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Reclaiming collective rights

Land and forest tenure reforms in Peru (1960–2016)

Iliana Monterroso
Peter Cronkleton
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Iliana Monterroso
CIFOR

Peter Cronkleton
CIFOR

Danny Pinedo
Universidad Nacional Mayor de San Marcos

Anne M. Larson
CIFOR

Center for International Forestry Research (CIFOR)

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CIFOR
Jl. CIFOR, Situ Gede
Bogor Barat 16115
Indonesia

T +62 (251) 8622-622
F +62 (251) 8622-100
E cifor@cgiar.org

cifor.org

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Executive summary

Since 1974, Peru has formalized property rights for 1,200 indigenous communities in the Amazon. These titled indigenous lands cover over 11 million hectares and represent approximately 17% of the national forest area. Progress has been possible due to multiple reforms that recognized indigenous rights to collective lands, a process characterized by complex and protracted conflicts among competing interests, shifting government priorities and continued resistance by indigenous people to contest efforts that undercut their interests. Although the government initiated these changes more than 50 years ago, implementation continues in a context that is highly convoluted and misunderstood. This working paper traces historical elements to illustrate the multifaceted trajectory of reforms affecting collective tenure rights over land and forests in the Peruvian Amazon. This paper is a product of a global comparative study that is analyzing how statutory reforms have devolved collective rights to local people in key national contexts including Uganda, Indonesia and Peru.[1]

This paper identifies key moments and trends in Peru that have influenced changes in regulations and policy frameworks and produced varied outcomes in implementation. We analyze how regulations have modified the content of rights granted to indigenous communities and the extent to which the recognition and formalization of these rights has been implemented. We discuss key contextual elements to understand political priorities related to land and forest tenure, competing social actors involved in reform debates, as well as the mechanisms for recognizing indigenous rights claims to forests and land. We identified three transition periods over the past 50 years (1960s–2016) during which reforms have modified the regimes that frame indigenous collective rights to land and forests in the Peruvian Amazon.

During the 1970s, significant policies for the recognition of indigenous rights in the Amazon mark the first key transition period, providing a foundation for understanding collective tenure reform in the Amazon. In 1974, the Law of Native Communities and Agrarian Regional Promotion in the Lowlands Forests and Valleys was the first legislation that recognized explicitly Amazonian indigenous groups as entitled to legal protection and recognition, as well as to collective land rights. A year later, the Peruvian government introduced regulations targeting forest resources for the first time. The Forest and Wildlife Law centralized the control of forests, formalizing the ownership of forest resources as state property. Under this framework, no individual, community or company could own forestlands but instead could only access forest resources through a contract system. These regulatory changes codified a dichotomy between agrarian and forest lands that has negatively influenced the titling of indigenous lands ever since. These changes have meant that, while areas claimed as native community lands are all demarcated, communities must still wait for results from soil analysis that define the best use of land as either forest, agricultural or pasture lands. Based on results from soil laboratory analysis, areas classified as agricultural will be granted under an agrarian land title and those classified as forests will be granted under usufruct contract. These are two separate processes that follow distinct procedures involving different government institutions.

During the second transition period, between 1980 and 2009, the government stressed the formalization of individual property rights as a means to promote agricultural development and investment in the Amazon. Although regulations that focused on the recognition and titling of indigenous communal lands in force since the 1970s remained the same, changes in the institutional framework deemphasized their implementation. Shifts in land tenure and forest policies during this period changed legal frameworks and the governmental institutions responsible for recognizing,

1 http://www.cifor.org/gcs-tenure/

demarcating and titling communities. In practice, these overlaps and gaps also made it difficult for communities to comply with procedures and to understand which institutions were responsible for the recognition of land and forest rights, as recognition involved multiple agencies at different government levels. This confusion created other problems, such as the allocation of resource extraction rights for timber or mining in the same areas demarcated as property or for use by communities.

By the late 2000s, decentralization had progressed, and subnational governments gained responsibility for recognizing and titling native communities. Nevertheless, the transfer of responsibilities to these subnational authorities was slow and confusing, and lacked the necessary financial and human resources to ensure implementation. The lack of a unified land registry exacerbated these problems. In 2009, a confrontation between indigenous peoples and police authorities during a protest against forest regulations in Bagua resulted in the death of 33 people and marked the peak of unrest. Bagua was a turning point and created momentum for efforts to reclaim indigenous tenure rights; this marks the beginning of the third transition, which started in 2009 and continues today. It is characterized by renewed interest in indigenous rights in the Amazon as part of the discussion and negotiation of climate change goals, which has brought collective rights issues back into the policy arena. Advocates for indigenous rights have been able to promote changes in the institutional framework to improve implementation practices for property rights recognition.

This paper argues that analyzing the history behind tenure reform allows us to illustrate how the current context evolved, the important breakthroughs and obstacles, and the forces behind them and, further, to understand the challenges that remain. The analysis of challenges to reform implementation can identify opportunities for research, some of which are being addressed by this project. Overall, the goal of this study is to contribute to the framing of effective forest rights devolution policies and practices.

Existing constraints include the lack of coordination among the different government institutions involved across sectors and governance levels, absence of financial and human resources, and the lack of a national registry of titled communities and those in process. Additionally, procedures for implementation need to be reviewed to address high transaction costs. Finally, new funding is being earmarked to recognize and title communities in Amazonian forestlands, representing an emerging opportunity to raise the issue of collective tenure and rights recognition in the political agenda. Tenure security likely represents an effective mechanism to address degradation and to slow deforestation rates, thus meeting climate negotiations goals.

This paper concludes that, over the past 50 years, many regulations have had significant impacts on indigenous rights to land and forests in Peru, though few have had the recognition of collective rights as their main goal. Most of the legislation was aimed at promoting colonization, development, conservation or private investment in forestlands. In this context, in spite of moments of considerable progress, indigenous rights have more often been ignored or denied, and progressive reforms have quickly been countered by attempts to dismantle them. Reforms in favor of communities have often emerged from social struggle, sometimes as a part of broader national reforms and with the support of broader networks and alliances for change. Social movements have been essential to supporting reforms achieved on paper as well as in practice. Despite the fact that land titles only grant property rights over agricultural lands, native communities have not stopped demanding their forests be recognized and titled.

1 Introduction

In the global trend of forest tenure reform, Peru lags behind only Brazil and Colombia, in terms of the total area recognized for Amazonian communities and titled collectively for indigenous people. Since 1974, Peru has titled more than 1,200 indigenous communities in the Amazon, where over 90% of the country's forests are located (about 68 million hectares), the second largest tract of forest in the basin. These titled indigenous lands cover over 11 million hectares and represent approximately 17% of the national forest area (See Table 1, MINAM 2016). Peru's Amazonian forests are highly biodiverse and contribute to the livelihoods of more than 50 ethnic groups. While these results are laudable, the process of reform has been a convoluted struggle among competing interests, with shifting government priorities and continued resistance from indigenous people against trends undercutting their rights claims; it is a process that has not been widely understood and that continues today.

This paper is part of a global comparative research initiative to analyze reforms that devolved collective rights to local people in Uganda, Indonesia and Peru.[2] It examines the historical evolution of policy frameworks that have defined how indigenous peoples in the Peruvian Amazon could collectively access land and forest resources, focusing in particular on changes over the past 50 years (1960s–2016). The paper reviews the emergence of regulations and changing institutional frames, examines how reforms were applied and assesses the results. Our basic premise is that understanding the current context of tenure reform, its outcomes and related bottlenecks requires the examination of the origin and evolution of these regulations, institutions and concepts that underlie or are manifest in the policies defining tenure rights. Analyzing the history behind tenure reform allows us to understand how the current situation came about and to identify the challenges that remain (Larson et al. 2016).

In recent decades there has been a global expansion of legal reforms governing the appropriation and use of natural resources, particularly forests, which has shifted responsibilities from central to local governments and has led to the recognition or transfer of collective rights to indigenous peoples and customary forest-dependent communities (Agrawal and Ostrom 2001). Forest tenure reforms stem from changes in institutions, often statutory regulations, that (re)define the bundle of rights and responsibilities over who uses, manages and controls forest resources and how (Sunderlin et al. 2008; Larson 2010; Larson et al. 2010a, b).

