlement, and the lack of vacancies in childcare facilities for their children in Jardim São José II, among other problems.
5. Although they alleged shortcomings at Jardim São José II, the Requesters told the ICIM that the complaint was restricted to those families, residents of the former Vila Nova Tatetuba, that had not accepted the terms and conditions for resettlement under the Habitar Program. The arguments concerning conditions in Jardim São José II would be used only to clarify why these families had declined to move to that housing complex.

1.1 The Project

6. On 23 September 1998, the Bank's Board of Executive Directors approved a loan (1126/OC-BR) to the Federative Republic of Brazil, for the purpose of cooperating in execution of the Habitar Program. The Habitar Program sought to provide an incentive to the municípios through matching grants to finance comprehensive neighborhood improvement projects and other activities under a Municipal Strategic Plan for Substandard Settlements. Among the project's objectives were to "raise living standards for poor families living in substandard neighborhoods in metropolitan areas and urban and capital agglomerations."² The activities to be financed under the project's comprehensive neighborhood improvement component included: (i) family resettlement to new housing units "as necessary in the course of neighborhood rehabilitation (families living on high-risk terrain, such as flood-prone areas and steep or eroding slopes, or in overcrowded housing);" (ii) a "basic housing unit for cases of family resettlement or replacement of

² IDB. Loan Proposal. Low-income Neighborhood Improvement Program – Habitar Brasil (1126/OC-BR), p. 11. A summary version of the proposal is available at: <http://www.iadb.org/pt/projetos/project-information-page.1303.html?id=BR0273>. Last accessed on 19 December 2011.

- housing that cannot be repaired or improvement of housing that poses health and/or environmental risks;” and (iii) “social support services during project implementation.”³
7. With respect to the potential environmental and social impacts, the Loan Proposal indicates that the impact of the direct investments financed under the Habitar Program would be primarily positive, in that they would provide the neighborhoods with basic services. It also notes that “in the case of family resettlements, the execution mechanism planned for the program includes the guidelines and points established in the Bank’s resettlement policy.”⁴
 8. In the operation that financed the Habitar Program, the national coordinating unit was the former National Urban Policy Secretariat (SEPURB), which reported to the Ministry of Planning and Budget.⁵ However, the municípios that received program funds through the federal government created municipal executing units; in the case at hand, this role was played by the Municipal Government of São José dos Campos (“the Municipal Government”).⁶
 9. The Habitar Program amount was US\$417 million, with US\$102.2 million financed by the IDB.⁷ The program was concluded in 2009, with the last disbursement made on 13 September 2008.⁸ According to the Project Completion Report (PCR), the comprehensive neighborhood improvement component directly benefited 57,329 families in 84 municípios, including São José dos Campos.⁹ With respect to project performance, the achievement of development and sustainability objectives was rated as probable in the PCR, and the implementation progress was rated as satisfactory.¹⁰

1.2.1 The project in São José dos Campos

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- ³ Loan Proposal, *supra* note 2, Executive Summary, p. 2.
 - ⁴ Project Completion Report, Low-income Neighborhood Improvement Program – “Habitar Brasil” ((1126/OC-BR), 7 January 2009, p. 35. Available at: <http://www.iadb.org/en/projects/project,1303.html?id=BR0273>. Last accessed on 19 December 2011.
 - ⁵ In 2003, the federal government created the Ministry of the Cities, “which became the agency responsible for urban development policy and, within that, for housing sector policy. The Ministry of the Cities includes: the National Housing Department, the National Urban Programs Secretariat, the National Environmental Sanitation Secretariat and the National Transportation and Urban Mobility Secretariat.” Ministry of the Cities. National Housing Policy. November 2004, p. 12. Available at: <http://www.cidades.gov.br/images/stories/ArquivosSNH/ArquivosPDF/4PoliticaNacionalHabitacao.pdf>. Last accessed on 19 December 2011.
 - ⁶ Loan Proposal, *supra* note 2, p. 5.
 - ⁷ Owing to the revaluation of the *real* and the availability of additional funds, the federal government opted to cancel US\$71 million of the undisbursed loan balance in 2005, and a further US\$76.7 million in 2007, thereby reducing the final amount financed by the Bank from \$250 million to \$102.2 million. See Project Completion Report, *supra* note 4, p. 7.
 - ⁸ Project Completion Report, *supra* note 4, p. 4. Although the request had been received by the Mechanism more than 24 months after the final project disbursement, in the Determination of Eligibility the Ombudsperson took account of the fact that “Central de Movimentos Populares reported the alleged harm caused by Habitar to the IDB’s Country Office in Brazil on at least four occasions between 2002 and 2010, without their complaints being brought to the attention of the Mechanism or its predecessor.” ICIM, Project Ombudsperson, Addendum to the Determination of Eligibility, 23 September 2011, p. 3.
 - ⁹ Project Completion Report, *supra* note 4, p. 8.
 - ¹⁰ Project Completion Report, *supra* note 4, p. 4.

10. As part of the Habitar Program, the Government of São José dos Campos implemented the “Casa da Gente” project to resettle 453 families “residents of the Vila Nova Tatetuba, Nova Detroit and Caparaó favelas to a housing complex known as ‘Conjunto Residencial Jardim São José II’ located in the same region, which was handed over in December 2003.”¹¹
11. According to the Municipal Government, the three communities “were located in environmental conservation areas with steep slopes and peat soil (Tatetuba), a public area on the bank of a ravine (Nova Detroit), and the area under the high-voltage electric power line owned by Centrais Elétricas de São Paulo (CESP) (Caparaó).”¹² The families were thus occupying hazardous areas, owing to: (i) landslips in Vila Nova Tatetuba; (ii) constant flooding in Nova Detroit;¹³ and (iii) proximity to high-voltage pylons and power lines in Caparaó. Compounding this, the communities had a profile of social vulnerability, characterized, among other things, by “low income, low levels of schooling, high unemployment rates, precarious and unstable informal work, a low level of organization, little integration in the social safety net, and high levels of deprivation in health and housing.”¹⁴
12. The issue of the families from Vila Nova Tatetuba who rejected the terms and conditions of the resettlement and refused to move to Jardim São José II is addressed in the final Quarterly Performance Report submitted by the Municipal Government in April 2004.¹⁵ Nonetheless, the Final Assessment Report does not mention the situation of these families, who form the Requester group in the case at hand (*supra* paragraph 5).

