

GONZALO CASTRO DE LA MATA
Chairman
The Inspection Panel

IPN REQUEST RQ 17/06

November 20, 2017

**MEMORANDUM TO THE EXECUTIVE DIRECTORS
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT**

Request for Inspection

**Republic of Peru: Boosting Human Capital and Productivity Development Policy
Financing with a Deferred Drawdown Option (P156858)**

Notice of Non-Registration

Summary

1. In accordance with paragraph 17 of the Resolution¹ establishing the Inspection Panel (the “Panel”), I hereby inform you that on October 13, 2017, the Panel received a Request for Inspection (the “Request”) of the Republic of Peru: Boosting Human Capital and Productivity Development Policy Financing with a Deferred Drawdown Option Program (P156858) (the “DPF” or the “Program”).
2. The Request was submitted by the leaders of two local indigenous organizations, claiming harm caused by Law No. 30230², allegedly supported by the above-referenced DPF operation. The Requesters claim that this law has reduced or eliminated Peru’s capacity to guarantee the territorial rights of indigenous peoples and to provide regulatory oversight of the extractive industry. They specifically refer to increased oil spills that have caused damage to forests, health issues, loss of clean water and food, economic and physical displacement, and loss of cultural resources and livelihoods in the affected communities, particularly of indigenous peoples.
3. After conducting its due diligence, speaking to the Requesters’ representative and Management, and receiving additional clarifications from Management, the Panel is not registering this Request for Inspection.

¹ The World Bank Inspection Panel, International Bank for Reconstruction and Development, Resolution No. IBRD 93-10 (referred to as the “Resolution”).

² Law No. 30230, dated July 12, 2014.

The Program

4. The Program supports the Peruvian National Competitiveness Agenda of 2014-2018 and the National Education Project to 2021, and aims to support Peru's efforts to foster productivity growth through "*measures targeting key productivity constraints by enabling the improvement of the quality of human capital, fostering competition pressures, and facilitating trade.*"³ The World Bank's 2015 report titled *Peru - Building on Success - Boosting Productivity for Faster Growth*, which among other studies serves as the analytical underpinning of the Program, found that while productivity improvements already were an important driver of Peru's economic growth, "*in the next stage of convergence, and under the new external conditions, a larger contribution to economic growth will have to come from productivity.*"⁴ The report explains that there is strong evidence at the firm level that markets in Peru tend to misallocate labor and capital into less productive workplaces. The report concludes that overall productivity could be increased by up to 130 percent, "*but that in turn requires deepening reforms in selected areas.*"⁵

5. The main policy pillars and objectives of the DPF are to support Peru's efforts to boost human capital and productivity by: (i) enhancing the education policy framework to enable better quality of skills; (ii) facilitating the entry, operation, and exit of firms; and (iii) reducing transaction costs in trade.⁶ The Program includes 10 prior actions implemented through several different legislative and administrative actions of the Borrower.

The Request

6. The Request was submitted by Edwin Montenegro, President of the *Organización Regional de las Pueblos Indígenas de la Amazonía Peruana* (ORPIAN), and Jorge Pérez, President of the *Organización Regional de las Pueblos Indígenas del Oriente* (ORPIO), represented by César Gamboa Balbín, Executive Director of the organization *Derecho, Ambiente y Recursos Naturales* (DAR). The Request is attached to this Notice as Annex 1.

7. The Requesters claim that the DPF reported the passage of Law No. 30230 as "*an accepted prior action*" before Peru could receive Bank financing.⁷ They allege that, although this law aims at promoting investments and tax reform, and the simplification of doing business in Peru, it significantly weakens environmental and social regulations.⁸ The Requesters claim that the law "*has reduced or eliminated the borrower's capacity to 1) guarantee the territorial rights of indigenous peoples and 2) prevent local communities from being affected by oil spills and other environmental harms caused by extractive industries.*"⁹ In particular, according to the Requesters:

³ Program Document for a Proposed Loan to the Republic of Peru, January 16, 2016, p. 1 and 12.

⁴ Peru - Building on Success - Boosting Productivity for Faster Growth. The World Bank Group, 2015, p. 11.

⁵ Id, p.11.

⁶ Program Document, p. iv.

⁷ Request for Inspection, p. 1.

⁸ Id, p.1 and 3.

⁹ Id, p. 1.

- Article 19 of Law No. 30230 had led to a reduction in the potential fines against companies operating in Peru for environmental infractions such as oil spills¹⁰ and, in doing so, weakens environmental and social outcomes “*by removing incentives for businesses operating in Peru to comply with environmental laws.*”¹¹ The definition of a “*recurring offender*” was also changed to only include companies that repeat infractions within the same six-month period, so that “[*e*]very six months their slate is wiped clean, and infractions committed more than six months ago are forgotten.”¹²
- The shortened review period for environmental assessments to 45 days and changes in land policies introduced in Articles 20 to 22 of the law have “*reduced incentives for oil companies to strictly comply with environmental standards.*”¹³
- Articles 45 to 51 of the law have caused the “*weakening of indigenous peoples’ land tenure rights.*”¹⁴

8. The Requesters state that since 2014 there have been numerous oil spills in the Peruvian Amazon and “*infringements have increased by 62% in the mining sector and 14% in the hydrocarbon sector, following the passage of this law.*”¹⁵ In particular, on January 25, 2016, an oil spill occurred in Chiriaco in the Amazonas region that affected up to 6,000 people in surrounding communities, with 45 different indigenous communities reporting health impacts.¹⁶ The Request also states that, on June 30, 2014, another oil spill occurred near the community of Cuninico, which affected over 20,000 indigenous families in the Urarinas district, causing health problems, a reduction of fish and farmland and other impacts.¹⁷ According to the Requesters, there is “*evidence that these oil spills have occurred as a result of an outdated and crumbling oil pipeline that is in dire need of maintenance.*”¹⁸ In the Requesters’ view, “*with reduced fines for environmental infractions such as oil spills, oil companies [...] no longer have a strong incentive to invest in oil pipeline maintenance.*”¹⁹

9. The Requesters claim that the environmental impact of Law No. 30230 was not properly assessed,²⁰ even though the World Bank, given that the law was passed in July 2014, “*had ample time to review the possible effects of this law on the environment, forests, and other natural resources of Peru prior to granting the Development Policy Loan in early 2016.*”²¹

¹⁰ Id, p.2.

¹¹ Id, p. 3.

¹² Id, p. 3.

¹³ Id, p.2.

¹⁴ Id, p.3.

¹⁵ Id, p. 4.

¹⁶ Id, p. 4.

¹⁷ Id, pp. 4-5.

¹⁸ Id, p.5.