Recent global reviews on forest tenure reform indicate that the most significant advances in the transfer of statutory rights for use and management by communities have occurred in Latin America. In Africa over 93% of the forestland is held by the state, and in Asia 67% of forests are administered by governments (RRI 2016). In contrast, as of 2016, nearly 33% of Latin American forests are under some type of collective tenure by communities and indigenous peoples, and another 6% are designated for their use (RRI 2016). This amounts to a total of 232 million hectares of forests controlled by these groups – an increase of more than 85 million hectares since 2002 (White and Martin 2002; RRI and ITTO 2009; RRI 2014). This portion of land represents over 60% of the global increase in forest under community ownership or control in the period of 2002–2015. However, in practice, changes in formal regulations – and even land titles – do not necessarily guarantee that local communities benefit from newly acquired rights (RRI 2011, 2012, 2014). Implementation processes often face significant constraints, such as long, costly and complex legal procedures, and can result in the granting of overlapping rights, or otherwise contested rights that are insecure (Meinzen-Dick and Mwangi 2008).

2 http://www.cifor.org/gcs-tenure/

Conditions motivating forest tenure reform in Latin American vary from country to country; nonetheless, existing centralized state forest ownership is rooted in colonial and post-colonial history (Cronkleton et al. 2008; Pacheco et al. 2012; Larson et al. 2016). More recent factors shaping tenure reform include grassroots struggles for land rights, decentralization processes and social mobilization and political advocacy by indigenous and conservation movements (Ribot et al. 2006; Barry et al. 2010; Larson and Dahal 2012). Latin American countries enacting important reforms around collective rights with some relation to land and resources include Brazil, Colombia, Bolivia, Ecuador, and Mexico. Table 1 presents the current distribution of forestland ownership in Peru.

Table 1. Percent of total forest under different tenure regime types in Peru

Tenure regime type	2016
Government owned and administered (protected areas, wetlands, reserved forests, uncategorized forests)	65%
Government owned and designated for private/individuals (forest entitlements including forest, ecotourism and other type of concessions)	14%
Government owned and designated for indigenous peoples (native communities) in the Amazon	17%
Owned by indigenous peoples (peasant communities) on the coast and in the highlands	1%
Owned by individuals and firms	1%

Source: based on tenure regime categories proposed by RRI (2016) and using data from MINAM (2016).

After providing a historical overview that brings us to the mid-twentieth century, this working paper breaks down the recent history of tenure reforms in the Peruvian Amazon into what we have identified as three main 'transition periods'. We choose this term because these periods witnessed the reorientation of the priorities guiding regulatory changes, shifting the trajectory of the reform process. The analysis and discussion of each transition period is largely chronological, but each one considers three main topics. First, we analyze key contextual elements to understand political priorities related to land and forest tenure, competing social actors involved in reform debates, as well as the mechanisms for recognizing indigenous rights claims to forests and land. Second, we review the policy and institutional changes embodied in the reforms, and the scope and content of rights that underlie indigenous collective regimes for land and forests in the Amazon. Third, we describe the outcomes resulting from the implementation of reforms. These outcomes are primarily measured in terms of the number of communities titled and the surface area falling under collective rights, but also in terms of perceived changes in the advancement and security of collective tenure regimes on the ground. This paper highlights important events affecting reforms, such as the confrontation between indigenous peoples and police authorities resulting in the killing of 33 activists in Bagua in 2009. The sections covering the three transition periods are followed by a discussion section that identifies current challenges and opportunities around reform implementation. It suggests opportunities for research, some of which are being addressed by this project. Our overarching goal is to contribute to the framing of effective forest rights devolution policies. The discussion is followed by a brief conclusion.

2 Historical precursors of current Amazonian tenure debates

Before discussing more recent tenure transitions, a brief overview of earlier tenure policies in the Amazon during the late nineteenth and early twentieth century will set the stage and explain historical efforts to draw the Amazon in from the national margins (Table 2 provides a summary of key laws enacted during this period). An important factor in understanding early governance of Peru's Amazon was rapid expansion in the global rubber economy in the 1800s and the goals of staking out national interest and encouraging investment in the region. Early tenure policies for the Amazon centered on two issues: ensuring resource access for rubber investments and encouraging the occupation of the region through agricultural colonization. Initial policies enacted in response to the rubber boom attempted to provide necessary institutional structure to facilitate the distribution of resource rights to rubber investors (Weinstein 1983; Barham and Coomes 1994). Investors, scientists and religious groups promoted different expeditions to the region (Alvarez 2012; Alonso and Fernández 2014). These voyages were key in collecting information on valuable resources, including forests, petroleum and minerals. These explorers also documented the conditions of indigenous groups in rubber estates, demonstrating evidence that indigenous people were treated as a labor reserve rather than constituent citizens in need of territorial rights.

In 1893, the Law on Immigration and Colonization declared it in the public interest that foreign colonists settle in the Amazon. In 1898, Peru's government passed the Organic Law of Forest Frontier Lands (1898), which allowed foreign investors to acquire land in the Amazon through different mechanisms including purchase, concession or colonization contracts (Gazzolo 1966). Concessions could be granted in perpetuity (Loker and Vosti 1993). In 1909, the government enacted a new General Law of Forest Frontier Lands (Law 1220), which transformed all land not distributed under the first such law into state property. It established other mechanisms for acquiring land including sales and 6-month usufruct lease contracts (Gazzolo 1966). Under this law, investors gained absolute and perpetual dominion over purchased lands. However, landowners would be required to pay a small annual fee for each uncultivated hectare if, after 10 years, they were not cultivating at least one-fifth of their holding. Interest in these development plans waned with the collapse of the rubber economy, due to the expansion of plantation rubber in Asia and the fall of global prices. The national government's allocation of property rights in the Amazon slowed.

Constitutional reforms in 1920 laid a foundation for the later recognition of indigenous community rights, which granted the first legal provisions to protect communal lands. This took place in response to peasant uprisings provoked by the dismemberment of communal lands and the concentration of these lands in the hands of non-indigenous elite, mainly in the highlands. While these constitutional changes established a precedent, the reform was intended for Andean communities and did not directly benefit Amazonian communities at this time (García Hierro 1995).[3] These provisions remained unchanged during the 1933 constitutional reforms.

The Amazon again drew the attention of the Peruvian government in the 1940s, during World War II, when there was a brief surge in the rubber economy. Seeing the region's sparse population and

3 In fact, although many Andean communities are also indigenous and live on collective lands, a separate legal framework was established for the so-called 'peasant communities' on the coast and in the Andes. This working paper refers mainly to the legal framework for 'native communities', which was established in the Amazon. Later regulations would allow the titling of lands to Amazonian riverine settlements as peasant communities. Riverine communities in the Amazon continue to base property claims on peasant community laws (ONAMIAP, pers. comm.).

Table 2. Early policies affecting tenure in the Amazon (1898–1968)

Year	Law	Implications
1893	**Law on immigration and colonization** *Ley sobre Inmigración y Colonización*	• Promoted colonization and declared a public interest in the immigration and settlement of foreign colonists in the Amazon
1898	**Organic Law of Forest Frontier Lands** *Ley Orgánica de Terrenos de Montaña*	• Created the governmental institutional structure to facilitate the distribution of resource rights to rubber investors and promoted land conversion for agriculture • Allowed rubber investors to acquire land in the Amazon through purchase, concession or colonization contract
1909	**Law No. 1220** General Law of Forest Frontier Lands *Ley General de Tierras de Montaña*	• Strengthened and extended the duration of resource rights, providing perpetual and absolute dominion over purchased land • Promoted the incorporation of the region into the national economy, declaring all lands – not distributed under the Organic Law – under state dominion • Promoted land conversion for agriculture and colonization purposes
1920	**Constitutional Reform** *Constitución Política del Perú de 1920*	• Recognized for the first time, the legal existence of indigenous communities, and included provisions to legally protect indigenous lands (mainly in the Andes) • Defined indigenous rights in native communities as inalienable (not transferable); imprescriptible (not possible to lapse) and not subject to seizure
1938	**Law No. 8687**	• Established the Huanuco colonization project in the Ucayali River
1950	**Law No. 114361**	• Established the Tingo María–Yurimaguas colonization project
1957	**Supreme Decree No. 03** *Decreto Supremo 03, Reserva de tierras para las tribus silvicolas*	• Created indigenous reserves that granted land under usufruct rights to indigenous peoples defined as 'forest dwelling tribes' • The reserves remained state property • A total of 114 reserves were established over 155,763 hectares