2. Assessment method and findings

13. For the assessment in this case, the Project Ombudsperson team conducted the following activities: (i) technical analysis of documents and information submitted by the Requesters, the executing agency, and the Bank’s project team, as well as other data collected by the ICIM team; (ii) field visits;¹⁶ and (iii) meetings with the Requesters and

¹¹ Municipal Government of São José dos Campos, Housing Department. *Relatório Final de Avaliação do Programa Habitar Brasil / BID* [Final Assessment Report of the Habitar Brasil / IDB Program]. São José dos Campos, November 2006, p.2.

¹² Final Assessment Report, *supra* note 11, p. 2. In 1999, the Municipal Government embarked on a process to produce a cadastre of families living in hazardous areas and irregular zones of the município, “freezing” and monitoring these areas to prevent them from expanding haphazardly. These areas encompassed the communities of Vila Nova Tatetuba, Caparaó and Nova Detroit.

¹³ The Quarterly Performance Report submitted by the Municipal Government in April 2003 describes conditions of adversity in the communities of Vila Nova Tatetuba and Nova Detroit in the first three months of 2003. Municipal Government of São José dos Campos, Social Development Department. *Relatório de Desempenho Trimestral* [Quarterly Performance Report], 4 April 2003.

¹⁴ Final Assessment Report, *supra* note 11, pp. 2-3.

¹⁵ Municipal Government of São José dos Campos, Social Development Department. Quarterly Performance Report, 12 April 2004, p. 1.

¹⁶ The Ombudsperson team conducted two missions to São José dos Campos to gather information on the Habitar Program: one on 7-9 September and the other on 13-15 December 2011. During these visits, apart from meeting the various stakeholders in the case, the team visited the site of the communities of Vila Nova Tatetuba and Caparaó, the Jardim São José II housing complex, and the former Federal Railway hangar occupied by families that rejected the resettlement terms and conditions.

their representatives, the executing agency, the project team, and other stakeholders. In these activities, the Project Ombudsperson received support from local facilitators.

14. The Assessment Stage made it possible to: (i) produce a map of the stakeholders involved; (ii) listen to the concerns of people affected by the project; (iii) verify the situation in which families that had rejected the terms and conditions of the resettlement were living; (iv) consult the executing agency on the Requesters' allegations; (v) identify the opportunities and difficulties for dialogue between the parties; (vi) analyze the positions and interests of the parties; and (vii) identify points for dialogue.



Photo 1: Meeting with the Municipal Government.



Photo 2: Meeting with the Requesters.

3. Execution of the project in São José dos Campos

15. As part of the Habitar Program, the Municipal Government of São José dos Campos resettled families from the communities of Vila Nova Tatetuba, Nova Detroit and Caparaó (*supra* paragraph 10). However, in addressing the situation of the families before project execution, it will only refer to Vila Nova Tatetuba, since the Request is restricted to families from that community (*supra* paragraphs 4.d and 5).

3.1 Vila Nova Tatetuba

16. Vila Nova Tatetuba, also known as “Morro do Regaço,” was situated on the right bank of the Cambuí River, close to the Tatetuba housing complex (also known as the Ronda neighborhood). According to the Municipal Government, the total area of “Morro do Regaço” is 184,600 square meters. The maximum width of this strip between the channeled bed of the Cambuí River and the Tatetuba housing complex, is about 285 meters.



Photo 3: Aerial view of the occupation of former Vila Nova Tatetuba, before the family resettlement (1997). Source: Municipal Government of São José dos Campos.

17. This is private land, belonging to the estate of José Ferreira de Almeida,¹⁷ which was previously part of an old property containing a pottery. The property had been broken up into various segments, resulting in the neighborhoods of Ronda, Vila Projeto Industrial, and others.
18. The Vila Nova Tatetuba families established themselves in Morro do Regaço as a settlement of former pottery employees, with the consent of the employer (and owner of the land). Many of these families had lived in the community for over 40 years. Some of them purchased their homes outright and/or received authorization from the Municipal Government to build and make improvements to them.¹⁸ The Requesters point to the fact that, in mid-1996, the Municipal Government had begun a dialogue with local inhabitants to draw up an urban development plan for the area.
19. In many cases, the houses in Vila Nova Tatetuba accommodated more than one family. The size and quality of the houses varied considerably. Moreover, many of them were directly linked to the families' source of livelihood, being used, for example, for small businesses, animal breeding and small-scale crop farming, as well as for storing recyclable material.

¹⁷ Municipal Government of São José dos Campos. *Levantamento planimétrico de áreas de terras a serem decretadas de utilidade pública. Propriedade: Espólio de José Ferreira de Almeida* [Planimetric survey of land areas to be zoned as public use. Property: Estate of José Ferreira de Almeida]. 15 February 2007.

¹⁸ In 1998, the land owner filed for repossession against the inhabitants of Vila Nova Tatetuba (Case No. 678/98). According to the Requesters, the case lapsed in 2006 owing to lack of interest by the plaintiff.



Photo 4: Vila Nova Tatetuba. Source: Requesters.



Photo 5: Vila Nova Tatetuba. Source: Requesters.



