

The impact of formalizing rights to land and forest

Indigenous community perspectives in Madre de Dios and Loreto

Zoila Cruz-Burga^{a,c}, Iliana Monterroso^b, Anne M. Larson^b, Frangi Valencia^c and Joe Saldaña^c

Key Messages

- The impact of the formalization of collective rights to land and forest in Peru is linked to a clear perception of tenure security: 80% of those surveyed consider their rights are stronger since titling, although this percentage is higher in men (85%) than women (75%).
- 83% of the members of communities analysed in Madre de Dios consider that livelihoods have become more constrained since titling took place.
- Despite progress, only 35% of those surveyed in Madre de Dios and Loreto say they participate in forest management. Titled communities are more actively involved (39%) than untitled ones (13%), and men more so than women.
- 51% of those surveyed in the communities analyzed in Madre de Dios feel that the formal rules and legislation on the use of resources are well known, clear and fair. The percentage drops significantly amongst women.

Introduction

This research is part of the Global Comparative Study on Forest Tenure Reform¹ which seeks to strengthen the tenure security of forest-dependent communities by improving understanding of the impact of formalizing collective rights in forest areas. The “reform” analyzed refers to the change in institutions and policies which determine how people access land and resources, as well as how these are used and maintained (Bruce et al. 2010; Larson et al. 2010). The research in Peru focused on the titling process in 22 native communities² (NC) and *campesino*

communities (CC) in Madre de Dios (10 NC) and Loreto (4 CC and 8 NC) over the period 2015-2017 (Table 1)³.

Tenure security is taken to mean the ability of an individual or a community “to appropriate resources on a continuous basis,” guaranteed by law and/or traditional systems, “free from imposition, dispute or approbation from outside sources, as well as the ability to claim returns

a Facultad de Ciencias Forestales, Universidad Nacional Agraria La Molina.

b Center for International Forestry Research, Lima, Peru.

c Grupo de Investigación Sistemas Socioecológicos y Servicios Ecosistémicos, Universidad Nacional Agraria La Molina.

1 For more information see: <http://www.cifor.org/gcs-tenure/>

2 We use the term “native” communities in this brief, rather than the more common “indigenous,” because of its specific legal meaning in the Peruvian context.

3 Under Supreme Decree 008-91-TR, the *comunidades ribereñas* (riverine communities) are those “settled on the banks of the Amazonian rivers, identified as ‘*riberena mestiza*’ [riverine *mestizo*], ‘*campesina ribereña*’ [riverine *campesino*] or simply ‘*riberena*’ [riverine], which have a minimum of 50 heads of family [and...] do not have a shared traditional ethnic and cultural origin and maintain a system of organization, communal work and use of land typical of ‘*comunidades campesinas*’ [campesino communities].” In contrast to the system for native communities, formalization of the collective rights of riverine communities is governed by the General Law on Peasant Communities (Law 24656) and the Law of Demarcation and Titling of Peasant Communities (Law 24657). The titling of native community land is governed by Decree Law 22175, Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests.

Table 1. Characteristics of the native communities (CN) and campesino communities (CC)