Source: Based on literature review by Pinedo (2014), Gazzolo (1966), Romero (1978), García and Sala i Vila (1998) and Ludescher (2001).

lack of integration into the national economy, and facing increasingly tense confrontations due to land concentration in the Andean highlands and coastal plains, the government began implementing a program of infrastructure development as well as border colonization. The goal of these efforts was to increase regional production and respond to Brazilian economic expansion in the Southeastern Amazon. There was also concern over control of geopolitical boundaries (Eidt 1962). Specific regulations were passed to encourage colonization projects, such as Law 8687, which established the Huanuco colonization project in the Ucayali River, and Law 114361, which established the Tingo María colonization project in 1950 near Yurimaguas (Gazzolo 1966; Romero 1978). Migration by Andean people into the Amazon increased dramatically, so in response the government of Manuel Prado (1956-1962) initiated a policy of state-directed colonization in an attempt to provide order to the population flow (Chirif and García Hierro 2007).

The first legal provision that referred to indigenous peoples in the Amazon was a presidential decree passed in 1957 (Supreme Decree 03), which installed state reserves for 'forest dwelling tribes' (Ludescher 2001:169). These reserves did not grant property or provide legal recognition of indigenous communities but mainly granted usufruct rights to lands (Chiriff 2006). The size of the reserves was calculated on the basis of 10 hectares of land for each community member older than 5 years. The law also allowed the allocation of an additional 20% of land, if the initial amount allocated was not enough (Chirif 1975; Stocks 1984). This new policy was an attempt by the government to adapt Peruvian legislation to the International Labor Organization (ILO) Convention that was passed in 1957, which encouraged the assimilation of indigenous people into their respective nation-states (Mora et al. 1993; Ludescher 2001). Between 1957 and 1974, a total of 114 reserves were created, covering about 155,763 hectares (over 596 communities) (Chiriff 2006).

3 First transition period (1969–1979): Moving toward the formalization of indigenous collective rights in the Amazon

In 1968, a military coup led by General Juan Velasco Alvarado seized control of Peru's government. The following year, as rural unrest intensified, the military government launched an ambitious agrarian reform (Decree No. 17716) intended to promote economic and political modernization (Lowenthal 1975) (Table 3 summarizes the laws enacted during this transition period). This reform was to be achieved through autonomous industrial development, redistribution of income, collectivization of property, colonization of the Amazon, integration of the indigenous population into the national society, and introduction of new forms of political participation (Mauceri 1997; Mayer 2009). While Decree No. 17716 introduced regulations to redistribute land in Peru, these did not directly affect the Amazon. Instead, policies and regulations were introduced to formalize property rights by promoting colonization initiatives to encourage agrarian development in the country's isolated forested regions. Change continued during the 1970s, as important policies for the recognition of indigenous rights in the Amazon made this the first key transition period for understanding collective tenure in the region. This period is also important because some of the first regulations targeting forest resources were introduced.

3.1 Political context of reforms

By the late 1960s, large rubber estates had long disappeared, but waves of colonists had started to arrive in the Amazon, seizing indigenous lands, thus increasing pressure and the need for indigenous people to defend their land claims (Stocks 1984). The agrarian reform regulations affected only agricultural lands, leaving 'natural forests', national parks, forests reserves and archaeological zones unaffected (Art. 25, Law Decree 17716). As will be described below, specific provisions were planned for the Amazon, further decreasing the reform's effect on the region (Matos and Mejía in DAR 2015: 22).

Regulatory changes supporting indigenous rights to land were promoted by a group of reformist intellectuals in the Division of Amazonian Native Communities, created in 1969 within the Ministry of Agriculture and the National Office of the Agrarian Reform (Varese 2006). This group realized that Supreme Decree 03 had serious limitations for securing indigenous people's rights to land and promoting their development, since it only supported the demarcation of temporary communal 'reserves' and lacked resources for implementation. These limitations led the group to propose new legislation, to influence public opinion and lobby state officials to consider the problems of indigenous peoples in the Amazon (Chirif 1975; Stocks 1984). Also in 1969, in Peru's central Amazon, where the Yánesha had lost a lot of land to settlers, 20 Yánesha communities gathered to form the Amuesha Congress, the first Amazonian indigenous federation to be created in Peru (Smith 1996).[4] The Amuesha Congress example encouraged communities from all major ethnic groups in the Peruvian Amazon to form their own local ethnic federations during the 1970s (Smith 1996). Indigenous organizations throughout the country continued emerging, as new indigenous federations and councils were established. For instance, the colonization project in the Marañon River (1968) promoted the

4 Amuesha was the original name for the Yánesha people.

organization of the Aguaruna Huambisa communities that established the Aguaruna and Huambisa Council in 1977 (Smith 1996).

3.2 Changes in the institutional framework

In 1974, in an attempt to formalize property rights and promote development in the Amazon, Velasco's government passed the Law of Native Communities and Agrarian Regional Promotion in the Lowlands Forests and Valleys (Law Decree 20653). This law promoted increased investment in agricultural production and timber extraction by rural settlement projects in the region. Decree 20653 did not consider customary tenure systems used by Amazonian indigenous groups, but rather replicated the model used by Andean peasant communities to create a category of 'native communities' to differentiate them from indigenous communities in the Andes (Chirif and García Hierro 2007). The law granted these communities collective titles, with rights that were inalienable, imprescriptible[5] and guaranteed against seizure- rights that had been recognized in the 1920 Constitution for the Andean communities (Article 13, See Table 1).

This law became the first legislation that recognized explicitly Amazonian indigenous groups as entitled to legal protection and recognition, as well as to collective land rights (Greene 2006:340). To implement these regulations, the government established the National System for the Support of Social Mobilization (SINAMOS, *Sistema Nacional de Apoyo de la Mobilización Social*) within the Ministry of Agriculture. SINAMOS became the first government entity dedicated to recognizing and demarcating native communities. According to IBC (2014) the use of the term 'native community' and not 'indigenous peoples' was meant to avoid the pejorative connotations associated with the term 'indigenous' during that time (Law Decree 17716, Article 115). Chiriff points out that, during the initial efforts by indigenous groups to organize themselves, there was little discussion of concepts such as territoriality, self-determination and autonomy, which did not appear until the 1980s (2006: 12-15).

Although this was a period of progress, the range of rights conferred was limited. While Law Decree 20653 defined all lands within demarcated and titled areas as communal property, it also alluded to future statutes that would be enacted to regulate the use of forest and wildlife resources (Art. 28), which are further elaborated below. Additionally, under this law the state retained rights to watercourses (lakes, rivers and streams), even though they were included in the demarcation maps of indigenous communities. Finally, the state retained rights over subsoil resources, leaving them open to third party exploitation.

3.3 Outcomes

Indigenous communities were required to gain legal recognition and then enroll in a registry of native communities to process their communal titles (Supreme Decree No. 003-79-AA). Once legally registered, they could initiate the two-step titling process, consisting of field inspection and demarcation. This entailed mapping communal boundaries and identifying zones for agriculture, pasture and forest. These steps could take months or even years to complete (Gray 1998). Given the lack of standard procedures during demarcation, when implementation of the law began, government technicians were reluctant to title larger territories (Chirif and García Hierro 2007). Instead, technicians carrying out field inspections tended to demarcate small areas, leading to the fragmentation of indigenous territories (Dean 2002). By titling only individual community areas, often spatially distant from each other, the law left large gaps for occupation by colonists or for exploitation by logging or mining companies (Stocks 2005). In many cases, by the time technicians arrived to demarcate boundaries, non-indigenous settlers already occupied much of the area between

5 Not subject to revocation or limited by time.

communities, especially in areas with better infrastructure and long histories of colonization such as Peru's central Amazon. As a result, over time, it became even harder to title large territories (Alberto Chirif, personal communication). Nonetheless, between 1974 and 1975 a total of 133 communities were titled, including the 114 'reserves' established under Supreme Decree 03. In total, 766,758 hectares were titled under collective ownership covering forests, agricultural land and pasture (Chirif and García Hierro 2007).