Photo 6: Vila Nova Tatetuba. Source: Requesters.

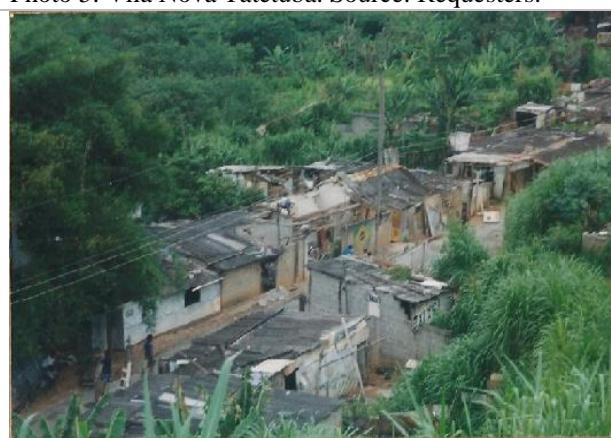


Photo 7: Vila Nova Tatetuba. Source: Requesters.

20. Vila Nova Tatetuba was located near the central part of the city, and was well provided with health services, education and public transportation infrastructure.
21. A visual analysis of the area reveals major difficulties for urban development, owing to the slope of the land.¹⁹ As a result, only the Morro do Regaço hillside, on the right bank of the Cambuí River, was not divided up into land plots. Moreover, Vila Nova Tatetuba was near, and even included within, a permanent conservation area (APP), since national law defines the permanent conservation area strip as 30 meters on either side of the river bed along water courses in urban areas (in this case Córrego Cambuí). Other areas considered permanent conservation areas include floodplains (*várzeas*) and land with a slope of more than 45 degrees (equivalent to 100% of the line of greatest slope).²⁰ Legislation governing the subdivision of land plots also prohibits urban development in areas with a slope steeper than 30%.²¹

¹⁹ This should be verified through a planialtimetric survey. Since the Municipal Government does not have a topographic survey of the area, the survey will be performed by the firm engaged to prepare the engineering design for the future Cambuí highway planned as part of the Urban Structuring Program (PEUSJC).

²⁰ See Article 2, Forestry Code (Federal Law 4771/65, as amended).

²¹ See Article 3, Law 6766/79, as amended by Law 9785/99 on the subdivision of urban land.

22. According to the Municipal Government, besides occupying a permanent conservation area, the community was in an area at risk of landslips owing to the slope of the land (*supra* paragraph 11). However, the Requesters allege that the expert reports used to justify this at-risk status (more than 200 of them) were prepared in just one day by a single technical specialist, without the houses being inspected and assessed by an engineer. In the Requesters' opinion, despite the slope of the land, the area where the favela was located did not pose an occupation risk, as verified by the expert report of the State of São Paulo Technical Research Institute (IPT) commissioned by the inhabitants. That report concluded that just six houses in Vila Nova Tatetuba were at serious risk, and therefore the vast majority could have their at-risk status remedied.²²
23. According to municipal legislation on land use and occupation (the 1997 Zoning Law), the area formerly occupied by Vila Nova Tatetuba was classified as a Special Social Interest Zone (ZEIS), meaning that it can be urbanized or have its nucleus relocated.²³ Given the Municipal Government's policy of eliminating favelas, and the effective removal of the Vila Nova Tatetuba favela, the ZEIS no longer made sense in urban planning. Just one family currently remains in the area of the former Vila Nova Tatetuba; and, following the revision of the Zoning Law in 2010, the entire "Morro do Regaço" hillside is now classified as Zones of Controlled Urbanization One (ZUC1) and Diversified Use (ZUD).²⁴

²² The IPT is part of the Economic Development, Science, and Technology Department of the State of São Paulo, and has extensive experience in the assessment of geological and geotechnical risks. The expert report described by the Requesters was sought by the attorney representing the inhabitants of Morro do Regaço on 6 January 2004 and issued by the IPT on 22 September 2004 (Technical Opinion No. 9084-301 – 8/80). However, the preliminary decision of December 2003 ordering the removal of families from Vila Nova Tatetuba (*infra* paragraph 29) was also based on an IPT expert report.

²³ Municipal Government of São José dos Campos. *Mapa de zoneamento* [Zoning map]. LC 165/97.

Art. 75. The urban and urban expansion macrozones I and II established in the Urban Development Master Plan Law are subdivided into the following use zones, [...]: XVII. Special Social Interest Zone (ZEIS): areas established for the main purpose of implementing programs and projects targeting low-income population groups, including, in this category, areas occupied by substandard housing/favelas, clandestine land divisions where there is a social interest in regularizing land ownership and promoting urban development, and abandoned land on the urban outskirts.

Available at <http://ceaam.net/sjc/legislacao/?doc=http://www.ceaam.net/sjc/legislacao/leis/2010/Lc0428.htm>. Accessed on: 19 December 2011.

²⁴ Municipal Government of São José dos Campos, LC 428/10.

Art. 127. The urban area of the município as defined in Municipal Supplemental Law No. 306, of 17 November 2006, altered by Article 124 of this Supplemental Law, is subdivided into the following use zones as described and defined in Annex 11 (Map 4), of this Supplemental Law: [...]

IV. Controlled Urban Development Zone One (ZUC1): areas used predominantly for residential and local commercial purposes, or vacant land, both of which tend to saturate the road system, making it necessary to control density as well as maximum height, allowing for horizontal single and multi-family residential, commercial, service and institutional uses with negligible levels of urban/environmental interference [...]

XVI. Diversified Use Zone (ZUD): areas established to protect the neighboring areas of zones used predominantly for industrial purposes against potential residual effects and accidents arising from activities of greater environmental risk. Commercial, service and institutional uses are allowed, as well as industrial uses of no more than low environmental risk.

