

**Report No. 154885-PE**

# **THE INSPECTION PANEL**

## **REPORT AND RECOMMENDATION ON A REQUEST FOR INSPECTION**

### **PERU**

#### **CUSCO TRANSPORT IMPROVEMENT PROJECT (P132505)**

**DECEMBER 15, 2020**



**THE WORLD BANK**  
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**The Inspection Panel  
Report and Recommendation  
on a  
Request for Inspection**

**Peru: Cusco Transport Improvement Project (P132505)**

**A. Introduction**

1. On July 16, 2020, the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) of the Cusco Transport Improvement Project (the “Project”) in Peru. The Request was submitted by two individuals who state their land is being taken without compensation to make way for an expressway – the Via Expresa Avenue – built under the Project. On November 2, 2020, the Panel received an additional signature from an individual who also claims to co-own part of this land, as well as nine signatures of brickmakers who explain that they have rented the land for several years and claim that they have been forcibly evicted without prior notification and compensation.<sup>1</sup> The brickmakers authorized their landlord, who is one of the Requesters, to represent them during the Panel process. The Requesters allege non-compliance with the Bank’s Policy on Involuntary Resettlement and lack of consultation and disclosure of information. They also raise concern about retaliation. The Requesters asked the Panel to keep their identities confidential.

2. The Panel registered the Request on September 28, 2020, and Management submitted its Response (the “Management Response”) to the Request on November 6, 2020. Due to COVID-19 and related restrictions, the Panel was not able to conduct a field visit during its eligibility assessment and adopted a virtual format to gather information for its recommendation on whether an investigation is warranted.

3. In accordance with the Panel Resolution,<sup>2</sup> the purpose of this report is to make a recommendation to the Board as to whether an investigation into the matters alleged in the Request is warranted. Based on its assessment below and considering a) the land ownership claims are a matter for the Peruvian courts and outside the Panel’s purview, b) the ineligibility of the claims of the brickmakers due to a lack of prior knowledge by Management, and c) Management’s commitment to request the Borrower to review the claims of the brickmakers to ascertain their possible eligibility, or lack thereof, to receive compensation or assistance under the Project’s Resettlement Action Plan (RAP), the Panel does not recommend an investigation.

**B. Description of the Project**

4. The Peru Cusco Transport Improvement Project (P132505) was approved on February 28, 2014, for a US\$120 million IBRD loan. The total Project cost is US\$152.6 million, and the Borrower is providing US\$32.6 million. There are no other funders. The original closing date of the Project was June 30, 2020, but it was extended to May 31, 2021. It is a Category B Project and

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<sup>1</sup> For a map showing the land in question, please see Annex 2, last page.

<sup>2</sup> The World Bank Inspection Panel, Resolution No. IBRD 2020-0004 and Resolution No. IDA 2020-0003, September 8, 2020 (the “Resolution”). Available at: <https://www.inspectionpanel.org/sites/www.inspectionpanel.org/files/documents/InspectionPanelResolution.pdf>

triggered the following safeguard policies: Environmental Assessment (OP/BP 4.01), Physical Cultural Resources (OP/BP 4.11) and Involuntary Resettlement (OP/BP 4.12). The Project was 2.5 percent disbursed at the time of receipt of the Request.

5. The Project development objective is to “*improve mobility in the east-west corridor of Cusco Provincial Municipality (San Jeronimo - Distrito de Cusco)*.”<sup>3</sup> The Project includes four components: Component 1: Integral Improvement of the Via Expresa Avenue of Cusco (US\$143 million, of which US\$112.7 million is Bank-financed); Component 2: Improvement of Mobility in Cusco Provincial Municipality (US\$3.6 million, of which US\$3 million is Bank-financed); Component 3: Institutional Strengthening and Monitoring and Evaluation (US\$4.6 million, of which US\$4.3 million is Bank-financed); and Component 4: Project management (US\$1.4 million, financed by local counterpart contributions). The Request relates to Component 1. The implementing agency is COPESCO (*Proyecto Especial Regional Plan para la Coordinación y Supervigilancia del Plan Turístico Cultural Perú-Unesco del Gobierno Regional del Cusco*; the Regional Special Project Plan for the Coordination and Supervision of the Peru-Unesco Cultural Tourism Plan of the Cusco Regional Government).

6. According to the Project Appraisal Document, Component 1 includes the following activities:

- a) Carrying out final detailed design studies for the completion of the construction of the Via Expresa Avenue and, based on the final detailed designs, carrying out civil works that comprise approximately 6.4 kilometers<sup>4</sup> of a divided roadway – with four local access lanes and four lanes for a total width of 50 meters for the purposes of improving connectivity and permeability in the surrounding urban road network for pedestrians, bicycle users and motorized vehicles.
- b) Carrying out supervision activities of the design and civil works referred to above.
- c) Providing and installing horizontal and vertical road signaling, including traffic lights and a control system.
- d) Acquiring land and providing compensation (including cash compensation and other assistance paid for involuntary resettlement) related to the implementation of the Project's RAP.<sup>5</sup>

### **C. Summary of the Request for Inspection**

7. The section below summarizes the issues raised in the Request, and the full Request is attached to this report as Annex 1. The additional signatures in support of the Request are also part of Annex 1.

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<sup>3</sup> International Bank for Reconstruction and Development Project Appraisal Document (PAD) on a Proposed Loan in the Amount of US\$120 million to the Republic of Peru for a Cusco Transport Improvement Project, January 30, 2014. (the “Project Appraisal Document” or “PAD”), p. v. Available at:

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/283521468325139031/peru-cusco-transport-improvement-project>

<sup>4</sup> The Management Response refers to a length of approximately 6.9 kilometers. Management Response, p. 2.

<sup>5</sup> PAD, p. v.



8. **Land ownership claims.** The Request alleges non-compliance with the Bank's Policy on Involuntary Resettlement and a lack of consultation and disclosure of information. The Requesters argue that the Project has taken their land without compensation for the construction of the Via Expresa Avenue. They claim that they have multiple sources of proof of their ownership of the land, including a court decision in their favor, a cadastral certificate,<sup>6</sup> a notarized registration document of the land and other records. They argue that the Bank should have reviewed these documents before deciding to finance the Project. The Requesters also allege that they lack access to information and were not consulted about the work, its impact and compensation.

9. **Alleged eviction of brickmakers/tenants.**<sup>7</sup> According to the Request, the land to be used for the Via Expresa Avenue was expropriated using tractors, more than 100 policemen, a large number of personnel from the Regional Government and the Provincial Municipality of Cusco to evict poor people who manufactured bricks as their only source of livelihood. The Requesters explain that these people, who are called "*adoberos*", lived in small shacks made of clay/brick, mats and wood with a corrugated iron roof and rented the plots to sell the bricks they manufactured. The Request explains that their houses were demolished. The Requesters state that they could not react and were paralyzed with fear of being physically attacked.

10. **Retaliation concerns.** The Requesters describe the spreading of false information about them through regional authorities, which the Requesters view as an effort to discredit and intimidate them. They also refer to a violent incident against one of them that they argue is linked to the works on the Via Expresa and their concerns with the Project.

#### **D. Summary of the Management Response**

11. The Management Response is summarized below, and the full Response is attached to this Report as Annex 2.

12. The Management Response explains that COPESCO has conducted the necessary due diligence in the preparation of the RAP to identify all Project-affected persons (PAPs) entitled to compensation. Management states that the RAP cut-off date in November 2016 was widely disseminated in the Project area and that COPESCO has engaged with the Requesters since the early stages of Project preparation and carefully reviewed their claims but that the Requesters were unable to provide satisfactory evidence of land ownership as required under national law. According to Management, the Project only required the acquisition of nine properties affected by the construction of access road lanes for the Los Libertadores roundabout and the Versailles interchange and for a bridge over the River Huatanay. Management explains that none of these properties are part of the Requesters' claims, and all but one has already been acquired. The acquisition for the last property, which includes 33 plots occupied by tenants, is still in process, but no complaints have been raised. The Management Response clarifies that no land acquisition was required for the road alignment itself.<sup>8</sup> Management further explains that the preparation

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<sup>6</sup> The Spanish name of the document is *Certificado de Búsqueda Cadastral de Propiedades*.

<sup>7</sup> This report refers to "brickmakers" or tenants" interchangeably when referring to the 9 individuals who submitted their signatures to the Panel on November 2, 2020.

<sup>8</sup> Management Response, pp. 5 and 6.

process for the RAP followed the consultation requirements of the Peruvian law and Bank safeguard policies.<sup>9</sup>

13. **Land ownership claims.** The Management Response argues that the Requesters' complaint relates to a matter of Peruvian law, and not to the application of Bank policy. According to Management, the Requesters have not been able to provide satisfactory evidence of ownership of the land as required under national law. Management explains that the Requesters and others have sought recognition of their land claims in Peruvian courts on numerous occasions over the course of 22 years, and that Peruvian courts have repeatedly rejected those claims. According to Management, it did not obtain documentation regarding lawsuits the Requesters allegedly won and which they refer to in the Request but was able to review documentation and court cases made available by COPESCO. The Management Response adds that the land in question has been used as a public road for 35 years and sales contracts presented by the Requesters were signed long after the road was built and started to be used.<sup>10</sup>

14. In Management's view, the Requesters are not Project-affected persons for the purposes of the Bank's Policy on Involuntary Resettlement and the RAP. Management explains that the Project does not require land owned by the Requesters, or land on which they reside or that they otherwise occupy, or on which they own structures or assets. Management argues that, for these reasons, the Request should be considered ineligible. Management argues that the Requesters are seeking to replace the Peruvian judicial process with an Inspection Panel investigation in order to establish their land ownership – a matter that only national courts can adjudicate.

15. **Alleged eviction of brickmakers.** The Management Response argues that the Request conflates a) evictions that did not occur in the Project area and were unrelated to the Project,<sup>11</sup> and b) a code enforcement action in the Project area that involved no structures and concerned the removal of brickmakers and materials without the use of force.

16. The Management Response explains that a code enforcement action was carried out in the Project area on September 2, 2019, and occurred without the use of force, following applicable national procedures and laws, and in the presence of Cusco's Prosecutor's Office, Cusco's Provincial Municipality Attorney's Office and the police. Management explains that the RAP had recognized 18 people in informal uses of the Project area as entitled to assistance and the process to compensate them was progressing. At least four brickmakers who continued to sell their goods in the road reserve afterward were instructed to vacate the area so that the city could then remove debris and unclaimed goods that were left behind. Management has received evidence that these brickmakers had been notified at least three weeks in advance of the code enforcement action.<sup>12</sup>

17. **Retaliation concerns.** Management explains that it takes allegation of threats or intimidation very seriously and notes that the Requesters' dispute regarding the ownership of land is longstanding and predates the Project and Request. Management explains that it has asked for

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<sup>9</sup> Management Response, p. 8.

<sup>10</sup> Management Response, p. v.

<sup>11</sup> According to Management, these evictions were carried out by authorities unrelated to the Project and occurred in a nearby area called Cerro Retamal (Zonal Park III).

<sup>12</sup> Management Response, p. vi.

the support of both regional and national authorities to help ensure that no retaliation is exerted against the Requesters and other Project stakeholders. Management also commits to continue monitoring the risk of retaliation and engage with the Peruvian authorities, as necessary.

18. In conclusion, Management is of the view that the Bank has followed the policies and procedures applicable to the matters raised in the Request. As a result, Management believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.

## **E. Panel Review of the Request and Management Response, and Eligibility Assessment**

19. Due to COVID-19 and related restrictions, the Panel was not able to conduct a field visit during its eligibility assessment and adopted a virtual format to gather information for its recommendation on whether an investigation is warranted. The methodology adopted by the Panel included several video calls with the Requesters to understand their concerns and the exact locations of the alleged impact. For this, the Requesters together with the Panel team annotated different maps on a shared screen. The Panel conducted extensive document review, assessed historical data of the past 10 years in Google Earth and reviewed numerous videos and photographs shared by the Requesters and verified the locations depicted in them through Google Maps and Google Earth, including street view images. The Panel further met with Bank Management to discuss the issues raised in the Request in detail and received several maps and other information.

20. The Panel expresses its appreciation to the Requesters for their readiness to meet several times virtually, sharing their views and providing detailed information and documentation relating to their claims. The Panel also thanks Management and the Project team for their responsiveness and readiness to share information.

21. The Panel's review is based on information presented in the Request, the Management Response, other documentary evidence, and information gathered through conversations with the Requesters and Management. The following review covers the Panel's determination of the technical eligibility of the Request according to the criteria set forth in the Panel Resolution (subsection E.1), observations on other factors (subsection E.2), and the Panel's review (subsection E.3) supporting the Panel's recommendation.<sup>13</sup>

### **E.1. Determination of Technical Eligibility**

22. The Panel is satisfied that the Request, as it relates to the claims of land ownership, meets the six technical eligibility criteria of the Panel Resolution. However, there was no prior knowledge of Management of the alleged harm to the brickmakers, and thus not all eligibility criteria are met for them. The Panel notes that its determination of technical eligibility, which is a set of verifiable facts focusing to a large extent on the content of the Request as articulated by the Requesters, does not involve the Panel's assessment of the substance of the claims made in the Request.

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<sup>13</sup> The Resolution, paras. 13-15 and 29.

- Criterion (a): *“The affected party consists of any two or more persons with common interests or concerns and who are in the borrower’s territory.”* The Request was initially submitted by two people who claim to own land affected by the Via Expresa Avenue in Cusco, Peru. On November 2, 2020, the Panel received an additional signature of an individual who also claims to co-own part of this land, as well as nine signatures of brickmakers who explain that they have rented land from one of the Requesters for several years and claim that they have been forcibly evicted without prior notification and compensation. The Panel therefore considers this criterion met.
- Criterion (b): *“The Request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the Requester.”* The initial Requesters and one of the later signatories claim that their land is being taken for the Via Expresa Avenue, constructed under the Project, without compensation. The Panel notes Management’s view that *“the Requesters are not Project-affected parties – the Project does not require land owned by the Requesters, or land on which they reside or otherwise occupy, or on which they own structures or assets. For these reasons, the Request should be considered ineligible for Panel review.”*<sup>14</sup> However, since the Requesters assert harm caused by the Project, the Panel does not agree with Management on the lack of eligibility of the Request regarding the land ownership claims. The brickmakers claim that they have been forcibly evicted from a part of this land they were renting for several years without prior notification and compensation. The Panel is thus satisfied that this criterion is met.
- Criterion (c): *“The Request does assert that its subject matter has been brought to Management’s attention and that, in the Requester’s view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.”* The Requesters shared with the Panel communications with Bank staff from early 2020. These exchanges concerned questions around the ownership of the land to be used by the Project and the Requesters’ pursuit of judicial processes to prove ownership. The Panel understands that the Bank’s Grievance Redress Service had registered a complaint on the same Project and land dispute several months prior to the receipt of the Request. The Panel is thus satisfied that this criterion is met for the land ownership claims.

With regard to the alleged harm to the brickmakers/tenants, the Panel understands that there had not been prior contact with the Bank regarding this issue, and thus this criterion is not met for them. During the Panel’s eligibility assessment and after receipt of additional signatures from the brickmakers/tenants, the Panel and Management engaged on this issue and Management agreed that it would ask the Borrower to review their claims to ascertain their possible eligibility to receive compensation or assistance under the RAP.

- Criterion (d): *“The matter is not related to procurement.”* The claims do not raise issues of procurement and thus this criterion is met.

