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**MICI-BID-BR-2016-0106
ELIGIBILITY DETERMINATION MEMORANDUM**

TIETÊ VÁRZEA PROGRAM

**(BR-L1216)
(2500/OC-BR)**

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ELECTRONIC LINKS	
1.	Original Request and Supplemental Information http://www.iadb.org/document.cfm?id=40536356 http://www.iadb.org/document.cfm?id=40497470
2.	Management Response – “Request MICI-BID-BR-2016-0106 in reference to the Tietê Várzea Program (BR-L1216) – Response to the Request.” http://www.iadb.org/document.cfm?id=40684961
3.	Loan Contract – Tietê Várzea Program (BR-L1216) (Parts I-IV) (Document available in Portuguese only) http://www.iadb.org/Document.cfm?id=35314731 http://www.iadb.org/Document.cfm?id=35328589 http://www.iadb.org/Document.cfm?id=35328459 http://www.iadb.org/Document.cfm?id=35328557 http://www.iadb.org/Document.cfm?id=35328303 http://www.iadb.org/Document.cfm?id=35328411
4.	Environmental and Social Management Report (ESMR) – Tietê Várzea Program (BR-L1216) (Document available in Portuguese only) http://idbdocs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=35305916
5.	Master Resettlement Plan – Tietê Várzea Program (BR-L1216) (Document available in Portuguese only) http://www.iadb.org/Document.cfm?id=35311787

EXECUTIVE SUMMARY

On 28 July 2016, the Independent Consultation and Investigation Mechanism (MICI) received a Request from three residents of Jardim Izildinha, located in the município of Guarulhos, Brazil, in which they claimed that they were being affected by the Tietê Várzea Program (BR-L1216) as a result of the involuntary resettlement planned under that program. Specifically, the Requesters alleged a lack of transparency in the process and said they had not accepted the housing proposal offered by the executing agency because they felt that it did not comply with the Master Resettlement Plan. They also warned of potential environmental harm associated with execution of the program.

The Requesters initially stated that they would be interested in having the MICI process the case through the Consultation Phase. However, in subsequent communications, they asked that it also be processed through the Compliance Review Phase.

The Tietê Várzea Program (BR-L1216) is a sovereign guaranteed loan operation for a total amount of US\$199.78 million. It was approved by the Bank's Board of Executive Directors on 15 December 2010 and is presently in execution. The borrower is the State of São Paulo, and the guarantor is the Federative Republic of Brazil. The executing agency is the Sanitation and Energy Secretariat, acting through the Department of Water and Electric Power of the State of São Paulo (DAEE). The program objective is to contribute to the recovery of the banks of the upper Tietê River, for the purpose of establishing the Tietê River Várzea Park (TVP) in order to conserve the area's ecological functions, including flood reduction.

For this Request, Management requested a temporary suspension of the eligibility determination process in order to address the concerns of the Requesters. During the suspension period, Management carried out a mediation process that enabled a solution to be found for two of the three Requesters. However, for the third Requester, as of the date of publication of this memorandum, no housing solution following eviction has been identified.

The MICI Director, as per Section G of the MICI Policy (document MI-47-6) and based on an analysis of the relevant documentation, concludes that this Request **is not eligible** because it does not meet one of the eligibility criteria established in paragraph 22 (a) of the MICI Policy. The MICI finds that for two of the Requesters, fulfillment of the signed agreements will have the effect of removing the alleged harm. Therefore, presuming that the agreements will be fulfilled, as of the date of publication of this memorandum and based on currently available information, there are no grounds to open a MICI process in the case of these two Requesters. For the third Requester, as mentioned above, the absence of a housing solution at the time of publication bears out the potential harm and its link with the Involuntary Resettlement Policy (OP-710) and would warrant a MICI process if and only if all eligibility criteria were met.

This determination of eligibility is not an assessment of the merits of the Request or the issues raised therein. Nor is it a determination of compliance or noncompliance by the Bank of its Relevant Operational Policies.

This determination is communicated directly through this memorandum to the Requesters, Management, and the Board of Executive Directors, as well as to interested third parties through the Public Registry. Once the notifications have been made, the MICI process for Request MICI-BID-BR-2016-0106 is deemed concluded. In the event that the signed agreements are not fulfilled, the Requesters have been informed that they could file a new Request with the MICI.