Available at: <http://ceaam.net/sjc/legislacao/?doc=http://www.ceaam.net/sjc/legislacao/leis/2010/Lc0428.htm> e http://servicos.sjc.sp.gov.br/spu/downloads/zoneamento_nova_lei/mapa04/Anexo_11_FI_38.pdf. Accessed on 19 December 2011.



Photo 8: Aerial view of occupation of the former Vila Nova Tatetuba (2011). Source: Google Earth.

24. Owing to the difficulty of occupation and subdivision of the area, its classification as a zone of fairly restrictive use meant that, as a practical matter, it was “frozen.” According to the loan proposal for the Urban Structuring Program (PEUSJC), part of this area would be used in constructing the Cambuí Highway and a municipal park specified in the município’s development master plan.²⁵ For that reason, clearance of the property would begin following the production and approval of the executive project for the corresponding works.

3.2 The resettlement process

25. With IDB financing, the Municipal Government constructed the 453-home Jardim São José II housing complex in the eastern part of the city, about 16 km from the center. Each family from the three resettled communities would receive one of these properties on a conditional basis.
26. The Municipal Government subsidized most of the value of the property, which cost a total of R\$18,000.00. The families, however, had to finance the remainder. For that purpose, the representative of each family signed a purchase contract with the Municipal Government, committing the family to pay monthly installments over 15 years, following a one-year grace period. The initial amount of the repayment installment ranged between R\$15 and R\$30, calculated on the basis of household income.²⁶ At the end of the 15-year period, “provided no installments are due and unpaid, the contract will be considered

²⁵ IDB. Loan Proposal. São José dos Campos Urban Structuring Program (BR-L1160), p. 12. Electronic link: Map of projects in the municipal urban zone. On the PEUSJC works, see the Integrated Development Master Plan (Supplemental Law No. 306 of 17 November 2006). Available at: <http://www.ceaam.net/sjc/legislacao/index.php>. Last accessed on 19 December 2011.

²⁶ See the purchase commitment agreements entered into between the Municipal Government of São José dos Campos and certain residents of Jardim São José II.

- fulfilled,”²⁷ and the family will receive title to the property. The amounts paid by the inhabitants are used to finance new low-income housing units.
27. The residents state that they were not involved in discussion of the resettlement plan and that the Municipal Government merely inquired, through its social workers, whether or not the residents agreed to the move to Jardim São José II. The Municipal Government, on the other hand, states that caseworkers visited each family before the resettlement and held public meetings in each of the three communities. The April 2003 Quarterly Performance Report states that the social work with the communities began in February 2000 and included meetings with the communities and individuals, the formation of resident committees, visits by the committees to the resettlement location, and other activities.²⁸
 28. The parties agree that the only option offered to the project families was a new residence in Jardim São José II, under the conditions described above (paragraph 26).²⁹
 29. As some families refused to leave their houses in Vila Nova Tatetuba, the Municipal Government took legal action to evict them, on the grounds that they were in a hazard area (*Ação demolitória c/c Desocupação de pessoas e coisas c/c Pedido de tutela antecipada* [Action for demolition / Removal of persons and belongings / Request for interim injunction]).³⁰ On 22 December 2003, the judge hearing the case issued a preliminary decision for the properties to be vacated, on the grounds that that “the IPT survey showed that the favela was in a hazard zone.”³¹ However, this preliminary decision prohibited the demolition of the houses until a final ruling was made on the case. On 31 December 2003, several families remained in Vila Nova Tatetuba, refusing to leave, whereupon the eviction order was enforced by the military police. The families were removed from their houses, and these were placed, along with other movable property, in the custody of the Municipal Government. The latter was made the judicial depository of the assets until a final ruling was made on the demolition action. In the meantime, however, the houses were burgled and/or had some parts stolen (e.g. doors, windows, water tanks). Ultimately, the houses were demolished.
 30. According to the Municipal Government, as recorded in the cadastre made at the time, 22 families did not accept the terms and conditions of the reallocation and have not

²⁷ Ibid., Clause IV – DO PREÇO [PRICE].

²⁸ Quarterly Performance Report, *supra* note 13.

²⁹ Although the Municipal Government confirmed that a house in São José II was the only option offered to the residents, it also noted that one family had swapped the housing unit for travel fares to return to the northeastern region of the country. A former resident of the Nova Detroit community currently living in Jardim São José II stated that the Municipal Government had offered fares to return to the northeast of the country, plus compensation for the house; but the compensation was very small.

³⁰ Court of the State of São Paulo, São José dos Campos jurisdiction, Second Public Treasury Division. Action for demolition] (Case No. 0521888-81.2003.8.26.0577). Available at: <https://esaj.tjsp.jus.br/cpo/pg/show.do?processo.foro=577&processo.codigo=G1Z40B6OW0000>. Last accessed on 19 December 2011.

³¹ São José dos Campos jurisdiction, Second Public Treasury Division. Action for demolition (Case No. 4027/2003), p. 232.

received any compensation to this day. The Requesters, in contrast, claim that 40 families are in this situation.³²