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<sup>14</sup> Management Response, p. v.

- Criterion (e): “*The related loan has not been closed or substantially disbursed.*” At the time of receipt of the Request, the Project was 2.5 percent disbursed and the closing date was set as May 31, 2021. Therefore, this criterion is met.
- Criterion (f): “*The Panel has not previously made a recommendation on the subject matter or, if it has, that the Request does assert that there is new evidence or circumstances not known at the time of the prior Request.*” The Panel has not made a recommendation on the issues raised in the Request, and thus this criterion is met.

## E.2. Panel Observations Relevant to its Recommendation

23. In making its recommendation to the Board and in line with its Operating Procedures, the Panel considers the following:

- whether there is a plausible causal link between the harm alleged in the Request and the project;
- whether the alleged harm and possible non-compliance by the Bank with its operational policies and procedures may be of a serious character; and
- whether Management has dealt appropriately with the issues or has acknowledged non-compliance and presented a statement of remedial actions that address the concerns of the Requesters.

24. Below, the Panel records its preliminary observations on the alleged harm and compliance, noting that in doing so it is not making any definitive assessment of the Bank’s compliance with its policies and procedures and any adverse material effect this may have caused.

25. **Land ownership claims.** The Requesters who claim ownership of land used by the Via Expresa Avenue are members of two families. The Panel learned that their parents jointly acquired the land in question in 1997. According to the Requesters, it consists of 41,823 m<sup>2</sup>, referred to as Granja Pachacutec in the sector of Quispiquilla, district of San Sebastián in the province of Cusco. The Panel received several documents from the Requesters in relation to this land.<sup>15</sup> The Panel understands that the transfer of this land to the Requesters’ families was recorded through a public deed notarized by Cusco’s Regional Government. This document mentions that the land had already been earmarked for acquisition to be used in the expansion of the Via Expresa Avenue. The Requesters claim that at that time, the land had not been expropriated and no compensation had been paid for it. This public deed also notes that the municipality stated in December 1996 that it would proceed with the expropriation at an opportune time, and that at that time, the government did not consider the improvement of the expressway a priority.<sup>16</sup> The Panel notes Management’s argument that the buyers were aware of the fact that the land was mostly in public use for the road and evidently were considering the possibility of securing compensation retroactively at the time of the purchase.<sup>17</sup>

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<sup>15</sup> These include: 1997 – Property Land Title; 2009 – Cusco’s Superior Court of Justice Sentence on the land division and partition; 2020 - Property Registration - Certificate for Cadastral Search of Properties.

<sup>16</sup> 1997 – Property Land Title.

<sup>17</sup> Management Response, p. 6.

26. The Requesters explained to the Panel that in 2009 a civil process regarding the division and partition of the land was processed and the judge divided the land in two fractions: 50 percent of the land belonging to the family of two Requesters; and the remaining 50 percent to the other Requester's family. According to the Requesters, the land has not been subdivided among the heirs and there are no clear demarcations. The Requesters informed the Panel that none of the property owners reside on the property and that no structures have ever been built on this land.

27. One of the Requesters claims to own additional land of 9495.57m<sup>2</sup> and shared several documents in relation to this land with the Panel.<sup>18</sup> The Requester does not reside on this land but rather uses it as a source of income. For the past 10 years, this land, located in the footprint of the Via Expresa Avenue, has been rented out to brickmakers who lived there and produced and sold bricks, as further discussed below. The Requester claims to have paid property taxes for this land, as well as water and electricity bills. The Panel learned that in 2011 the Requester donated a fraction of this land (4279.09m<sup>2</sup>) to the municipality to be used for the expansion of the expressway.

28. While the Requesters claim to have won lawsuits recognizing their ownership of the land, the Panel was not able to confirm those claims based on the information received. The Panel understands that COPESCO has engaged with the Requesters since early Project preparation,<sup>19</sup> but determined that they were not able to show satisfactory evidence of land ownership as required under national law. The Management Response summarizes several court cases, including a May 2013 Civil Court ruling, a September 2019 Arbitral Court ruling, a June 2020 Supreme Court ruling, and an October 2020 Civil Court ruling. The Panel notes Management's conclusion that none of these cases confirmed the Requesters' land ownership claims. The Management Response also refers to the dismissal of a claim filed by the Cusco Regional Government in August 2019 to suspend judicial cases related to the Via Expresa. According to Management, this ruling established that all claims to land ownership must be reviewed and adjudicated by competent courts. Management explains that this was a procedural ruling that rejected the government's attempt to suspend the adjudication of such claims, but it did not examine the merits of the claims of the Requesters (and others) and did not recognize any ownership claims to land.<sup>20</sup> The Management Response includes detailed summaries of these cases.<sup>21</sup> The Management Response also explains that the Requesters and others, including the widow of the original owner, have overlapping land claims and sued each other several times to annul the sales contracts, and some of these cases are still pending.<sup>22</sup>

29. The Panel understands from the Management Response that at least two additional lawsuits were recently filed by the Requesters, in which they seek to be recognized as PAPs under the

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<sup>18</sup> The Requester provided the following documents: 1997 – Public Deed of Purchase; 2008 - Certificate of Possession; 2011 – Property Registration, 2011 – Map of Property stamped by the Municipality, 2012 – Public Deed of Donation, 2013 - Judgment of Better Property Law, 2020 - Property Tax - Self-Assessment.

<sup>19</sup> In April 2012, COPESCO acknowledged and summarized documents received by the Requesters, and noted that the validity of these documents should be determined by the judicial branch and that there are rules to define the prevalence of one document over the other. In July 2017, one of the Requesters wrote to COPESCO identifying the property owners affected by the Project.

<sup>20</sup> Management Response, p. 10.

<sup>21</sup> See Management Response, p. 9 and Annex 2.

<sup>22</sup> Management Response, p. 16.

Project and seek to have a court order on the government to initiate an expropriation process regarding the land on the Via Expresa so that they can obtain compensation. According to Management, these lawsuits are in process and could possibly take years to fully resolve.<sup>23</sup>

30. **Alleged eviction of brickmakers.** During its eligibility assessment, the Panel received the signatures of nine brickmakers in support of the Request. The Panel spoke to three of them in a video call. They explained that they rented land in front of the business *Grupo Palomino*, in the middle stretch between the lanes of the Via Expresa. Two of them told the Panel that they have been there since 2013, and the third one since 2010. They told the Panel that they had signed renewable biennial contracts for the lease of the land and paid monthly fees. The Panel received copies of a number of these contracts, some of which are dated 2012. These contracts refer to an area of approximately 800m<sup>2</sup> of land to produce bricks and authorized the tenants to use the soil and water. The brickmakers the Panel spoke to explained that their livelihood is based on producing and selling bricks. All of them claimed that this was the only source of income for their families.

31. The brickmakers explained that they lived right next to where they produced and sold the bricks. They told the Panel that they had small, simple clay houses, where they stayed with their partners, some also with children or older parents. The Panel notes that two videos it received from the Requesters show three small, precarious structures in the middle of the road next to the bricks on display.



Figure 1 - Google Street view of the Via Expresa Avenue with bricks on display in the center of the lanes, 2013.

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<sup>23</sup> Management Response, p. 10.





*Figure 2 - Print Screen of Video sent by a Requester, showing a structure in the middle of the Via Expresa Avenue in the same location as the bricks above, September 2019.*

32. In its conversations with the Panel team, the brickmakers described the day of their eviction, which they claim took place on September 2, 2019. According to them, they were awakened in the early morning, around 5 a.m., when heavy machinery and many policemen arrived at the site. They explained that they were told to leave immediately and were not given time to salvage their belongings. The brickmakers told the Panel that their houses were destroyed, and their bricks and construction materials were taken away. Some of the brickmakers are now without work or with unstable and irregular work opportunities, and some are homeless. When asked about their current homes, they explained that some moved to nearby villages or stayed with family or acquaintances. The brickmakers also told the Panel that they knew about the works on the Via Expresa Avenue, but were not aware that they had to leave, and had not received prior notice about the eviction.

33. The Requesters shared more than 200 pictures and 20 videos with the Panel that they explain serve as evidence of the forceful eviction. The Panel has reviewed them and notes that they show construction machinery and police officers in the stretch of land the Requesters claim to co-own. One video shows a person retrieving items from a small structure in the presence of police, who urge him to leave to protect himself from the imminent demolition. Other videos the Panel received show brickmakers loading bricks onto a truck in one area, and construction vehicles destroying and removing bricks in the presence of police nearby. Several pictures also show piles of bricks being destroyed and removed, as well as small structures.

34. The Management Response states that there are no adobe houses with metal roofs or other structures in the Project area, and none of the brickmakers or other individuals had erected habitable houses or structures on the claimed land. Management explains that, according to the RAP and Project supervision, the Project area is occasionally and on a seasonal basis occupied by mobile service providers/vendors, including brickmakers who display and sell their bricks in the median of the Via Expresa Avenue. Management also notes that as part of the consultation process during the preparation of the RAP, some brickmakers who were selling their products in the road reserve mentioned that they were renting from one of the individuals claiming land ownership of the area through a verbal arrangement. According to Management, the Requesters did not identify



themselves as landlords or raise the issue of rental income throughout the RAP process or in any written submissions. The landlord also did not raise the rental arrangements during RAP consultations.<sup>24</sup>

35. The RAP identified 18 PAPs eligible for resettlement assistance for their informal economic activities in the right of way of the Via Expresa Avenue. Those who occupied the area after November 2016, which is the RAP's cut-off date, are not eligible for assistance. Of the 18 PAPs, eight are car washers and 10 are brickmakers, and they are entitled to training to support them finding alternative means of livelihood and cash compensation equivalent to six months' minimum wage.<sup>25</sup> According to Management, two car washers have already been provided their resettlement assistance and another five recently accepted the assistance offered under the RAP. Management further states that the 10 brickmakers have also accepted the RAP's resettlement assistance. The Management Response explains that the RAP is still under implementation.<sup>26</sup> According to Management, four of the brickmakers continued to sell goods in the road reserve and were instructed to vacate the area so debris and unclaimed goods could be removed.

36. As described above, Management argues that while an eviction took place in a nearby but different area, which was unrelated to the Project, a code enforcement action took place in the Project area on September 2, 2019. Management states that this code enforcement action involved no structures. According to Management, the code enforcement action concerned the removal of brickmakers and materials and did not involve the use of force. The Bank reviewed publicly available videos of this action that support the government statement that no force was applied, and due process was followed. Management explains that it received evidence that the brickmakers had been notified at least three weeks in advance of this event.<sup>27</sup> Management explains that it is aware of a number of similar code enforcement actions conducted by the municipalities of Cusco around the same period, some of which involved the destruction of houses, but further explains that they were not located in the Project area, were not requested or needed by the Project, and not linked to it in any way.<sup>28</sup>

37. The Panel notes that, according to the Management Response, the Project Implementation Unit (PIU) "*continues to make every effort to reach all persons entitled to compensation, (...) identified in the RAP*", and the Bank sent a letter to COPESCO on October 9, 2020, requesting that the compensation process be accelerated for the brickmakers and car washers identified in the RAP. According to Management, the PIU met with mobile service providers and published information widely to explain the different entitlements and how to claim them. Management further explains that a grievance redress mechanism is in place. It includes a complaints box in COPESCO's offices and in the Project area, a website, an email, and a WhatsApp account, but no complaints have been filed to date by or in relation to the mobile vendors/service providers in the Project area regarding the process or amount of assistance.<sup>29</sup>

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<sup>24</sup> Management Response, p. 6.

<sup>25</sup> Six months minimum wage is Peruvian Sol (PEN) 5,580 or US\$1,548. Management Response, pp. 6 and 7.

<sup>26</sup> Management Response, pp. 6 and 7.

<sup>27</sup> Management Response, p. 11.

<sup>28</sup> Management Response, p. 10 and 11.

<sup>29</sup> Management Response, p. 7.

38. **Retaliation concerns.** The Panel notes that the Requesters have continuously reported they face a high degree of retaliation for raising their concerns. They claim they were and continue to be publicly intimidated by the local authorities with harassment, such as verbal and cyber threats. The Requesters claim local authorities have been using social media and television to spread misinformation and defame them as well as their businesses, creating an environment of hostility where the Requesters fear for their safety. Also, according to the Requesters, government authorities have publicly disclosed and discussed sensitive information regarding the Project status and the Requesters' families. One of the Requesters claims to have suffered threats and a physical attack which all the Requesters believe to be related to the Project.<sup>30</sup>

39. In response to the Requesters' concerns, Management noted that the dispute between government and the Requester is a longstanding one and precedes the Project and the Request for Inspection. Management also noted that the Requesters have been using public fora to communicate their views about the Project, which reportedly has triggered negative comments from other social media users. Management stated it condemns the use of threats and defamatory comments by social media users against any Project stakeholders. According to Management, there are no indications that Project staff were involved in posting defamatory or threatening content on social media.

40. The Panel notes Management's assertion that it takes seriously any allegation of retaliation or intimidation in the context of Bank-supported projects. Management explains that it has reviewed the recordings of public consultation events and did not note any signs of threats or hostilities. Management has also reviewed publicly available video footage of the code enforcement action that took place on September 2, 2019, in the Project area, and notes that there is no discernible use of violence of any kind. Management also explains that it has explicitly requested the Cusco Regional Government to proactively remind all implementing agency staff of the Bank's zero-tolerance policy for retaliation. The Panel notes that Management has discussed ensuring that no retaliation is exerted against the Requesters and other Project stakeholders at the highest level of regional and national government and will continue monitoring the situation and involve Peruvian authorities as needed.<sup>31</sup>

### **E.3. The Panel's Review**

41. The Panel acknowledges the serious concerns of the Requesters and appreciates their submissions and the productive discussions with them, as well as the trust they have placed in the Panel's process. The Panel also acknowledges Management's detailed response to the issues raised in the Request and willingness to provide further information.

42. With regard to the land ownership claims of the Requesters, the Panel observes that this land dispute long precedes the Project. As noted above, the Requesters and others have sought to have their land claims recognized in national courts for more than 22 years. The Panel notes that COPESCO has been aware of the Requesters' claims since early Project preparation and has engaged with them but determined that they were not able to produce satisfactory evidence of land

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<sup>30</sup> Several news outlets report that a fake robbery occurred in 2018 and acid was thrown at one of the Requesters' face.

<sup>31</sup> Management Response, p. 12.

ownership. The Panel further understands that there are pending court cases that were initiated by the Requesters, and Management commits to continue monitoring the outcome of ongoing legal actions as well as their eventual implications for the Project.<sup>32</sup> The Panel is of the view that the Requesters' claims of land ownership are a matter for the Peruvian courts, as the determination of land ownership under national law is outside the Panel's mandate.

43. The Panel observes that the Requesters who claim land ownership do not live on the land in question, which is located in the right of way of a public road that has been used for many years. They also do not have any structures on this land or derive livelihood from it, except for one of them through the collection of rental income from the brickmakers/tenants.