I. THE PROJECT¹

- 1.1 The Tietê Várzea Program (BR-L1216) is a sovereign guaranteed loan operation for a total amount of US\$199.78 million—US\$115.7 million corresponding to the loan and US\$84 million corresponding to the local counterpart contribution. It was approved by the Bank's Board of Executive Directors on 15 December 2010 and is presently in execution. The borrower is the State of São Paulo and the guarantor is the Federative Republic of Brazil. The executing agency is the Sanitation and Energy Secretariat, acting through the Department of Water and Electric Power of the State of São Paulo (DAEE).
- 1.2 The program objective is to contribute to the recovery of the banks of the upper Tietê River, located in the São Paulo metropolitan region, for the purpose of establishing the Tietê River Várzea Park (TVP) in order to conserve the area's ecological functions, including flood reduction.
- 1.3 To achieve program objectives, three components were planned:
- 1.4 **Component I: Works.** This component will finance approximately: (i) 23 kilometers of park road and 23 kilometers of bike paths in the município of Guarulhos; (ii) 3 small bridges; (iii) removal and final disposal of 1,150,000 cubic meters of waste removed from the riverbanks; (iv) implementation of 2 kilometers of macro-drainage system (protective slopes and channels); (v) recovery of 110 hectares of riverbank area; and (vi) creation of three areas with 169 recreation facilities (soccer fields, music and art offices, skating rinks, grills, etc.).
- 1.5 **Component II: Resettlement.** This component will finance the resettlement of approximately 500 families living in flood-prone areas in the município of Guarulhos. It includes land registry work; purchase of the land (counterpart); and communication, consultation, dissemination, negotiation of resettlement alternatives, construction or purchase of residences, supervision and monitoring.
- 1.6 **Component III: Environmental and social sustainability.** This component will support DAEE strengthening actions; social communication and environmental education to ensure the sustainability of the implemented actions; preparation and implementation of the TVP management plan; and revegetation of approximately 125 hectares of riverbanks.
- 1.7 The expected outcomes of program execution include: (i) the resettlement of approximately 500 families into better housing; (ii) the construction of approximately 23 kilometers of park roads and 23 kilometers of bike paths in the município of Guarulhos; (iii) the construction of three areas with 169 recreation facilities; and (iv) the revegetation with native species of approximately 125 hectares of degraded areas.
- 1.8 In accordance with the Environment and Safeguards Compliance Policy (OP-703), the program was classified as a category "A" operation, due mainly to the risks associated with the resettlement needs.
- 1.9 Based on program documentation, the operational policies identified are the Environment and Safeguards Compliance Policy (OP-703), the Involuntary

¹ Information from the Bank's website and public documents on the operation. These documents are available via the electronic links section of this memorandum.

Resettlement Policy (OP-710), the Disaster Risk Management Policy (OP-704), and the Access to Information Policy (OP-102).

II. THE REQUEST²

- 2.1 On 28 July 2016, the Independent Consultation and Investigation Mechanism (MICI) received a Request from three residents of Jardim Izildinha, located in the município of Guarulhos, Brazil, in reference to the Tietê Várzea Program (BR-L1216).
- 2.2 In the Request, the Requesters claimed that they were being affected as a result of involuntary resettlement under the program. Specifically, the Requesters alleged a lack of transparency concerning the negative impact that the program could have on them as a result of relocation, as well as on the environment.
- 2.3 The Requesters said they had not accepted the housing proposal presented by the executing agency because they felt that it did not comply with the Master Resettlement Plan and feared that they would not be fairly compensated for their properties. Likewise, they indicated that they had documents supporting the existence of a claim of adverse possession (*usocapião*).
- 2.4 In addition, the Requesters said they were in need of immediate attention as they anticipated that they would be evicted soon.
- 2.5 Regarding previous contact with Management, the Requesters said they presented their concerns on 27 July 2016 to the IDB Country Office in Brasília, where, according to the Request, they were told to contact the MICI.
- 2.6 Lastly, they initially stated in their Request that they would be interested in having the MICI process the case through the Consultation Phase, but in subsequent communications with the MICI, they said they were interested in having their Request processed through the Compliance Review Phase too.

III. MANAGEMENT'S RESPONSE³

- 3.1 In accordance with paragraph 21 of the MICI Policy, on 22 August 2016, IDB Management was notified of the registration of Request MICI-BID-BR-2016-0106. On 20 September 2016, the MICI received the Response by Management, which includes Management's perspective with respect to the issues raised in the Request. Following is a summary of the Response, which can also be consulted via the electronic links section of this memorandum:
- 3.2 In its Response, Management reported that the target population that was subject to a resettlement process grew to 730 families (from an original estimate of 500 families). According to Management, a large number of these families were eligible to receive low-income housing under the criteria set out in the Master Resettlement Plan, and DAEE initiated their resettlement on 2 August 2016.⁴ Management explained that once the resettlement process was concluded, it would begin to update the cadastre of families that remain in the program area, for the

² The Request and Supplemental Information are available via the electronic links section of this document.

