

**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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## 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-costanera/">https://www.copesco.gob.pe/mejoramiento-de-la-transitabilidad-via-expresa-ovalito-libertadores-puerto-costanera/</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.
4. Regional public attorney of Cusco Vs. Defendants (more than 10 persons). File: 01472-2019-0-1001-JR-CI-01 Case initiated in August 2019.	Civil /August 2019  Appeal / February-2020	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.  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.
5. Claimants vs. CRG File: Unavailable. Case initiated in December 2012.	Arbitration / September 2019	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.  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.  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.  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).

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.