44. With regard to the brickmakers who rented land from one of the Requesters in the middle of the Via Expresa Avenue for the production and sale of bricks, the Panel notes that there is a potential livelihood impact on poor and vulnerable individuals. While there had been no prior knowledge by Management of this issue before the Panel's process, the Panel and Management engaged on this issue and Management informed the Panel in writing of its commitment to request the Borrower to review the claims of these individuals to ascertain their possible eligibility, or lack thereof, to receive compensation or assistance under the Project's RAP. Management explained in its note to the Panel that in order for Bank Management to follow up on these claims with the Borrower, the brickmakers should a) contact Bank Management directly (through the Project's task team leader or Grievance Redress Service); b) share their information via the Panel; or c) raise their concern through the Project's Grievance Redress Mechanism. Management noted that once the brickmakers have put forward their claims and accompanying evidence through one of these channels, Bank Management would be able to promptly support the Borrower in reviewing the validity of these claims, per the RAP, and, if valid, ask that the Borrower proceed with providing the individuals with their benefits under the RAP. Management would inform the Panel within six months' time from having received the information required for the above-cited review.

45. Management in its note to the Panel also explained that since some individuals have expressed concern about potential retaliation, Bank Management would be willing to reiterate such concerns with the Borrower, emphasizing that the Bank does not tolerate retaliation against Project-affected persons who choose to use the Bank's avenues for grievance redress. Management stated that it has already conveyed this to the Borrower on numerous occasions in the last months, both in writing and orally.

## **F. Recommendation**

46. The Panel notes that the Requesters and the Request, as they relate to the claims of land ownership, meet the technical eligibility criteria set forth in the Panel Resolution. However, there was no prior knowledge of Management of the alleged harm to the brickmakers, and thus their claims are not eligible for Panel review.

47. Considering a) the land ownership claims are a matter for the Peruvian courts and outside the Panel's purview, b) the ineligibility of the claims of the brickmakers due to a lack of prior

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<sup>32</sup> Management Response, p. 10.

knowledge by the Bank, and c) Management's commitment to request the Borrower to review the claims of the brickmakers to ascertain their possible eligibility, or lack thereof, to receive compensation or assistance under the Project's RAP, the Panel does not recommend an investigation.

48. The Panel notes Management's commitment to inform the Panel within six months' time from having received the information required for the review of the situation of the brickmakers.

49. The Panel notes that this recommendation does not preclude the possibility of a future Request for Inspection based on new evidence or circumstances not known at the time of the current Request.

50. If the Board of Executive Directors concurs with this recommendation, the Panel will advise the Requesters accordingly.

# **Annex I**

## **Request for Inspection**



# **Request for Inspection**

## **(in Spanish)**



## FORMULARIO DE DENUNCIA (SOLICITUD DE INSPECCION)

### Destinatario:

A la Secretaria Ejecutiva, Panel de Inspección, Banco Mundial, MSN: MC 10-1007

Dirección postal: 1818 H St., NW, Washington, DC 20433, USA. Facsimil +1(202)-522-0916. Email: [ipanel@worldbank.org](mailto:ipanel@worldbank.org)

### Primera Parte: Denuncia

1. Que tipo de daño o perjuicio cree que ha causado o podría causar a Ud o a su comunidad el proyecto financiado por el Banco Mundial? Por favor describa en detalle las razones.

Ni el Gobierno Regional Cusco, ni el PER plan COPESCO, nó nos pagaron lós [REDACTED] m2 del terreno, a los propietarios , [REDACTED] Este terreno esta segun el Certificado de Busqueda Catastral de Propiedades inmuebles existe, lo cual le anexo al presente reclamo.

El Banco Mundial nos causa daño, porque antes de liberar el financiamiento, el BID eberia de haber sido responsable de revisar minuciosamente los contratos, revisar la entrega del terreno , donde se ejecutará la Obra, libre de cualquier interferencia que pueda afectar el desarrollo de dicha obra.

Ni COPESCO, ni el Gobierno Regional de Cusco, tienen la disponibilidad del terreno , este terreno no ha sido expropiado, ni liberado, tampoco ha sido cedido al estado. Tampoco poseen los respectivos Títulos de propiedad del terreno, los cuales ilegalmente pretende apropiarse . ¿Porque? el funcionario del Banco Mundial , no revisaron , no vieron . ¿Porque El Banco Mundial liberó el dinero para esta obra, Sabiendo que no cumplian los requisitos?

Siendo asi, un Juez podria paralizar la obra pretendida con los consiguientes perjuicios para el Banco Mundial, para el estado peruano y para el Gobierno Regional.

- 2.Cuál es el nombre del proyecto del Banco Mundial (en caso que lo sepa)?

PE Cusco Transport Improvement Project ID P132505 Notice No OP00032446 Borrower Bid Reference SBCC 002-2015 CONTRATO DE PRÉSTAMO 8339-PE

3. Dónde se localiza el proyecto del Banco Mundial? (favor detallar el nombre del país)?

Ciudad CUSCO - pais PERU

4. Habita Ud en el área del proyecto?

[REDACTED]

5. A manifestado con anterioridad sus inquietudes a la Gerencia del Banco Mundial? Si su respuesta es afirmativa, favor indicar cuando se realizó y explicar las razones del por qué no quedó satisfecho con la respuesta proporcionada por la Gerencia del Banco Mundial.

Si , hemos manifestado queja por 1ra vez el [REDACTED] de 2020, [REDACTED] Banco Mundial [REDACTED] con abundante documentación. [REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

Sabemos que existe normas, políticas, del Banco Mundial; las cuales recomiendan que el Gobierno Regional en este caso actue sin agresividad y converse pacíficamente en la solución de los problemas para liberar los áreas y terrenos en los que se tengan que construir las obras. Todo esto fue incumplido y lo viene incumpliendo burda y sagazmente El BID.

6. Favor indicar cuáles serían los procedimientos operacionales que según Ud no se han seguido.

[REDACTED]

No han considerado las salvaguardas sociales, pues según el Banco Mundial, la parte social se conversa, jamás se litiga y al haberse declarado mediante sentencia judicial IMPROCEDENTE la demanda del Gobierno Regional, entonces han dejado abiertas las puertas del poder judicial para que nosotros continuemos litigando reclamando nuestros derechos ante los jueces del Perú. Es decir ya hay un problema judicial, que en tanto no se resuelvan nuestras denuncias, el terreno de la Vía Expresa no está liberada y uno de los requisitos para ejecutar el proyecto es que el polígono debe de estar liberado sin ningún problema y peor aun de orden judicial.

Es decir Copesco, el Gobierno Regional, el Proder y el BID nos han maltratado permanentemente, al no haber solucionado por la vía pacífica, cumpliendo las salvaguardas Sociales del Banco Mundial.

Los terrenos de la Futura Vía Expresa fueron liberados usando tractores, más de 100 policías, gran cantidad de personal del Gobierno Regional y del Municipio Provincial del Cusco para DESALOJAR a las humildes personas que fabricaban adobes, cuyo único sustento era ese trabajo. Este forzado desalojo lo hizo en forma conjunta Copesco, la Municipalidad Provincial del Cusco, Copesco y el PRODER.

El director Ejecutivo de Copesco miente cuando dicen cuando dicen que las Municipalidades distritales aledañas han liberado pacíficamente el área para esa vía vehicular. Falso, porque lo que han hecho es violar las políticas de salvaguarda social del Banco Mundial. Inclusive con presencia del Gobernador Regional de Cusco.

Copesco al haber permitido la intervención de tractores, policías y matones para liberar la vía vehicular; ha incumplido las normas del Banco Mundial y peor aun ha hecho incurrir al municipio Provincial del Cusco en malversación de fondos del estados. Inclusive el Gobierno Regional y Copesco han incurrido en el delito penal de malversación de fondos, pues el uso de maquinarias, combustible y horas hombre no estaba presupuestado.

De acuerdo al Contrato de préstamo entre la república del Perú y el Banco Internacional de Reconstrucción y fomento, firmado el 24 de julio del año 2014, préstamo N° 8339-PE; previamente al comienzo de las obras civiles de el Proyecto, el Prestatario debe instar al Gobierno Regional del Cusco, actuando a través de PER Plan COPESCO, a asegurar que:

Toda adquisicion de terreno requerido para las obras civiles debe haber sido concluída y dicho terreno deberia estar libre de gravámenes y listo para ser entregado al licitador ganador, todo de manera aceptable para el Banco. PERO ESO NO SE HÁ HECHO.

Segun el mencionado contrato del BIRF para iniciar con la ejecucion del proyecto, debe cumplirse el acuerdo del contrato de prestamo N° 8339-PE, de lo contrario NO SE PUEDE INICIAR CON LA LICITACION DE OBRA NI CON LA PRESENTACION DE PROPUESTAS DE LOS POSTORES PARA LA EJECUCION DE LA OBRA.

7. Favor indicar si cree que va a ser objeto de alguna forma de represalia o amenaza por presentar la denuncia al Panel de Inspección?

SI, ES MUY CLARO QUE ELLOS VAN A TOMAR REPRESALIAS CONTRA NOSOTROS.

1. El gobierno Regional a publicado un reportaje en contra de [REDACTED] [REDACTED] Diciendo que yo probablemente no cumplia con las normas del estado. Mi temor es que continuen tomando represália con nuevos informes periodisticos pagados en contra [REDACTED] que nada tienen que ver con el Gobierno Regional. Lo cual me anula economicamente y me desprestigia seriamente con mis clientes.
2. [REDACTED]
3. En nuestros terrenos el PER PLAN Copesco y el Gobierno Regional, en forma violenta han maltrato a lós que ocupan lós terrenos, gente pobre que vivia en pequenas casuchas de esteras de adobe y madera con techo de calamina, quienes son los llamados ADOBEROS y que nos alquilaban los terenos para vender han sido desalojados com acciones violentas, usando tractores, matones, 100 policías, 2 coroneles de la Policia Nacional, derrubando viviendas, maltratando a la gente pobre que se dedicaban a fabricar adobes en los térrenos de nuestra propiedad, violando las políticas de salvaguardia social del Banco Mundial, inclusive con la prescencia del gobernador Regional y el Alcalde del Cusco. Ayudados por cientos de personas que habian sido convocados por el Gobierno Regional, cientos de trabajadores y gente adiestrada con el fin de amedrentarnos. Nosotros simplemente no pudimos reaccionar y nos quedamos paralizados con el miedo a ser agredidos fisicamente.



## Segunda Parte: Datos de contacto

8. Es Ud el demandante o un representante de los demandantes?

Demandante: XXX SI      Representante del demandante o comunidad afectada: ☐

9. Desea mantener su nombre e información personal en forma confidencial? *(El Panel de Inspección no divulgará su identidad a nadie sin su previo consentimiento)*      Si XXX confidencial      No ☐

10. Nombre y Apellido de los Demandantes (se requieren dos nombres y sus firmas como requisito mínimo):

Demandante No. 1	Demandante No. 2
Nombre y Apellido <input type="text"/>	Nombre y Apellido <input type="text"/>
Dirección <input type="text"/> <input type="text"/> <input type="text"/>	Dirección <input type="text"/>
Teléfono <input type="text"/>	Teléfono <input type="text"/>
Email <input type="text"/>	Email <input type="text"/>

11. Nosotros, los suscritos, autorizamos al Panel de Inspección del Banco Mundial a investigar los hechos detallados en esta solicitud.

Firmas *(Para firmas adicionales, favor adjuntar como documento anexo):*

Two signatures were provided to the Inspection Panel in a separate document.

### NOTES:

- Favor adjuntar documentos de apoyo si los tiene disponibles.
- Si necesita asistencia para completar el formulario, favor contactar al Panel de Inspección a través de nuestro email [ipanel@worldbank.org](mailto:ipanel@worldbank.org) or por teléfono al: +1-202-458-2000.

# **Request for Inspection**

## **(in English)**



**THE WORLD BANK**  
IBRD • IDA | WORLD BANK GROUP

## COMPLAINT (REQUEST FOR INSPECTION) FORM

### To:

The Executive Secretary, The Inspection Panel, The World Bank, MSN: MC 10-1007  
1818 H St., NW, Washington, DC 20433, USA. Fax: +1(202)-522-0916. Email: [ipanel@worldbank.org](mailto:ipanel@worldbank.org)

### Section 1: Complaint

1. What harm do you believe the World Bank-financed project caused or is likely to cause to you or your community? Please describe in as much detail as possible.

Neither the Cusco Regional Government, nor the PER COPESCO plan, [REDACTED] m2 of land. According to the Certificate of Real Estate Cadastral Search, this land exists, this certificate is attached to this claim.

The World Bank causes us harm, because the Bank should have been responsible for carefully reviewing the contracts and the release of the land where the Project would be executed before releasing the financing, free of any interference that may affect the development of said work.

Neither COPESCO, nor the Regional Government of Cusco, have the availability of the land, this land has not been expropriated, nor released, nor has it been ceded to the state. Neither do they possess the respective property titles for the land, which they illegally intend to appropriate. Why? the World Bank staff didn't check, didn't see. Why did the World Bank release the money for this project? knowing that they did not meet the requirements?

This being the case, a Judge could paralyze the intended work with the consequent damages for the World Bank, the Peruvian state and the Regional Government.

2. What is the name of the World Bank project? (If known)

PE Cusco Transport Improvement Project ID P132505 Notice No OP00032446 Borrower Bid  
Reference SBCC 002-2015 Lending Contract 8339-PE

3. Where is the World Bank project located? (Please include country name)

City of CUSCO - Country PERU

4. Do you live in the project area?

[REDACTED]

5. Have you previously reported your concerns to World Bank management? If yes, please provide the details about those communications and explain why you are not satisfied with the Bank's action in response.

Yes, we have made a complaint for the first time on [REDACTED] 2020, to the [REDACTED] World Bank [REDACTED], with abundant documentation.

We know that there are rules, policies, of the World Bank; which recommend that the Regional Government in this case act without aggressiveness and converse peacefully in the solution of the problems to free the areas and lands in which the works have to be built. All of this was not complied with and has been rudely and sagasically not complying with The IDB



6. If known, please list the World Bank's operational procedures you believe have not been followed.

[REDACTED]

They have not considered the social safeguards, because according to the World Bank, the social part is discussed, never litigated and since the demand of the Regional Government has been declared by an IMPROPER judicial sentence, therefore they have left the doors of the judiciary open for us to continue litigating claiming our rights before the judges of Peru. In other words, there is already a legal problem, that for as long as our complaints are not resolved, the land of the Via Expresa is not released and one of the requirements to execute the project is that the polygon must be released without any problem, or worse yet, no court order.

In other words, Copesco, the Regional Government, Proder and the Bank have permanently mistreated us, by not having solved by peaceful means or complying with the Social safeguards of the World Bank.

The lands of the Futura Via Expresa were expropriated using tractors, more than 100 policemen, a large number of personnel from the Regional Government and the Provincial Municipality of Cusco to EVICT the humble people who manufactured clay/bricks, whose only livelihood was that job. This forced eviction was carried out jointly by Copesco, the Provincial Municipality of Cusco, Copesco and PRODER.

The Executive Director of Copesco lies when he says that the neighboring district municipalities have peacefully evicted the area for this vehicle route. False, because what they have done is to violate the World Bank's social safeguard policies. Even with the presence of the Regional Governor of Cusco.

Copesco, by allowing an intervention with tractors, policemen and thugs to expropriate the vehicular road; has not complied with the norms of the World Bank and even worse has caused the Provincial Municipality of Cusco to misappropriate state funds. Furthermore, the Regional Government and Copesco have incurred the criminal offense of embezzlement, since the use of machinery, fuel and man-hours was not budgeted.

According to the loan contract between the Republic of Peru and the International Bank for Reconstruction and Development, signed on July 24, 2014, loan No. 8339-PE; Prior to the beginning of the civil works of the Project, the Borrower must urge the Regional Government of Cusco, acting through PER Plan COPESCO, to ensure that:

All acquisition of land required for civil works must have been completed and said land should be free of encumbrances and ready to be issued to the winning bidder, all in a manner acceptable to the Bank. BUT THAT HAS NOT BEEN DONE.