¹⁹ Id, p. 6. According to the Requesters, Law No. 30230 has been recognized by the Peruvian government as having caused harm to the environment and indigenous communities. Almost three years after the law was passed the congress of Peru voted overwhelmingly to repeal Article 19 of Law 30230. (p. 4).

²⁰ The Request quotes the Program Paper, which states that “[t]he specific policies supported by the DPF-DDO are not likely to have significant effects on Peru’s environmental resources (e.g. forests, water resources, etc.) and natural habitats” (p. 29) and that “Peru has adequate environmental controls in place and environmental legislation and regulations are aligned with good international practices” (p. 29).

²¹ Request for Inspection, p. 7.

The Requesters state that they believe that the Bank's Operational Policy 8.60 on Development Policy Financing (OP 8.60) "*is not a sufficient environmental and social safeguard.*"²²

10. The Request states that the World Bank needs to compensate community members harmed by the Program, some of whom needed to leave their homes, which were too close to the oil spills and therefore no longer habitable. They explain that the harms that need to be compensated include impacts on community members' health, livelihoods, loss of cultural resources and others.

Panel's Observations and Determination

11. In accordance with its Operating Procedures²³, after receipt of the Request on October 13, 2017, the Panel issued a Notice of Receipt on its website on October 17, 2017.²⁴ The Panel conducted its due diligence by reviewing the information contained in the Request and Program documents. The Panel, on October 13, 2017, met with the Requesters' representative to better understand the concerns and to share information about the Panel's mandate and process. The Panel also met with Bank Management on October 25, 2017, and received written clarifications from Management on November 8, 2017 (attached here as Annex 2).

12. According to Management, Law No. 30230 is an omnibus legislation that contains a large number of different legislative initiatives ranging "*from competition policy, to tax policy, to customs administration, to private investment promotion, to public finance administration, and to disaster risk management, among others.*"²⁵

13. Management explains that, "[u]nlike in some other operations where approval or submission of legislation to Congress might be a prior action," in this DPF, "*the Bank supported only specific policy and institutional actions related to productivity growth.*"²⁶ Three sections of Law No. 30230 - concerning modifications to the value-added tax, modification to the law on administrative procedures, and a temporary provision derogating customs stamp duties - were accepted as supporting evidence of compliance with the related prior actions. Management explains that the same sections "*could as well have been enacted independently of the omnibus law through the issuance of separate pieces of legislation or regulations and still be considered supporting evidence.*"²⁷

14. As an example, Management indicates that prior action #6 supported the strengthening of INDECOPI²⁸ by enhancing its enforcement role to prevent local governments from imposing illegal bureaucratic barriers on firms. Management explains that this goal was achieved through the issuance of a new decree (Decree 1212), the amendment of Law No. 27444 (as evidenced by Articles 16 and 17 of Law No. 30230) and the amendment of Decree-

²² Id, p. 7.

²³ <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>

²⁴ <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=129>

²⁵ Management Clarification Note, p. 1.

²⁶ Id, p.1.

²⁷ Id, pp.1-2.

²⁸ INDECOPI (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*) is the Peruvian National Institute for the Defense of Free Competition and the Protection of Intellectual Property.

Law No. 25868 (as evidenced by Article 18 of Law No. 30230). In Management's view, "*the action did not support new policy setting, but rather the agency's power to enforce existing country law. Moreover, said policy action does not include, or is not linked to, any issues related to environmental regulation or regulations on Indigenous Peoples rights.*"²⁹

15. Management explains that, in compliance with OP 8.60, the Bank had analyzed whether the policies supported by the Bank were likely to cause significant poverty and social impacts, especially on poor and vulnerable groups, or effects on the environment. The Bank team concluded that the poverty and social impacts are expected to be positive or poverty-neutral in the short term and positive over the medium term. The Bank also determined that the actions supported by the DPF "*would not have any significant environmental effects.*"³⁰

16. The Panel notes that according to OP 8.60 "[t]he Bank determines which of the policy and institutional actions the Member Country has committed to take are critical for the implementation and expected results of the program supported by the development policy operation."³¹ With regard to the Program in discussion, the Bank made such a determination by enlisting the Borrower's prior actions relevant to the Program in the Program Document and the Loan Agreement³², under the corresponding pillars. The following prior actions refer to Law No. 30230:

- Pillar 2: Facilitating the entry, operation and exit of firms. Prior Action #6: "*The Borrower has taken measures to limit the discretion of all government bodies to impose regulations and administrative procedures outside the national legal framework, by strengthening INDECOPI's power to sanction non-compliance with the national legal framework, as evidenced by the enacting of Law No. 30230 [...].*"³³
- Pillar 2: Facilitating the entry, operation and exit of firms. Prior Action #7: "*The Borrower has taken measures to simplify the withholding regime for VAT payments to reduce operating costs for firms, as evidenced by the enactment of Law 30230 [...].*"³⁴
- Pillar 3: Reducing transaction costs in trade. Prior action #9: "*The Borrower has improved the customs regime through: (i) the modernization of the Borrower's Custom Law [...]; and (ii) the elimination of all stamp duties for Customs Declaration reducing transaction costs and in alignment with the Bali WTO Trade Facilitation Agreement, as evidenced by the enactment of Legislative Decree No.1235 [...] and Law 30230 [...].*"³⁵

17. The Panel notes that the Bank's Program is neither supporting Law No. 30230 as a whole, nor is it supporting any of the provisions of Law No. 30230, which the Requesters allege cause negative impacts to the environment and land rights (Articles 19-23, 36, 38, 39, 40 and 42-51 of Law No. 30230). It is the Panel's understanding that the references to Law No. 30230

²⁹ Management Clarification Note, p. 2.

³⁰ Id, p. 1.

³¹ OP 8.60, art. 12.

³² Loan Agreement between the Republic of Peru and the IBRD, April 4, 2016, p.5.

³³ Loan Agreement, p. 6.

³⁴ Id, p. 6.

³⁵ Id, p. 6.

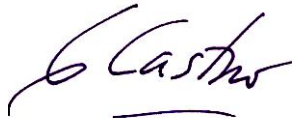
- as well as those to many other legislative and administrative acts - in the Program document are exclusively those supporting specific prior actions within the framework of the Program's objectives. Both the reduction of bureaucratic barriers associated with the powers of INDECOPI and the withholding of VAT, as well as the modernization of the Custom Law and elimination of stamp duties, are clearly aimed at reducing transaction costs in trade and increasing competition.

18. The Panel also understands that the Bank has conducted an assessment of the social and environmental impacts of the Program and has determined that there is no expectation of a negative impact in the short or long term. Since the Bank Program does not support the enactment of Law No. 30230 as a prior action, but rather, specific articles within it unrelated to the claim, the Panel has determined that it is not possible to identify a Bank program plausibly linked to the Request, and therefore deems it inadmissible.

