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AND INVESTIGATION MECHANISM

MICI-PE-2015-0094

ELIGIBILITY DETERMINATION MEMORANDUM

RURAL LAND CADASTRE, TITLING, AND REGISTRATION PROJECT IN PERU

**(PE-L1026)
(3370/OC-PE)**

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This document is being released to the public and distributed to the Bank's Board of Executive Directors simultaneously for its information.

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LINKS
<ol style="list-style-type: none"> 1. Original Request http://www.iadb.org/document.cfm?id=40097617 2. Management's Response http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39918677 3. Project Profile, Rural Land Cadastre, Titling, and Registration Project in Peru, Third Phase PTRT-3. http://www.iadb.org/Document.cfm?id=39045138 4. Loan Proposal, Rural Land Cadastre, Titling, and Registration Project in Peru, Third Phase PTRT-3. http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39234588 5. Environmental and Social Management Report (ESMR), Rural Land Cadastre, Titling, and Registration Project in Peru, Third Phase PTRT-3. http://www.iadb.org/Document.cfm?id=39090461

EXECUTIVE SUMMARY

On August 27, 2015, Mr. Henderson Rengifo Hualinga, President of the Inter-Ethnic Association for the Development of the Peruvian Amazon (AIDSESP), an umbrella group for nine regional indigenous organizations, submitted a Request to the MICI on behalf of 64 indigenous peoples and 1,809 native communities of the Peruvian Amazon.

In the Request, the Requesters allege that they will be adversely affected by omissions made by the Inter-American Development Bank (IDB) in the design and implementation of the “Rural Land Cadastre, Titling, and Registration Project in Peru – Third Phase” (PE-L1026), in violation of the Operational Policies on Environment and Safeguards Compliance (OP-703) and Indigenous Peoples (OP-765). They allege that those omissions will have negative, direct, and substantial effects related to (a) property and territorial rights; (b) increased colonization pressures, and (c) territorial disputes.

The Project is a sovereign-guaranteed loan operation that was approved by the Bank’s Board of Executive Directors on December 3, 2014, by simplified procedure.

Pursuant to Section G of the MICI Policy (MI-47-3), and after examining the pertinent documentation, the Director of the MICI concludes that this Request **is eligible** given that it meets all of the requisite eligibility criteria under the Policy. This eligibility determination is not an assessment of the merits of the Request and the issues raised therein; nor is it a determination of the Bank’s compliance or non-compliance with its Relevant Operational Policies.

In accordance with paragraph 17(a) of the MICI Policy, and because the Requesters expressed interest in having their Request examined at both phases of the MICI process (Consultation Phase and Compliance Review Phase), the Request is being transferred to the Consultation Phase in order to immediately start the assessment stage of that Phase (paragraph 27 of the MICI Policy).

Notice of this determination is being provided directly to the Requesters, Management, and the Board of Executive Directors by means of this Memorandum; and to interested third parties through the Public Registry.

I. THE PROJECT¹

- 1.1 The “Rural Land Cadastre, Titling, and Registration Project in Peru, Third Phase” (PE-L1026) (“Project” or “PTRT3”) is a sovereign-guaranteed investment loan operation in the agriculture and rural development sector. It was approved on December 3, 2014 by the Bank’s Board of Executive Directors by simplified procedure in the amount of US \$40 million, with local matching funds in the same amount. The borrower is the Republic of Peru, and the Executing Agency is the Ministry of Agriculture and Irrigation (“MINAGRI” or “Executing Agency”) through the Agricultural/Rural Productive Development Program.
- 1.2 The objective of the Project is to formally record rural property in the jungle and specific areas of the highlands in order to enhance the security of rural land ownership. The Project aims to increase the agricultural productivity and income of the beneficiaries. According to the Loan Proposal, by providing registered property titles, the Project will benefit: (a) 220,000 agricultural producers; (b) 190 peasant communities; and (c) 190 native communities.
- 1.3 The Project seeks to support rural land titling in approximately 274 districts within the jurisdictions of 10 different Regional Governments: Amazonas, Apurímac, Cajamarca, Cusco, Huánuco, Junín, Loreto, San Martín, Ucayali, and Puno.²
- 1.4 To meet its objectives, the project will be executed in three components:
- 1.5 **Component 1. Rural Land Cadastre, Titling and Registry.** This component will support the formal registration of individual rural properties and the lands of peasant and native communities.
- 1.6 **Component 2. Development of the technology platform to streamline land cadastre, titling, and registry services.** This component will support the development of the technology platform required to facilitate the execution of rural land cadastre, titling, and registry procedures.
- 1.7 **Component 3. Strengthening of the institutional capacity and policy framework for rural land titling.** This component seeks to strengthen MINAGRI’s land stewardship functions, as well as the regional governments’ ability to fully perform their rural and