	Native and campesino communities	Province	District	Ethnic Group	Number of families	Tenure status
Madre de Dios						
1	CN Shintuya	Manu	Manu	Harakbut	48	Recognized 1974; titled 1979; expansion requested
2	CN Shipetiari	Manu	Manu	Matsigenka	24	Recognized 1990; titled 1996; expansion requested
3	CN Diamante	Manu	Fitzcarrald	Yine and Matsigenka	100	Recognized 1984; titled 1986; expansion 2003
4	CN Isla de los Valles	Manu	Fitzcarrald	Yine	21	Recognized 1998; titled 2003
5	CN Puerto Azul	Manu	Fitzcarrald	Harakbut	35	Recognized 2002; titled 2011; expansion requested
6	CN Infierno	Tambopata	Tambopata	Ese Eja	87	Recognized 1976; titled 1976; expansion requested
7	CN Puerto Arturo	Tambopata	Tambopata	Kichwa	35	Recognized 1984; titled 1988; expansion requested
8	CN Palma Real	Tambopata	Tambopata	Ese Eja	85	Recognized 1974; titled 1976; expansion requested
9	CN Sonene	Tambopata	Tambopata	Ese Eja	25	Recognized 1984; titled 1988
10	CN Tres Islas	Tambopata	Laberinto	Shipibo, Ese Eja	103	Recognized 1992; titled 1994
Loreto						
11	CN Boras de Pucaurquillo	Mariscal Ramón Castilla	Pebas	Bora	93	Recognized and titled 1975; expansion 2015
12	CN Santa Lucía de Prefecto	Mariscal Ramón Castilla	Pebas	Yagua	21	Recognized 2009; not titled
13	CN San José de Piri	Mariscal Ramón Castilla	Pebas	Yagua	54	Recognized 1978; titled 1992; expansion requested
14	CN Brillo Nuevo	Mariscal Ramón Castilla	Pebas	Bora	64	Recognized and titled 1975; expansion 2015
15	CN Santa Lucía de Pro	Mariscal Ramón Castilla	Pebas	Yagua	48	Recognized and titled 1991; expansion 2015
16	CN Estirón de Cuzco	Mariscal Ramón Castilla	Pebas	Murui-muinani	45	Recognized and titled 1975; expansion 2015
17	CC Porvenir de Inayuga	Maynas	Napo	Mestiza	77	Recognized 1998; not titled*
18	CN San Lorenzo	Maynas	Napo	Kichwa	45	Recognized 1978; titled 1979; considering requesting expansion
19	CN Santa María de Loreto	Maynas	Napo	Mestiza	28	Not recognized**; not titled
20	CN San Felipe	Maynas	Napo	Mestiza	45	Recognized 2016; not titled
21	CC Esperanza-Paleta	Maynas	Napo	Mestiza	36	Recognized 1995; titled 1998
22	CN Negro Urco	Maynas	Napo	Murui-muinani	91	Recognized and titled 1975

*Titled in 2017. **Recognized in 2016.

Source: focus groups and in-depth interviews, 2015

from investment in the resource" (Mwangi y Meinzen-Dick 2009: 310). This document summarizes the conclusions drawn from analysis of a survey of 1006 households (450 in Madre de Dios and 556 in Loreto), 44 focus groups (2 in each community, by gender) and 52 in-depth interviews with leaders and officials on tenure security from the point of view of community members. It examines the perceptions of these communities on the impacts of formalizing collective rights through titling – with emphasis on the views of native communities – on forests, norms for extraction, community organization, forest management and livelihoods.

Perception of the impact of titling on forest condition

Community members were asked their views on the impact of titling on the condition of forests and on the adoption of different technologies and practices for management and conservation⁴. The answers to both questions differed significantly between the two regions ($p=0.05$ and $p=0.03$). In Loreto, the response to the statement "The condition of the forest has improved since my community was titled" was more positive (62%) than in Madre de Dios (48%). But the situation was reversed in relation to the statement "I have adopted different technologies and practices to protect, maintain and improve the forest since my community was titled", where views were more positive in Madre de Dios (47%) than in Loreto (42%). The results indicate (Cruz Burga et al. 2017a, 2017b) that the adoption of management practices is linked to the existence of capacity building programs to conserve and manage forests, run by government or external entities.

Most of the communities hope to increase forest resource extraction, but the surveys and focus groups show that they are held back by factors such as lack of technical assistance, poor organization and little added value for their products. In the focus groups, it was found that this problem was exacerbated in communities undertaking activities in agreement with external loggers.

4 The survey took into account the following forest management technologies and practices: nurseries; tree planting; reforestation; management plans; annual operating plans; fire management or forest permits; agroforestry; seed management; conservation of species (such as *aguaje*, *chambira* and *huasai* palms and *tornillo*); management of small farms, secondary forest and timber plantations (cedar, mahogany, *tornillo* and Brazil nut) and agroforestry species (cocoa trees); recognition of native species; training sessions on management practices; and community forest monitoring (oversight committees).

Impact on norms governing resource exploitation

The titling process triggered the introduction of new institutions, including rules and norms designed to address the use of certain resources that are widely used by local residents, as well as those that generate significant income for the community. These rules are embodied in formal agreements that govern the use of resources at the local level, and include not only regulations introduced by the government but also rules drawn up at the local level and set out in community regulations. The agreements and rules on resource use, including the committees in charge of extraction by outsiders, vary between communities according to the availability of the resource, level of organization of the community and presence or absence of entities offering related technical advice (focus groups and in-depth interviews; see also Cruz-Burga et al. 2017a, 2017b).