3.3 Situation of families who did not accept the resettlement terms and conditions

31. The families that did not accept the move to Jardim São José II were forced to leave their homes in Vila Nova Tatetuba under a court order (*supra* paragraph 29). These residents considered that the resettlement option, under the terms and conditions proposed, would have caused them an overall deterioration in their living conditions and, therefore, would violate the Bank's Operational Policy on Involuntary Resettlement (OP-710). These families made the following arguments in particular:
 - a. As Jardim São José II is 16 km from the city center, resettlement of these families to an outlying area would dramatically reduce their access to the public services they regularly used (e.g. transportation, health and education). Moreover, the income source of most of the families was related, or at least facilitated, by the community's location (e.g. collection and sale of recycled material, cleaning and other domestic services, etc.). For those able to maintain their economic activity, the time and cost of travel between the new location and their jobs would have made it impossible to continue these economic activities/jobs.
 - b. The houses offered were cramped and inadequate to accommodate the number of family members. Irrespective of family size, the units had just one room and a built area of roughly 30 square meters,³³ which either replicated the makeshift conditions in which they were previously living or, in other cases, worsened them by forcing families to live in a small space.
 - c. The fact that most inhabitants already owned a house in Vila Nova Tatetuba outright and, as a condition of resettlement, would have to pay for a new house they did not own in Jardim São José II was not attractive for these families.
32. In addition, during the eviction (*supra* paragraph 28), the families' furniture and other personal belongings were taken by court officials to a public depository. The eviction order made the Municipal Government the custodian of this property. Nonetheless, the belongings became mixed up and, owing to the poor condition of the depository, were lost or damaged. The residents are currently taking legal action against the Municipal Government, seeking compensation for the furniture and other belongings that were removed and damaged. An expert report on the property in the context of these court actions suggests that "the stored belongings were lost, and are unusable, and it is impossible to separate and identify the belongings of each of the evicted families."³⁴ In September 2011, the Second Public Treasury Division ruled in at least 15 of these cases that the Município of São José dos Campos should pay compensation to the affected families for property damage and emotional distress.

³² The Municipal Government provided the list of the 22 families who, in its opinion, originally lived in Vila Nova Tatetuba and were not transferred to Jardim São José II. That list will be compared with the list of families provided by the Requesters, in order to define the public to be covered by this case.

³³ See *Construtora Massafra SQT, Manual do proprietário, planta baixa* [Massafra Construction Company, Owner's manual, ground floor], p. 3.

³⁴ Court of the State of São Paulo, São José dos Campos jurisdiction, Second Public Treasury Division. Case No. 0564886-88.2008.8.26.0577. Judgment dated 31 August 2011.

33. In 2004, the families living in Vila Nova Tatetuba filed an action for adverse possession against the estate of José Ferreira de Almeida on the area they had occupied, claiming that, before their removal, they had enjoyed peaceful and continuous occupation of the area. The case is still awaiting a final judgment, and is proceeding before the Eighth Civil Division of the São José dos Campos jurisdiction.³⁵
34. The families that refused to move to Jardim São José II took over an abandoned hangar forming part of the structures of the former Federal Rail System (RFFSA), located between the railway line and Avenida Engenheiro Sebastião Gualberto,³⁶ between the area of the former Vila Nova Tatetuba and the central region of São José dos Campos.



Photo 9: Location of Jardim São José II in relation to the São José dos Campos city center, the Vila Nova Tatetuba area and the RFFSA hangar (labeled in the photo “Galpão da RFFSA”).

Source: Google Earth.

35. The old RFFSA railroad was granted under concession to the company MRS Logística, which operates it. However, the rail system buildings and structures were not included in the concession, and are currently Federal Union property. The latter has filed a legal action to repossess the hangar. Through an interlocutory decision, the judge hearing the case issued an eviction order against the families, which has not yet been enforced. The families that remain in the hangar are currently living under the threat of eviction.

³⁵ The plaintiff in this case is *Associação de Amigos e Moradores do Morro do Regaço* [Association of Friends and Residents of Morro do Regaço], represented by attorney Josué Lopes de Oliveira. In 2006, the case which was being heard in the First Civil Division was transferred for dependency reasons to the Second Public Treasury Division, which was hearing the demolition action brought by the Municipal Government (*supra* paragraph 29). Subsequently, the action for adverse possession was transferred to the Eighth Civil Division, because the judge of the Second Public Treasury Division declared that he lacked jurisdiction. See *Poder Judicial do Estado de São Paulo, Consultas de processos de 1º grau* [Judiciary of the State of São Paulo, Consultations of trial court cases]. São José dos Campos jurisdiction. Eighth Civil Division. Case No. 0302421-95.2006.8.26.0577. Available at: <https://esaj.tjsp.jus.br/cpo/pg/show.do?processo.foro=577&processo.codigo=G1Z106HCL0000>. Last accessed on 19 December 2011.

³⁶ According to the PEUSJC loan proposal, this avenue will interconnect the future Via Cambuí with Via Norte.

36. These families³⁷ are living in cramped spaces separated by improvised walls, with rooms shared by various family members regardless of age or gender (Photos 12 and 14). The residents share the original sanitary installations (Photo 15). In addition, on orders from the Public Prosecutor's Office, the Fire Department inspected the hangar and concluded that it represented a risky environment due to the improvised electrical fixtures and gas canisters.
37. Being so close to the city center, many of the people who used to earn a living collecting recyclable waste material when they lived in Vila Nova Tatetuba continue to do so, and use the hangar area to store the collected materials for later resale (Photo 13).



Photo 10: RFFSA hangar.



Photo 11: Area alongside the hangar.



Photo 12: Inside one of the divisions of the hangar.



Photo 13: Recyclable materials deposit area.

³⁷ Other residents who did not accept the resettlement terms and conditions have decided to leave the hangar and live in rented dwellings. They have lodged complaints citing the amount spent on rental, transportation, and water and electricity services.

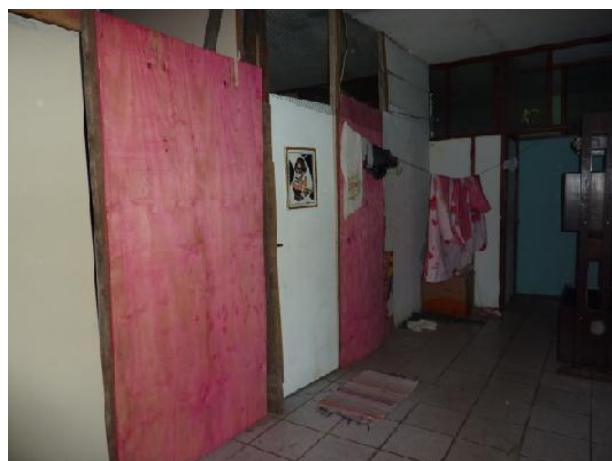


Photo 14: Divisions used to separate rooms.