In 1975, the Peruvian government approved the first law regulating forest and wildlife resources, the Forest and Wildlife Law (Law Decree 21147), which centralized state control of forests, including the rights to own and manage forestlands (Law Decree 21147, 1975). Under this framework, no individual, community or company could own forestlands but instead could only access forest resources through a contract system. Also, additional regulations were introduced to classify land by its potential 'best use', which included a classification for forests (Supreme Decree No. 0062/75-AG). These specific regulations established formal categories for three main types of land use: agricultural lands, pasture lands and forests.

In 1978, to comply with these reforms, the 1974 law for native communities (Law Decree 20653) was rescinded and a new law for titling native communities (Decree No. 22175) was approved. This law added land-use classification to the procedures required to title native communities. Under these regulations land-use classification became the technical basis for determining which lands could be titled or not. Under the new process, once the total area claimed by an indigenous group was demarcated, soil analysis would be used to classify potential land use in the area. Communal rights would only be granted to lands classified as appropriate for agriculture or pasture. For land classified as forests, indigenous people could only claim usufruct rights and only by following a separate procedure for obtaining usufruct contracts, through engagement with a different government institution, the National Forest and Fauna Department. Once granted, they would also require management plans to extract forest products with commercial value.

These regulatory changes in forest sector reform codified a dichotomy between agrarian and forest lands that has had considerable influence on progress toward the titling of indigenous lands ever since. By requiring a differentiation between lands classified as appropriate for agriculture and pasture from those lands classified as forest, it introduced additional procedures and new institutional structures, and involved multiple agencies in making decisions about titling. Other constitutional reforms in 1979 further codified forests as part of the public domain by declaring forest resources national patrimony.

Despite the complications created with these regulatory changes, between 1976 and 1979, almost 1.5 million hectares were titled to 331 native communities in the Amazon (AIDESEP 2013). This progress was largely possible due to an emerging national indigenous organization, the Interethnic Association for the Development of the Peruvian Amazon (AIDESEP), in parallel with continued mobilization by several subnational indigenous federations in the Amazon. AIDESEP was established in 1979[6] and became a key stakeholder in the mobilization of demands for the recognition, demarcation and titling of native communities.

6 A second native national organization, CONAP (Confederation of Amazonian Nationalities of Peru Confederación de Nacionalidades Indígenas de la Amazonía Peruana), emerged in 1987.

Table 3. Key changes in regulations during the formalization of collective rights to land and forests in the Amazon (1969–1979)

Year	Key reform	Implications for collective tenure rights
1969	**Law Decree No. 17716** Law of Agrarian Reform *Ley de Reforma Agraria*	• Transformed the agrarian structure of the country ordering the expropriation of large landholdings and their replacement by peasant-based cooperatives • Set maximum limits on property size, between 15 and 55 hectares depending on the region • Applied only to agricultural lands, no 'natural forests', national parks or forests zones were affected
1974	**Law Decree No. 20653** Law of Native Communities and Promotion of Agriculture in the Lower and Upper Rainforests *Ley de comunidades nativas y de promoción agropecuaria de regiones de selva y ceja de selva*	• Promoted agrarian development in the Amazon region • Provided legal protection of indigenous settlements in the Amazon • Recognized 'communal property' rights, creating 'native communities' as new forms of indigenous organization in the Amazon • Established a mechanism for legal recognition for indigenous communities and acknowledged their ownership over agricultural and forest lands • Retained state rights to subsoil resources • Regulated colonization and exploitation of forests
1975	**Supreme Decree No. 0062/75-AG** Regulations for Land Classification *Reglamento de clasificación de tierras por su capacidad de uso mayor*	• Classified lands according to their main use capacity • Created use classifications including: lands suitable for intensive cultivation, permanent crops, pasture, forestry and protection
1975	**Law Decree No. 21147** Forest and Wildlife Law *Ley Forestal y de Fauna Silvestre*	• Defined forest and wildlife resources as public property • Granted native communities exclusive rights to extract timber and wildlife resources within their territories • Established a contract regime for industrial and commercial extraction of timber and non-timber products
1978	**Law Decree No. 22175** Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests *Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y Ceja de Selva*	• Revoked indigenous communities' property rights over forests and natural resources within their demarcated territories • Granted indigenous communities only usufruct rights over forest and natural resources within their demarcated territories
1979	**Constitutional Reform** *Constitución Política del Perú de 1979*	• Defined community lands as imprescriptible and guaranteed against seizure • Allowed transfer or sale of rights with agreement by at least two-thirds of the community members • Established forests resources as national patrimony

Source: Based on literature review by Romero (1978), García and Sala i Vila (1998) and Ludescher (2001) and Pinedo (2014).

4 Second transition period (1980–2009): Shifting emphasis toward individual rights to promote investment and away from indigenous rights

The second transition period took place between 1980 and 2009. This section discusses how the legal framework around tenure for indigenous peoples in the Amazon took three major pathways during this period. First, this period is characterized by increased emphasis on the formalization of individual property rights to promote agricultural development and investments in the Amazon. Second, changes in institutional frameworks affected the implementation of regulations during this period, even though said regulations had not changed since their introduction in 1978. Third, legal reform in the forest sector and emerging regulations around natural resources continued to influence indigenous titling (see Table 4). The overlapping implementation of these distinct legal frameworks produced significant confusion and conflicts on the ground. The divergent events of this period culminated with the violent conflict at Bagua in 2009, leading to a new transition period.

4.1 The context of reform: Formalization of individual property rights and the promotion of investment activities in the Amazon

During the 1980s, Peru entered a period of socioeconomic and political crisis, exacerbated by hyperinflation, a fiscal deficit, high unemployment, an escalation of poverty, and an increase in armed insurrection (Pastor and Wise 1992; Wise 1994; Murakami 2012:114–116). During this decade the government introduced new frameworks for formalizing individual property rights in the Amazon. The Agrarian Promotion Law (Decree Law No. 002) was the first in a series of laws to emphasize individual private property regimes in the Amazon. Approved in 1980, this law allowed the allocation of private lands outside of colonization projects to encourage agricultural and agro-industrial development (DAR 2015).

However, it was during the 1990s that the most significant modifications to land and forest tenure regimes since the agrarian reform took place (Baldovino 2016). The Fujimori administration's economic strategy involved a series of structural adjustment policies, referred to popularly as 'Fujishock' (Brook 1990) for its severity, including reforms intended to formalize individual property rights; these tenure reforms were inspired in part by Hernando de Soto's argument that land markets would promote investment (Stokes 1997; Manrique 1996; Murakami 2012: 226–263).

In 1991, the Fujimori government passed the Law for the Promotion of Investment in the Agrarian Sector (Legislative Decree 653) to regularize individual properties and to provide legal security for investors in the Amazon while formally ending the agrarian reform process. To implement these regulations, a national cadaster of rural landholdings was created in 1991 (Law Decree 667), which was intended to improve the institutional structure for land titling, forest tenure and natural resource management. This law required land owners to prove possession of land through economic use, usually meaning land clearing for agricultural purposes, which became an important incentive for forest clearing (Baldovino 2016:38).