The native communities located in the buffer zones adjacent to protected areas (PA) or regional conservation areas (ACR) – such as those abutting the Amaraeri Communal Reserve in Madre de Dios, or next to the Ampiyacu Apayacu ACR – collaborated with the administrators of these areas in the development of extraction rules; they are required to abide by these agreed norms (focus groups).

Rules on resource use are usually formalized at the local level through their inclusion in community statutes. One of the main changes noted by members of the communities included in the study is that, after titling, most of their resource-related activities - including subsistence resource use, such as hunting and fishing - were restricted to the area within community borders (focus groups and household survey). The two regions differ in how they view the change in forest resource use rules over the last 20 years ($p<0.01$): 83% of those surveyed in Madre de Dios consider them to be more restrictive today, as opposed to only 38% in Loreto.

With regard to the perception of how well people know the rules and norms on access to and use of the forest, and how clear and fair they are thought to be, there is no significant statistical difference between the regions. There are significant gender differences, however, over those reporting that rules are clear (men: 64%; women: 44%, $p<0.01$) and fair (men: 54%; women: 38%, $p<0.01$), although not regarding awareness (51% of men and 56% of women say the rules are well known, Figure 1).

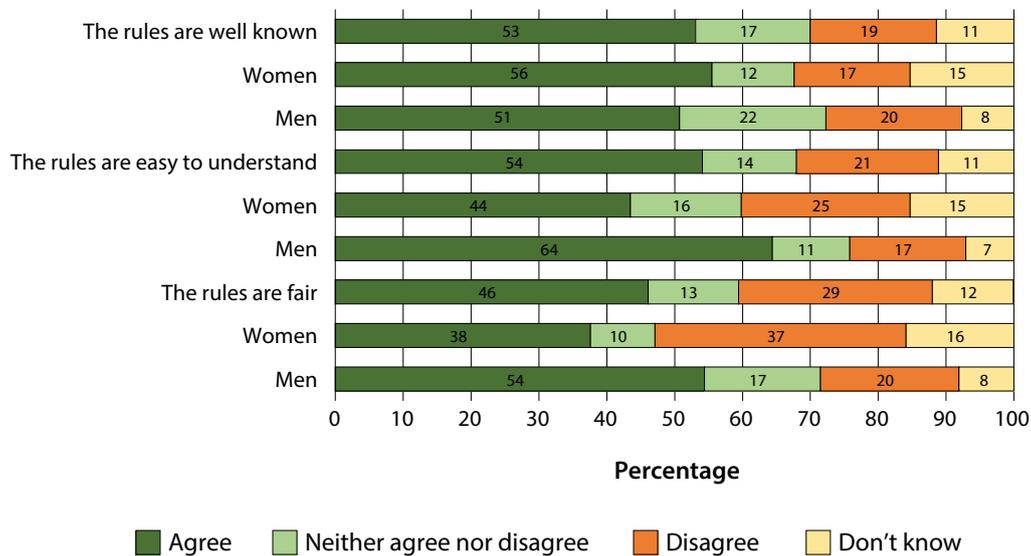


Figure 1. Perceptions on rules and norms of access to and use of the forest in titled and untitled communities in Loreto and Madre de Dios (n=1006)

The fact that almost half the population is unfamiliar with the rules and norms may indicate that within some communities, decision-making on access to the forest and its resources is dominated by certain groups. This situation influences views on government regulations. The results show that 29% of those surveyed (men: 20%; women: 37%) perceive government regulations on access to and use of the forest as unfair, a factor which may affect their enforcement. Furthermore, the differences found between men and women as to the clarity and fairness of rules and norms suggest that when community agreements are being discussed, efforts should be made to promote greater participation of vulnerable groups.

Impact on community organizations

The process of formalizing communities required setting up internal management structures, such as a board of directors, responsible for managing collective arrangements for the community. This represented a change in longstanding forms of community organization that had previously been headed up by the *curaca* or traditional leader. In addition, support committees or brigades were formed to implement the titling process, and monitoring groups were set up to reduce

the risk of incursion and illegal resource extraction (Cruz-Burga et al. 2017a, 2017b).

Focus groups in most of the communities studied said that the titling process led to the establishment of committees on productive activities like agriculture, ecotourism and extraction of timber and non-timber forest products, such as Brazil nut and *ungurahui*, among others, in compliance with forest legislation.

In-depth interviews and focus groups showed that the process of titling led to the presence of public institutions, particularly in the Madre de Dios communities, where the government implemented social projects and programs for basic services and communication.