Photo 15: Bathrooms shared by the families.

3.4 Situation of families living in Jardim São José II

38. During its visit to Jardim São José II, the Project Ombudsperson team interviewed many of the former residents of the three communities in question. Although some of them expressed satisfaction with the new houses compared to their previous dwellings, most of those interviewed said the houses had structural problems.³⁸ Moreover, as acknowledged by the Municipal Government, some of the land plots were on several levels, which made it difficult to remodel or extend the houses.
39. The homes offered to the family units, irrespective of the number of members, had a built area of approximately 30 square meters on a land plot of 175 square meters. The houses were delivered with just one bedroom, in unplastered masonry, of low construction standard. Some already have improvements and extensions, but most still display precarious construction features. The streets are asphalted, but the surface in front of the houses in many cases has been destroyed.
40. Based on the interviews, the population does not seem well informed of the reasons for having to pay for the houses, or the criteria used to calculate the amounts of the installments. People questioned why they still did not have any property title, and why they could not sell their homes. Some said they could not pay the monthly installment on the house.
41. According to the Municipal Government, core services (e.g. water, electricity, education, health and social assistance) were functioning when the families were moved to this area. A branch of the Hélio Augusto Souza Foundation (FUNDHAS) was built in Jardim São José II,³⁹ to serve children and teenagers. An Art and Education Program there supports the comprehensive development of socially vulnerable children and teens, along

³⁸ In its April 2004 Quarterly Performance Report, the Municipal Government noted the existence of “many complaints about construction problems in the houses received, and the persistence of several situations that had been identified in the review/approval period.” Quarterly Performance Report, *supra* note 15, p. 1.

³⁹ A nonprofit institution associated with the Municipal Government, whose main mission is to provide services to socially vulnerable, at-risk children and youths ages 6-18 from underprivileged economic groups.

- with their families. The complex has wastewater treatment and garbage collection services.
42. Nonetheless, the residents claim that access to public services, such as health and education, has become very difficult, or even impossible for some families. The health clinic (UBS), school and childcare facility in Jardim São José II serve other communities nearby (e.g. Jardim São José I, Coqueiros and Frei Galvão), and lack the capacity to meet population demand. Therefore, some families have to seek services elsewhere, such as the Santa Inês neighborhood. The Office of the State Ombudsperson has filed a court action against the Municipal Government on behalf of the residents of the complex, to ensure their access to public education and health services. According to the Municipal Government, the services in question will be improved shortly; for example a new school is expected to be opened in the area.
 43. Although public transportation in Jardim São José II has improved in recent months, it still poses a challenge to residents, mainly owing to the cost of fares, which is a new expense for the families who moved to this community.
 44. As some families cannot afford the costs of water and electricity, the services have been cut off, leading the families to resort to pirated connections. In the April 2004 Quarterly Performance Report, the Municipal Government notes that “some residents were surprised by the exorbitant bills [water and electricity].”⁴⁰ In the Final Assessment Report on the project, the Municipal Government acknowledges that the high cost of electricity is a post-occupation obstacle and that “the discounted rate for low-income users should be offered, in conjunction with the Bandeirante Power Company through the master cadastre.”⁴¹ However, the Municipal Government claimed that the high costs of the services were also caused by inefficient use of these resources.
 45. With a view to facilitating income generation and job creation, a factory was set up in Jardim São José II, making concrete blocks for use in road surfacing—an activity targeting the male population. However, it was closed after a few months of operation owing to repeated thefts of material and equipment. No other income-earning activity has been proposed or implemented in the neighborhood. The only commercial or service establishments in the neighborhood are a few bars. As no economic activities have been identified in the region that could generate jobs and income for the resident population, residents have gone to the more central part of the city in search of job opportunities. The distance, entailing long travel times and high costs, often makes it impossible to engage in short-term, informal activities that previously made a significant contribution to household budgets.
 46. On this point, the April 2004 Quarterly Performance Report, issued immediately following the resettlement, noted that “workers have been identified who are finding it difficult to keep their jobs or continue the activity in which they previously engaged, jeopardizing their families’ very survival.”⁴² The Municipal Government also stated that research done in June and July 2006, after the occupation of Jardim São José II, found that “the

⁴⁰ Quarterly Performance Report, *supra* note 15, p. 1. The ICIM also had access to a large number of water and electricity bills received by the residents of Jardim São José II.

⁴¹ Final Assessment Report, *supra* note 11, p. 11.

⁴² Quarterly Performance Report, *supra* note 15, p. 1.

residents' evaluation of the quality of the set of current actions/services compared to those available at their previous location was generally positive [e.g. attendance and capacity in schools, childcare facilities, and the health clinic, the sewer network and garbage collection]; the exceptions related to the quality of access to means of transportation, shops and job opportunities.”⁴³

47. According to the representatives of the Housing Department, the residents of Jardim São José II are served by programs run by the Social Development Department, such as the Skills Development Support Subsidy (*Bolsa Auxílio Qualificação*).⁴⁴ Some residents of the housing complex have confirmed their participation in this program and other work areas of the Municipal Government.