¹ The information in this section has been extracted from the following documents: Project Profile, Loan Proposal, and Environmental and Social Management Report.

² Loan Proposal, Rural Land Cadastre, Titling, and Registration Project in Peru, Third Phase, p. 9.

community land titling duties. This component also seeks to organize and consolidate the legal framework, adapting it to the country's needs and technological changes.³

- 1.8 The Project has been classified as Category "B" under the Environment and Safeguards Compliance Policy (OP-703), and based on the Project documents, the Operational Policies identified by the Project are the Environment and Safeguards Compliance Policy (OP-703), the Policy on Indigenous Peoples (OP-765), the Access to Information Policy (OP-102), the Disaster Risk Management Policy (OP-704), and the Policy on Gender Equality in Development (OP-761).

II. THE REQUEST⁴

- 2.1 On August 27, 2015, Mr. Henderson Rengifo Hualinga, President of the Inter-Ethnic Association for the Development of the Peruvian Amazon (AIDSESP), an umbrella group for nine regional indigenous organizations,⁵ submitted a Request to the MICI on behalf of 64 indigenous peoples and 1,809 native communities of the Peruvian Amazon.
- 2.2 In the Request, the Requesters allege that they will be adversely affected by omissions made by the Bank during the design and implementation of the project, in violation of the Operational Policies on Environment and Safeguards Compliance (OP-703) and Indigenous Peoples (OP-765). They allege that those omissions will have negative, direct, and substantial effects related to (a) property and territorial rights; (b) increased colonization pressures, and (c) territorial disputes.
- 2.3 With regard to property and territorial rights, the Requesters allege that the project will exacerbate the insecurity of their land ownership as native communities. They assert that PTRT3 "rightly aims to address the insecurity of land tenure in the Amazon. However, its design is incorrect, setting the wrong priorities (awarding en masse new rights and title on 441,093 individual properties that may be occupying indigenous land and granting title to a further 353,255 colonists) and pursuing the wrong strategy

³ Loan Proposal, Rural Land Cadastre, Titling, and Registration Project in Peru, Third Phase, pp. 9-11.

⁴ The Request is available in the electronic links section of this document.

⁵ The nine regional organizations that belong to AIDSESP are: (1) the Regional Organization of Indigenous Peoples of the Eastern Amazon (ORPIO); (2) the Regional Coordinating Body of the Indigenous Peoples of San Lorenzo (CORPI); (3) the Regional Organization of AIDSESP in Ucayali (ORAU); (4) the Regional Organization of indigenous Peoples of the Northern Amazon (ORPIAN-P); (5) the Council for the Development of Indigenous Peoples of the San Martín Region San Martín (CODEPISAM); (6) the Regional Association of Indigenous Peoples of the Central Rainforest (ARPI); (7) the Regional Coordinating Body of Indigenous Peoples of AIDSESP Atayala (CORPIAA); (8) the Machiguenga Council of the Urubamba River (COMARU), and (9) the Native Federation of Madre de Dios (FENAMAD).