At the same time, most of the communities surveyed in the two regions (both titled and in the process of being titled) have organized themselves into federations – at the level of the watershed, province or region – and have taken on a leadership role and become more actively involved in consultations on natural resource exploitation (in-depth interviews in Loreto and Madre de Dios).

Level of participation in forest-related activities

The household survey shows that participation in forest management activities, such as tree nurseries and plantations, is still incipient in both regions. Only 35% of those surveyed said they had been involved in these activities in the last 20 years (see Figure 2). The communities analyzed in Madre de Dios were more active in monitoring forest condition (28%) than in Loreto (15%) ($p < 0.01$), as well as in drawing up rules for extraction: 38% and 17%, respectively ($p < 0.01$). In-depth interviews suggest this difference could be due to the fact that outside organizations, which promote community participation in forest management, play a greater role in the Madre de Dios communities than they do in Loreto, especially in the Napo district communities where such organizations are few and far between.

The household survey also shows that women are less involved than men in most forest-related activities. The

difference is significant on monitoring forest condition ($p < 0.01$) and rule-making for extraction ($p < 0.01$). Nevertheless, in both regions women (31%) participate more than men (28%) in sanctioning rules-breakers, although the difference is not significant.

Turning to the differences in participation between titled and untitled communities, the former are more active in monitoring forest condition (24%) than the latter (6%) ($p < 0.01$). In addition, titled communities (35%) participate more in meetings to develop extraction rules than untitled (21%) ($p < 0.01$). On the other hand, although not statistically significant, untitled communities play a more active role sanctioning rule-breakers (33% as opposed to 29%), in forest monitoring committees (25% as opposed to 18%) and in conflict resolution in the community forest (32% in contrast to 28%). This may indicate that untitled communities, over the past 20 years, have experienced more conflict than titled communities and need to spend more time protecting their forests as a means of reducing the costs of insecurity.

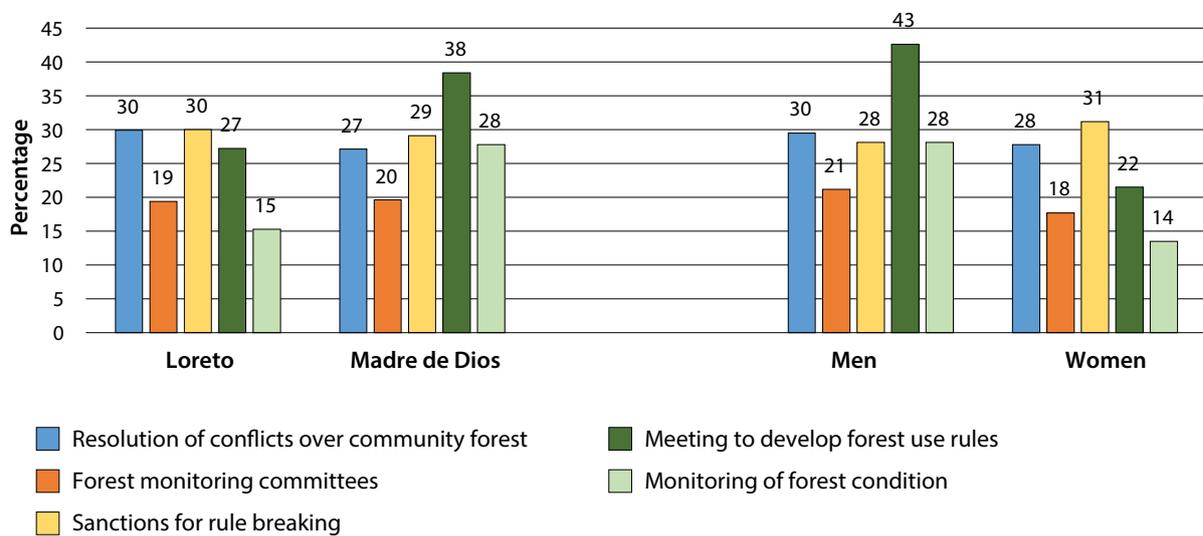


Figure 2. Participation by communities in activities related to community forest management over the last 20 years (n=1006)

Impact on livelihoods

Though the difference is not statistically significant, perception of the impact of titling on income and wealth is more positive in Loreto (58%) than in Madre de Dios (48%) (Figure 3). On the other hand, views differ significantly according to gender ($p < 0.01$), with men holding a more positive view in both regions (Loreto: men, 62%; women, 54%; Madre de Dios: men, 58%; women, 44%).

