



MEMORANDUM

COMPLIANCE PHASE: ELIGIBILITY DETERMINATION

FROM: Werner Kiene, Chair of the Compliance Review Panel
TO: MICI Executive Secretary
CC: MICI
REFERENCE: Case BR MICI1/2010
PROJECT: Program for Social-Environmental Recovery of the Serra do Mar and Mata Atlantica Mosaics (BR-L1241)
COUNTRY: Brazil
DATE: December 15, 2010

Summary:

A Brazilian Non-Governmental Organization called Mongue, Coastal System Protection, represented by Mr. Plinio Melo, submitted on May 13, June 15 and October 13, 2009 communications to the old Mechanism with observations and complaints regarding the replacement of the existing environmental protection system in the Project area through a so-called “mosaic approach” that intends to protect special and limited conservation units instead of a large contiguous conservation area. Of particular concern to the Requester was the proposed establishment of such special conservation units, and changes in the conservation regime of the Ecological Reserve Jureia-Itatins in the Municipality of Peruibe, Sao Paulo, Brazil and the Bank’s plans to finance certain elements of this new approach.

Based on the information available at the time, the Ombudsperson determined on October 8, 2010, that the complaint was not eligible for the Assessment and Consultation Phases by the Ombudsperson as stipulated in the Policies of the Mechanism¹. The Requester subsequently submitted his complaint to the Compliance Review Panel (the Panel) of the Mechanism.

Subsequently, based on a detailed review of new and additional information made available since then, the Chair of the Panel, in line with the Policies of the Mechanism and without any judgment on the merits of the Complaint, determines that the Request is eligible for a Compliance Review by the Panel. The complexity and the innovative nature of the Project and the sometimes conflicting assertions of those involved in this complaint require on-site discussions with the Requester and the Project authorities, as well as with the Project team both in the Country Office and at IDB Headquarters. This will ensure an impartial assessment of the situation, the alleged harm and the alleged non-compliance by the Bank.

¹ **The terms:** Mechanism, MICI, ICIM, Management, Executive Secretariat, Project Ombudsperson, Panel, Mechanism Policy, 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 February 17, 2010

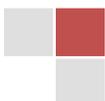
Chair of the Compliance Review Panel

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I. Background

The Program for Social and Environmental Recovery of the Serra do Mar and *Mata Atlantica* Mosaics -BR-L1241- (the Project) funded by an Investment Loan of 162,454,000 million dollars was approved by the Board on September 8, 2010. The Loan Agreement was signed on December 8, 2010.

The objective of the project is to enable the Government of Sao Paulo implement a strategy known as the Mosaic Approach to Protected Area Management. It consists of creating a “mosaic” of conservation areas where previously a single conservation category existed. New conservation categories (ranging from strict preservation to sustainable use) are assigned to different territories according to their potential, current conservation status, and the feasibility of providing the management support that each category would require. As per the Project Document, this strategy promises to be useful for conservation units which had been created four or five decades ago, but whose primary conservation purpose can no longer be guaranteed due to changes in land use, encroachment, or even natural changes.

The Brazilian Non-Governmental Organization, “Mongue - Coastal System Protection”, represented by Mr. Plinio Melo, submitted on May 13, June 15 and October 13, 2009 communications to the old Mechanism with observations and complaints regarding the replacement of the existing environmental protection system in the Project area through a so-called “mosaic approach”, with the purpose of establishing and protecting special conservation units instead of a large contiguous conservation area. Of particular concern to the Requester was the proposed establishment of such special conservation units, and changes in the conservation regime of the Ecological Reserve Jureia-Itatins in the Municipality of Peruipe, Sao Paulo, Brazil and the Bank’s plans to finance certain elements of this new approach.

Based on the information available at the time, the Ombudsperson determined on October 8, 2010, that the complaint was not eligible for the Assessment and Consultation Phases by the Ombudsperson as stipulated in the Policies of the Mechanism. The Requester subsequently submitted his complaint to the Compliance Review Panel (the Panel) of the Mechanism.

The Chair and several Members of the Panel reviewed additional information obtained from various sources including new information from Mr. Melo². The review brought forth additional clarity on his concerns. Mr. Melo alleges that the new approach to environmental management of the Reserve will be harmful to him and Mongue since it will prevent them from working directly on behalf of the environment of the Reserve and the wellbeing of some of the populations living in the Reserve. He continues to fault Government decision making with respect to the proposed Mosaic approach, and also alleges that the Bank’s handling of its responsibilities with respect to consultation and the provisions of environmental assessment are related to the harm that he is concerned about and that will be experienced not only by him but also by the Reserve’s marginal populations whom he claims to represent.

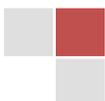
² Mr. Melo expanded on his complaint in emails to the Panel on November 11, November 22, and December 12, 2010. Furthermore, one of the Panel Members engaged him in several phone conversations to obtain additional clarity about his concerns.

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Exchanges with the Project team confirmed the continued openness of Management to deal with the Complaint. However, it became also apparent that the additional information available from the Requester and the lack of specificity in certain areas of the Request would still not give Management sufficient opportunities to deal constructively with the Complaint without subjecting the conflicting assertions to an independent fact-finding exercise.

II. Eligibility Analysis

The Panel's Eligibility followed the Mechanism's Policy, Paragraphs 55 and 56, as well as the arguments outlined in the Ombudsperson's memo of October 8, 2010 on how to deal with complaints that originated before the establishment of the new Mechanism. Furthermore, the information received from the Project team during the eligibility determination of the Ombudsperson was carried forward, re-examined and supplemented by additional information both from management and the complainant.