(addressing first the granting of new rights and postponing the recognition of indigenous people's ownership)."⁶

- 2.4 In terms of the increased colonization pressures on indigenous territories, the Requesters allege that "The prioritization and sequence of investment in titling does not adequately consider the risks of conflict between the effect of consolidating colonists' plots and the incentives for more migration to the edge of the jungle and pressure on indigenous lands."⁷ They assert that the motivation of obtaining property titles in the Amazon encourages migration to areas currently protected by native communities. Therefore, from their perspective, both demographic pressure and the pressure of natural resources extraction, as well as the potential development of agricultural crops, will cause environmental and socioeconomic harm such as the deforestation of ancestral lands, the degradation of ecosystems, and the loss of indigenous peoples' livelihoods in view of the resulting land use changes.
- 2.5 With respect to conflicts, the Requesters cite the risks of creating new territorial disputes and aggravating the existing ones by granting land titles to settlers rather than to indigenous communities in areas where there are overlapping rights to traditional indigenous territories.
- 2.6 The Requesters additionally maintain that they have not participated in a public consultation on the Project, but have only been called to attend informational meetings. They state that their request for the Project to be submitted to prior, free, and informed consent in accordance with Peru's Law 29785 was denied on the basis that it was not timely filed. They further allege "a profound violation of Operational Policy OP-765 deriving from the incorrect classification of the project's risk, thereby avoiding the established requirement to achieve the explicit written support of native communities for the project as a condition for its approval."⁸
- 2.7 In addition, the Requesters allege discrimination against indigenous populations based on the denial of equal access to land titling. In particular, they assert that only native communities are subject to the following requirements for land titling: (a) they must be recognized by the State; (b) they must have more than 233 hectares of surface area; (c)

⁶ Original Request, Section II paragraph 2 (a).

⁷ Original Request, Section II paragraph 2 (c).

⁸ Original Request, Section II, paragraph 2 (j).

they must not have any land disputes; and (d) they must be engaged in communal productive activities. The Requesters allege that with these requirements, the number of native communities that can benefit from the Project is significantly reduced, further exacerbating the exclusion of indigenous peoples.

- 2.8 With respect to contact with Management, the Request details the various meetings the Requesters have had with Bank Management since 2008, as well as with MINAGRI, and the results and agreements that came out of those meetings. They note in particular that during those meetings Bank Management agreed to take actions that had yet to materialize as of the filing date of the Request, which they submitted to the MICI after more than five months without a reply from the Bank.⁹
- 2.9 In their Request, the Requesters stated that they were not asking for confidentiality.
- 2.10 Regarding the existence of specific issues or matters raised in the Request that could be the subject of arbitral or judicial proceedings, AIDSEP informed the MICI on January 7, 2016 that none of the issues raised in the Request had been taken to court or to arbitration.
- 2.11 Finally, the Requesters expressed their interest in having the Request considered at both the Consultation Phase and the Compliance Review Phase of the MICI process.

III. MANAGEMENT'S RESPONSE¹⁰

- 3.1 In accordance with paragraph 21 of the MICI Policy, Bank Management was notified of the registration of Request MICI-PE-2015-0094 on September 3, 2015. The MICI received Management's Response on October 5, 2015, in compliance with the 21-day period established in the Policy. It includes Management's perspective on the issues raised in the Request, and also asks the MICI to temporarily suspend the eligibility determination process. Below is a brief summary of the Response, which can also be accessed through the link provided at the beginning of this Memorandum.
- 3.2 Management responds extensively to each allegation of non-compliance made in the Request. In particular, it states that the social and environmental assessments conducted, as well as the resulting recommendations, became an integral part of the

⁹ Section IV of the Request contains a description of the different meetings and agreements.

¹⁰ Management's Response is available in the electronic links section.