According to the aforementioned IBRD contract in order to start the execution of the project, the agreement of the loan contract No. 8339-PE must be fulfilled, otherwise IT CANNOT BEGIN THE BID OF WORK OR THE SUBMISSION OF PROPOSALS FROM THE BIDDERS FOR THE EXECUTION OF THE WORK.

7. Do you expect any form of retaliation or threats for filing this complaint to the Inspection Panel?

YES, IT IS VERY CLEAR THAT THEY ARE GOING TO RETALIATE AGAINST US.

1. The Regional government has published a report against the [REDACTED] [REDACTED] [REDACTED]. Saying that I probably didn't meet state standards. My fear is that they will continue to retaliate with new paid journalistic reports against [REDACTED] that have nothing to do with the Regional Government. Which harms me economically and seriously discredits me with my clients.
2. [REDACTED]
3. In our lands, PER PLAN Copesco and the Regional Government have violently mistreated those who occupy the lands, poor people who lived in small shacks made of clay/brick mats and wood with a corrugated iron roof, who are called ADOBEROS and who rented the plots from us to sell the bricks they manufactured have been evicted with violent actions, using tractors, thugs, 100 policemen, 2 colonels of the National Police, demolishing houses, mistreating poor people who were engaged in making adobes on the land of our property, violating the social safeguard policies of the World Bank, even with the presence of the Regional Governor and the Mayor of Cusco. Helped by hundreds of people who had been summoned by the Regional Government, hundreds of workers and trained people in order to intimidate us. We simply could not react, and we were paralyzed with the fear of being physically attacked.

## Section 2: Contact Information

8. Are you complainants or a representative of complainants?

Complainants: ☒ Representing a complainant or community: ☐

9. Would you like your name and contact details to be kept confidential? (*The Inspection Panel will not disclose your identities to anyone without your prior consent.*) Yes ☒ No ☐



10. Complainants' Names (Minimum two names and signatures are required):

Complainant 1		Complainant 2	
Name	<input type="text"/>	Name	<input type="text"/>
Address	<input type="text"/> <input type="text"/> <input type="text"/>	Address	<input type="text"/> <input type="text"/>
Phone	<input type="text"/>	Phone	<input type="text"/>
Email	<input type="text"/>	Email	<input type="text"/>

11. We, the undersigned, request the Inspection Panel to investigate the issues described above.

Signatures (*More signatures can be sent as an attachment document*):

<input type="text"/>	<input type="text"/>
----------------------	----------------------

NOTES:

- Please attach supporting documents, if available.
- If you have any difficulty in completing the form, please contact the Inspection Panel at [ipanel@worldbank.org](mailto:ipanel@worldbank.org) or by phone: +1-202-458-5200.



## **Additional Signatures**

Firma de Solicitud de Inspección

Yo, [REDACTED] Con DNI N° [REDACTED] domiciliada en [REDACTED] distrito de San Sebastián, provincia y región del Cusco; quisiera suscribir la Solicitud de Inspección relacionada a el proyecto de Mejora de Transporte Perú, Cusco (P 132505), presentada al Panel el 16 de Julio del 2,020 como solicitante adicional. Por favor, mantener mi identidad confidencial.

12 de Noviembre del 2020

FECHA

Asimismo adjunto la relación de mis inquilinos/adoberos; quienes suscriben el presente documento adhiriéndose a la Solicitud de Inspección del Proyecto Mejora de Transporte Perú, Cusco (P 132505); los que solicitan, también, que su identidad se mantenga en reserva y ser representados en el presente proceso por mi persona.

NOMBRE

DNI

FIRMA

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

Unofficial Translation

### Request for Inspection - Additional Signatures

I, [REDACTED], with the ID number [REDACTED], residing in [REDACTED], [REDACTED], province and region of Cusco; would like to sign on to the Request for Inspection related to the Peru - Cusco Transport Improvement Project (P132505) presented to the Panel on July 16th, 2020. Please maintain my identity confidential.

November 12<sup>th</sup>, 2020.

Signature

Date

Likewise, I attach a list of tenants/brickmakers; who sign the present document joining the Request for Inspection Request for Inspection of the Peru - Cusco Transport Improvement Project (P132505); they further request, their identity remain private and that they be represented by me.

NAMES

ID

## SIGNATURES

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.



# **Annex II**

## **Management Response**





**MANAGEMENT RESPONSE TO  
REQUEST FOR INSPECTION PANEL REVIEW OF THE  
PERU: CUSCO TRANSPORT IMPROVEMENT PROJECT (P132505)**

Management has reviewed the Request for Inspection of the Peru: Cusco Transport Improvement Project (P132505), received by the Inspection Panel on July 16, 2020 and registered on September 28, 2020 (RQ20/02). Management has prepared the following response.

October 26, 2020



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### **Map**

Map 1. IBRD No. 45374

### **Annexes**

- Annex 1. Claims and Responses
- Annex 2. Summary of Lawsuits and Arbitration Processes

### **Photographs**

- Photo 1: Road reserve claimed by the Requesters (land and buildings on the left and the right of the road reserve are not included in the claim) (November 15, 2019)
- Photo 2: Car washers using the road reserve for their services (August 21, 2019)
- Photo 3: Brick maker being advised of the compensation options under the RAP (October 16, 2020)

## ABBREVIATIONS AND ACRONYMS

COPESCO	Regional Special Project Plan for the Coordination and Supervision of the Peru-Unesco Cultural Tourism Plan of the Cusco Regional Government ( <i>Proyecto Especial Regional Plan para la Coordinación y Supervigilancia del Plan Turístico Cultural Perú-Unesco del Gobierno Regional del Cusco</i> )
CRG	Cusco Regional Government
DGASA	General Directorate of Socio-Environmental Affairs ( <i>Dirección General de Asuntos Socio Ambientales</i> )
ESIA	Environmental and Social Impact Assessment
GRM	Grievance Redress Mechanism
IBRD	International Bank for Reconstruction and Development
IPN	Inspection Panel
OP	Operational Policy
PACRI	<i>Plan de compensacion y reasentamiento involuntario</i> (Project's RAP)
PIU	Project Implementation Unit
RAP	Resettlement Action Plan

### **Currency Unit as of October 26, 2020**

US\$1.00 = PEN3.605  
PEN1.00 = US\$0.277

## EXECUTIVE SUMMARY

- i. ***Management has carefully reviewed the Request for Inspection and concluded that the Requesters' complaint relates to a matter of Peruvian law, and not to the application of Bank policy. The Requesters claim ownership of part of the Via Expresa Avenue but have not been able to provide satisfactory evidence of ownership as required under national law. The Requesters (and others) have on numerous occasions sought recognition of their land claims in Peruvian courts over the course of 22 years, and Peruvian courts have repeatedly rejected those claims. In Management's view, the Requesters are not Project-affected parties – the Project does not require land owned by the Requesters, or land on which they reside or otherwise occupy, or on which they own structures or assets. For these reasons, the Request should be considered ineligible for Panel review.***
- ii. ***The Request concerns the Requesters' efforts to obtain legal recognition of their ownership of land that they claim to have purchased, and through which they seek to become eligible for compensation. The land in question, however, has been in use as a public road for the past 35 years. The Requesters' "sales contracts" for the claimed land were signed long after the road was built and put in public use. The sales contracts and other documents presented by the Requesters fail to meet the legal requirements under Peruvian law to establish ownership over the land claimed. The cadaster records also do not show that the Requesters are the owners of the land in question. Moreover, the Requesters do not own any structures or assets on the claimed land, nor do they occupy it. For these reasons, the Requesters are not Project-affected people for the purposes of Operational Policy (OP) 4.12 on Involuntary Resettlement and the Resettlement Action Plan (RAP).***
- iii. ***In 1979, the Government of Peru approved an Urban Master Plan for Cusco, which included the location of the Via Expresa Avenue and established the basis for the city's urban expansion and its road network. The original owner of the land on whose former property a segment of the Via Expresa is located, however, continued to sell un-demarcated portions of the land – which was already in public use then – to private buyers. These sales transactions not only occurred long after the Via Expresa had been built and was in public use, they also lack demarcations or clear geo-references of the land area that was allegedly paid for. Moreover, different individuals have sued each other to obtain the annulment of their respective overlapping sales contracts and some of these claims remain pending in court.***
- iv. ***The Requesters seek to replace the Peruvian judicial process with an Inspection Panel investigation in order to establish their land ownership. This is an attempt to misuse the Panel process for a matter that only national courts can adjudicate. The Requesters (and others) have filed repeated lawsuits over the past 22 years to have their ownership legally recognized (including up to the Peruvian Supreme Court) but have not been successful so far. These lawsuits were filed against the Cusco Regional Government (CRG), and against other private parties as noted above. However, the court rulings so far have sided with the CRG and rejected the recognition of and compensation for private ownership claims over the land in***

question. Additional lawsuits have recently been filed against the CRG, meaning that the issue remains a matter for national courts to decide.

- v. ***The Request for Inspection alleges that the Project carried out evictions, which is not correct.*** Management notes that the “violent evictions” to which the Request refers do not pertain to the Project area or the Project. The Request refers to the eviction of individuals who lived in “*small shacks made of clay/brick mats and wood with a corrugated iron roof, who are called [adoberos] and who rented the plots from us to sell the bricks they manufactured.*” These evictions, which were carried out by authorities unrelated to the Project, occurred in a nearby area called *Cerro Retamal (Zonal Park III)* and have nothing to do with the Project.
- vi. ***The municipalities of Cusco did carry out a code enforcement action in the Project area on September 2, 2019.*** The RAP process has recognized 18 persons involved in informal uses of the Project area as entitled to assistance. These individuals were identified before the RAP’s cut-off date in November 2016 and the process to compensate them is progressing. At least four brick makers, who continued to sell their goods in the road reserve afterwards, were instructed to vacate the area so that the city could then remove debris and unclaimed goods that were left behind. This action took place on September 2, 2019 and occurred without the use of force, following applicable national procedures and laws, and in the presence of Cusco’s Prosecutor’s Office, Cusco’s Provincial Municipality Attorney’s Office and the police. None of the brick makers or other individuals lived there or had erected habitable houses or structures on the claimed land. Management has received evidence that these brick makers had been notified at least three weeks in advance of the upcoming code enforcement action. Management also understands that due process was followed and that the code enforcement action complied with applicable national procedures and regulations.
- vii. ***The Request thus conflates events and locations:*** (a) the code enforcement actions carried out in the Project area, which involved no structures and concerned the removal of brick makers and materials in preparation for civil works and without the use of force; and (b) the evictions referred to by the Requesters in the *Cerro Retamal (Zonal Park III)*, which did not occur in the Project area and were unrelated to the Project.
- viii. ***Management also notes that the Request introduces allegations that were not previously raised with Management. This includes the alleged evictions (though unrelated to the Project), as well as the issue of the “tenants” who allegedly “rented” land (located in the public road reserve) from the Requesters.*** Management informed the Panel that there had not been prior contact regarding these issues as required by the Panel Resolution. Management also was advised by the Panel that the “tenants” (i.e., the brick makers who were using parts of the public road reserve to sell their products) were not formal parties to the Request for Inspection nor was the Panel provided with any documentation indicating that the “tenants” had formally authorized the Requesters to represent them. Management was also not able to obtain from the Panel the documentation provided by the Requesters with regard to lawsuits

they allegedly won and to which the Request refers. However, Management was able to review the documentation and court cases that were made available by the Project Implementation Unit.

- ix. The Requesters have also raised allegations of retaliation against them. Management takes any allegation of threats or intimidation against Requesters, witnesses or any other Project stakeholders very seriously. Management notes that the Requesters' dispute regarding the landownership is longstanding and predates the Project and the Request for Inspection. Management has requested the support of both regional and national authorities to help ensure that no retaliation is exerted against the Requesters and other Project stakeholders. Management will continue to monitor the risk of retaliation and will alert and continue to involve the Peruvian authorities, as necessary.
- x. *In Management's view, the Bank has followed the policies and procedures applicable to the matters raised by the Request. As a result, Management believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.*





## I. INTRODUCTION

1. On September 28, 2020, the Inspection Panel registered a Request for Inspection, IPN Request RQ 20/02 (hereafter referred to as “the Request”), concerning the Peru: Cusco Transport Improvement Project (P132505) financed by the International Bank for Reconstruction and Development (IBRD, or the Bank).
2. **Structure of the Text.** The document contains the following sections: Section II presents the Request; Section III provides Project background and Section IV contains Management’s Response. Annex 1 presents the Requesters’ claims, together with Management’s detailed responses, in table format. Annex 2 provides a summary of lawsuits and arbitration processes related to land claims.

## II. THE REQUEST

3. The Request for Inspection was submitted by two individuals who have requested confidentiality (hereafter referred to as the “Requesters”). While the Request makes note of an attachment, Management did not receive this material.

## III. PROJECT BACKGROUND

4. **The Project.** The Bank’s Board of Executive Directors approved an IBRD loan (IBRD-8339-PE) of US\$120 million for the Cusco Transport Improvement Project on February 28, 2014. The Loan Agreement between the Republic of Peru and the Bank was signed on July 24, 2014, and entered into effect on November 11, 2014. The Project is under implementation and civil works for Component 1 are still being procured. Disbursement is 2.5 percent. The loan to the Republic of Peru is on-lent with the same conditions to the Cusco Regional Government (CRG). After five years of limited implementation progress, the Project began to show some positive results in January 2019 and the Bank agreed to a 12-month closing date extension, following a request by the CRG and the Ministry of Economy and Finance. Since the initial closing date extension, the international competitive bidding process for the Vía Expresa civil works, as well as for the associated supervision activities, was launched. Implementation of the Resettlement Action Plan (RAP) is also progressing satisfactorily.
5. **Project Objectives.** The Project Development Objective is to improve mobility in the east-west corridor of the Cusco Provincial Municipality, from San Jeronimo to the Cusco District.
6. **Project Components.** The Project has four components. Component 1, which is the one that pertains to the Request, supports the Integral Improvement of the Vía Expresa Avenue of the City of Cusco (*PIP - Mejoramiento Integral de la Vía Expresa de la Ciudad de Cusco: Óvalo los Libertadores – Puente Costanera – Nodo Versalles*). Component 1 includes: (a) the final detailed design studies for completing the construction of the Vía

Expresa Avenue, and the civil works that comprise (based on the detailed engineering design completed in 2019) approximately 6.9 kilometers of an urban arterial road, 50 meters wide, with four local access lanes, four central lanes, one bi-directional cycle lane, and wide sidewalks with streetscaping and landscaping; (b) supervision of the design and civil works referred to above; (c) provision and installation of horizontal and vertical road signaling, including traffic lights and a control system; and (d) land acquisition and compensation (including cash compensation and other resettlement assistance) related to implementation of the Project's RAP. The total cost of Component 1 is US\$137.9 million, of which the Bank is financing US\$112.7 million. The other three components finance studies on the improvement of mobility in the Cusco Provincial Municipality; institutional strengthening and monitoring and evaluation; and Project management.