19. While the Panel determined that the alleged harms are not linked to the Bank Program in this particular case, it notes that in the case of Development Policy Financing in general serious social and environmental impacts could occur, and in accordance with OP 8.60 the Bank needs to conduct adequate assessments of the risks and impacts of the policies supported by its operations and propose appropriate mitigation measures.

20. In light of the foregoing and in accordance with the Panel Resolution, its Clarifications, and its Operating Procedures, and after reviewing the information gathered through its own due diligence and received from Management, the Panel is not registering the Request for Inspection given the absence of a plausible link between the Request's claims of harm and the Bank-financed Program.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'G. Castro', with a horizontal line underneath.

Gonzalo Castro de la Mata
Chairman

Attachments

Mr. Jim Yong Kim, President
International Bank for Reconstruction and Development

The Executive Directors and Alternates
International Bank for Reconstruction and Development

César Gamboa Balbín, Executive Director of the organization *Derecho, Ambiente y Recursos Naturales* (DAR)

ANNEX I

Request for Inspection

RECEIVED

10/13/2017

DIEGO BARRAS

Diego Barras

Request for inspection
Executive Secretary of the Inspection Panel

To: Executive Secretary, the Inspection Panel 1818 H Street NW, MSN 10-1007, Washington, DC 20433, USA

Email: ipanel@worldbank.org

1. We Edwin Montenegro, President of the Organización Regional de los Pueblos Indígenas de la Amazonía Peruana (ORPIAN –P: Santiago District, Bagua, Amazonas, Perú); Jorge Pérez, President of the Organización Regional de los Pueblos Indígenas del Oriente (ORPIO: Iquitos, Iquitos, Loreto, Perú); represented, in this case by César Gamboa Balbín, Executive Director of Derecho, Ambiente y Recursos Naturales (DAR: Jirón Huáscar 1415, Jesús María.
2. We have suffered, harm as a result of the World Bank's failures or omissions in the Boosting Human Capital and Productivity Development Policy Financing with a Deferred Drawdown Option. P156858: The objectives of the DPF-DDO are to support Peru's efforts to boost human capital and productivity by: (i) enhancing the education policy framework to enable better quality of skills, (ii) facilitating the entry, operation, and exit of firms; and (iii) reducing transaction costs in trade; located in Peru.
3. Harm

The Development Policy Loan project titled "Boosting Human Capital and Productivity" reported the passage of Law 30230 in Peru as an accepted prior action before Peru could receive the project funds from the World Bank. This law was enacted on July 12, 2014¹. It aims at investment promotion, tax reform, and the simplification of "doing business" in Peru.² It covers specifics such as tax reform for certain industries, including mining, hydrocarbons, and small and medium sized enterprises.³ It has been touted as an "economic stimulus decree" that has reduced or eliminated the borrower's capacity to 1) guarantee the territorial rights of indigenous peoples and 2) Prevent local communities from being affected by oil spills and other environmental harms caused by extractive industries under the supervision of Agency for *Environmental Assessment and Enforcement*⁴.

¹ http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY_30230_12072014/LEY30230.pdf

² http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY_30230_12072014/LEY30230.pdf

³ http://www.proinversion.gob.pe/RepositorioAPS/0/0/arc/LEY_30230_12072014/LEY30230.pdf

⁴ Organismo de Evaluación y Fiscalización Ambiental. <http://www.oefa.gob.pe/en/>

Prior actions are actions that the borrowing country government (in this case Peru) must complete before the project is approved, and must complete in order to receive the loan from the World Bank.⁵ The World Bank defines prior actions as the following: "Prior Actions are a set of mutually agreed policy and institutional actions that are deemed critical to achieving the objectives of a program supported by a development policy operation and that a country agrees to take before the Board approves a loan (credit or grant)."⁶ Law 30230 is used as an example of how Peru is meeting both prior action 6 and 7 in the loan agreement.

Law 30230 and the Boosting Human Capital and Productivity Development Policy Loan

Law 30230 was referenced in prior action #6 and #7 in the program document of the Development Policy Loan project titled "Boosting Human Capital and Productivity: Development Policy Financing with a Deferred Drawdown Option" in the following terms, respectively: "The Borrower has taken measures to limit the discretion of all government bodies to impose regulations and administrative procedures outside the national legal framework, by strengthening INDECOP's power to sanction non-compliance with the national legal framework, as evidenced by the enacting of Law No. 30230 published in the Official Gazette on July 12, 2014."⁷ INDECOP is the National Institute for the Defense of Competition and Intellectual Property Protection.⁸ Prior action 7 is referenced in the following: "The Borrower has taken measures to simplify the withholding regime for VAT payments to reduce operating costs for firms, as evidenced by the enactment of Law 30230 published in the Official Gazette on July 12, 2014."⁹

Article 19 of Law 30230 has led to a reduction in the potential fines that can be levied against companies operating in Peru for environmental infractions such as oil spills. Furthermore, the shortened review period for environmental assessments and changes in land policies introduced in Articles 20-22 have also reduced incentives for oil companies to strictly comply with environmental standards. The reduction in these fines has led to the oversight of several hydrocarbon companies regarding oil pipeline maintenance and has caused numerous oil spills in the Peruvian Amazon¹⁰. These companies have failed to invest in the proper pipeline maintenance necessary to prevent these spills, and have failed to properly remediate the harm caused by these spills. The oil spills have permanently affected the health and environment of the communities living in the regions where these have occurred. Indigenous communities and civil society organizations have filed an appeal against articles 19 - 23, 36, 38, 39, 40, 42 - 51 and the third

⁵ <http://www.dar.org.pe/wp-content/uploads/2017/01/009361-Ejecutivo-WB-DPF-ENG02.pdf>

⁶ <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1244732625424/Q&Adplrev.pdf>

⁷ <http://documents.worldbank.org/curated/en/483991468284660170/pdf/RAD1994832267.pdf>

⁸ <https://www.indecopi.gob.pe/sobre-el-indecopi>

⁹ <http://documents.worldbank.org/curated/en/483991468284660170/pdf/RAD1994832267.pdf>

¹⁰ <http://excesosincastigo.convoca.pe/english>

complementary disposition of Law N° 30230 asserting that it violates their rights provided in the Constitution, and this appeal is currently in progress¹¹.