The household survey also brings out differences between communities ($p < 0.01$). For example, 77% of those surveyed in a community near the small town of Pebas in Loreto consider that their income and wealth have received a boost, as compared to 34% of those surveyed in a community near the Tambopata National Reserve in Madre de Dios. Information provided by the focus groups suggests that these inter-community differences could be linked, amongst other things, to proximity to urban centers, construction of access roads, involvement of government (education, health and social programs) and role of external stakeholders in community capacity building. In the same vein, a community near the district capital in Loreto has a communal electricity generator, a health post and a school offering secondary education, while a remote community in Madre de Dios is six hours away from Puerto Maldonado by small boat, and has no communal electricity, a technician but no health post, and a school only offering early years and primary education.

For respondents in most of the communities analyzed in the two regions, the impacts of the process of recognition and titling are linked both to holding exclusive rights over the use of resources and to productive and economic diversification (focus groups). This is related to the norms mentioned previously. On the one hand, this exclusive right was the basis for the payment of a commission to the community on the income generated from these resources or activities, and for the subsequent distribution of the income derived.

For example, in some of the Madre de Dios communities, the commission charged on logging is 3% for ordinary wood and 5% for high value wood such as *tornillo* and *shihuahuaco*. On the other hand, the view was also expressed that the restriction of subsistence hunting and fishing within and outside the boundary of the titled area not only affects food security but triggers conflicts with neighboring communities (in-depth interviews).

Perceptions on tenure security and insecurity

Analysis of the household surveys and focus groups shows that the communities feel that tenure security is influenced not only by holding a property title but also by actions that affect immediate and long-term availability of the natural resources that provide the basis for their livelihood. They believe the recognition of their rights with a land title places them in a better position to work and to derive benefits from the resources within the titled area (for example, selling timber and other forest products such as Brazil nut, palm leaves and fruit). However - and this is particularly true for the Madre de Dios communities in the study - while opening up opportunities for communities, the title alone does not guarantee complete security over land because of the kinds of threats that they face.

Community members were asked if they felt "tenure security over land and forest has changed in the last 20 years in this community?" In titled communities, 48% of those surveyed state that tenure security over land and forest is better now, as opposed to only 26% in untitled communities ($p < 0.05$). This view varies between the two regions ($p < 0.01$). Although the same percentage in both consider security has improved (44%), a much higher percentage of those surveyed in Madre de Dios feel that security has worsened (27%, as compared to 11% in Loreto). Reasons given include: new restrictions on

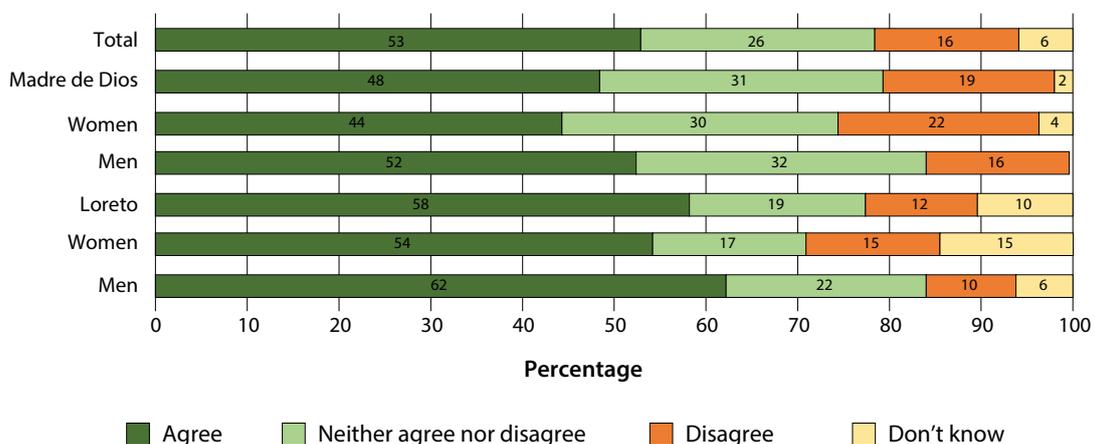


Figure 3. My income and livelihood have improved since my community was titled (titled: n=835)