4. Map of stakeholders and positions

48. The stakeholders in the case were identified during the assessment stage, and were classified as primary or secondary to clarify the positions of each. The primary stakeholders are persons and/or entities directly affected by the project, or those who have a direct influence on decisions regarding the design, implementation, and operation of the project, as well as their legitimate representatives. Secondary stakeholders are persons or entities not directly affected by the project, but have or could have an effect on the context, project decision-making, and/or dispute resolution. The roles and positions of the primary and secondary stakeholders are summarized below.

4.1 Primary stakeholders

4.1.1 Requesters

49. This group is formed by residents of the former Vila Nova Tatetuba who did not accept the resettlement terms and conditions offered by the Habitar Program. These people did not move to Jardim São José II and are currently living in the RFFSA hangar or in rented houses. When asked by the Project Ombudsperson team who would be their representatives in dealings with the ICIM, the Requesters designated several residents of the hangar. In addition, the group stated that it has been supported, and will also be represented by, the Central de Movimentos Populares of São José dos Campos and other nongovernmental organizations. On more than one occasion, the Requesters have expressed their interest in starting a process of dialogue through the ICIM.
50. As noted above, these families refused to move to Jardim São José II, because they believed that their living conditions would worsen (*supra* paragraph 4). Based on the 2004 IPT expert report, the action for adverse possession against the owner of the area, and the fact that they were to have been transferred ownership of their houses and land in the former Vila Nova Tatetuba (*supra* paragraphs 22, 33 and 18, respectively), the Requesters are suing for resettlement in the area in which Vila Nova Tatetuba was situated, in good-quality houses large enough to accommodate their families, with full infrastructure.

⁴³ Final Assessment Report, *supra* paragraph 11, pp. 8-9.

⁴⁴ This program pays a monthly subsidy of R\$516.00, plus a basic shopping basket and a transportation voucher, conditional on the beneficiary's participation in socioeducational activities, or vocational training or skills development courses. Municipal Government of São José dos Campos, Social Development Department, Services. Available at: http://www.sjc.sp.gov.br/secretarias/desenvolvimento_social/programa_de_desenvolvimento_comunitario.aspx. Accessed on 19 December 2011.

4.1.2 Executing agency

51. The executing agency is the Municipal Government de São José dos Campos, represented by the Housing Department. This agency was responsible for the process of dismantling favelas in the município, which began in 1999. In conjunction with the Ministry of Cities and with IDB financing, it executed the *Casa da Gente* project, to resettle families formerly residing in the Caparaó, Nova Detroit and Vila Nova Tatetuba communities to Jardim São José II.
52. Of the total number of families affected by the removal of these three communities, the Municipal Government states that just 22 did not join the project. There is no monitoring of the Municipal Government in relation to these families. According to the Housing Department, despite attempts to make contact with the residents, mainly those living in the RFFSA hangar, the families refuse to receive Municipal Government staff.
53. In relation to Jardim São José II, the Municipal Government states that the housing offered is of good quality, and the public facilities needed by the resettled population were made available; there were still plans to open another school to meet demand. The Municipal Government also recognizes that the neighborhood is a long way from the center, but claims that it has been impossible to buy land in less remote areas, owing to the high price and other real estate market factors beyond its control.
54. The Municipal Government has shown willingness to discuss feasible solutions for the situation of the Requester families, expressing its intention to participate in the dialogue facilitated by the ICIM. In relation to the area of the former Vila Nova Tatetuba, the Municipal Government states that, under the New Municipal Zoning (Supplemental Law No. 428/2010), this land has been set aside for construction of the Cambuí highway and a municipal park. It does not believe that housing can coexist with the road system being proposed and the topographic features of the land.

4.2 Secondary stakeholders

4.2.1 Federal Heritage Secretariat

55. The Federal Heritage Secretariat (SPU) is responsible for administering the assets of the former Federal Railroad System (RFFSA), including the buildings and abandoned land along the railroad track, which are currently occupied by inhabitants of the former Vila Nova Tatetuba. The SPU can transfer or sell these properties, including for resettlement purposes. Moreover, the hangar area occupied by the residents is the subject of a claim by the SPU, which is pursuing repossession and consequent total vacating of the area (*supra* paragraph 35).

4.2.2 Ministry of Cities

56. Created in 2003 before the families were resettled to Jardim São José II, the Ministry of Cities, acting through the National Housing Secretariat and other agencies, replaced the National Urban Policy Secretariat of the Ministry of Planning and Budget. The Ministry of Cities thus became the national coordination unit for the Habitar Program, and as such “will provide technical liaison with the Bank, [and] will be responsible for overseeing

fulfillment of the conditions and compliance with the procedures adopted for implementation of the program.”⁴⁵

4.2.3 Office of the Public Ombudsperson of the State of São Paulo

57. The Office of the State Public Ombudsperson (DPE) (São José dos Campos regional branch) has provided legal assistance to the residents who did not participate in the Jardim São José II resettlement program. Specifically, the DPE filed suits to obtain compensation for the loss of personal property and other belongings of the residents of the former Vila Nova Tatetuba. Public Ombudsperson Jairo Salvador de Souza has been supporting the families affected by removal and resettlement for many years, and is considered an “ally” of the residents in discussions with the Municipal Government.