#### IV. MANAGEMENT'S RESPONSE

7. *Management has carefully reviewed the Request for Inspection and concluded that the Requesters' complaint relates to a matter of Peruvian law, and not to the application of Bank policy. The Requesters claim ownership of part of the Via Expresa Avenue but have not been able to provide satisfactory evidence of ownership as required under national law. The Requesters (and others)<sup>1</sup> have on numerous occasions sought recognition of their land claims in Peruvian courts over the course of 22 years, and Peruvian courts have repeatedly rejected those claims. In Management's view, the Requesters are not Project-affected parties – the Project does not require land owned by the Requesters, or land on which they reside or otherwise occupy, or on which they own structures or assets. For these reasons, the Request should be considered ineligible for Panel review.*

8. *While the Requesters have chosen to keep their identity confidential, they engaged with Management regarding their land ownership claims, which were extensively reviewed, prior to the submission of the Request for Inspection.*

9. *The Request concerns the Requesters' efforts to obtain legal recognition of their ownership of land that they claim to have purchased, and through which they seek to become eligible for compensation. The land in question, however, has been in use as a public road for the past 35 years.* The Requesters' "sales contracts" with the original owners of a property called "Quispiquilla Ranch," which includes the claimed land, were signed long after the road was built and in use by the public. Consistent with the court decisions (referred to in paragraph 7 and explained in more detail in paragraphs 25–29), COPESCO (the implementing agency) has concluded that the sales contracts and other documents presented by the Requesters fail to meet the legal requirements under Peruvian law to establish ownership over the land claimed. The cadaster records also do not show that the Requesters are the owners of the land in question. Moreover, the Requesters do not own any structures or assets on the claimed land, nor do they occupy it. For these reasons, the Requesters are not Project-affected people for the purposes of Operational Policy (OP) 4.12 and the RAP.

10. *In 1979, the Government of Peru approved (Resolución Suprema 261-79-VC-5500, November 22, 1979) an Urban Master Plan for Cusco, which included the location of the Via Expresa Avenue and established the basis for the city's urban expansion and its road network. The original landowner of the Quispiquilla Ranch, on whose former property a segment of the Via Expresa is located, however, continued to sell undemarcated portions of the land – which was already in public use then – to private buyers.* These sales transactions not only occurred long after the Via Expresa had been built and was in public use, they also lack demarcations or clear geo-references of the land area that was allegedly paid for. Moreover, different individuals have sued each other to obtain the annulment of their respective overlapping sales contracts and some of these claims remain pending in court.

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<sup>1</sup> Besides the Requesters, there have been other persons with competing claims who have also sought recognition of property rights in the Project area in court.

11. ***The Requesters seek to replace the Peruvian judicial process with an Inspection Panel investigation in order to establish their land ownership. This is an attempt to misuse the Panel process for a matter that only national courts can adjudicate. The Requesters (and others) have filed repeated lawsuits over the past 22 years to have their ownership legally recognized (including up to the Peruvian Supreme Court) but have not been successful so far.*** These lawsuits were filed against the CRG, and against other private parties as noted above. The court rulings so far have sided with the CRG and rejected the recognition of and compensation for private ownership claims over the land in question. Additional lawsuits have recently been filed against the CRG; hence, the issue remains a matter for the national courts to decide.

12. ***The Request for Inspection alleged that the Project carried out evictions, which is not correct.*** Management notes that the “violent evictions” to which the Request refers do not pertain to the Project area or the Project. The Request refers to the eviction of individuals who lived in “*small shacks made of clay/brick mats and wood with a corrugated iron roof, who are called [adoberos] and who rented the plots from us to sell the bricks they manufactured.*” These evictions took place in an area called *Cerro Retamal (Zonal Park III)* which is adjacent to the Project area but not part of it (see Map 1) and were carried out by authorities unrelated to the Project.

13. ***The municipalities of Cusco did carry out a code enforcement action in the Project area on September 2, 2019.*** As noted in paragraphs 16-22 below, the RAP process has recognized a number of persons involved in informal uses of the Project area as entitled to assistance. Some brick makers who continued to sell their goods in the road reserve were instructed to vacate the area so that the city could then remove debris and unclaimed goods that were left behind. This action, which is discussed further in paragraphs 30–33 below, occurred without the use of force, following applicable national procedures and laws, and in the presence of Cusco’s Prosecutor’s Office, Cusco’s Provincial Municipality Attorney’s Office and the police.

14. The Request thus conflates events and locations: (a) the code enforcement actions carried out in the Project area, which involved no structures and concerned the removal of brick makers and materials in preparation for civil works and without the use of force; and (b) the evictions referred to by the Requesters in the *Cerro Retamal (Zonal Park III)*, which did not occur in the Project area and were unrelated to the Project.

15. ***Management also notes that the Request introduces allegations that were not previously raised with Management. This includes the alleged evictions noted above (though unrelated to the Project), as well as the issue of “tenants” who allegedly “rented” land (located in the public road reserve) from the Requesters.*** Management informed the Panel that there had not been prior contact regarding these issues as required by the Panel Resolution. Management also was advised by the Panel that the “tenants” (i.e., the brick makers who were using parts of the public road reserve to sell their products) were not formal parties to the Request for Inspection nor was the Panel provided with any documentation indicating that the “tenants” had formally authorized the Requesters to represent them.



*Photo 1: Road reserve claimed by the Requesters (land and buildings on the left and the right of the road reserve are not included in the claim) (November 15, 2019)*

## **Project location and RAP implementation**

16. *Management notes that COPESCO has carried out the necessary due diligence in the preparation of the RAP to identify all Project-affected people who are entitled to compensation and assistance as required by Bank policy.* COPESCO has been engaging with all persons who have presented claims of entitlement to compensation and resettlement assistance from the early stages of Project preparation. The claims and the supporting documents of all those who have come forward have been carefully reviewed in multiple instances and each complaint lodged at Project level and with the Bank directly has been properly responded to and addressed.

17. *The only locations where some land needed to be acquired for the Project involved nine properties affected by the construction of access road lanes for the Los Libertadores roundabout, the Versailles interchange, and for a bridge over the River Huatanay. None of these nine properties is part of the Requesters' claims.* The land has already been acquired for all but one of the properties. The social team of the Project Implementation Unit (PIU) has been closely monitoring the ongoing implementation of the RAP and conducted individual visits to the Project-affected people. The eight affected landowners have been fully compensated without any complaint being registered or expressed during consultation meetings. The acquisition process for the ninth property – Villa Rinconada, which has 33 plots (occupied by tenants) – is still in process, and

negotiations with the tenants are progressing without complications or complaints being raised.

18. ***No land acquisition was required for the road alignment itself. Management underlines that the land the Requesters claim to own was already part of the Via Expresa Avenue at the time of their purchases.*** One of the “sales contracts” for this land from November 1997 indicates that full payment of the agreed price for approximately 4.1 hectares was subject to progress with outstanding claims for compensation for the public acquisition of the land, including ongoing and future claims in court. ***Hence, buyers were aware of the fact that the land was mostly in public use for the road and evidently were considering the possibility to secure compensation retroactively at the time of the purchase.***

19. ***Management also notes that the Request does not indicate that the Requesters live on or use the claimed land. However, the Request mentions that they “rented plots” to brick makers (adoberos ambulantes)<sup>2</sup> who were using portions of the road reserve that the Requesters claim is part of the land they purchased.*** As part of the consultations held during the preparation of the RAP, some brick makers, who were using parts of the road reserve to sell their products, mentioned that they were “renting” from one of the individuals claiming ownership of this land, through a verbal arrangement. Management notes that there are no building structures on the claimed land. Moreover, the Requesters did not identify themselves as “landlords” or raise the issue of “rental income” throughout the RAP process or in any previous written submissions to the Project<sup>3</sup> or to the Bank. The individual who was “renting” to the brick makers also did not raise this verbal arrangement during the RAP consultations.

20. ***The Requesters have not submitted to COPESCO satisfactory legal documentation that would identify them as the lawful owners of the land.*** COPESCO has been engaging with the Requesters from the early stages of Project preparation to review their land claims. These claims and the supporting documents provided by them have been carefully reviewed on multiple occasions and each complaint lodged at Project level and with the Bank directly has been properly responded to and addressed. As explained above, however, the Requesters have not been able to submit to COPESCO satisfactory legal documentation that would identify them as the lawful owners of the land. In addition, the Bank verified that these families do not live on the land, nor do they own any assets on it. Hence, they have no status under the RAP or under the Bank’s safeguard policies.

21. ***The RAP identified 18 Project-affected people eligible for resettlement assistance for potential displacement of informal economic activity on the Via Expresa’s right-of-***

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<sup>2</sup> The manufacture of adobe bricks from mud and grass is an activity that is informal, temporary and seasonal, with a varying number of brick makers. Ten brick makers were identified in 2016-2017 when the RAP was prepared. They numbered only four during a field visit conducted by the PIU in 2018. According to the information received by the Bank, based on local municipal records, there were up to four brick makers with some assets still on the road in July and August 2019.

<sup>3</sup> The Project has a functional GRM which is available to collect, review and process eventual complaints, but the Requesters have not registered any complaints with the GRM in relation to loss of “rental income” allegedly collected from brick makers who were using the road reserve to sell their goods.

*way, none of whom are related to the Request.* These affected people consisted of mobile vendors/service providers conducting their business in the Project area on an occasional and/or seasonal basis, of whom eight are car washers and ten are *adoberos ambulantes*, who are entitled under the RAP to receive resettlement assistance in the form of training to support them with finding alternative means of livelihood and an amount in cash of PEN 5,580 (US\$1,548), equivalent to six months of minimum wage, i.e., PEN 930 (US\$258). Such resettlement assistance has already been provided to two of the car washers, and another five car washers recently accepted the resettlement assistance offered under the RAP. The ten brick makers have also accepted the resettlement assistance offered under the RAP. The RAP is still under implementation, and the PIU is making good progress to reach out to the remaining car washer to provide him with the compensation and/or resettlement assistance he is entitled to under the RAP.

22. *As required under Bank policy, the PIU continues to make every effort to reach all persons entitled to compensation, including all mobile vendors/service providers identified in the RAP.* On October 9, 2020, the Bank sent a letter to COPESCO requesting acceleration of the compensation process for the brick makers and car washers who were identified in the RAP. The PIU efforts included meetings with the mobile service providers to explain the different assistance entitlements and publication of notices that all mobile vendors/service providers identified in the RAP are entitled to the agreed compensation and can safely and confidentially claim their dues at any time. The PIU is disseminating widely information on the entitlement program under the RAP, through local newspapers and radio throughout the Province of Cusco to reach out to the remaining affected car washer. The grievance redress mechanism (GRM) is in place (complaints box in COPESCO's offices and the Project area, website, email, and WhatsApp account), but no complaints have been filed to date by or in relation to the mobile vendors/service providers in the Project area regarding either the process or the amount of the resettlement assistance due.





*Photo 2: Car washers using the road reserve for their services (August 21, 2019)*



*Photo 3: Brick maker being advised of the compensation options under the RAP (October 16, 2020)*

## Consultations

23. ***The preparation process for the revised and final RAP followed consultation requirements per Peruvian law and Bank safeguard policies.*** Specifically, before approving the revised RAP, all potential Project-affected people, and the Cusco population in general, were informed through three sessions of public consultations (January 12, 14 and 21, 2017). These public consultations were announced eight days in advance on a daily basis through local media, radio, newspaper ads, and billboards in public areas. During the public consultations, it was announced that a dedicated GRM for the Project was available to any party who wished to lodge a potential claim regarding the evaluation of their property documents. In May 2019, COPESCO also made public announcements inviting any potential Project-affected person not identified to date to present documentation related to land ownership in the Project area. Management notes that COPESCO reviewed all submissions received and determined that the Requesters (and others) ***did not submit satisfactory legal evidence documenting land ownership in the Project area.***



24. Some of the Requesters participated in at least one consultation meeting during the RAP preparation (2013) and follow-up meetings with the PIU in 2019 and 2020, and their presence was recorded on the sign-in sheets and videos made of the meetings.

### Legal disputes regarding landownership

25. *The Requesters (and others) so far have lost the court cases which they have initiated against the CRG to obtain recognition of and compensation for private ownership claims over the land where a segment of the Via Expresa is located. The rulings in the most prominent cases are as follows:*

- *In May 2003, a Civil Court dismissed a compensation claim filed by the Requesters (and others) in January 1999.* The court rejected the claim due to, inter alia, the following: (i) it was not possible to establish that the claimants were the owners of the claimed land; (ii) the buyers did not pay the price, as such payment was in turn subject to obtaining payment of just compensation.<sup>4</sup>
- *In September 2019, an Arbitral Court dismissed a compensation claim filed by the Requesters (and others) in December 2012. This court also ruled that the land claimed by the Requesters (and others) could not be physically identified based on the documentation they provided.* Several other parties intervened in this process claiming ownership of the land, including the widow of the original owner of the Quispiquilla Ranch, who claimed that a “sales contract” from January 2012 was obtained through fraudulent means and that she did not receive any payment under such contract.
- *In June 2020, the Peruvian Supreme Court rejected an appeal filed by the Requesters in a civil case that escalated through the lower courts, which was originally initiated in June 2013. The appellants sought to retrieve a portion of land they claimed to own on the Via Expresa.* In this case, the Requesters obtained a favorable ruling in the first instance (the CRG was declared *in absentia*).<sup>5</sup> However, this ruling was appealed by CRG, which re-engaged in the process, and obtained a favorable ruling by the Superior Court of Cusco, which overturned the first instance ruling. Subsequently, the Supreme Court of Peru dismissed the final appeal filed by the Requesters.
- *In October 2020, a civil court revoked an injunction to stop any works on the claimed land that the Requesters had previously obtained, in an ongoing case initiated in July 2020.* The injunction had sought to stop any works until their ownership claims were resolved in court. In revoking the injunction, the court noted that there are significant doubts regarding the Requesters’ ownership claims and that despite a series of judicial proceedings, these have not been substantiated.

<sup>4</sup> A summary of the court cases is provided in Annex 2.

<sup>5</sup> This means the Regional Government did not participate in the process or offer a legal defense.

26. ***The Requesters refer to a case that they claim was determined “in their favor” but do not provide information as to what case they are referencing.*** Management was not able to obtain from the Panel the documentation provided by the Requesters with regard to the lawsuit they allegedly won and to which the Request refers. However, Management was able to obtain from the PIU the pertaining documentation and court cases for review.

27. Management assumes therefore that this court decision presented as “in the Requesters’ favor” is related to the dismissal of a claim filed by the CRG in August 2019 to suspend judicial cases related to the Via Expresa. The court ruling established that all claims to land ownership have to be reviewed and adjudicated by competent courts. ***This, however, was merely a procedural ruling that rejected the CRG’s attempt to suspend the adjudication of such claims, but it did not examine the merits of the claims of the Requesters (and others) and did not recognize any ownership claims to land.*** After the CRG had filed this claim, the Arbitral Court and the Supreme Court issued the two rulings referred to paragraph 25.

28. ***Management understands that at least two additional lawsuits have been recently filed by the Requesters against the CRG.*** In the first lawsuit, the Requesters seek to be recognized as Project-affected persons under the Project. In the second lawsuit (for which the above-cited injunction was revoked by the court), the Requesters seek to have a court order the CRG to initiate an expropriation process of their alleged property rights to the land on the Via Expresa so that they can obtain compensation. These lawsuits are still in process and could possibly take years to fully resolve. In Management’s view the first lawsuit demonstrates the Requesters’ attempt to have their claims regarding land ownership and compensation resolved through the Project.