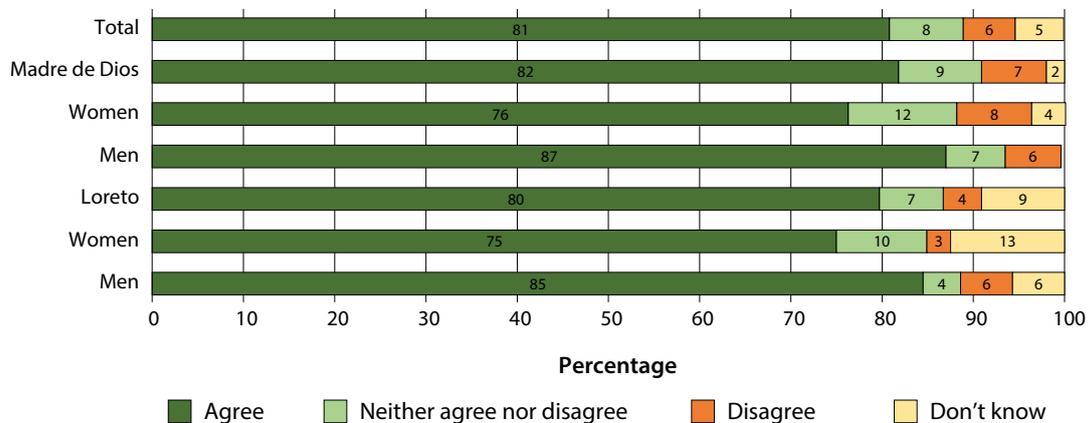


Figure 4. I feel that my rights and access to land and forest are more secure since my community was titled (titled: n=835)

use of land and resources they previously had access to, illegal logging, fewer resources and more incursions into the titled area. Men (54%) hold a more positive view than women (35%) about the improvement in tenure security ($p < 0.05$).

Two direct questions were also posed about tenure security: interviewees had to say whether or not they agreed with a statement. The first was “I feel that my rights and access to land and forest are strong and secure since my community was titled” and the second was “If I have a dispute over use of the forest and access to the land I feel confident that my rights will be protected and respected”. Analysis of the titled communities in the two regions (Figure 4), showed that 81% of those surveyed (men: 86%; women: 76%) feel that their rights and access to land and forest are stronger and more secure since they were titled (the difference by gender is significant, $p < 0.01$); additionally, 78% (men: 81%; women: 75%) feel confident in the face of possible disputes ($p < 0.05$).

Factors causing insecurity

In the household survey, the communities identified over 20 reasons for feeling insecure with respect to the area that had been titled or was in the process of being titled; foremost amongst these were: lack of a property title, competition with neighboring communities and the inability to exercise and defend their rights. In Madre de Dios the main source of insecurity alluded to by men was the new restrictions on land use introduced by the government. In the case of the women it was the inability to exercise and defend their rights. In Loreto the main source of insecurity raised by both men and women was not holding a title; another important factor leading to insecurity was competition from private investment.

Factors providing security

The household surveys mention over 13 factors which provide a sense of security. For both regions and genders

the main factors were: holding a regularized property title, absence of conflict within the community and the fact that community authorities are autonomous and can therefore abide by customary arrangements. In Madre de Dios emphasis was also given to the importance of clear boundaries; in Loreto inhabitants stressed that national laws should support local claims and incorporate these into the current legal code.

Conclusions

This study shows that titling has represented a very important step in protecting the rights of indigenous peoples to land. But the findings also suggest ways in which this could be improved upon to boost the impact on the lives of indigenous peoples, both men and women, living in these communities.

A first recommendation would be to take a direct approach to the factors causing tenure insecurity in order to avert any conflict that might prevent communities from benefitting from the rights they have obtained.

It is important to stress the responsibility of the different offices of government in defending tenure rights.

In addition, action should be taken to support communities after the process of titling has concluded, to strengthen their capacity to manage resources, organize as a community and form federations, and fully exercise their rights.

Support must be sought, not only from government but also from NGOs, to develop policies tailored to the specific context of each region and community. This can be done with indigenous organizations, which have the institutional structure to articulate across different levels.

Finally, the particular interests and needs of women and other more vulnerable groups in the communities must be recognized, understood and tackled with sensitivity. To achieve this, the

task of titling should be approached from an intercultural perspective, as has been laid down in Peru's policies and legislation.

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For further information

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