In 1992, the Fujimori administration initiated one of Peru's largest land-titling programs, the Special Project on Land Titling (PETT, Law No. 25902). PETT's objective was to finalize land distribution in

areas subject to agrarian reform, still in the hands of the state, and to register private land titles. The program did not assign funds for titling of native communities during its first 10 years of existence. While the project was originally designed to have national coverage, the first two phases focused on the coast, where most commercial agriculture was concentrated (Plant and Hvalkof 2001:64). To support this program, the Inter-American Development Bank (IDB) approved the first phase of the Rural Land Cadaster, Titling and Registration Project (PTRT Project) for US$36.5 million in 1996 (the project has continued to date in two further phases).[7]

A constitutional reform in 1993 modified the communal tenure regime to allow communities to divide and sell their land, opening these areas to foreign investment (Greene 2006). The new constitution rescinded the previously 'inalienable' status of communal lands (Greene 2006:335). In 1995, the Fujimori government increased options to allow peasant and native communities to divide collective land into individual parcels with the enactment of the Law of Private Investment in the Development of Economic Activities in the Lands of the National Territory and of the Peasant and Native Communities (Law No. 26505 also known as 'Land Law'). The law attempted to facilitate a shift toward a more entrepreneurial development model by allowing peasant and native communities to choose whether they wanted to be organized as a community or a joint stock company. In this context, collective property was viewed as an obstacle to the development of a free market for land and the promotion of private investment in the agrarian sector (De Soto 1986, 2001; Plant and Hvalkof 2001). The IDB strongly promoted the reforms to facilitate the privatization of land and removal of lingering constraints and restrictions on land and water markets.

In parallel to these reforms to formalize individual property rights, the government was also interested in expanding large-scale extractive industries and infrastructure projects (Little 2014). In 2000, Peru signed the Initiative for Integration of Regional Infrastructure of South America (IIRSA) project, agreeing to create a network of major infrastructure initiatives, including roads, ports, hydroelectric plants and oil pipelines, aimed at opening up isolated regions for sustained foreign investment. In the case of Peru, however, a significant part of these projects was located in the Amazon, overlapping areas where there have been longstanding territorial claims (Bebbington 2009).

4.2 Changes in government institutions

Since the 1990s, changes in the responsibilities and functions of government institutions in charge of communal land-titling processes have also influenced implementation outcomes (IBC 2014; Baldovino 2016). In 1992, Law Decree No. 25891 transferred the function of titling native community lands to the Ministry of Agriculture offices at the regional (subnational) level. Subsequently, the legal framework promoting decentralization (Law No. 27867, Organic law of regional governments) passed in 2002 established the framework for transferring this function from the Ministry to the newly established regional governments. In 2006, specific provisions (Supreme Decree 068-2006-PCM) would finally transfer responsibilities for land registration and titling to these new governments. One year later, with the goals of expediting titling processes for projects of national interest and promoting individual titling, the government enacted Supreme Decree 1089 (2007), which allowed the Commission for the Formalization of Informal Property (COFOPRI) to assume rural titling programs, including those targeting both private and communal landholdings until the transfer to

7 The second phase of the project (PTRT II) for US$46.7 million was approved in 2001 (IDB 2014) and aimed at titling 50 native communities and 580 peasant communities. A third phase (PTRT III) for over US$80 million has been approved and was originally slated for implementation in 2015, but it has been delayed due to negotiation over the number of indigenous and peasant communities to be titled (see Indufor and RRI 2014:21 and http://www.iadb.org/es/proyectos/project-information-page,1303.html?id=PE-L1026#doc).

regional governments was completed (Baldvino 2016).[8] PETT's powers and duties were transferred to COFOPRI (Supreme Decree 074-2007-PCM). In practice, the decentralization process has been slow and confusing, and regional governments have lacked sufficient budget and personnel to advance the titling of native community lands (Zamora and Monterroso 2016).

Changes to forests and natural resources law continued after 1997.[9] In 2000, a new Forest and Wildlife Law (Law No. 27308) was approved, further modifying the forest contract regime. This new forestry law introduced a system of concessions, permits and authorizations for forest management activities administered by the National Institute of Natural Resources (INRENA), under the supervision of the Ministry of Agriculture. These reforms were intended to establish a modern regulatory system based on 'scientific forestry,' to reduce and control deforestation, to promote a competitive timber market, and to control illegal logging (Sears and Pinedo-Vasquez 2011). Forests were re-zoned, production forests were identified and registered (*Bosques de producción permanentes*, BPP) and a forest concession system was established. A forest cadaster was created to register new forest entitlements, however, it was never fully operational.

Even though this law underwent a participatory review process (Urrunaga et al. 2012), the resulting regulatory changes did not expedite or clarify procedures for indigenous groups in communal lands to access or manage forest resources. The law introduced onerous bureaucratic processes for the approval of management and annual operation plans and, as a result, encouraged informal arrangements between loggers and communal authorities to extract forest resources in communities. In addition, continued confusion over institutional responsibility for issuing forest usufruct contracts meant that native communities could receive title to agricultural and pasture lands, but not the necessary usufruct contract for forestland.[10] The resulting delays in the forest zoning process also meant that indigenous groups were unable to complete the land registration and/or titling process before third parties registered contesting claims. Overlaps between forests granted to timber concessionaires and areas claimed by indigenous groups resulted in conflicts and hobbled the titling process for many communities.

4.3 Outcomes

Because of the central government's lack of political will to support indigenous groups and finance their demands for collective titling, indigenous organizations mobilized to fill the gap in communal land titling in the Amazon. In 1984, AIDESEP's regional efforts served as a catalyst for the emergence of the Coordination Body of Indigenous Organizations of the Amazonian Basin (COICA), which brought together national indigenous organizations from nine different countries (Smith et al. 2003). These indigenous organizations monitored and lobbied government agencies and internationally funded projects to ensure the adoption of specific targets to recognize and title native communal lands. AIDESEP and COICA pressured international funders, NGOs and development institutions to promote advances in the recognition of collective rights in the Amazon (Greene 2006). For instance, the Pichis-Palcazu Special Project (PEPP) was a colonization and development initiative in central Amazonian Peru funded in 1983 by the United States Agency for International Development (USAID) that sought to bring 50,000 colonists to the valleys of the Pichis and Palcazu rivers, an area occupied by Yánesha and Asháninka communities (Smith 1983; Stocks and Hartshorn 1992). The Amuesha Congress

8 Formally, from 2006 to 2010, the transfer of the communal land titling function to the regional governments was extended in different moments (DS 074-2007-PCM; DS088-2008-PCM; DS-064-2009-PCM; DS 056-2010-PCM). According to Baldovino (2016), the regional governments are responsible for implementing native community lands titling processes. COFOPRI continues to hold the authority to title private landholdings (2016:54-55).

9 These included Law No. 26834 regulating natural resources management and Law No. 26834 establishing the national protected area system.

10 This was confirmed during fieldwork activities. In areas such as Madre de Dios, native communities do not have usufruct contracts.

leaders traveled to the United States to negotiate directly with USAID. As a result, USAID committed to funding land titling for Yánesha communities within the Palcazu River valley. The legalization of these communities and the adoption of a land-use zoning proposal made by the Amuesha Congress were made preconditions for the release of USAID funding for the PEPP project. The land-use zoning proposal included the creation of the Yanachaga-Chemillén National Park in 1986, the San Matías-San Carlos Protection Forest in 1987 and the Yánesha Communal Reserve in 1988 (Stocks et al. 1994; Chirif and García Hierro 2007). As a result of these negotiations, the lands of approximately 50 to 60 communities were demarcated and legalized (Chirif and García Hierro 2007).

Another initiative in the early 1980s allowed the titling of about 350,000 hectares in more than 80 native communities in the provinces of Bagua Region (Santos 1990). A growing number of NGOs became involved with land rights. The Center for the Development of Indigenous Amazonians (CEDIA) extended its support to demarcation, land titling and territory extension to Madre de Dios, Lower Urubamba, Yaquerana, Yavarí, Nanay, Chambira, Corrientes and Apurimac river basins.[11] CEDIA also supported the creation of two reserves for indigenous people in voluntary isolation: the Kugapakori Nahua Nanti and Others (443,887 hectares) and the Madre de Dios (829,941 hectares) reserves (Chirif and García Hierro 2007).[12] In the late 1990s, the Instituto del Bien Común (IBC) began an ambitious effort to map existing native communities and create a database using geographic information systems (Smith et al. 2003). Perhaps the most important land-titling program carried out by an indigenous organization was led by AIDESEP for communities of Ucayali (Gray 1998). Funded by the Danish International Development Agency (DANIDA), the Ucayali Titling and Communal Reserve Project assisted the titling of 117 communities and also expanded the area of another 92 communities that had previously received titles, eventually reaching a total of 2 million hectares demarcated and titled (Gray 1998). Additionally, the program established three more reserves for indigenous people in voluntary isolation – Mashco-Piro, Muruhanua and Iscohanua, for a total of 1,526,073 hectares – and prepared proposals for the creation of three communal reserves. In total, five territorial reserves, including lands designated for the protection of uncontacted tribes or peoples in initial contact, have been approved for 2.8 million hectares. Additionally, 10 communal reserves[13] representing 2.2 million hectares have been approved. These efforts sought to circumvent official emphasis on titling individual communities, by developing other legal avenues that allowed recognition of uncontacted indigenous groups and encouraged communities to apply for communal reserves in contiguous lands (Gray 1998).