Law 30230

Although Law 30230 aims to promote investments and tax reform, in reality significantly weakens environmental and social regulations, including inter alia expedited approval of environmental impact assessments in Article 21, greatly reduced fines for environmental infractions in Article 19, and the weakening of indigenous peoples' land tenure rights in Articles 45-51¹². Article 19 weakens the capacity of the Ministry of Environment (MINAM, in Spanish) and the Agency for Environmental Assessment and Enforcement (OEFA, in Spanish) which is housed within the Ministry of Environment. Environmental and social outcomes have been weakened by removing incentives for businesses operating in Peru to comply with environmental laws by reducing fines for noncompliance, which could result in conflicts of interest. Another example of the Ministry of Environment's reduced capacity is that it can no longer create Natural Protected Areas, as stipulated in Article 20¹³¹⁴, but the effects go beyond this. Article 22 of Law 30230 also provides companies with the right to any surrounding land that is necessary to complete a project, effectively removing rights of local community members.¹⁵

Some of the main changes introduced by Law 30230 include a 50% reduction in the fines levied for environmental infractions (Article 19).¹⁶ Article 22 of Law 30230 has also changed the definition of a "recurring offender" to only include companies who repeat infractions within the same six month period.¹⁷ Every six months their slate is wiped clean, and infractions committed more than six months ago are forgotten. Finally, in Article 21 of Law 30230, the comment period for an Environmental Impact Report is reduced to only 45 days.¹⁸ This means that if any agency objects to the findings of an Environmental Impact Report they only have 45 days to make their case.

¹¹ <http://www.dar.org.pe/wp-content/uploads/2017/01/009361-Ejecutivo-WB-DPF-ENG02.pdf>

¹² http://www.dar.org.pe/archivos/docs/amicus_ley30230_julio15.pdf

¹³ http://www.dar.org.pe/archivos/docs/amicus_ley30230_julio15.pdf

¹⁴ <http://rightsandresources.org/en/blog/new-law-in-peru-to-severely-curtail-land-rights-for-indigenous-peoples-and-smallholder-farmers/#sthash.y6pKpILR.dpbs>

¹⁵ [http://rightsandresources.org/en/blog/new-LAW-in-peru-to-severely-curtail-land-rights-for-indigenous-peoples-and-smallholder-farmers/#sthash.y6pKpILR.dpbs](http://rightsandresources.org/en/blog/new-law-in-peru-to-severely-curtail-land-rights-for-indigenous-peoples-and-smallholder-farmers/#sthash.y6pKpILR.dpbs)

¹⁶ <http://excesosincastigo.convoca.pe/english>

¹⁷ http://dar.org.pe/archivos/publicacion/154_analisis_Ley30230.pdf

¹⁸ http://dar.org.pe/archivos/publicacion/154_analisis_Ley30230.pdf

Petroperu has avoided millions of dollars in environmental fines due to this law¹⁹, and Pluspetrol, an Argentinian company has avoided S/. 25 million in fines²⁰. This law has been recognized by the Peruvian government as having caused harm to the environment and indigenous communities. Almost three years after the law was passed, on May 16, 2017 the congress of Peru voted overwhelmingly to repeal Article 19 of Law 30230, which limits the ability of OEFA to impose sanctions and fines.²¹ The executive branch has 30 days to respond to this vote.²²

Harm

There have been numerous oil spills in the Peruvian Amazon since 2014. According to Oracio Pacori, a congressman who voted to repeal Article 19 on May 16, 2017 stated, “[Article 19 of Law 30230] through mild sanctions, has not been a deterrent; on the contrary, it has actually increased the number of infringements.”²³ In fact, infringements have increased by 62% in the mining sector and 14% in the hydrocarbon sector, following the passage of this law.²⁴ On January 25th, 2016 an oil spill occurred in Chiriaco, in the region of Amazonas²⁵, affecting up to 6,000 people in surrounding communities, with a total of 45 different indigenous communities reporting health impacts.²⁶ Around 3,000 barrels of oil spilled into the Chiriaco and Morona rivers. In Chiriaco, the company bought barrels of oil back from anyone who collected them, creating a perverse incentive that led villagers, including children, to scoop up oil along riverbanks without any protective gear.²⁷ Community members reported feeling symptoms such as headaches, nosebleeds, nausea and stomach aches, all of which affected children and the elderly most severely.²⁸ Community members also saw a massive die-off of fish, approximated at between two and seven tons²⁹ and other animals immediately following the oil spill.

An oil spill also occurred near the community of Cuninico on June 30th, 2014, spilling over 2,358 barrels of crude oil³⁰. Over 20,000 indigenous families in the Urarinas district were affected by this

¹⁹ <http://excesosincastigo.convoca.pe/english>

²⁰ <http://larepublica.pe/impres/politica/713575-los-millones-perdonados-las-petroleras-por-el-gobierno-de-humala>

²¹ <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²² <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²³ <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²⁴ <http://www.muqui.org/details/itemlist/tag/Ley%2030230>

²⁵ <http://convoca.pe/investigaciones/las-huellas-del-petroleo-que-intentaron-esconder>

²⁶ “Informe de Seguimiento: Vigilancia Epidemiologica Post Desastre Por Derrame de Petroleo en el Distrito Imaza/Provincia Bagua/Region Amazonas - Enero, Febrero del 2016.” Gobierno Regional Amazonas.

²⁷ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

²⁸ <https://www.theguardian.com/environment/2014/dec/09/the-amazon-oil-spills-overlooked-by-environmental-leaders-in-lima>

²⁹ <https://www.scientificamerican.com/article/oil-spill-in-amazon-sickens-villagers-kills-fish/>

³⁰ Tessa Torres Sanchez, President of the Direct Council, OEFA. June 9, 2016. Powerpoint Presentation.

oil spill, which includes the community of Cuninico.³¹ Approximately two hectares of forest were damaged by this oil spill, and there was again a massive die-off of fish and other animals, similar to the impacts seen in the Chiriaco oil spill.³² Fish were previously a main food source for these community members, but many reported that the remaining living fish tasted like oil following the spill. Now community members must make the choice between eating the local contaminated fish or purchasing fish from another community. As recently as September 2016, Cuninico community members have reported lingering impacts from the oil spill, such as health problems and a reduction of fish and farmland.³³ There have been five oil spills in this region just in 2014.

Law 30230 and Harm

The changes in environmental oversight imposed by Law 30230, specifically Articles 19, 20, 21, 22, and 42-51 have caused harm to the communities in Chiriaco and Cuninico. Article 19 has been particularly harmful, leading to reduced fines and oversights on the part of oil companies, which has caused oil spills in the communities of Cuninico and Chiriaco. In June 2016, a report was released showing elevated levels of mercury and cadmium in villager's urine.³⁴ Scientists stated that monitoring health, water, fish, and vegetation in the event of an oil spill are necessary steps to take in order to correctly determine the impact of the oil spill and effectively mitigate the impacts.³⁵ OEFA has found TPH (Total Petroleum Hydrocarbons) in soil samples in amounts up to 1500% over the legal amount.³⁶ According to the Center for Disease Control and Prevention (CDC) "Some of the TPH compounds, particularly the smaller compounds such as benzene, toluene, and xylene (which are present in gasoline), can affect the human central nervous system. If exposures are high enough, death can occur. Breathing toluene at concentrations greater than 100 parts per million (100 ppm) for more than several hours can cause fatigue, headache, nausea, and drowsiness."³⁷ These are the exact symptoms many community members reported following the oil spills.