³ The Response by Management is available via the electronic links section of this document.

⁴ Management notes that 667 families were selected for resettlement in the Lavras Housing Complex. In addition, 10 families were removed by the Civil Defense Force in 2013 due to flooding in the area, and the remaining 53 families were selected for other means of compensation.

purpose of analyzing their individual situations to determine their eligibility for a housing subsidy. For families that have already received low-income housing through another project and under Brazilian law are not eligible to receive another housing benefit, they will be “treated on an exceptional basis through a specific social support program.”

- 3.3 Regarding the allegation of lack of transparency in the resettlement process, Management responds that since 2014, when the initial cadastre of affected housing units was conducted, the program management unit (PMU-Várzea) carried out various dissemination activities with the residents of the affected area, including at sites near the Requesters' homes. It states that, “the Requesters have had various opportunities not only to register to have their eligibility examined but also to obtain clarification with respect to the process.”
- 3.4 In reference to the allegation of environmental harm, Management reaffirms that the objective of the program is to recover and protect the ecological functions of the banks of the Tietê River. It also notes that the program calls for the creation of recreational areas and the restoration of formerly occupied risk areas, in accordance with the provisions of the Environment and Safeguards Compliance Policy (OP-703).
- 3.5 In reference to the specific case of the three Requesters, Management reports the following: (i) with respect to one of the Requesters, Management said the Requester did not provide housing information during the 2014 cadastral survey, so it was impossible to determine his eligibility for the resettlement process; (ii) in reference to another Requester, Management reported that he had already received housing services from the Urban Housing Development Company (CDHU) under a low-income public housing program but had recently assigned the rights to the property he had received, and the fact that he had previously received compensation “makes him ineligible for a new property” under Brazilian law; and (iii) in reference to the final Requester, Management stated that during the 2014 cadastral survey, the property in question belonged to another person, who had declined to register it at the time, and there was no information attesting to any relationship with the current Requester.
- 3.6 In addition, Management verified the existence of a claim of adverse possession (*usucapião*) pending before the 8th Civil Court for the District of Guarulhos (Case No. 1021525-09.2015.8.26.0224), filed by one of the Requesters, and reported that the case is pending trial.
- 3.7 As for the Request, Management finds that the Requesters have not established a clear relationship between the alleged harm and noncompliance with the Bank's operational policies.
- 3.8 In the same document, Management presented a request to temporarily suspend the process for determining the eligibility of the Request, as provided in paragraph 23 (c) of the MICI Policy, in order to: (i) contact the Requesters to update their status in the cadastre; (ii) make the pertinent adjustments to the resettlement instruments; (iii) provide the Requesters with additional information beyond what is already made available in compliance with the Bank's operational policies regarding the project and the details of the Master Resettlement Plan; and (iv) develop mechanisms and timelines for monitoring the agreements and progress made during this period. This request was accompanied by an Action Plan and the corresponding timeline.

IV. SUSPENSION OF ELIGIBILITY

- 4.1 In accordance with paragraph 23 (c) of the MICI Policy, the MICI Director granted a temporary suspension of the eligibility determination process, as requested by Management, for the maximum period of 45 business days (from 21 September to 23 November 2016), for implementation of the Action Plan and timeline presented in the Response by Management.
- 4.2 According to the Action Plan presented, Management coordinated the hiring of an external mediator to lead the mediation process with the participation of the executing agency, Management, and each Requester, in order to identify alternative solutions for the Parties to reach an agreement. Between 11 October and 8 November 2016, in accordance with the proposed timeline, meetings were held jointly and individually with the three Requesters. At the request of the Requesters, the MICI attended as an observer.
- 4.3 At the end of the suspension period, the perspectives received from the Parties are as follows:
- 4.4 On 15 December 2016, Management reported to the MICI that during the mediation process, it was verified that two of the three Requesters were eligible for the housing and assets replacement alternatives in accordance with the Resettlement Master Plan, so after updating the cadastral information on their homes, both signed a relocation agreement on 18 November 2016. Meanwhile, Management reported to the MICI that the third Requester chose not to accept the proposed alternative, so there has been no resolution of his case.
- 4.5 The Requesters reported by telephone to the MICI that two of the three had indeed signed agreements with the DAEE but that they remained concerned about fulfillment of those agreements. The third Requester confirmed that he did not yet have a housing solution.