As a result, between 1980 and 2000 more than 9 million hectares were titled to 1,074 communities. After 2000, however, the pace of titling slowed considerably (IBC 2014:36), and no usufruct contracts were issued after the approval of the Forestry Law of 2000 (Chiriff 2012:6).

According to the analysis presented in this section, three factors explain why the process of recognition, demarcation and titling stalled and the transfer of usufruct rights was halted. First, investment in large mining, petroleum and other resource extraction and infrastructure initiatives in the Amazon became political priorities to promote development in the Amazon (Little 2014). This meant shifts in the policies around land tenure and forests, which introduced changes in the legal framework and the governmental institutions responsible for titling communities. In practice, this resulted in overlaps and gaps. It also made it difficult for communities to comply with procedures and understand which institutions were responsible for different transactions, as recognition of land and forest rights involved multiple government agencies at different governance levels.

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11 In the Yaquerana and Yavarí river basins, the Matsés people received in 1993 the largest common property title in the Peruvian Amazon, covering an area of 452,735 hectares and about 20 indigenous settlements.

12 The area of the Kugapakori reserve was extended in 2003 to 456,672 hectares.

13 Communal Reserves are a type of protected area category that recognizes management rights to communities (Special Regime for the Management of Communal Reserves, Resolution 019-2005-INRENA-IANP).

Table 4. Key changes in regulations around the formalization of individual property rights and the promotion of investment affecting titling of native communities in the Amazon (1980-2009)

Year	Law	Description
1980	**Law Decree 002** Law for Promoting Agrarian Development *Ley de Promoción y Desarrollo Agrario*	• Institutionalized property regimes around individual tenure to promote agricultural and agro-industrial development in the Amazon • Allowed allocation of lands outside of colonization project areas to private owners
1987	**Law No. 24656** General Law of Peasant Communities *Ley General de Comunidades Campesinas*	• Acknowledged the legal existence of Andean peasant communities • Defined collective lands of Andean peasant communities as inalienable, imprescriptible and guaranteed against seizure • Allowed transfer of communal lands with agreement by at least two-thirds of the qualified community members
1987	**Law No. 24657** Law of Demarcation and Titling of Territories of Peasant Communities *Ley de Comunidades Campesinas, Deslinde y Titulación de Territorios*	• Defined the guidelines for the demarcation of community lands for peasant communities
1990	**Legislative Decree No. 613** Environmental and Natural Resources Code *Código del Medio Ambiente y de los Recursos Naturales*	• Acknowledged property rights of peasant and native communities located within protected areas and buffer zones • Mandated the restoration of native community lands affected by extractive industries
1991	**Legislative Decree No. 667** Law of Registration of Rural Landholdings *Ley de Registro de Predios Rurales*	• Created the national registry of rural landholdings (including agricultural, pasture and forestlands) which appointed cadaster offices under the Ministry of Agriculture in charge of rural landholding registration • Facilitated the registration of informal landholdings for individuals who lack ownership title
1992	**Law Decree No. 25902** Organic Law of the Ministry of Agriculture *Ley Orgánica del Ministerio de Agricultura*	• Created the Special Project for Land Titling and Rural Cadaster (PETT) • Intended to improve land titling and registration of land expropriated during the 1969 Agrarian Reform
1992	**Law Decree No. 25891**	• Transferred the function of titling native and peasant community lands (defined in Law No. 22175) to the regional offices of the national Ministry of Agriculture
1993	**Constitutional Reform**	• Modified the property rights regime for peasant and native communities giving them autonomy to sell or mortgage their lands • Community lands remained imprescriptible, but residents could sell or otherwise transfer rights
1995	**Law No. 26505** Law of Private Investment in the Development of Economic Activities on the Lands of the National Territory and of the Peasant and Native Communities *Ley de la inversión privada en el desarrollo de las actividades económicas en las tierras del territorio nacional y de las comunidades campesinas y nativas*	• Acknowledged the rights of peasant communities to allocate individual property from their communal territories to members or to third parties (mainly applied to coast communities) • Acknowledged the right of community members to rent and mortgage their individual plots

Year	Law	Description
1997	**Law No. 26845** Law of Land Titling for Coastal Peasant Communities *Ley de titulación de las tierras de las comunidades campesinas de la costa*	• Promoted individualization of collective lands in coastal peasant communities • Allowed the division of communal lands into individual plots following the decision of at least 50% of members attending a community assembly • Lowered threshold to 30% of members for decision to transfer property rights to individual members and third parties
1997	**Law No. 26834** Law of Natural Protected Areas *Ley de Areas Naturales Protegidas*	• Recognized protected areas as public property and prohibited transfer to private parties • Declared protected areas as imprescriptible state conservation domains • Restricted use of preexisting private property in protected areas to align with conservation objectives
2000	**Law No. 27308** Forest and Wildlife Law *Ley Forestal y de Fauna Silvestre*	• Introduced a system of concessions, permits and authorizations to access forest resources • Prevented contracts being issued to communities
2002	**Law No. 27867** Organic Law of Regional Governments *Ley Orgánica de Gobiernos Regionales*	• Authorized regional governments to restructure processes to formalize agrarian property, guaranteeing legal protections for community lands
2005	**Law No. 28611** General Law of the Environment *Ley General del Ambiente*	• Acknowledged the property rights of titled peasant and native communities within protected areas • Acknowledged the preferential rights of titled communities to natural resources within their lands
2005	**Resolution 019-2005-INRENA-IANP** Special Regime for the Management of Communal Reserves *Regimen Especial de Administración de Reservas Comunales*	• Created the category of communal reserves as wildlife conservation areas to benefit of neighboring rural communities, both indigenous and mestizo • Established a co-management arrangement between the state and local communities to administer the wildlife conservation areas
2006	**Supreme Decree N° 068-2006-PCM**	• Transferred all land administration and titling procedures to regional governments, including those for native communities • Implemented land administration and titling functions introduced by Law No. 27867
2007	**Supreme Decree No. 074-2007-PCM**	• Transferred the land-titling process from COFOPRI to the regional governments (set a 2008 deadline for completion of the transfer)
2008	**Supreme Decree No. 088-2008-PCM**	• Postponed the transfer of land-titling functions from COFOPRI to the regional governments (reset deadline for transfer to June 2009)
2009	**Supreme Decree No. 064-2009-PCM**	• Defined steps for finalizing transfer of land-titling functions to regional governments • Postponed the transfer of the land-titling functions from COFOPRI to the regional governments (reset deadline for transfer to December 2009)

Source: Based on literature review by Pinedo (2014), Baldovino (2016), DAR (2015) and IBC (2014).

Second, the lack of clarity in the institutional structure made it difficult to maintain updated information on the status of reform implementation (Defensoría del Pueblo 2014; Baldovino 2016). This created several problems, particularly regarding the allocation of resource extraction rights for timber or mining in areas demarcated as community property or set aside for use by communities, a problem exacerbated by the lack of a unified registry. This uncertainty increased the time and costs required to comply with procedures. Third, even though the newly created regional governments were granted responsibility for land titling and approving forestland usufruct contracts, the National Ombudsman Office (Defensoría del Pueblo 2014) reported that these governments lacked financial and human resources to implement these reforms. According to Greene (2006), even while the recognition of land claims in the Amazon officially continued through early 2000, the opening of large areas to investment in the 1990s, plus the ongoing encouragement of colonization of forestlands, resulted in explosive land conflicts with both colonists in search of land and foreign investors. The incident at Bagua, discussed next, led to a new period of reforms.