29. ***Management’s view is that this is a matter for the national courts to review and adjudicate and the Requesters may continue to pursue their claims through the Peruvian judiciary as they are already doing.*** Management will continue to monitor the outcome of these legal actions as well as their eventual implications for the Project. ***Management also believes that the process to prepare the RAP and identify both the land to be acquired for the Project and the Project-affected persons met the requirements OP 4.12 on Involuntary Resettlement.***

### **Alleged forced and violent evictions**

30. ***Management notes that the Request refers to the violent evictions of individuals who lived in “small shacks made of clay/brick mats and wood with a corrugated iron roof” and who rented part of the claimed land to sell the bricks that they manufactured. Management reiterates that this eviction is unrelated to the Project and did not occur in the Project area but in an adjacent area. There are no adobe houses with metal roofs or other structures in the Project area.*** Rather, as stated in the RAP and seen on multiple occasions during Project supervision, part of the Project area is occupied occasionally and on a seasonal basis by mobile service providers/vendors, including different *adoberos ambulantes*. These *adoberos* display and sell their bricks in the median of the Via Expresa.

As noted above, ten such mobile vendors were determined to be entitled to resettlement assistance under the RAP and all of them have accepted such assistance. Any other mobile vendors who occupied the Project area after the RAP's cut-off-date in November 2016 are not eligible for resettlement assistance under the RAP. This cut-off-date was widely disseminated in the Project area.

31. ***The municipalities of Cusco carried out a code enforcement action in the Project area on September 2, 2019.*** Brick makers were instructed to vacate the road reserve, following applicable national procedures and laws, without the use of force, and in the presence of Cusco's Prosecutor's Office (*Fiscalía de Prevención del Delito de Cusco*), Cusco's Provincial Municipality Attorney's Office (*Procuraduría Pública de la Municipalidad Provincial de Cusco*), and the police. Following this, the city removed debris and unclaimed goods that were left in the road reserve. None of the brick makers or other individuals lived there or had erected habitable houses or structures on the claimed land. Management understands that these brick makers had been notified at least three weeks in advance of the code enforcement action and that due process was followed. The code enforcement action was filmed by the municipalities of Cusco, local media and others and several videos are publicly available.<sup>6</sup> The videos watched by the Bank support the CRG's statement that the code enforcement was carried out without the use of force, following due process and in accordance with the law, in the presence of the relevant public authorities.

32. ***Management has also carefully reviewed a video, which the Requesters shared with the Panel as part of the Request. The video confirms the non-violent and lawful nature of the September 2, 2019 code enforcement action.*** The 26-minute video provided by the Requesters was shared with Management by the Panel, after obtaining the prior agreement of the Requesters. It was filmed by a local media outlet on September 2, 2019 during the code enforcement action conducted by the municipalities of Cusco, and it includes several interviews with public officials and some individuals claiming ownership of parts of the Via Expresa, who offer their views of the process to reporters. These individuals, however, did not identify themselves as "landlords" or raise the issue of "rental income" from brick makers in the area.

33. ***Management confirms that there were no adobe houses or other structures in the claimed area and that no sign of violence was visible in the video footage taken during the code enforcement action in the Project area.*** Management is aware that the municipalities of Cusco have conducted a number of similar code enforcement actions around the same period, including some actions that involved the destruction of houses, but these were not located in the Project area<sup>7</sup>, were not requested or needed by the Project, and are not linked in any way to the Project.

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<sup>6</sup> [https://www.facebook.com/watch/live/?v=2152632835037103&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=2152632835037103&ref=watch_permalink)  
[https://www.facebook.com/watch/live/?v=374251193503764&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=374251193503764&ref=watch_permalink)

<sup>7</sup> Evictions involving the destruction of houses took place in the *Cerro Retamal* area which is located outside of the Project area (see Map 1).

## **Risk of retaliation**

34. ***Management notes that the dispute in question is a longstanding one and precedes the Project and the Request for Inspection.*** Management also notes that the Requesters are communicating their views about the Project and their claims in public fora, which reportedly has triggered negative comments from other social media users. Management condemns the use of threats and defamatory comments by social media users against any Project stakeholders. However, there are no indications that Project staff were involved in posting defamatory or threatening content on social media.

35. ***Management takes seriously any allegation of retaliation or intimidation in the context of Bank-supported projects.*** Management has reviewed the recordings of public consultation events where interactions between the authorities and the Requesters do not show any signs of threats or hostilities. Management has also reviewed publicly available video footage of the code enforcement action that took place on September 2, 2019 in the Project area, and there is no discernible use of violence of any kind. Management has explicitly requested the CRG to pro-actively remind all implementing agency staff of the Bank's zero-tolerance policy for retaliation.

36. Management also has requested the support of both regional and national authorities to ensure that no retaliation is exerted against the Requesters and other Project stakeholders. This was discussed at the highest level of regional and national government. Management will continue to monitor the risk of retaliation against any complainants, witnesses or other Project stakeholders very closely and involve the Peruvian authorities as may be needed.

37. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

38. ***In Management's view, the Bank has followed the policies and procedures applicable to the matters raised by the Request. As a result, Management believes that the Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.***

## Annex 1: Claims and Responses

(Left column: Panel Notice of Registration text in italics; text from English translation of Request in plain text)

N o.	Claim/Issue	Response
1.	<p><i>Land Acquisition. The Requesters allege non-compliance with the Bank's Policy on Involuntary Resettlement [...]. They argue that the Project has taken their land without compensation for the construction of a road under the Project, the Via Expresa Avenue. They claim that they have multiple sources of proof of their ownership of the land, including a court decision in their favor, a cadastral certificate, a notarized registration document of the land and other records.</i></p> <p>Neither the Cusco Regional Government, nor the PER Copesco plan, REDACTED m2 of land. According to the Certificate of Real Estate Cadastral Search, this land exists, this certificate is attached to this claim.</p> <p>The World Bank causes us harm, because the Bank should have been responsible for carefully reviewing the contracts and the release of the land where the Project would be executed before releasing the financing, free of any interference that may affect the development of said work.</p> <p>Neither Copesco, nor the Regional Government of Cusco, have the availability of the land, this land has not been expropriated, nor released, nor has it been ceded to the state.</p>	<p><i>Management notes that all owners in the Project area that provided satisfactory evidence of ownership have been included in the RAP as affected persons and have been/will be compensated in accordance with OP 4.12.</i></p> <p><i>Management understands that the Requesters (and others) are claiming land ownership in the right-of-way of the Via Expresa, around the area where the former Quispiguilla Ranch was located. However, such individuals have not been able to provide satisfactory evidence of ownership to the claimed area as required under national law. Therefore, these persons are not included as affected persons in the RAP.</i></p> <p><i>Moreover, the Requesters (and others) have filed suit in court on numerous occasions over the past 22 years (up to the Supreme Court of Peru) seeking recognition of or compensation for the land they claim, without success. Additionally, there appear to be competing claims for the same or overlapping parcels for which there are separate "sales contracts," and the purchasers have sued each other to obtain the annulment of their respective contracts; some of these suits are ongoing.</i></p> <p>The Via Expresa Avenue is located in an existing right-of-way in the provincial area of Cusco. The improvement works will be carried out on a section about 6.9 kilometers long, running through the districts of Wanchaq, San Sebastian, and San Jeronimo from the Los Libertadores roundabout to the Versailles interchange (see Map 1).</p> <p>In 1979, the Government of Peru approved (<i>Resolución Suprema</i> 261-79-VC-5500, November 22, 1979) an Urban Master Plan for Cusco, which included the location of the Via Expresa Avenue and established the basis for the city's urban expansion and its road network. The Via Expresa has been open for vehicular traffic and in daily use since the 1980s. It is currently an existing public road and part of a national route (PE-3S).</p> <p>The RAP process, initiated during Project preparation by a Government-accredited consulting firm engaged by COPESCO (the implementing agency), sought to identify all Project-affected people, including those with property rights or valid claims in the Project area. An initial RAP developed in 2013 contained a preliminary identification of potential Project-affected people, which was to be validated and updated as needed once the final engineering designs for the Via Expresa Avenue improvement works were ready. In June 2016, Law 30.448 was approved by the Peruvian Congress, authorizing the</p>

N o.	Claim/Issue	Response
	<p>Neither do they possess the respective property titles for the land, which they illegally intend to appropriate. Why? the World Bank staff didn't check, didn't see. Why did the World Bank release the money for this project? knowing that they did not meet the requirements?</p> <p>This being the case, a Judge could paralyze the intended work with the consequent damages for the World Bank, the Peruvian state and the Regional Government.</p>	<p>expropriation of properties required for the Project under Legislative Decree No. 1.192.</p> <p>The updating of the RAP based on the final Project technical designs was carried out in 2016 and 2017 by the consulting firm, which was tasked, among other things, with confirming the properties that needed to be acquired for the Project. The final Project technical designs sought to reduce resettlement impacts and, as such, the updated RAP reflects a smaller number of Project-affected people than originally estimated in 2013. A final census was carried out in 2016 of Project-affected people, based on the updated technical designs, along with the investigation of cadastral and land title documentation on the parcels to be acquired for purposes of the Project. A cut-off date in November 2016 was widely disseminated by the consulting firm in the Project area. In this context, individuals claiming ownership rights over land required for the Project, such as the Requesters, were invited to submit pertinent documentation. The Requesters did not provide satisfactory evidence of land ownership or valid claims to land in the Project area. Instead, various sales contracts of the claimed property area were presented, which allegedly pertained to land located in the Via Expresa Avenue, but with no clear demarcation or proof of title registration at the cadaster office. As such, these persons were not included in the RAP as Project-affected persons.</p> <p>The updated RAP was finalized, and thereafter approved by DGASA<sup>1</sup> in August 2017. The Bank's no-objection had been obtained on April 28, 2017. In May 2019, the PIU (COPESCO), issued a public invitation to any potentially affected person not identified as a property owner to date to come forward. The Requesters (and others) responded to this invitation, but COPESCO found the documentation submitted was again insufficient to demonstrate land ownership in the claimed area of the Via Expresa Avenue.</p> <p><b><i>Those individuals who have not been able to provide the required evidence or documentation of a recognizable legal claim or ownership of the claimed land as required under national law are not eligible for compensation under OP 4.12 and the RAP. Moreover, Management has also confirmed that the persons making the claims do not live on such land, or own assets or structures on it, and therefore cannot be considered Project-affected or eligible for compensation and/or assistance under para 15(c) of OP 4.12.</i></b></p> <p>Management wishes to highlight that these individuals have filed suit on several occasions against the CRG, unsuccessfully. The most prominent cases are:</p> <ul style="list-style-type: none"> <li>• In May 2003, a Civil Court dismissed a compensation claim filed by individuals against the Provincial Council of Cusco and</li> </ul>

<sup>1</sup> Ministry of Transport and Communication (MTC) General Directorate of Socio-Environmental Affairs (Dirección General de Asuntos Socio Ambientales, DGASA).

N o.	Claim/Issue	Response
		<p>Provisional Council of Regional Administration of Cusco in January 1999. The dismissed claim sought compensation for land acquired on the Via Expresa based on a sales contract signed in November 1997 with the original owner of the Quispiquilla Ranch. The court rejected the claim due to, inter alia, the following: (i) it was not possible to establish that the claimants were the owners of the claimed land; (ii) the buyers did not pay the price, as such payment was in turn subject to obtaining payment of just compensation.</p> <ul style="list-style-type: none"> <li>• In September 2019, an Arbitral Court dismissed a compensation claim filed by the Requesters (and others) against the CRG in December 2012. The dismissed claim sought compensation for land acquired on the Via Expresa based on sales contracts signed in February 1997 (the sale was ratified in April 2011) and January 2012 with the original owner of the Quispiquilla Ranch and his wife (now widow) as his representative, respectively. Several other parties intervened in the court process, claiming ownership of the land, including the widow of the original owner of the Quispiquilla Ranch, who alleged that the sales contract from January 2012 was obtained through fraudulent means and that she did not receive any payment under such contract. The court also indicated that the CRG demonstrated, through documentation and technically, that the properties claimed by the claimants, and other persons who intervened in the process, could not be physically identified.</li> <li>• In June 2020, the Peruvian Supreme Court dismissed an appeal filed by the Requesters in a civil case that escalated through the lower courts after having been originally initiated by the Requesters in June 2013. The appellants sought to retrieve a portion of the land they claimed to own (2 ha) on the Via Expresa. In this case, the Requesters obtained a favorable ruling in the first instance (the CRG was declared <i>in absentia</i>, as it did not participate in the process or offer a legal defense). However, this ruling was appealed by the CRG, which re-engaged in the process, and obtained a favorable ruling by the Superior Court of Cusco, which overturned the first court ruling. Subsequently, the Supreme Court dismissed the final appeal filed by the Requesters.</li> <li>• In October 2020, a civil court revoked an injunction to stop any works on the claimed land that the Requesters had previously obtained on September 25, 2020, in an ongoing case initiated in July 2020. The injunction had sought to stop any works on the claimed land until their ownership claims were resolved in court. In revoking the injunction, the court noted, inter alia, that there are significant doubts regarding the Requesters' ownership claims, made during a series of judicial proceedings, which were not dispelled or countered with evidence by the claimants.</li> </ul>



N o.	Claim/Issue	Response
		<p>The Requesters refer to a case that they claim was determined “in their favor” but do not provide information as to what case they are referencing. Management was not able to obtain from the Panel the documentation provided by the Requesters with regard to the lawsuit they allegedly won and to which the Request refers. However, Management was able to obtain from the PIU the pertaining documentation and court cases for review. Management assumes therefore that this court decision presented as “in the Requesters’ favor” is related to the dismissal of a claim filed by the CRG in August 2019 to suspend judicial cases related to the Via Expresa. The court ruling established that all claims to land ownership have to be reviewed and adjudicated by competent courts. This, however, was merely a procedural ruling that rejected the CRG’s attempt to suspend the adjudication of such claims, but it did not examine the merits of the claims of the Requesters (and others) and did not recognize any ownership claims to land. After the CRG had filed this claim, the Arbitral Court and the Supreme Court issued the rulings referred to above.</p> <p>Management understands that at least two additional lawsuits have been filed recently by the Requesters against the CRG. In the first lawsuit, the Requesters seek to be recognized as Project-affected persons under the Project. In the second lawsuit, for which the above-cited injunction was revoked by the court, the Requesters seek to have a court order the CRG to initiate an expropriation process of their alleged property rights to land on the Via Expresa so that they can obtain compensation. These lawsuits are still in process and could possibly take years to fully resolve.</p> <p>Finally, the Requesters and others, including the widow of the original owner of the Quispiquilla Ranch, have sued each other several times to obtain the annulment of the sales contracts that are the basis of their respective overlapping land claims on the Via Expresa. Some of these cases are still pending.</p> <p>A summary of the various lawsuits and their rulings can be found in Annex 2.</p> <p><b><i>In sum, Management notes that despite numerous lawsuits against the CRG, none of the individuals have so far succeeded in obtaining recognition of or compensation for private ownership claims over the land in question. Moreover, Management has also confirmed that the persons making the claims do not live on such land, or own assets or structures on it, and therefore cannot be considered Project-affected or eligible for compensation under OP 4.12 and the RAP.</i></b></p> <p><b><i>Management’s view is that this is a matter for the national courts to review and adjudicate and the Requesters may continue to pursue their claims through the Peruvian judiciary as they are already doing. Management will continue to monitor the outcome of these legal actions</i></b></p>