There is evidence that these oil spills have occurred as a result of an outdated and crumbling oil pipeline that is in dire need of maintenance. The oil pipeline in this region is now over 40 years old.³⁸ Osinergmin, the oversight body of the Ministry of Energy and Mining, found that there were

³¹ Ministerio del Ambiente Resolución Directoral No. 844-2015-OEFA/DFSAL.

³² http://dar.org.pe/archivos/loUltimo/lu_204/np_loreto_240714.pdf

³³ <http://voices.nationalgeographic.com/2016/09/07/things-shouldnt-be-like-this-lingering-effects-of-peru-jungle-oil-spills/>

³⁴ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

³⁵ <https://www.scientificamerican.com/article/oil-spill-in-amazon-sickens-villagers-kills-fish/>

³⁶ <http://convoca.pe/investigaciones/los-millones-perdonados-las-petroleras>

³⁷ <https://www.atsdr.cdc.gov/phs/phs.asp?id=422&tid=75>

³⁸ <https://www.scientificamerican.com/article/oil-spill-in-amazon-sickens-villagers-kills-fish/>

at least 5 cases of spills since 2014 caused by corrosion in pipelines, whereas there had been zero spills in the previous 3 years caused by corrosion³⁹. In fact, in the case of the Cuninico oil spill, the Institute of Legal Defense (IDL) found that the aging oil pipeline was responsible for the oil spill, and that Petroperu was responsible, as stated in resolution number 844-2015-OEFA/DFSAL.⁴⁰ Specifically, there was a 30 cm crack in the oil pipeline, and 6 cm break that ruptured the pipeline⁴². Furthermore, according to Mongabay, "On June 24, 2016 OEFA sanctioned Petroperú over its failed cleanup of the 2014 spill in Cuninico, and the agency has three other cases open against the company related to the 2016 Chiriaco and Morona spills that could result in millions of dollars in fines."⁴³ With reduced fines for environmental infractions such as oil spills, oil companies such as Petroperu no longer have a strong incentive to invest in oil pipeline maintenance.

In addition, article 19 says that OEFA have to "prefer actions of prevention and correction from the offender during a 3 year old period, and only perform sanction processes in case of non-compliance on correcting actions; also the fines will not surpass the 50% of what it is established by law except when "real and very severe health damage" is proven⁴⁴. It is important to note that only health damage is taken into account leaving environmental damage off the table. In practice, it is very difficult to prove a direct link between the activity and personal health damage. In the case of Petroperu's oil spills, OEFA was unable to enforce and monitor cleanup efforts⁴⁵, and the commission of health did not declare a health emergency because they were only provided information on the status of the cleanup from Petroperú.⁴⁶ Furthermore, OEFA froze or reduced fines in the mining and hydrocarbons sectors by S/.55, 6 million.⁴⁷ Article 19, have left the Peruvian government with no legal tools to act in a way that the really protects its citizens right to health and to enjoy of a good ecological environment.

Petroperu and the government of Peru have both recognized that there was harm to communities and the environment caused by these oil spills. In fact, Petroperu apologized to the communities in a public hearing in mid-2016.⁴⁸ Furthermore, OEFA has stated that Article 19 of Law 30230 has led to reduced fines for environmental infractions, which has in turn caused companies to commit

³⁹ Division of Supervision of Liquid Hydrocarbons, Osinergmin September, 2016.

⁴⁰ Ministerio del Ambiente Resolución Directoral No. 844-2015-OEFA/DFSAL.

⁴¹ <https://news.mongabay.com/2016/07/health-concerns-food-insecurity-linger-months-after-peruvian-oil-spills/>

⁴² Tessa Torres Sanchez, President of the Direct Council, OEFA. June 9, 2016. Powerpoint presentation.

⁴³ <https://news.mongabay.com/2016/07/health-concerns-food-insecurity-linger-months-after-peruvian-oil-spills/>

⁴⁴ <http://www4.congreso.gob.pe/pvp/leyes/ley30230.pdf>

⁴⁵ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

⁴⁶ <https://news.mongabay.com/2016/06/breaking-oil-spill-in-peruvian-amazon-puts-local-communities-at-risk/>

⁴⁷ <http://convoca.pe/agenda-propia/paquetazo-ambiental-las-5-preguntas-que-las-autoridades-no-responden>

⁴⁸ <https://infoamazonia.org/en/2016/06/petroperu-apologizes-to-communities-for-oil-spills-in-the-amazon/#!/story=post-15814>

more environmental crimes.⁴⁹ The president of OEFA stated that “[these fines] are not a preventative mechanism because they do not effectively deter environmental infringements.”⁵⁰

4. Section 10 of Operational Policy 8.60 (the policy that applies to Development Policy Loans), titled “forests” states that it is the responsibility of the World Bank to “determine whether specific country policies supported by the operation are likely to cause significant effects on the Member Country’s environment, forests, and other natural resources”. Given that Law 30230 was passed in July of 2014, the World Bank had ample time to review the possible effects of this law on the environment, forests, and other natural resources of Peru prior to granting the Development Policy Loan in early 2016.

However, the environmental impact of this law was not properly assessed, and environmental impacts of the project were referenced only in the following sentence “The specific policies supported by the DPF-DDO are not likely to have significant effects on Peru’s environmental resources (e.g. forests, water resources, etc.) and natural habitats” (P. 29).

It was further stated that “Peru has adequate environmental controls in place and environmental legislation and regulations are aligned with good international practices.” However, the reality is that after the passage of Law 30230, Peru no longer has the proper and adequate environmental controls in place to effectively incentivize mining and hydrocarbon companies from avoiding environmental infractions. Immediately following the passage of this law there were a series of oil spills in several communities in the Amazon, including the communities of Cuninico and Chiriaco. Given that the Development Policy Loan was approved in February 2016, it was the responsibility of the World Bank to analyze the effects of the recently passed laws in Peru, including Law 30230.

The failure of the World Bank to recognize the potential impacts of this law on the environment, forests and people of Peru was a negligent oversight. There is precedent for oversights such as this, as stated by the Independent Evaluation Group: “The pressure to deliver operations quickly, combined with the lack of a formal role for environmental or social specialists, provide incentives for task teams to deprioritize management of environmental and social risks in DPOs.”⁵¹

It is the belief of the presenters that OP 8.60 is not a sufficient environmental and social safeguard for Development Policy Loans. Due to this situation, we think the case should be eligible.