V. MICI ACTIONS

- 5.1 In accordance with section G of the MICI Policy and the eligibility criteria set out in paragraph 22, the registration and eligibility determination process for the Request proceeded according to the following timeline:

Table 1
Timeline of MICI actions during the period
from 28 July 2016 to 27 January 2017

Date	Actions
2016	
28 July	Receipt of Request.
1 August	Telephone call with Requesters concerning the Request and the MICI process.
4 August	Allowance of a maximum period of 10 business days for the Requesters to present additional information required to process the Request.
17 August	Receipt of additional information requested of the Requesters.
22 August	Registration of the Request and notification to Parties.
30 August	Telephone call with the IDB Management team responsible for the operation in Brazil.

Date	Actions
14 September	Meeting with the IDB Management team responsible for the operation in Washington, D.C.
20 September	Receipt of the Response by Management, including the request for a temporary suspension of the eligibility determination process.
21 September	Notification of suspension of eligibility for a maximum period of 45 business days in order for Management to implement the Action Plan and timeline proposed in its Response.
23 September	Telephone call with Requesters on the suspension of eligibility.
11 October - 8 November	Participation of the MICI as observer at the mediation meetings between the executing agency, Management, and the Requesters.
23 November	End of the temporary suspension period for the eligibility determination process.
5 December	Submittal for consideration by the Board of Executive Directors of the request to extend the period for determining the eligibility of the Request by 20 business days.
14 December	Approval by short procedure of the extension by 20 business days of the period for determining the eligibility of the Request.
15 December	Receipt of information from Management on execution of the Action Plan and results of the mediation process.
2017	
12-13 January	Eligibility determination mission – meeting with Requesters, tour of the program area, and meeting with the program management unit (PMU).
26 January	Telephone call with Requesters.
27 January	Publication of Eligibility Memorandum.

- 5.2 As part of the eligibility determination process, the MICI considered the information presented in the Request and the supplemental information sent by the Requesters, as well as the Management Response and annexes thereto, various Bank documents, and other sources relevant to this analysis.⁵
- 5.3 In addition, during the mediation process carried out by Management during the suspension period, the MICI, at the request of the Requesters, participated as an observer in the group and individual meetings held with the executing agency, Management, and the three Requesters.
- 5.4 On 5 December 2016, the MICI Director submitted for consideration by the short procedure a request to extend the period for determining the eligibility of the Request. Her request was approved on 14 December. The purpose of this extension was to enable the Parties to formalize the agreements they had reached.
- 5.5 On 12 and 13 January 2017, a MICI delegation conducted an eligibility determination mission to meet with the three Requesters and with the staff on the program management unit (PMU).
- 5.6 During the meeting with the Requesters, the two who had signed agreements said they were satisfied but just hoped that the agreements would be fulfilled within six months from the date of the meeting, which is when they expected to be evicted from their homes. Their sole request was that the Bank take care to execute the agreements as planned and on schedule. Meanwhile, the third Requester confirmed that he had not accepted the alternatives offered and at the time of publication of

⁵ The documents analyzed are available via the electronic links section of this memorandum.

this memorandum the threat of eviction continued to loom for him, with no housing solution in sight. He also confirmed that he was waiting to receive information on the adverse possession case that was before the courts (*usocapião*).

- 5.7 In a meeting with the executing agency, the officials presented a detailed account to the MICI of the process that they are conducting to fulfill the agreements with two of the Requesters. In the case of the third Requester, they said that due to limitations imposed by Brazilian law and the lack of substantiating documentation from the Requester, there were no alternative housing solutions other than the ones that had already been offered.
- 5.8 The following photographs were obtained by the MICI delegation during their mission to the site.

Banks of the Tietê River



Meeting with Requesters



Jardim Izildinha- Requesters' homes



VI. DETERMINATION OF ELIGIBILITY

- 6.1 In accordance with paragraph 22 of the Policy, a Request will be deemed eligible by the MICI if it is determined that it meets all the following criteria:
- a. The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the Bank-financed Operation is implemented. If the Request is filed by a representative, the identity of the Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.