N o.	Claim/Issue	Response
		as well as their eventual implications for the Project. <i>Management also believes that the process to prepare the RAP and identify both the land to be acquired for the Project and the Project-affected persons met the requirements OP 4.12 on Involuntary Resettlement.</i>
2.	<p><b>Eviction.</b> <i>According to the Request, poor tenants who rented and occupied a section of the land were mistreated and forcibly evicted from the land in the presence of more than 100 police force members and large numbers of personnel from the regional government and provincial municipality. The Request explains that the tenants lived in clay houses that were destroyed.</i></p> <p>The lands of the Futura Via Expresa were expropriated using tractors, more than 100 policemen, a large number of personnel from the Regional Government and the Provincial Municipality of Cusco to EVICT the humble people who manufactured clay/bricks, whose only livelihood was that job. This forced eviction was carried out jointly by Copesco, the Provincial Municipality of Cusco, Copesco and Proder.</p>	<p><i>Management notes that the Request refers to the violent evictions of individuals who lived in “small shacks made of clay/brick mats and wood with a corrugated iron roof” and rented part of the claimed land to sell the bricks that they manufactured. Management reiterates that this eviction is unrelated to the Project and did not occur in the Project area but in an adjacent area. There are no adobe houses with metal roofs or other structures in the Project area.</i></p> <p><i>A code enforcement action decided and executed by the municipalities of Cusco was carried out in the Project area on September 2, 2019. Brick makers were instructed to vacate the road reserve without the use of force, following applicable national procedures and laws, and in the presence of Cusco’s Prosecutor’s Office (Fiscalía de Prevención del Delito de Cusco), Cusco’s Provincial Municipal Attorney’s Office (Procuraduría Pública de la Municipalidad Provincial de Cusco), and the police.</i></p> <p>As stated in the RAP and seen on multiple occasions during Project supervision, part of the Project area is occupied occasionally and on a seasonal basis by mobile service providers/vendors, including different <i>adoberos ambulantes</i>. These brick makers display and sell their bricks in the median of the Via Expresa. Management understands that the brick makers using the median had been notified at least three weeks in advance of the coming code enforcement action and that due process was followed. The city removed debris and unclaimed goods that were left in the road reserve. None of the brick makers or other individuals lived there or had erected habitable houses or structures on the claimed land.</p> <p>Ten brick makers were determined to be entitled to resettlement assistance under the RAP and all of them have accepted such assistance. Any other mobile vendors who occupied the Project area after the RAP’s cut-off-date in November 2016 are not eligible for resettlement assistance under the RAP. This cut-off-date was widely disseminated in the Project area. The GRM remains available to receive any valid claims of people who can demonstrate they were in the area prior to the cut-off date but were not captured in the census. To date, no such claims have been received in the Project GRM.</p> <p><i>Management confirms that there are no adobe houses or other structures in the claimed area and that no use of force was visible in the video footage of the code enforcement action that took place in the Project area. Management has carefully reviewed a video, which the Requesters shared with the Panel as part of the Request. The video</i></p>

N o.	Claim/Issue	Response
		<p><b><i>confirms the non-violent and lawful nature of the September 2, 2019 action.</i></b> The 26-minute video provided by the Requesters was shared with Management by the Panel on October 8, 2020, after obtaining the prior agreement of the Requesters. It was filmed by local media on September 2, 2019 during the code enforcement action conducted by the municipalities of Cusco, and it includes several interviews with public officials and some individuals who claim ownership to segments of the Via Expresa, who offer their views of the process to reporters. These individuals, however, did not identify themselves as “landlords” or raise the issue of “rental income” from brick makers in the area.</p> <p>Management is aware that the municipalities of Cusco conducted a number of similar code enforcement actions around the same period, which were not located in the Project area, were not requested or needed by the Project, and are not linked in any way to the Project.</p>
3.	<p>The Executive Director of Copesco lies when he says that the neighboring district municipalities have peacefully evicted the area for this vehicle route. False, because what they have done is to violate the World Bank's social safeguard policies. Even with the presence of the Regional Governor of Cusco.</p>	<p><b><i>Management has reviewed the video footage of the code enforcement action that took place on September 2, 2019 in the Project area. This video footage did not show signs of violence.</i></b></p> <p><b><i>Management understands that this code enforcement action was decided and executed by the municipalities of Cusco and was carried out following applicable national procedures and laws, and in the presence Cusco’s Prosecutor’s Office (Fiscalía de Prevención del Delito de Cusco), Cusco’s Provincial Municipal Attorney’s Office (Procuraduría Pública de la Municipalidad Provincial de Cusco), and the police. Management also understands that the brick makers had been notified in advance of the coming code enforcement action and that due process was followed.</i></b></p> <p>Management is aware that the municipalities of Cusco have conducted a number of similar code enforcement actions around the same period, which are not located in the Project area, were not requested or needed by the Project, and are not linked in any way to the Project.</p>
4.	<p>Copesco, by allowing an intervention with tractors, policemen and thugs to expropriate the vehicular road; has not complied with the norms of the World Bank and even worse has caused the Provincial Municipality of Cusco to misappropriate state funds. Furthermore, the Regional Government and Copesco have incurred the criminal offense of embezzlement, since the use of</p>	<p><b><i>See responses to Items 2 and 3 above.</i></b></p>

N o.	Claim/Issue	Response
	machinery, fuel and man-hours was not budgeted.	
5.	<p>According to the loan contract between the Republic of Peru and the International Bank for Reconstruction and Development, signed on July 24, 2014, loan No. 8339-PE; Prior to the beginning of the civil works of the Project, the Borrower must urge the Regional Government of Cusco, acting through PER Plan Copesco to ensure that:</p> <p>All acquisition of land required for civil works must have been completed and said land should be free of encumbrances and ready to be issued to the winning bidder, all in a manner acceptable to the Bank. <b>But that has not been done.</b></p> <p>According to the aforementioned IBRD contract in order to start the execution of the project, the agreement of the loan contract No. 8339-PE must be fulfilled, otherwise <b>it cannot begin the bid of work or the submission of proposals from the bidders for the execution of the work.</b></p>	<p><b><i>Management notes that a RAP has been prepared for the Project and is currently being implemented in accordance with OP 4.12. The RAP identifies the land that needs to be acquired for the Project. Moreover, civil works have not started yet and will not begin until the land acquisition processes have been completed in accordance with the RAP, and as stipulated in OP 4.12.</i></b></p> <p>Civil works for the improvement of the Via Expresa Avenue are still being procured and have therefore not started. As indicated previously, the existing right-of-way of the Via Expresa Avenue is currently in daily use by the general public and has been since the 1980s. Once the detailed engineering designs for the works were defined, the RAP prepared during Project preparation was updated to identify all Project-related resettlement impacts, including the properties that would need to be acquired in the Project area. As indicated above in Item 1, an independent consulting firm was engaged by the PIU to conduct the RAP process. As also noted above, land acquisition and resettlement impacts were significantly reduced after the finalization of the technical designs in 2016 and, as a result, the land required for the Project is less than originally anticipated in 2013.</p> <p>The updated RAP, approved by DGASA by a national government Resolution (<i>Resolucion Directoral</i> No. 320-2017-MTC/16) and with the Bank's no-objection, identified nine properties to be acquired for the Project in order to build the access road lanes at the Libertadores roundabout, Versailles interchange, and a bridge over the River Huatanay. None of these nine properties are part of the Requesters' claims.</p> <p>The land from eight of the properties has already been acquired, and the owners have been compensated at full replacement cost, in line with the approved RAP and OP 4.12, without any complaint being registered or expressed during consultation meetings. The acquisition process for the remaining property – Villa Rinconada, which has 33 plots (occupied by tenants) – is still in process, and negotiations with the tenants are progressing without complications or complaints being raised.</p> <p>The social team of the PIU has been closely monitoring the implementation of the ongoing RAP and has conducted individual visits to the Project-affected people. The Bank team has been providing frequent and close implementation support to the PIU. As such, Management believes the processes to acquire the necessary land for the Project are well advanced, and fully in line with the Bank-approved final RAP and OP 4.12.</p> <p><b><i>No land acquisition was required for the road alignment itself. Management underlines that the land the Requesters claim to own</i></b></p>

N o.	Claim/Issue	Response
		<p><i>was already part of the Via Expresa Avenue at the time of their purchases.</i> One of the “sales contracts” for this land from November 1997 indicates that full payment of the agreed price for approximately 4.1 hectares was subject to progress with outstanding claims for compensation for the public acquisition of the land, including ongoing and future claims in court. <i>Hence, buyers were aware of the fact that the land was mostly in public use for the road and evidently were considering the possibility to secure compensation retroactively at the time of the purchase.</i></p> <p><i>The past and ongoing litigation processes between some individuals and the CRG regarding land claims in the Project area have been closely monitored by Management. While these individuals may continue to pursue their claims in the Peruvian legal system, as they are already doing, this remains a matter for the national courts to review and adjudicate.</i></p> <p><i>Management therefore is of the view that the properties that need to be acquired for the Project have been properly identified in the RAP, in accordance with OP 4.12.</i></p> <p><i>See also responses to Items 2 and 3 above.</i></p>
6.	<p><b>Lack of Consultation.</b></p> <p><i>The Requesters also allege that they lack access to information and were not consulted about the resettlement.</i></p> <p>We know that there are rules, policies, of the World Bank; which recommend that the Regional Government in this case act without aggressiveness and converse peacefully in the solution of the problems to free the areas and lands in which the works have to be built. All of this was not complied with and has been rudely and sagaciously not complying with the [Bank] REDACTED</p> <p>They have not considered the social safeguards, because according to the World Bank, the social part is discussed, never litigated and since the demand of the Regional Government has been declared</p>	<p><i>Management confirmed that relevant Project-related information on resettlement, including copies of environmental and social safeguard instruments, is available in a place, form and manner easily accessible to all Project-affected people and other stakeholders.</i> The Environmental and Social Impact Assessment (ESIA) and the RAP for the Project are available on the website of COPESCO (<a href="https://www.copesco.gob.pe/mejoramiento-de-la-transitabilidad-via-expresa-ovalito-libertadores-puerto-costanero/">https://www.copesco.gob.pe/mejoramiento-de-la-transitabilidad-via-expresa-ovalito-libertadores-puerto-costanero/</a>) and on the Bank’s website, and may be consulted free of charge by any Project stakeholder.</p> <p><i>Similarly, Management considers that consultations with Project-affected people and other stakeholders about Project-related land acquisition and resettlement have been carried out in a systematic, meaningful and effective manner, in line with OP 4.12 and the Project RAP, as further detailed below.</i></p> <p>As part of Project preparation, an ESIA and RAP were developed in 2013 by COPESCO. The ESIA and RAP were further revised in 2016 and 2017 to reflect changes in Project design that reduced land acquisition and resettlement impacts. COPESCO hired a consulting firm accredited to conduct the RAP process, collect relevant documentation from potential Project-affected people and conduct extensive public consultations with them and other stakeholders, in accordance with OP 4.12 and applicable Peruvian laws.</p> <p>As part of the participation and public consultations process on the revised RAP held during 2016 and 2017, informative workshops were</p>



N o.	Claim/Issue	Response
	<p>by an <b>improper</b> judicial sentence, therefore they have left the doors of the judiciary open for us to continue litigating claiming our rights before the judges of Peru. In other words, there is already a legal problem, that for as long as our complaints are not resolved, the land of the Via Expresa is not released and one of the requirements to execute the project is that the polygon must be released without any problem, or worse yet, no court order.</p> <p>In other words, Copesco, the Regional Government, Proder and the Bank have permanently mistreated us, by not having solved by peaceful means or complying with the Social safeguards of the World Bank.</p>	<p>held with representatives of civil society and the general population involved in the Project. Specifically, before approving the updated RAP, all potential Project-affected people – and the Cusco population in general – were informed through three sessions of public consultations (January 12, 14 and 21, 2017). These public consultations were announced eight days in advance every day via local media, radio, newspaper ads, and billboards in public areas. Representatives of the government and civil society organizations were invited via letter as well as direct communication. During these public consultations, it was announced that a dedicated GRM for the Project was available to any party who wished to lodge a potential claim regarding the evaluation of their property documents.</p> <p>In May 2019, COPESCO made additional public announcements inviting any potential Project-affected person not identified to date to present documentation related to land ownership in the Project area.</p> <p>Management notes that throughout the preparation and updating process for the RAP, there were multiple opportunities and entry points for disclosure of information and public consultation on Project-related resettlement, and considers that it followed the consultation requirements of Peruvian law and Bank safeguard policies, including OP/BP 4.12.</p> <p>The objectives of the public consultations held on the ESIA and RAP included:</p> <ul style="list-style-type: none"> <li>- Present the scope, contents and characteristics of both the ESIA and the Project, and take note of the views and suggestions made by the participants;</li> <li>- Present the RAP (PACRI in Spanish) to the Project affected people, including affected landowners and mobile vendors/service providers in the Project area;</li> <li>- Promote the participation of the general public during the ESIA process, with emphasis on identification of environmental and social impacts and preventive, corrective and/or mitigation plans and programs.</li> </ul> <p>The three consultation events in January 2017 were attended by 254, 107, and 200 persons, respectively.</p> <p><i>The past and ongoing litigation processes between some individuals and the CRG regarding land claims in the Project area have been closely monitored by Management. While these individuals may continue to pursue their claims in the Peruvian legal system, as they are already doing, this remains a matter for the national courts to review and adjudicate.</i></p>
7.	<b>Retaliation.</b> <i>The Requesters further raise concern about</i>	<i>Management notes that the dispute in question is a longstanding one and precedes the Project and the Request for inspection.</i> Management

N o.	Claim/Issue	Response
	<p><i>retaliation, including [...] spreading of false information through regional authorities to discredit them.</i></p> <p>The Regional government has published a report against the REDACTED saying that I probably didn't meet state standards. My fear is that they will continue to retaliate with new paid journalistic reports against REDACTED that have nothing to do with the Regional Government. Which harms me economically and seriously discredits me with my clients.</p>	<p>also notes that the Requesters are communicating their views about the Project and their claims in public fora, which reportedly has triggered negative comments from other social media users. Management condemns the use of threats and defamatory comments by social media users against any Project stakeholders. However, there are no indications that Project staff were involved in posting defamatory or threatening content on social media.</p> <p><b><i>Management takes seriously any allegation of retaliation or intimidation in the context of Bank-supported projects.</i></b></p> <p>Management has requested the support of both regional and national authorities to ensure that no retaliation is exerted against the Requesters and other Project stakeholders. This was discussed at the highest level of regional and national government.</p> <p>Management also has explicitly requested the CRG to pro-actively remind implementing agency staff of the Bank's zero-tolerance policy for retaliation, and will continue to monitor the risk of retaliation against any complainants, witnesses or other Project stakeholders very closely and involve the Peruvian authorities as may be needed.</p>
8.	<p><i>The Requesters further raise concern about retaliation, including a violent incident.</i></p> <p>In our lands, PER PLAN Copesco and the Regional Government have violently mistreated those who occupy the lands, poor people who lived in small shacks made of clay/brick mats and wood with a corrugated iron roof, who are called <i>adoberos</i> and who rented the plots from us to sell the bricks they manufactured have been evicted with violent actions, using tractors, thugs, 100 policemen, 2 colonels of the National Police, demolishing houses, mistreating poor people who were engaged in making adobes on the land of our property, violating the social</p>	<p><b><i>See Items 2, 3 and 7.</i></b></p> <p><b><i>Management takes allegations of retaliation in the context of Bank-supported projects very seriously.</i></b></p> <p><b><i>Management notes that the code enforcement action executed by the municipalities of Cusco on September 2, 2019 in the Project area took place without the use of force, following applicable national procedures and laws, and in the presence of Cusco's Prosecutor's Office (Fiscalía de Prevención del Delito de Cusco), Cusco's Provincial Municipal Attorney's Office (Procuraduría Pública de la Municipalidad Provincial de Cusco), and the police, as explained above. Management would also like to emphasize that there are no "small shacks made of clay/brick mats and wood with a corrugated iron roof" in the Project area and, as such, no structures were demolished in the Project area.</i></b></p> <p>Management would like to underscore that it is following up closely with the PIU<sup>2</sup> to ensure that the 18 mobile vendors (including the 10 brick makers) identified in the RAP, are promptly provided with the resettlement assistance they are due. As indicated above, 17 of the 18 mobile vendors identified in the RAP have now either received or accepted the resettlement assistance offered under the RAP. The ten brick makers have already accepted the resettlement assistance. Two car washers have been given resettlement assistance, per the RAP, and five</p>

<sup>2</sup> A letter was sent by the Bank to the PIU on October 9, 2020 to request an acceleration of the compensation process for all the brick makers and car washers identified as Project-affected people in the RAP.