The results of this analysis are presented in the table below.

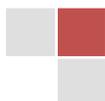
| ELIGIBILITY CRITERIA FOR A COMPLIANCE REVIEW PHASE | CRITERIA MET? | COMMENTS |
|--|---------------|---|
| a) The names and contact information for the Requester are available; | YES | Names and contact information for Mr. Melo and the NGO Mongue are on file |
| b) The names and contact information for the Representative, if any, and proof of the authorization are available; | YES | Mr. Melo is a legitimate Representative of his and Mongue's Request. Mechanism Policy Paragraph 30, requiring just one Requester, is satisfied. His additional claim to represent others living in the Project area could not be substantiated in a formal way. |
| c) The bank-Financed Operation(s) at issue has been identified; | YES | The Program for Social and Environmental Recovery of the Serra do Mar and Mata Atlantica Mosaics (BR- L1241) |
| d) the Requester resides in the country where the relevant Bank-Financed Operation is or will be implemented (or a qualified Representative has been appointed); | YES | According to the project team and other documents in file, Mr. Melo is one of the occupants of the protected area. |
| e) none of the exclusions set forth in Section 37 applies; | YES | In light of additional information, the Chair also examined changes that occurred since the eligibility determination by the Ombudsperson and concluded that the previously determined Exclusions do not any longer apply: Previously determined Exclusions of Mechanism Policy Paragraphs 37 (a) and (b) do not any longer apply: Although Mr. Melo continues to raise issues that are the responsibility of parties other than the Bank (in this case the executing agency and the Borrower's legal system), he also alleges that the Bank has been and continues to be involved in determining the direction of the proposed changes that he alleges to |

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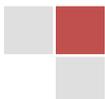
| | | |
|--|-----|---|
| | | <p>be harmful to his concerns.</p> <p>The previously determined Exclusion 37 (i) does not any longer apply: According to the best information currently available to the Panel, Mr. Melo's case is not, or not any longer, under litigation or review in other national, supranational or similar bodies.</p> |
| <p>f) the Requester has reasonably asserted that it has been or could be expected to be directly, 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 such action or omission in the Bank-Financed Operation;</p> | YES | <p>Mr. Melo continues to allege that the Project will harm the concerns of Mongue by preventing him and his associates to work directly (i.e. in the facility located in the Reservation) on behalf of the environment of the Reservation and on behalf of interests of marginal population groups that Mongue alleges to represent.</p> <p>The Requester alleges faults in the way consultations on potential resettlement and environmental assessments were handled. Without in any way prejudging the findings of an eventual Compliance Review, this could point to potential non-compliance with relevant sections of OP 102, OP 710 and OP 703.</p> |
| <p>g) with respect to an issue raised in the Request, a Compliance Review may assist in determining whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requester; and</p> | YES | <p>Mr. Melo's submissions are driven by a strong commitment to sustained environmental and social protection in the Project area. His goals are in many ways congruent with the goal of the Project. However, his and the Project's goals differ strongly on how to achieve them. His complaint about the Bank's role, possible omissions or commissions with respect to Operational Policies is not always sufficiently specific. On the other hand, behind his allegations, if found substantiated, are serious risks for the reputation of the Bank and for the sustained success of this important and innovative project. An independent and impartial Compliance Review promises to clarify the issues and help the Bank to initiate changes if they should be warranted.</p> |
| <p>h) the Requester has taken steps to bring the issue to the attention of Management. The Panel Chairperson shall consult with Management as to its response and if Management is involved in addressing the concerns raised, the Panel Chairperson shall allow forty-five (45) calendar days from the date of receipt by the Executive Secretary of the Request for purposes of the Compliance Review before it is deemed eligible. The Panel Chairperson may waive this requirement in his or her discretion if the 45-day period has been invoked by Management during the Consultation Phase.</p> | YES | <p>Mr. Melo contacted -via email- the team in the Brazil Country Office with his initial request. In recent communications with the Panel he alluded to personal safety concerns as one reason for minimizing further contacts with outsiders in general.</p> <p>Management has indicated that it continues to find it difficult to react to Mr. Melo's allegations in any meaningful way since on one hand, these allegations on non-compliance are not specific enough and on the other they are strongly related to both specific and general complaints about Government decision making.</p> <p>Further exchanges between Mr. Melo and Management might not be productive at this stage without a firm basis of facts that could be produced by a Compliance Review.</p> |

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III. Conclusion

The Project constitutes an important innovation in environmental management in general and specifically in the Serra do Mar and *Mata Atlantica* Region of the State of Sao Paulo. In spite of the apparent careful preparation of this Project it is evident now that certain aspects of the underlying approach are contested by some of the Project's stakeholders or persons interested in its further evolution. Although the Requester criticizes a number of decisions that are clearly within the mandate of Brazilian authorities he also complains about the Bank's failure to sufficiently uphold standards related to consultation and environmental assessment. These are allegations of non-compliance that pose a reputational risk for the Bank as well as a risk for the development effectiveness of this important Project.

Based on a detailed review of the information currently available, the Chair of the Panel, in line with the Policies of the Mechanism and without any judgment on the merits of the Complaint, determines that the Request is eligible for a Compliance Review by the Panel.

As per the Mechanism's Policy, Paragraph 55, the Executive Secretariat will post the notice of registration on the Registry and notify the Requester, the Board, the President, Management and the Project Executing Agency or Borrower of said registration, and the contents of this memorandum.

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