⁴⁹ <http://www.convoca.pe/agenda-propia/oefa-reconoce-impacto-nocivo-de-la-ley-del-paquetazo-ambiental>

⁵⁰ <http://www.convoca.pe/agenda-propia/oefa-reconoce-impacto-nocivo-de-la-ley-del-paquetazo-ambiental>

⁵¹ https://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf

According to the Bank Information Center (BIC) “The policy lacks detailed requirements on how risk assessment and mitigation should take place and how a country system analysis should take place, as well as clear and verifiable requirements for transparency, participation and accountability in policy design and implementation.”⁵² This case exemplifies that substantial harm can be caused by Development Policy Loans and that this harm was not sufficiently assessed by the World Bank prior to granting the loan. Because there is no project level grievance mechanism for Development Policy Loans, the affected communities were unable to raise their complaints directly in an effective forum prior to this complaint. OP 8.60 should undergo review at the level of World Bank management and should be changed to more closely match the Environmental and Social Safeguards in place for other types of World Bank lending instruments.

For example, the World Bank’s own Independent Evaluation Group found in 2015 that there are “significant gaps in how environmental and social risks are managed through OP 8.60 in development policy financing (DPF)”, and furthermore that “the Bank’s identification of risk was inconsistent.”⁵³ These gaps consisted of a focus on short term impacts rather than longer term impacts, ambiguity in the sequencing of requirements, and a lack of incentives and requirements for comprehensive environmental and social reporting.⁵⁴ The Independent Evaluation Group has also found that “over the last 10 years 70% of the Bank’s lending to the forest sector was through DPLs, which are not currently covered by OP 4.01 (the safeguard covering forests and land, in effect prior to 2017) and have no requirement for environmental assessment (EA).”⁵⁵ Although these recommendations were made prior to the World Bank’s environmental and social safeguards review completion in 2016, many of the recommendations still apply because they were not incorporated into the review process.

⁵² <http://www.bankinformationcenter.org/wp-content/uploads/2013/05/7-DPL-Primer.pdf>

⁵³ http://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf

⁵⁴ <http://www.bankinformationcenter.org/our-work/safeguards/development-policy-loans/>

⁵⁵

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenteronthearchitectureofsafeguardpolicies.pdf>

Further information:

http://dar.org.pe/archivos/publicacion/154_analisis_Ley30230.pdf

http://www.dar.org.pe/archivos/loUltimo/lu_200/doc_tecnico_pl_3627.pdf

http://www.mediafire.com/file/8z562qqhiba64na/20160302155444_INDECI_AMAZONAS.pdf



**ALGUNAS SANCIONES CON RESOLUCIONES FIRMES APLICADAS POR OEFA
AL SECTOR MINERO E HIDROCARBURÍFERO**

EMPRESA	UNIDAD	INFRACCIÓN	AÑO	SANCIÓN / MEDIDA PREVENTIVA
CHINALCO	Toromocho	Descarga de efluentes en lagunas Huacacocha y Huacacocha.	2014	Implementó y amplió diques de contención e infraestructura para encausamiento del efluente.
VOLCÁN COMPAÑIA MINERA	Cerro de Pasco	Exceder límites máximos permisibles en tres y dos punto de control, respecto de dos parámetros.	2014	150 UIT y 100 UIT.
XTRATA TINTAYA	Tintaya	Presencia de 1.7% del valor normal de sedimentos de cobre predominante en la zona, en una área de 1000 metros de pastos naturales debido al bombeo de agua realizado desde un canal de la empresa.	2014	50 UIT, 6 UIT y 6 UIT respectivamente
		No comunicar el incidente al OEFA.		
		No presentar el informe de investigación del incidente		
		Verter agua de relaves sin tratamiento hacia la laguna Yanacocha.		
CASTROVIRREYNA COMPAÑIA MINERA	Unidad Minera San Genaro	Superar los LMP en efluente de agua de relavera.	2013	70 UIT
		Efluente cuyo punto de monitoreo no se encontraba establecido en el instrumento de gestión ambiental.		
CATALINA HUANCA SOCIEDAD MINERA	Concesión de Beneficio San Jerónimo	Descarga directa al río Mishka de aguas provenientes del sistema de drenaje subterráneo de uno de sus depósitos de relaves y no redirigirla hacia la planta de beneficio San Jerónimo, como lo indicaba su EIA.	2012	60 UIT
		Exceder el LMP en un punto de control.		
MINERA YANACOGCHA	Conga	Incumplimiento de cinco compromisos del EIA, entre ellos la instalación de una plataforma de exploración a menos de 50 metros de un bofedal y un curso de agua estacional.	2012	127.75 UIT
PLUSPETROL NORTE	Lote 192 (1 AB)	Pluspetrol Norte fue multado en primera instancia con más de 20 millones de soles por haber contaminado y desaparecido la laguna Shanshococho, ubicada en el Lote 1AB que opera en Loreto; por haber afectado con hidrocarburos líquidos a la laguna. Monto: 3410.15 UIT; por la pérdida ecológica irrecuperable del ecosistema que conformaba la laguna, al haber realizado actividades de drenaje y remoción de suelos sin contar con el Instrumento de Gestión Ambiental correspondiente. Monto: 2000 UIT; por incumplir con informar al OEFA sobre la regularización de los trabajos de intervención en la cocha. Monto: 4.39 UIT; por no comunicar al OEFA, dentro de las 24 horas, la afectación ambiental a la cocha. Monto: 2.36 UIT.	2013	3410.15 UIT, 2000 UIT, 4.39 UIT y 2.36 UIT

Fuente: OEFA. Elaboración: Propia.

There are no grievance mechanisms for Development Policy Loans, but the complaint has been raised with OPCS, executive directors, and World Bank management (see attached correspondence).

The issues were raised initially over email and then in a series of meetings and reports. These issues were also raised in a report titled: "World Bank Development Policy Finance and Climate Change: Is the Bank Providing the Right Incentives for Low-Carbon Development in Peru." World Bank staff were invited to input into this report prior to its release, but declined to do so. Following publication, Bank staff provided comments which were promptly addressed by the authors of the report. There has been no further communication between the authors and Bank staff to date.

It can also be noted that many of the findings raised by the IEG in 2015 are reiterated in the experience with this DPL project. The Bank response to the IEG report was very similar to

responses received in correspondence with Bank management and other departments over this specific project as well as issues raised with OP 8.60 overall. In all cases the Bank has responded in a similar manner, as exemplified in their response to the IEG report: "It looks at environmental and social "risks," that is, the potential for adverse effects, and does not examine the positive environmental and social contributions that many DPFs make."⁵⁶ However, this response downplays the importance of these potential risks, and is not rational - it is the job of the IEG to focus on the risks, while the World Bank is likely to focus more on the benefits. By not responding to the serious risks that many DPLs pose, the Bank is disregarding their own responsibility in problems caused by projects such as this.