Project design process and, thanks to those studies, it was acknowledged that “the work of titling rural properties, especially in the jungle region, requires significant efforts prior to and during the execution of the operative tasks of land titling in order to prevent negative social and environmental impacts. Accordingly, components 2 and 3 of the project and the Environmental and Social Management Plan include a number of actions and measures to ensure that: (i) the rights and territorial claims of the native communities are respected within the project execution framework; and (ii) the process of formally recording the property of small producers does not negatively affect the rights of native communities.”¹¹

- 3.3 In addressing the allegation of environmental degradation in the rainforest, Management underscores the inclusion in components 2 and 3 of the Project of actions to educate small producers and native communities on sustainable forest use practices and to have a better monitoring system.
- 3.4 Management further states that it has taken account of the risk posed by the weakness of the institutions involved in the project and, therefore, component 3 focuses on strengthening the capacity of these institutions to manage the titling process, especially with native communities.
- 3.5 Management adds that a Monitoring Plan has been included, and the operational details of its institutional culture, its terms of reference, and internal regulations, will be developed in a participatory process during the compliance with prior conditions phase, as well as during the first year of project execution.
- 3.6 With respect to public consultations, it states that meetings have been held with the participation of the Project’s Executing Agency, the Bank, the Requesters, and other indigenous organizations to discuss the Project and broader issues related to the titling of indigenous lands, resulting in an agreement signed on April 29, 2015 between MINAGRI and the main indigenous organizations, AIDSEP and CONAP. The agreement includes: (a) an increase in the number of native communities to be titled in the jungle region; (b) the initiation of titling in the jungle by the native communities; and (c) the development of a national inventory of peasant and native communities.

¹¹ Management’s Response, paragraph 3.8.

- 3.7 Finally, with respect to non-compliance with Law 29785 on prior consultation, Management notes that the Project does not qualify as a subject for prior consultation under the law according to Peruvian authorities.
- 3.8 With regard to compliance with OP-765, Management states that the Project has been designed to include important benefits for the native communities and that the assessments conducted have not identified any particularly significant potential adverse effects on the native communities that entail a high risk to the physical, territorial, or cultural integrity of the peoples involved. It further reports that several measures have been developed to prevent and minimize the potential negative impacts identified, in particular with respect to the titling of individual rural properties within communal lands.
- 3.9 In the same document, Management requests that the MICI temporarily suspend the eligibility determination process, as provided in paragraph 23(c) of the MICI Policy, in order to: (a) finalize the negotiations that are underway between the national authorities and the Requesters regarding the increased number of native communities to benefit from the project and the Requesters' recommendation to begin the titling process with the lands of native communities; (b) make the appropriate adjustments to the project execution documents, considering the technical, economic, and socio-environmental feasibility and the requirements of the National Public Investment System; (c) provide the Requesters with additional information; and (d) develop mechanisms and timelines to monitor the agreements and progress made during this period. A plan of action and the respective timeline is attached to Management's request.

IV. SUSPENSION OF ELIGIBILITY

- 4.1 In accordance with paragraph 23(c) of the MICI Policy, the Director of the MICI granted Management's request for the temporary suspension of the eligibility determination process for the maximum period of 45 business days (from October 8 to December 10, 2015), for the implementation of the action plan and timeline presented in Management's Response.
- 4.2 On December 10, 2015, the end of the suspension period, Management contacted the MICI to request an extension for an additional six business days, since it had not been possible to carry out some of the activities provided for in the action plan and, in Management's opinion, the additional time period would allow for the anticipated results

to be accomplished. The MICI Director did not grant the requested extension. Nevertheless, she encouraged Management to continue the dialogue with the Requesters during the eligibility assessment period, leaving open the possibility for both Parties to jointly inform the MICI of any results that may affect the eligibility determination prior to the conclusion of the 21 business days granted under the Policy.

- 4.3 As of the date of issue of this determination, the viewpoints received from the Parties with respect to the results of the plan implemented during the suspension period are as follows:
- 4.4 From the perspective of Management, the action plan implemented during the suspension period resulted in significant progress toward reconciling the interests of the Executing Agency and the Requesters. In addition, Management reiterates its commitment to continue with the mediation and conciliation work it initiated as an observer and facilitator of the process.
- 4.5 From the Requesters' point of view, the concerns expressed in the Original Request, which gave rise to its filing with the MICI, still remain.