- b. The Request clearly identifies a Bank-financed Operation that has been approved by the Board, the President, or the Donors Committee.
 - c. The Request describes the Harm that could result from potential noncompliance with one or more Relevant Operational Policies.
 - d. The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
 - e. None of the exclusions set forth in paragraph 19 of this Policy apply.
- 6.2 The analysis of Request MICI-BID-BR-2016-0106, with respect to the eligibility criteria established in the Policy, is as follows:
- 6.3 The Request was presented by **three Brazilian Requesters who live with their families in homes located in the area known as Jardim Izildinha, in the município of Guarulhos, São Paulo, Brazil, and who claim to be affected by the program.**
- 6.4 As set forth in the documents presented by Management following the conclusion of the process of mediation and confirmation by the Requesters to the MICI during the eligibility determination mission, two have signed an agreement that will be addressing the harm alleged in the Request and the expectation is that it will be fulfilled in accordance with the timelines agreed upon with the program. Meanwhile, one of the three Requesters confirmed that he did not reach an agreement through this process.
- 6.5 Under these circumstances, the two Requesters who are awaiting fulfillment of the agreement would no longer be considered affected inasmuch as the alleged harm is being addressed, which means the alleged harm persists only in the case of one of the three Requesters. As a result, given that the Request would now only have one Requester, **the criterion set out in paragraph 22(a) is not fulfilled.**
- 6.6 The Request identifies the **Tietê Várzea Program**, which is being financed by the IDB through operation **BR-L1216 (2500/OC-BR)**, approved by the Board of Executive Directors on 15 December 2010. **The criterion set out in paragraph 22(b) is fulfilled.**
- 6.7 The Request describes **allegations of harm as a consequence of the involuntary resettlement that would occur in the framework of the program and points to noncompliance with Bank policies, lack of transparency, and noncompliance with the Master Resettlement Plan.** This establishes a plausible link between the alleged harm and potential noncompliance with the Involuntary Resettlement Operational Policy (OP-710). **The criterion set out in paragraph 22(c) is fulfilled.**
- 6.8 The Request offers information on previous contact with the Bank's Management. **The criterion set out in paragraph 22(d) is fulfilled.**
- 6.9 As for the exclusions provided in paragraph 19, **the MICI finds that none of the exclusions provided in paragraphs 19(a), 19(b), 19(c), 19(e), and 19(f) apply.**
- 6.10 In relation to the **exclusion 19(d)**, the MICI finds as follows:
- 6.11 The Policy establishes that neither the Consultation Phase nor the Compliance Verification Phase will be applied to particular issues or matters raised in a Request that are under arbitral or judicial review in an IDB member country.

- 6.12 Both the Request and the Response by Management report the existence of a claim of adverse possession (*usocapião*) pending before the 8th Civil Court for the District of Guarulhos (Case No. 1021525-09.2015.8.26.0224), filed by one of the Requesters. In subsequent documents presented by Management, it reports that the claim corresponds to a different area than the one where the Requesters' properties are located, so it would not apply to this case.
- 6.13 During the meeting with the Requesters, one reported the existence of another claim of adverse possession (*usocapião*) that had been filed, but not much information about it had been presented at the time of this determination process.
- 6.14 In the analysis of the applicability of **exclusion 19(d)**, the MICI finds that this exclusion does **NOT apply** as there is no evidence linking the particular issues and matters raised in this Request:
- 6.15 Without prejudice to the foregoing, as presented in paragraph 6.4 and 6.5, the MICI finds that for two of the Requesters, fulfillment of the signed agreements will have the effect of removing the alleged harm. Presuming that the agreements will be fulfilled, as of the date of publication of this memorandum and based on currently available information, there are no grounds to open a MICI process at this time for these cases. For the third Requester, the absence of a housing solution at the time of publication bears out the potential harm and its link with OP-710 and would warrant a MICI process if and only if all eligibility criteria were met.
- 6.16 However, given that the MICI Policy establishes that a Request is eligible only if it is presented by two or more Requesters and that as a result of the mediation carried out by Management during the suspension period, the concerns that gave rise to the Request remain valid for only one of the three Requesters, the MICI Director has determined that Request MICI-BID-BR-2016-0106 **is not eligible** because it fails to meet one of the eligibility criteria established in paragraph 22 of the MICI Policy.
- 6.17 This determination is based on the presumption that the signed agreements will be fulfilled, and as a result the alleged harm will only persist in the case of one Requester whom the MICI is prevented from attending because the MICI Policy does not allow a process to be initiated for a single requester. If the agreements are not fulfilled, the Requesters are advised to return to the MICI and present a new Request.

VII. CONCLUSION

- 7.1 The MICI Director, as per Section G of the MICI Policy (document MI-47-6), concludes that this Request **is not eligible** because it does not meet one of the eligibility criteria required by the Policy.
- 7.2 This determination of eligibility is not an assessment of the merits of the Request or the issues raised therein. Nor is it a determination of compliance or noncompliance by the Bank of its Relevant Operational Policies.
- 7.3 This determination is communicated directly through this memorandum to the Requesters, Management, and the Board of Executive Directors, as well as to interested third parties through the Public Registry upon its distribution to the Board of Executive Directors. Through this action, the MICI process for Request MICI-BID-BR-2016-0106 is hereby concluded.