The communities harmed by this project need to be compensated by the World Bank for the tangible and intangible harm that was caused to them. Prior to compensation, there should be a thorough assessment of the harm caused, including health and environmental harm, assessed by the relevant government agencies. Some tangible harm includes the loss of clean drinking water and food, which could be compensated by the delivery of clean water and culturally appropriate food supply. Several communities felt that they had to leave their homes because their homes were too close to the oil spill and therefore were no longer habitable. These families should be compensated for the cost of relocation. Past and likely future health expenses should also be included in compensation. Furthermore, many livelihoods and cultural resources were lost due to this oil spill, and the World Bank should compensate these.

While Article 19 of Law 30230 is being revoked, the complainants believe that all downstream legal changes caused by Law 30230 need to be assessed, especially pertaining to the internal structure of OEFA.

For future projects the requesters would like to see improved DPF transparency for all Development Policy Loans (DPLs). DPL programs should disclose: 1. All measures contained in DPL-supported laws, policies, and investment frameworks. 2. All current and planned investment projects related to the DPL operation. 3. The government's planned projects associated with the DPL operation: carbon intensive vs. low carbon projects; and projects involving both direct and indirect drivers of deforestation, for example. 4. Whether the DPL reforms will enhance or undermine the governance capacity of key ministries regarding social and environmental safeguards. Finally, 5. DPLs should include a stipulation for broader stakeholder consultation prior to granting given their unique role in affecting national and sub-national policy changes, especially if these are changes in policies that will impact land tenure rights of indigenous peoples as it is in this specific case⁵⁷ and must go through a Prior Consultation Process according to Peruvian

⁵⁶ https://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf

⁵⁷ Articles 45-51 of 30230 Law.

National Law⁵⁸. DPLs can drive development trends for many years, so it is critical that DPLs are carefully assessed for environmental and social risks.

We believe it is necessary to review Operational Policy (OP) 8.60 in order to ensure that the environmental and social safeguards and standards applied to Development Policy Loans are consistent with those applied to other World Bank projects, including the stipulation that public consultations are carried out prior to the granting of a loan.⁵⁹ These demands have previously been communicated to the Bank, as early as 2013 at the start of the review of the World Bank's environmental and social safeguards.⁶⁰ Furthermore, the IEG suggested that "BP 8.60 could be revised to specify procedures to ensure that the provisions of OP 8.60 with respect to environmental and social risks are adequately applied."⁶¹ For a full list of demands to changes in the World Bank's treatment of Development Policy Loans, please see page 8 of "World Bank Safeguards & Development Policy Lending: A Primer on Why DPLs Should be Part of the Safeguard Review."⁶²

<http://www.dar.org.pe/wp-content/uploads/2017/01/009361-Ejecutivo-WB-DPF-ENG02.pdf>

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenteronthearchitectureofsafeguardpolicies.pdf>

<http://www.bankinformationcenter.org/wp-content/uploads/2013/05/7-DPL-Primer.pdf>

⁵⁸ Article 2 of Prior Consultation Law. "[...] *Is the right of indigenous peoples to be consulted about legal or administrative measures which affects directly their collective rights, physical existence, cultural identity, quality of life or development [...]*"

⁵⁹ <http://www.bankinformationcenter.org/wp-content/uploads/2017/03/Kim-letter-on-DPF-FINAL.pdf>

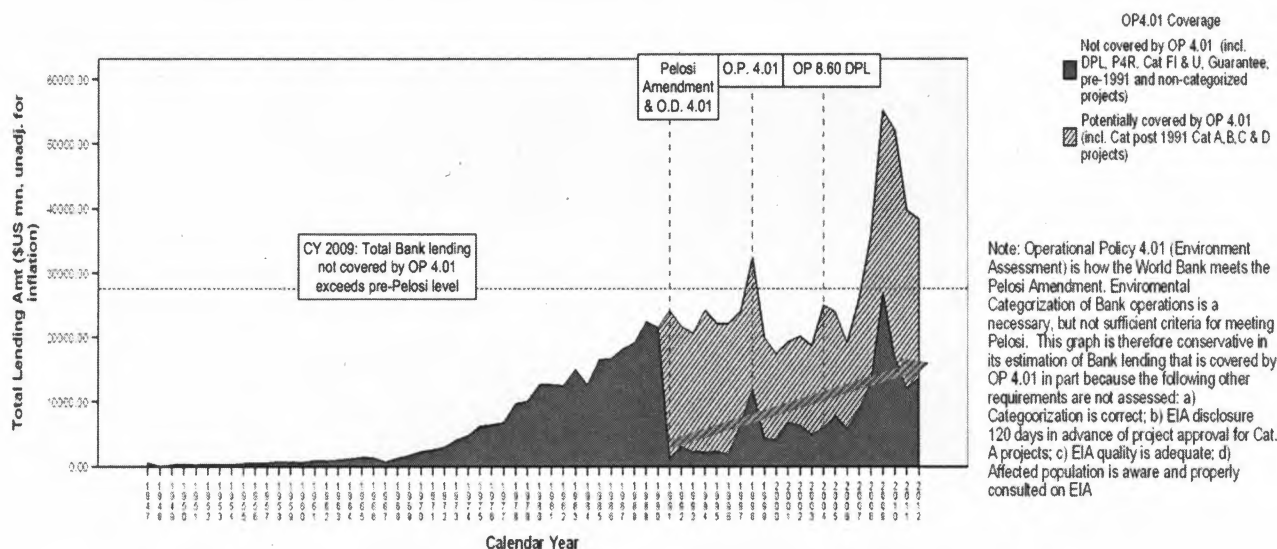
⁶⁰

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenteronthearchitectureofsafeguardpolicies.pdf>

⁶¹ [https://ieg.worldbankgroup.org/Data/reports/Managing ES Risks in DPF.Sept18.2015.pdf](https://ieg.worldbankgroup.org/Data/reports/Managing_ES_Risks_in_DPF.Sept18.2015.pdf)

⁶² <http://www.bankinformationcenter.org/wp-content/uploads/2013/05/7-DPL-Primer.pdf>

World Bank (IBRD+IDA) Lending Not Covered by Safeguard Policy OP 4.01 - Environment Assessment



Source: BIC Calculations from World Bank Project database

Source:

<https://consultations.worldbank.org/Data/hub/files/submissionfromthebankinformationcenternthearchitectureofsafeguardpolicies.pdf>