V. MICI ACTIONS

- 5.1 In accordance with Section G of the MICI Policy and the eligibility criteria set forth in paragraph 22, the eligibility determination process followed the timeline outlined below:

Table 1
Timeline of MICI Actions

Date	Actions
August 27, 2015	Receipt of Request.
August 31, 2015	Telephone call with Requesters regarding Request and MICI process.
September 1, 2015	Granting of a maximum period of 10 business days to the Requesters to submit additional information required to process the Request.
September 2, 2015	Receipt of additional information requested of the Requesters.
September 3, 2015	Registration of the Request and notice to the Parties.
September 10, 2015	AIDSEP delegation visits Washington, D.C. and meets with the MICI.
September 11, 2015	In-person and telephone conference with members of the project team.
September 30 – October 1, 2015	Eligibility mission to Peru (meetings with Requesters, Executing Agency, and Management at Country Office).
October 5, 2015	Receipt of Management's Response, which includes the request for temporary suspension of the eligibility determination process.

Date	Actions
October 8, 2015	Notice of Suspension of Eligibility process for a maximum period of 45 business days in order for Management to implement the action plan and timeline proposed in its Response.
December 10, 2015	End of the temporary suspension of the eligibility determination process. Management requests an extension.
December 11, 2015	MICI response to the Request for an extension, which is denied.
December 28, 2015	Receipt of information from Management regarding execution of the action plan during the suspension period.
January 7, 2016	Receipt of information from the Requesters regarding their perspective on the execution of the action plan during the suspension period.
January 13, 2016	Issuance of the Eligibility Determination Memorandum.

- 5.2 As part of the eligibility determination process, the MICI considered the information presented in the Request and the complementary information submitted by the Requesters, as well as Management's Response, the Bank documents pertinent to this analysis,¹² and the correspondence relating to the term of suspension of the eligibility determination and the results obtained. A mission to Peru was also conducted to hold meetings with the Requesters, MINAGRI, and Bank Management at the Country Office in order to gain a deeper understanding of the perspectives of all of the Parties regarding the issues presented in the Request and their connection to the Project.
- 5.3 The MICI is grateful to Management, the MINAGRI, and the Requesters and their representatives for the time they have devoted to the MICI process at this stage, as well as for the information they have provided.

VI. ELIGIBILITY DETERMINATION

- 6.1 According to paragraph 22 of the Policy, a Request will be deemed eligible by the MICI if it is determined that it meets the following criteria:
- a) The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the Bank-Financed Operation is implemented. If the Request is filed by a representative, the identity of the

¹² The documents examined are available in the electronic links section of this document.

Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.

- b) The Request clearly identifies a Bank-Financed Operation that has been approved by the Board, the President, or the Donors Committee.
 - c) The Request describes the harm that could result from potential noncompliance with one or more Relevant Operational Policies.
 - d) The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
 - e) None of the exclusions set forth in paragraph 19 of this Policy apply.
- 6.2 After conducting the respective analysis, the Director of the MICI has determined that Request MICI-PE-2015-0094 **is eligible**, as it meets the eligibility criteria established in paragraph 22 of the MICI Policy.
- 6.3 This eligibility determination is not an assessment of the merits of the Request and the issues raised therein; nor is it a determination of the Bank's compliance or non-compliance with its Relevant Operational Policies.

VII. CONCLUSION AND NEXT STEPS

- 7.1 Pursuant to Section G of the MICI Policy (MI-47-3), the Director of the MICI concludes that this Request **is eligible** given that it meets the requisite eligibility criteria under the Policy.
- VIII.** Notice of this determination is being provided directly to the Requesters, Management, and the Board of Executive Directors by means of this Memorandum; and to interested third parties through the Public Registry.
- 8.1 **Next Steps.** In accordance with the wishes of the Requesters (see paragraph 2.11) and pursuant to paragraph 27 of the MICI Policy, the Request will be transferred to the Consultation Phase and the assessment stage will commence. In accordance with paragraph 29 of the MICI Policy, the purpose of that assessment is to establish within a maximum term of 40 business days from the date of the Eligibility Determination whether it is proper to conduct a Consultation Phase process.