4.4 Bagua: contesting collective tenure regimes in the Amazon

In April 2006, during Alan García's second term (2006–2011), the Peruvian government signed a Free Trade Agreement (FTA) with the United States. As part of the agreement, the Peruvian government committed to legislative reforms to guarantee transparent management of international commerce, as well as to adopt a set of minimum standards for the environmental and labor sectors (Crabtree 1992). In June 2008, the Peruvian congress provided regulatory powers to the executive branch to respond to the requirements of the FTA. As a result, in 2008, 99 legislative decrees were approved. Most of these changes in legislation were aimed at opening areas for mining, logging and oil drilling in the Amazon. According to Bebbington (2009), these decrees were meant to further formalize the division of collective lands.

In 2007, President García and some of his government officials published a series of articles in Peru's largest newspaper *El Comercio.* The first of these articles used Aesop's Fable of 'The dog in the manger' as an allegory for indigenous people who they saw as occupying valuable resources but denying their development for national benefit. In this article, García suggested that large tracts of lands in the Amazon remained 'idle' because of this 'syndrome,' and proposed the sale of communal lands to private investors as the solution to develop and modernize the country (García 2007)[14]. According to this article, one of the most pressing issues in Peru was that natural resource endowments were not legally titled, and therefore could not be traded, did not attract investment, and did not generate employment (Bebbington 2009:12). The solution was to formalize individual property rights and attract large-scale investment.

The first of García's reforms, Bill 840/2006, known as the 'Law of the Jungle,' opened the possibility of granting foreign investors property rights over 'deforested' lands in the Amazon for reforestation or agroforestry projects. This bill modified the Law of Promotion of Private Investment in Reforestation and Agroforestry (Law 28852), replacing the concession regime to allow private property rights to deforested Amazon lands. The underlying argument behind these changes was that 40-year concessions were not enough to attract private investment and provide tenure security over rights acquired. Indigenous people opposed the bill believing the reallocation of uncultivated lands – such as cleared lands left in fallow – threatened their collective property rights to lands (SERVINDI 2009; *La Revista Agraria* 2008). In addition, as large extensions of the land demarcated to native communities

14 To back up these discussions further articles were published in *El Comercio*, written by widely respected government officials, including the Minister of Agriculture at the time Milton Von Hesse (28 January 2014), as well as other articles enshrining individual ownership such as those published between 2012 and 2014 (IBC 2014:25).

were only under usufruct contracts (60% of 10.6 million hectares), it could revert back to the state to be reallocated to other uses, thus also threatening their collective rights (SERVINDI 2009).[15]

Another controversial decree, No. 1090, proposed a series of amendments to the 2000 Forest and Wildlife Law. This decree limited the definition of 'forest resources' and 'forest patrimony' exclusively to protection forests, leaving forest plantations and production forests out of the new regulatory regime. According to DAR (2008) this meant that 45 million hectares of forestlands, equivalent to 60% of Peru's forested territory, fell outside the forestry regime. According to this law, degraded or deforested lands that have been abandoned could be given to private individuals or businesses. Nevertheless, the law did not include a clear definition of 'wasteland' or 'deforested' lands, which placed primary forests at risk of being classified as deforested only because they did not contain commercial timber species.

To improve access to forestlands for agricultural investment, Legislative Decree 1064 allowed for conversion of state forestlands into private agricultural lands, through administrative reclassification of the land-use capacity (as established by law through soil samples, discussed previously, Supreme Decree No. 0062/75-AG of 1975).

These reforms sparked two historically important indigenous uprisings in 2006 and 2009 (Rénique 2009). Initially, the scope and growing number of indigenous strikes, protests and road blockades did not attract much government reaction. According to AIDESEP, this new phase of conflict was the result of the government's failure to comply with its obligation to consult indigenous peoples with regard to the decrees affecting their land rights, as required by ILO Convention 169 (Urrunaga et al. 2012). Thus, on 5 June 2009, thousands of indigenous people staged a protest in the Amazonas province of Bagua to demand the revocation of the decrees. The government ordered the forced removal of protesters. The resulting violent confrontations between the indigenous protesters and police ensued, leaving 33 dead and 200 injured (Rénique 2009). On 19 June, 2 weeks after the tragic events of Bagua, the government revoked legislative decrees 1090 and 1064 and the indigenous strike was lifted, after 3 months of protests.

15 In 2009, AIDESEP estimated that 60% of the 10,564,258 hectares titled and demarcated to native communities were under use contracts (SERVINDI 2009).

5 Third transition period (2009–present): Toward reclaiming collective tenure rights after Bagua

Bagua was a turning point in the struggle to reclaim collective tenure rights and marked the beginning of the third transition period. Two trends have shaped regulations for collective rights to land in the Amazon during this phase. First, renewed interest in the recognition of collective rights brought collective rights issues back into the policy agenda. Advocates for indigenous peoples' rights promoted changes in the institutional framework to improve implementation practices. The reforms of particular interest are the passing of a law on prior consultation and the reform in forest regulations that followed the first national consultation process. Second, while these regulatory changes accelerated the pace of pending recognition and titling, there also was continuity in key policy decisions, including regulatory changes to consolidate favorable conditions facilitating large private investments in rural areas (for a summary of legal reforms, see Table 5). Social conflicts continue to emerge throughout the country as a result of prolonged tensions over access to key resources inside and outside communal lands.[16]

5.1 The post-Bagua context: Changes for indigenous peoples

As different authors point out, the issue of consulting affected communities was at the forefront of the political conflict over Bagua, as such consultation would impede continued government efforts to lease or sell indigenous lands without consent (Bebbington 2009; Finer and Orta-Martínez 2010; Haselip 2011). To address indigenous people's demands, the government created a National Coordination Group for the Development of the Amazonian Peoples, bringing together different governmental sectors with AIDESEP and CONAP, the two national Amazonian indigenous organizations. In response to local and international pressure after the Bagua tragedy, there were two important reforms. First, in order to provide the framework to acknowledge indigenous peoples' rights to free prior and informed consent, the Law of Prior Consultation of Indigenous or Original Peoples (Decree No. 29785) was passed in 2011. This law established specific provisions requiring that indigenous peoples should be consulted on any administrative and legislative action, as well as on any development plan or program, that could affect their rights, before such action goes into effect.

Subsequently, in order to respond to concerns raised by Bills 1064 and 1090, the government implemented the first consultation process during the review of a new forest law. To do this, the government created a platform for debate that brought together representatives of several government agencies, indigenous organizations, universities, research centers, professional organizations, and other representatives of civil society (Urrunaga et al. 2012). The Forests and Wildlife Law No. 29763 was approved in 2011 (MINAGRI 2013). The consultation process of its four specific regulations took another four years (See *El Comercio* 2015a); these were finally approved in 2015. Indigenous organizations supported the consultation process, as the negotiation of the law included, for the first time, specific provisions for forest management in native and peasant communal lands (DS 021-2015-MINAGRI). The law reinstated peasant and native communities' exclusive rights to use forest resources within their territories – rights that had been revoked by the Organic Law for the

16 According to the last annual report by the Ombudsman's office, over 74% of the conflicts are related to boundaries, overlapping rights or extractive activities and territorial autonomy concerns (Defensoría del Pueblo 2016). (See also previous Annual Reports from the Ombusdsman Office http://www.defensoria.gob.pe/informes-publicaciones.php; accessed 9 December 2016).

Sustainable Use of Natural Resources (Law 26821) in 1997. In addition, this right is recognized whether forestlands are titled or held under usufruct contract.

5.2 Economic policy reforms: More of the same

Despite events at Bagua, however, economic policy during this period has continued to prioritize privatization and large-scale investments (Haselip 2011). Conflict continues, as many of the active or proposed areas for mining, oil, gas and timber extraction overlap titled communities or areas claimed by communities. Existing legal frameworks permit these overlaps, because, even if native communities have titles, the Peruvian state retains the power to assign extraction and usufruct rights to different right-holders for subsoil and above-ground resources (i.e. forest) in the same area. This section discusses what these overlapping rights mean in practice. It also discusses the main legal reforms promoted after 2010 that focus on the promotion of large-scale investment initiatives in the Amazon.