N o.	Claim/Issue	Response
	<p>safeguard policies of the World Bank, even with the presence of the Regional Governor and the Mayor of Cusco. Helped by hundreds of people who had been summoned by the Regional Government, hundreds of workers and trained people in order to intimidate us. We simply could not react, and we were paralyzed with the fear of being physically attacked.</p>	<p>additional car washers listed in the RAP have accepted the resettlement assistance offered under the RAP. The compensation process is ongoing as the RAP is under implementation. The PIU is making good progress to reach out to the remaining affected car washer to provide him with the compensation and/or resettlement assistance. COPESCO is widely disseminating information on the entitlement program under the RAP through local newspapers and radio throughout the Province of Cusco.</p> <p>Management would also like to note that any mobile vendors/service providers, such as brick makers, that occupy the Project area after the cut-off date are not eligible for resettlement assistance under the RAP, but that the GRM is available to receive any valid claims of people who can demonstrate they were in the area prior to the cut-off date but were not captured in the census. To date, no such claims have been received in the Project GRM.</p>
9.	<p><b>Previous Contact with the Bank.</b></p> <p><i>The Panel received earlier correspondence with the Bank about [the Requesters'] concerns and learned that the Bank's Grievance Redress Service has received a complaint on this matter as well.</i></p> <p>Yes, we have made a complaint for the first time on REDACTED 2020, to the REDACTED World Bank, REDACTED, with abundant documentation. REDACTED.</p>	<p>Management confirms that a complaint was received from the Requesters in March 2020.</p> <p>This complaint was sent to the Bank's Country Director for Peru through two emails received on March 2 and May 11, 2020, together with multiple documents claiming ownership of an area of land that is part of the Vía Expresa Avenue's existing right-of-way. The Requesters also filed a complaint in the Bank's Grievance Redress Service. The complaints are very similar to one another, and focus on the same land ownership issue. Both complaints were responded to on May 20, 2020, after a thorough review of the associated documentation was conducted by Management. In its response, the Bank explained that, based on the review of the official property records and the documentation provided, claiming ownership, the Requesters did not possess evidence of land ownership and that this has been confirmed by several judicial processes in Peru.</p> <p>Management notes, however, that the issue of eviction of brick makers was noted for the first time by the Requesters in the Request for Inspection. Management also notes that the Requesters did not identify themselves as "landlords" or raise the issue of "rental income" throughout the RAP process or in any previous written submission to the Project (GRM) or the Bank. As part of the consultations held during the preparation of the RAP, some brick makers who were using part of the claimed land to sell their products, had mentioned that they were "renting from" one of the individuals claiming ownership of this land, through a verbal arrangement. This individual, however, did not bring up this verbal arrangement during the consultations.</p>



## Annex 2: Summary of Lawsuits and Arbitration Processes

The following tables contain summaries of the lawsuits and arbitration processes, provided to the Bank by the PIU.<sup>1</sup>

- Claims and lawsuits between different individuals and the CRG:

No. Claimant/Defendant File Id.	Court / Date of ruling	Brief Summary of Rulings or Status
1. Claimants vs. Provincial Council of Cusco and Provisional Council of Regional Administration of Cusco.  File: 1998-0396-0-1001- JR-CI-03  Case initiated in January 1999.	Civil /May 2003	Claim for payment of just compensation ( <i>justiprecio</i> ) based on a sales contract signed in November 1997 between the claimants and the original owner of the Quispiquilla Ranch (seller) for an area of 41.283 m2.  The court ruled that the claim was unfounded ( <i>infundada</i> ) due to, inter alia, the following: i) it was not possible to establish that the claimants were the owners of the claimed land; ii) the buyers did not pay the price, as such payment was in turn subject to payment of just compensation; iii) the land seems to have been sold in the past to other parties, making it difficult to establish precisely what property should be compensated; iv) no evidence was presented to establish how the property of the claimants was affected, in terms of extension, location or perimeter.  The court also dismissed counterclaims by the Provincial Municipality of Cusco to i) obtain the annulment of the sales contract, on procedural grounds, since the seller was not a claimant/defendant in the case; ii) declare that the actions expired, since this was not provided for through explicit norm.
2. Claimant vs. CRG/Plan COPESCO  File: 00637-2012-0- 1001-JM-CI-02  Case initiated in November 2012.	Civil / May 2013	Claim to recover a portion of the claimed area in the Via Expresa. The court initially dismissed the claim in November 2012 on procedural grounds. The dismissal was confirmed in May 2013.
3. Claimant vs. CRG/Plan COPESCO  File: 00352-2013-0- 1001-JM-CI-01 Case initiated in June 2013.	Civil / June 2015	Claim for payment of just compensation ( <i>justiprecio</i> ) based on: i) a sales contract from November 1997 (referred to in box 1 above), ii) extrajudicial transaction from 2006 with the original owner of the Quispiquilla Ranch (seller) for an area of 41.283 m2 and; iii) partition process 2007-02337-0-1001-JR-CI-3.  The Court declared the process null since the claimant was acting in representation of his parents, who had been declared interdicted and, therefore, lacked interest to pursue the

<sup>1</sup> The cases included in Annex 2 can be consulted online using the file ID. at:  
<https://cej.pj.gob.pe/cej/forms/busquedaform.html>

No. Claimant/Defendant File Id.	Court / Date of ruling	Brief Summary of Rulings or Status
		process. The Court indicated that the claimant could still pursue the claim by itself, but the process would have to be restarted. The process was subsequently archived.
<p>4. Regional public attorney of Cusco Vs. Defendants (more than 10 persons).</p> <p>File: 01472-2019-0-1001-JR-CI-01</p> <p>Case initiated in August 2019.</p>	<p>Civil /August 2019</p> <p>Appeal / February-2020</p>	<p>Claim (<i>Amparo</i>) submitted by the Regional public attorney of Cusco against the Defendants, to paralyze or suspend any civil, criminal, administrative, o arbitral action that would suspend or obstruct the execution of the works related to the Project.</p> <p>Initially, the <i>Amparo</i> claim was declared <i>improcedente</i> as the purpose of the action was outside and against the objective of the <i>Amparo</i> action. The Appeals ruling confirmed the decision of first instance, indicating that that all claims to land ownership have to be reviewed and adjudicated by competent courts. The court clarified that the decision could not be interpreted as a recognition to the alleged rights the Defendants were pursuing through different processes. The court did not examine the merits of the claims of the Requesters (and others) and did not recognize any ownership claims to land.</p>
<p>5. Claimants vs. CRG</p> <p>File: Unavailable.</p> <p>Case initiated in December 2012.</p>	<p>Arbitration / September 2019</p>	<p>Claim for payment of just compensation (<i>justiprecio</i>) based on the following: i) sales contract signed in February 1997 and ratified in April, 2011, with the original owner of the Quispiquilla Ranch for an area of 9,459,57 m2 of said ranch; ii) sales contract signed in January 2012 by the claimants and the wife (now widow) of the original owner of the Quispiquilla Ranch, acting in representation of her husband, for an area of 39,069,228 m2 of said ranch.</p> <p>More than ten persons intervened in this process to oppose the claim and claim property rights to the Quispiquilla Ranch as well, including widow of the original owner of said ranch, who alleged that the sales contract of January 2012 was null, as she indicated it was obtained through fraudulent means and that she did not receive any payment under such contract.</p> <p>The arbitration court ruled that it could not establish the just compensation filed by the claimants given there were several persons claiming to be the rightful owners of the property. The court indicated it was for civil and criminal courts to resolve the competing claims, including ownership over the claimed property, which was not within the scope of the arbitration.</p> <p>The court also indicated that the Regional Government demonstrated, through documentation and technically, that the properties claimed by the claimants, and even other persons who intervened in the process, could not be physically identified, which is why the properties of the claimants were not considered in the PACRI (RAP).</p>

No. Claimant/Defendant File Id.	Court / Date of ruling	Brief Summary of Rulings or Status
		Therefore, the claim was dismissed.
6. Claimants vs. CRG File: 00351-2013-0-1001-JM-CI-02  File: 31124-2019-0-5001-SU-DC-01 (Supreme Court) <sup>2</sup>  Case initiated in June 2013.	Civil / March - 2018	<p>Claim to retrieve the possession of a portion of the claimed area -20,911,50 m2- in the Via Expresa based on: i) extrajudicial transaction signed in September 2006 with the original owner of the Quispiguilla Ranch for an area of 41.283 m2, part of the Via Expresa; and ii) partition process 2007-02337-0-1001-JR-CI-3, where 50 percent of the property purchased through the referred sales contract was allocated to his family.</p> <p>The Court granted the claim in first instance, indicating that through a partition process, a portion equal to 50 percent of the 41.283 m2 had been allocated to the claimant, and ordered the restitution of such area -20,911.50 m2- in favor of the claimant.</p> <p>In the first instance process, the CRG was declared <i>in absentia</i>, which means it did not intervene in the process and offered no legal defense with respect to the arguments of the claimant.</p>
	Appeal / August- 2018	First instance ruling was revoked by the Superior Court of Justice of Cusco, and the claim was dismissed. The court indicated that the requirements to grant the claim were missing, specifically that the defendant was not in possession of the claimed land.
	Supreme Court / June 2020	The Supreme Court dismissed the <i>casación</i> action filed by the claimant to overturn the Appeals ruling. The court indicated that the claimants did not explain the alleged wrongful application of law by the Superior Court of Justice of Cusco, nor how this was material to said Court's decision. This ruling concluded the civil case, which means the claim was dismissed.
7. Claimants vs. CRG File: 00545-2019-0-1001-JM-CI-02  Case initiated in September 2019.	Civil / ongoing	Claimants seek to be included as affected persons under the RAP (PACRI) for the Project and consequently receive just compensation for their alleged property on the Via Expresa, in accordance with the applicable expropriation laws. The PIU indicated that the CRG has yet to be formally notified of this lawsuit. Therefore, this lawsuit is still in process and could possibly take years to fully resolve.
8. Claimants vs. CRG File: 00557-2020-0-	Civil /	Claim petitions the court to order the CRG to comply with its obligation to expropriate a property of about 4.1 ha on the Via

<sup>2</sup> The Supreme Court case can be consulted using the file ID. at: <https://apps.pj.gob.pe/cejSupremo/ConsultaExpediente.aspx>

No. Claimant/Defendant File Id.	Court / Date of ruling	Brief Summary of Rulings or Status
1001-JR-CI-02  Case initiated in July 2020.	ongoing	<p>Expresa, which would have been part of the Quispiguilla Ranch, in accordance with the applicable expropriation laws, for the purpose of obtaining just compensation. The claimant claims to own 50 percent of the 4.1 ha, based on: (i) a sales contract from November 1997, and (ii) partition process 2007-02337-0-1001-JR-CI-3, where 50 percent of the property purchased through the referred sales contract was allocated to his family. The claim, therefore, seeks to obtain compensation by way of expropriation.</p> <p>As part of this lawsuit, the claimant requested and was granted, on September 25, 2020, a precautionary measure (injunction), which sought to stop any works on the claimed land until the claim is resolved in court. The injunction was issued before the CRG submitted its answer to the claim and a writ of opposition to the request for injunction. On October 20, 2020, the civil court revoked the injunction, noting, inter alia, that (i) there are significant doubts regarding the ownership claims, made during a series of judicial proceedings, which were not dispelled or countered with evidence by the claimants; (ii) the injunction was not suitable for the type of claim filed by the claimants.</p> <p>This lawsuit is still in process and could possibly take years to fully resolve.</p>

- Lawsuits filed by different individuals claiming property rights to the Via Expresa against each other:

Claimant/Defendant File Id.	Court / Year	Brief Summary of Rulings or Status
1. Claimant v. Defendants  File: 00533-2011-0- 1001-JR-CI-02  Case initiated in April, 2011.	Civil / January - 2019	<p>Claim to obtain the annulment of a sales contract between the defendant and original owner of the Quispiguilla Ranch.</p> <p>In January 2019, the Court accepted the withdrawals of the claims filed by the parties for undisclosed reasons. The case was concluded.</p>
2. Claimant v. Defendants  File: 01794-2012-0- 1001-JR-CI-02  Case initiated in December, 2012.	Civil / December - 2018	<p>Claim initiated to obtain the annulment of a sales contract between the defendant and original owner of the Quispiguilla Ranch.</p> <p>In December 2014, this process was merged with process 01795-2012-0-1001-JR-CI-02.</p>

<b>Claimant/Defendant File Id.</b>	<b>Court / Year</b>	<b>Brief Summary of Rulings or Status</b>
3. Claimant v. Defendants  File: 01795-2012-0- 1001-JR-CI-02  Case initiated in January, 2013.	Civil / December - 2018	Claim to obtain the annulment of a sales contract between the defendant and original owner of the Quispiquilla Ranch.  In December 2018, the Court accepted the withdrawals of the claims filed by the parties for undisclosed reasons. The case was concluded.
4. Claimant v. Defendants  File: 01126-2018-0- 1001-JR-CI-05  Case initiated in June, 2018.	Civil / December - 2019	Claim to obtain the annulment of a sales contract between the defendant and original owner of the Quispiquilla Ranch. The claim was submitted by the widow of the former original owner of the Quispiquilla Ranch.  In December 2019, the Court finalized the case because the claimant failed to appear at an evidence hearing. The case was concluded.
5. Claimant v. Defendants  File: 01673-2018-0- 1001-JR-CI-02  Case initiated in June, 2018.	Civil / ongoing	Claim submitted by the widow of the former original owner of the Quispiquilla Ranch to obtain the annulment of the extrajudicial transaction dated September 16, 2006, of the Defendants with the original owner of the Quispiquilla Ranch (seller) for an area of 41.283 m2.  In January 2019, this process was merged with process No. 1392-2018-0-1001-JR-CI-02.
6. Claimant v. Defendants  File: No. 1392-2018-0- 1001-JR-CI-02.  Case initiated in July, 2018.	Civil / ongoing	Claim to obtain the annulment of the sales contract signed in January 2012 by the Defendants and the wife (now widow) of the original owner of the Quispiquilla Ranch, acting in representation of her husband, for an area of 39,069,228 m2 of said ranch.  On May 17, 2019 the process in file 01673-2018-0-1001-JR-CI-02 was annexed to this process.  This is an ongoing process. No substantive resolution has been issued so far.