6. We request the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out.

Jorge Perez Rubio
JORGE PEREZ RUBIO
PRESIDENTE DE ORPIO
DNI 05384225

Edwin Montenegro Davila
Edwin Montenegro Davila
PRESIDENTE DE ORPIAN
DNI 40473442

Date : October, 13th of 2017

Contact address : Jirón Huáscar 1415, Jesús María – Lima – Lima - Perú

Telephone number : 51 01 4303780

E-mail address : cgamboa@dar.org.pe | dar@dar.org.pe

We do authorize you to disclose our identities

ANNEX II

Management Clarification Note

**Clarification Note to Inspection Panel
on the Peru Boosting Human Capital and Productivity DPF-DDO (P156858)**

1. This DPF supports Peru's policy reforms in the areas of (i) enhancing the education policy framework, (ii) facilitating the entry, operation, and exit of firms to foster competition, and (iii) reducing transaction costs in trade. Specifically, the policy and institutional actions supported the recruitment of qualified teachers in disadvantaged areas, extending the school-day model, creating a directorate for school infrastructure, and ensuring quality standards of universities. They have also supported reductions in firms' cost of entry, exit, taxes (particularly compliance costs of VAT), improvements in accreditation systems/institutions for accessing foreign markets, and strengthening the independence of Peru's competition authority (INDECOPI).
2. These specific actions constitute the program of prior actions supported by this Bank loan, as detailed in the Legal Agreement and Letter of Development Policy (LDP), and described more broadly in the Program Document (PD). These actions were achieved by the Borrower (as evidenced by its supporting documentation) prior to the presentation of this DPF operation to the Board of Executive Directors for approval in accordance with Bank policy (OP 8.60).
3. In compliance with OP 8.60, the Bank team analyzed whether the specific policies supported by the Bank's operation were likely to cause significant (i) poverty and social impacts, especially on poor people and vulnerable groups, or (ii) effects on the Member Country's environment; and determined that was not the case. The poverty and social impacts of the prior actions are expected to be either positive or poverty-neutral in the short term (as the Program Document explains), and to be positive over the medium term. With respect to the environmental aspects, the Bank determined that actions supported in this DPF would not have any significant environmental effects.
4. We have not received or seen the official request submitted to the Inspection Panel. Based on the meeting with the Inspection Panel on October 25, 2017, and the description of the claim on its website, we assume that the request stems from discussions local NGOs had in Peru referring to specific environmental/land provisions of the *omnibus* legislation No. 30230. Those environmental/land provisions are included in separate chapters of Law 30230 and are outside the scope of this DPF.
5. Law No. 30230 is an omnibus legislation that contains a large number of different legislative initiatives—in total, 18 chapters with 67 articles, each enacting or amending provisions in different, and in many cases unrelated, policy areas. The areas covered by this omnibus legislation (No. 30230) range from competition policy, to tax policy, to customs administration, to private investment promotion, to public finance administration, and to disaster risk management, among others. Unlike in some other operations where approval or submission of legislation to Congress might be a prior action, in this DPF, approval or enactment of the omnibus legislation as a whole was not a prior action. The Bank supported only specific policy and institutional actions related to productivity growth. Three sections of said law (modifications to the value-added tax, modification to the law on administrative

procedures, and a temporary provision derogating customs stamp duties) were accepted as supporting evidence of compliance of said actions, and these sections could as well have been enacted independently of the omnibus law through the issuance of separate pieces of legislation or regulations and still be considered supporting evidence. These sections amended existing legislation that define competition and tax policy in Peru (Articles 9, 16 and 17, 18, and the Second Complementary Annulment Provision (*Disposición Complementaria Derogatoria Segunda*) amend Law No. 29173, Law No. 27444, Decree-Law 25868, and Law No. 27973, respectively).

6. Omnibus legislation is very common in Peru (as it is in other countries). It is used to bundle a large number of different legislative initiatives and proposals across a wide range of different areas, as well as amendments to, or derogation of, different laws, in one omnibus bill. That is why, when the Bank supports policy actions in DPFs in Peru, the operational and LEG teams work very closely and are very specific about prior actions' wording in our legal agreements, so that they cover only the reforms the Bank supports.
7. Compliance by the Borrower with some of the policy or institutional actions was evidenced by the passage of new legislation or new regulations. In other cases, compliance of supported actions was evidenced by amendments to existing pieces of legislation. For example, prior action No. 6 supported the strengthening of INDECOPI, which was achieved through the issuance of a new decree (Decree 1212), the amendment of Law No. 27444 (as evidenced by Articles 16 and 17 of Law No. 30230) and the amendment of Decree-Law No. 25868 (as evidenced by Article 18 of Law No. 30230). The policy action supported was focused on enhancing the enforcement role of INDECOPI, which is the anti-trust/competition body of the country, to prevent local governments from imposing illegal bureaucratic barriers on firms. The action did not support new policy setting, but rather the agency's power to enforce existing country law. Moreover, said policy action does not include, or is not linked to, any issues related to environmental regulation or regulations on Indigenous Peoples rights.
8. As regards the question of the basis for indicating in paragraph 46 (page 19) of the PD that Law No. 30230 is supported by this operation, it is important to clarify that the sentence conveys that said law contained provisions which served as supporting evidence of compliance of prior action No. 6. It is also important to consider the context of the same sentence where that law is mentioned, as well as the rest of paragraph 46, which goes into detail of how prior action No. 6 would specifically strengthen INDECOPI. It is also important to consider the results envisaged under this operation in Annex 1-Policy and Results Matrix, which are used to ex-post assess the DPF. They include a reduction of bureaucratic barriers associated with the action of INDECOPI, the average amount of monthly VAT withholdings, and a reduction in the time to clear imports through customs, that is, in addition to the result indicators related to education policy and quality of skills.
9. The analytical underpinning of this DPF and the Bank engagement are clearly stated in the PD. The Bank could not (cannot) support all the reforms that take place in the country at certain periods of time, including through omnibus legislation. As with other countries, the Bank engages and supports specific policy or institutional actions based on our analytical work and policy dialogue. In the case of this loan, the engagement was clearly limited to productivity

growth (i.e., quality) and not investment (i.e., quantity). As highlighted at the outset, the PD defines three specific areas of productivity growth that are targeted by this DPF—the quality of human capital, fostering competition pressures, and trade facilitation. These three areas have been identified as critical productivity growth constraints in Peru in the Bank’s analytical work, most notably the 2015 Peru Flagship “Building on Success—Boosting Productivity for Faster Growth.” Moreover, the Bank has a long-standing dialogue and engagement supporting INDECOPI through technical assistance on the effectiveness of competition policy.