5. Main findings of the assessment stage:

58. **Analysis of the facts based on the Bank’s Operational Policies.** Based on the information gathered during the assessment stage, and in the light of the Bank’s operational policies on Involuntary Resettlement (OP-710) and on Women in Development (OP-761),⁴⁶ the Project Ombudsperson notes that:
 - a. The parties disagree about the at-risk status of the area of the former Vila Nova Tatetuba (*supra* paragraph 22). If the alleged risk and/or other reasons for removing the families were not found to exist (e.g. an environmental conservation area and/or an area of prohibited occupation, *supra* paragraph 21), then “every effort... to avoid or minimize the need for involuntary resettlement” would not have been made.⁴⁷
 - b. Although the Municipal Government has undertaken social work during project execution, the affected communities claim that they could not participate actively in preparation of the resettlement plan, for example, before the option offered to the families to be resettled had been determined.⁴⁸
 - c. The only option offered to the residents of the three resettled communities consisted of the conditional provision of a housing unit in Jardim São José II, which did not guarantee the maintenance or improvement of the living conditions of the population affected by the project (OP-710, points III.2.a and V.3). This would particularly affect the women to be resettled, owing to the lack of job opportunities in the resettlement location, as well as the difficulties of keeping their previous job or searching for new ones due to the distance from the central part of the city and the lack of vacancies for their children in the childcare facilities and schools in Jardim São José II.⁴⁹

⁴⁵ Loan Proposal, *supra* note 2, p. 20.

⁴⁶ This policy was approved by the Board of Executive Directors in 1987 and updated on 3 November 2010 as Operational Policy on Gender Equity in Development (OP-761).

⁴⁷ OP-710, point III.1.

⁴⁸ OP-710, points IV.2.ii and V.2.

⁴⁹ OP-710, points V.1, V.2 and V.3, and OP-761, point 5.

- d. The families living in the former RFFSA hangar claim that their living standards have been impaired, and thus far have received no compensation for the loss of their houses, furniture, and other personal belongings.⁵⁰
59. **Legal actions.** The Mechanism has received information on other legal actions being taken by the Requestors in relation to the present case, which would be important for the Consultation Phase. Based on the principle of nonintervention, the Ombudsperson reviewed those cases to determine: (i) whether the parties and purpose were the same in the cases and in the Request submitted to the ICIM; and (ii) the current stage of the process, in accordance with ICIM policy.
 60. The **action for adverse possession** regarding the acquisition of ownership of the area of Vila Nova Tatetuba is brought by the Association of Friends and Residents of Morro do Regaço against the estate of José Ferreira de Almeida. The case was initiated in 2004 and is still in the trial phase, with no date set for judgment. Accordingly, the parties in the court proceeding do not coincide with those in this case, and, despite the time that has elapsed since the proceeding began, there is not yet any decision that could directly influence the dialogue process.
 61. Besides the adverse possession case, the parties have brought **actions for compensation** against the Município of São José dos Campos for the loss of personal property and other belongings (*supra* paragraph 32). The parties in that case are the same as the stakeholders in the present case. The purpose of the actions brought, namely compensation by the Municipal Government for the lost personal property, is part of the object of the Request (*supra* paragraph 4). Following the trial court finding for the residents, the Municipal Government appealed, and the case is currently at the appellate level. The Project Ombudsperson thus considers that the results of this action could directly affect discussion and decisions on proposals for compensation for personal property, as sought by the Requesters. Nonetheless, the ICIM will monitor this matter during the Consultation Phase, to determine the most appropriate course of action to prevent the dialogue process from interfering in this court case, and vice versa.
 62. **Breakdown of trust between the parties.** There is a clear deterioration in relations between the parties, in particular between the Municipal Government and some representatives of the popular movements. This lack of trust stems from long-standing tensions relating to more than implementation of the Habitar Program. During the next stages of the Consultation Phase, the Project Ombudsperson team will take steps to rebuild communication channels and restore trust between the parties.

6. Conclusion

63. There is an opportunity for the parties to seek alternatives to resolve the concerns raised in the Request. The primary stakeholders in the case have confirmed their willingness to participate in a dialogue sponsored by the Mechanism. The Requesters have put forward the issues they wish to address during the dialogue process, together with proposals to resolve the problems described in the Request. The Project Ombudsperson team will raise these issues with the Municipal Government for consideration during the dialogue agenda preparation activities. They will be discussed in detail between the parties in the next

⁵⁰ OP-710, points III.2.a and V.3.

stages of the Consultation Phase. The Municipal Government, in turn, is open to dialogue and has a firm desire to find a viable and effective solution in this case.

7. Next steps

64. Once the assessment stage is complete, the Project Ombudsperson will begin the Consultation Phase with the dialogue preparation stage. The activities will include: (i) confirmation of the willingness of the parties to start a dialogue process and find solutions; (ii) reopening of communication channels between the parties; (iii) confirmation of the representatives who will participate in the dialogue process; (iv) participatory design of activities for exchange of information, methodology, and the rules of dialogue; (v) facilitation of the dialogue aimed at finding solutions; and (vi) participatory design of the monitoring of any agreements.
65. The Mechanism will contact the primary stakeholders to confirm the names of those who will represent them at the dialogue table. It will also contact the secondary stakeholders and invite them to form part of the dialogue process. The representatives who will participate at the dialogue table will ideally have the following characteristics:
 - a. *Direct representation of the parties and all their positions.* In the case of the Requesters, the points of view and decisions adopted by the families affected by the project will be prioritized.
 - b. *Decision-making authority or direct access to those who can make decisions.* For the sake of more robust dialogue between the parties that facilitates the finding of solutions, it is better for the stakeholders participating in the dialogue to have decision-making authority, direct access to decision-makers, or the ability to activate streamlined processes for the people they represent to make decisions.
 - c. *Compact and multidisciplinary group.* While respecting the internal processes of decision-making of each group and the selection of their representatives, the dialogue table will consist of the smallest possible number of people possessing the necessary attributes and integrity to effectively seek solutions.
66. Once the parties, in a participatory manner and with assistance from the Mechanism, have designed the methodology and the rules governing the dialogue process, received the information necessary for decision-making, and agreed upon the instruments to facilitate this process, the dialogue will be conducted according to the instructions established by the parties, and may involve one or more sessions.
67. When the dialogue is considered concluded, the parties will jointly decide how any agreement(s) reached will be monitored, specifying a monitoring plan and methods and the persons responsible for this activity, among other matters.