During this transition period, interests in investments in extractive industries, mainly oil and gas, have continued. The proportion of the Amazon region allocated to prospecting increased from 15% to 72% between 1999 and 2009 (Haselip 2011:284). By 2010, about 41.2% of the Peruvian Amazon was under oil or gas concessions, with 52 active concessions; of these, over 50% overlapped with titled communities and about 20% overlapped with protected areas (Finer and Orta-Martínez 2010:10). According to Finer and Orta-Martínez (2010), most of these concessions were granted without the prior consultation of indigenous communities. Indigenous organizations, such as AIDESEP, report that some 60% of the areas proposed for new territorial reserves for uncontacted peoples have overlapping hydrocarbon concessions.

In the case of mining concessions, the situation is similar, with concession rights superimposed on titled community lands. In Madre de Dios, the Amazonian region most affected by mining, mining concessions increased from 50 registered in 1978 to 2,700 at the end of 2015 (Valencia 2014). According to the regional government of Madre de Dios, more than 2 million hectares in the region have some type of problem with overlapping rights – a significant source of conflict. In some communities, areas of overlapping mining rights may affect 100% of their titled area, such as in the native community of Arazaire, which is overlapped by 18 mining permits; 80% of the native community of Tres Islas is overlapped by 137 mining concessions (CRS et al. 2013).

Community titles also coincide with areas classified as production forests, which allow logging concessions (BPPs). In the Amazon, over 17 million hectares have been classified as BPPs; however, the Ministry of Agriculture has reported that over 9 million hectares of this area (52%) has some level of overlap with native communities.[17] All of these cases of overlap delay applications for community land titles until boundary issues are resolved.

In 2014, a landmark case illustrated the extent of this problem, when illegal loggers were accused of murdering four Asháninka leaders from the Saweto community in Ucayali. The community had first petitioned for recognition and titling in 2003. The Ucayali government suspended the titling process for over 10 years, as a portion of the community area had been classified as production forest (Gobierno Regional de Ucayali 2014). After the murders, and pressured by subsequent mobilization, the National Forest Service introduced a ministerial resolution in 2014 (No. 0547-2014-MINAGRI) to ensure that this type of overlap does not affect other communities undergoing titling. However, despite

17 For more information on this case, see the reports produced by MINAGRI Nº 006-2014: MINAGRI-DIGNA/DISPACR/joch/jlvdlr and the Regional Government of Ucayali 2014-GRU-P-DRSAU/DISAFILPA/JDCS.

the significant media and policy attention, and increase in funds to accelerate the titling process, it was not until 2015 that the Saweto community was able to obtain its title.[18]

Meanwhile, other policy reforms have continued to promote large-scale investments as an economic development strategy. In 2013, President Humala commissioned the Ministry of Economy and Finance, the Council for Competitiveness and the Ministry of Mining to pass a series of reforms with the objective of expanding foreign investment. National organizations denounced the reforms for relaxing environmental standards for large-scale investments and modifying the decision-making process around communal lands (Red Muqui and GRUFIDES 2015; IBC 2016). Law No. 30230 (2014) and Law No. 30327 (2015), for instance, included specific provisions that softened environmental regulations over mining projects. According to IBC (2016:34), the main problem for indigenous organizations is that these reforms were adopted without open debate and consultation. Law No. 30230 has been strongly criticized for including provisions to speed up demarcation, titling and registration of idle lands to allocate large-scale investment projects (Gonzales-Tovar et al. 2014; ANC et al. 2015[19]). Supreme Decree 001-2015-EM, promoted by the Ministry of Mining to ease access procedures for private companies, specified that resolutions from communal leaders (and not communal assemblies) were sufficient proof of consent to authorize the use of communal land for mining activities; this contradicts the provisions specified in the National Law of Consultation and has resulted in protests (Red Muqui and GRUFIDES 2015).

5.3 Outcomes

By the late 2000s, decentralization had progressed and regional governments retained the responsibility for recognizing and titling native communities. Nevertheless, the transfer of responsibilities to regional government was slow, confusing, and lacked sufficient financial and human resources to ensure implementation (Defensoría del Pueblo 2014). Land demarcation and titling of native communities involved numerous complicated and expensive activities, including population censuses, surveys and soil analysis, and the majority of native communities could not afford these. In addition, when funds were allocated, some regional governments lacked operational capacity to use them (Defensoría del Pueblo 2014).

The lack of clarity regarding the transfer of rights also led to different interpretations of the newly acquired responsibilities of subnational governments, exacerbated by the lack of clear, unified protocols to implement procedures for communal land titling. In the regional government of Loreto, home to over 70% of titled communities and 65% of pending claims, the number of new community titles issued dropped from 265 between 1990 and 1999 to 80 from 2000 to 2009 (DRA–DISAFILPA 2016[20]). In a recent report on the situation of collective titling, the Ombudsman's Office argued that these trends indicate the lack of political priority for recognition of indigenous communities' land rights (Defensoría del Pueblo 2014).

To clarify and accelerate the process, indigenous organizations and non-governmental advocates[21] demanded that a single government institution be in charge of establishing guidelines for subnational governments. After significant mobilization, Supreme Decree 001-2013 was passed, establishing that,

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18 According to the media, the main problem for completing the process was that the National Registry did not allow overlapping rights be to registered (El Comercio 2015b). http://elcomercio.pe/peru/ucayali/comunidad-saweto-tendra-titulo-propiedad-luego-12-anos-noticia-1787857?ref=nota_peru&ft=mod_leatambien&e=titulo.

19 http://www.psf.org.pe/institucional/wp-content/uploads/2014/10/impactos-intereses-beneficiarios-30230-final.pdf.

20 Based on the review produced by Guerrero and interviews with the Office in the Regional Government in charge of titling (July 2016).

21 The Coalition for Secure Territories (*Colectivo de Territorios Seguros*) is a network of more than 30 organizations supported by international organizations such as Oxfam, the Rights and Resources Initiative and the International Land Coalition; http://comunidadesdelperu.ibcperu.org/ Accessed 11 December 2016.

Table 5. Key reforms affecting tenure in the Amazon after 2009

Year	Regulation	Description
2010	**Supreme Decree No. 056-2010-PCM**	• Authorized regional governments to formalize or revert property rights to fallow lands
2011	**Law No. 29785** Law of Prior Consultation for Indigenous or Original Peoples, acknowledged by the ILO Convention 169 *Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT)*	• Acknowledged the right of indigenous people to be consulted on any policy that affects their interests and rights • Did not grant the right of veto
2011	**Law No. 29763** Forest and Wildlife Law *Ley Forestal y de Fauna Silvestre*	• Confirmed indigenous peoples rights to prior and informed consultation • Promoted gender equity as overarching principle in the regulation but lacked specific provision and implementation procedures • Granted peasant and native communities exclusive rights to forest resources within their territories, whether they are titled or granted only for use
2013	**Supreme Decree No. 001-2013-AG**	• Confirmed the responsibility of subnational governments for titling of native communities • Authorized the Ministry of Agriculture to supervise the administration of regional governments
2014	**Ministerial Resolution No. 0547-2014-MINAGRI**	• Ensured the uninterrupted demarcation and titling of a native community despite overlapping classification of areas as production forest • Defined steps to modify the size of production forests to facilitate the demarcation and titling of native communities in cases where overlap exists
2015	**Ministerial Resolution No. 0355-2015-MINAGRI**	• Defined guidelines for soil analysis to categorize the best use of land as a prerequisite for titling of native communities • Assigned responsibility for analysis to regional governments under the supervision of the Ministry of Agriculture • Did not assign budgetary responsibility for related costs
2015	**Supreme Decree No. 021-2015** Regulations for managing forest and wildlife in native and peasant lands *Reglamento para la gestión Forestal y de Fauna Silvestre en comunidades nativas y campesinas*	• Approved specific provisions to manage forests in lands of native and peasant communities • Established that a proof of possession (not necessarily a title or a usufruct contract) is enough evidence for obtaining forest management permits • Created new structures at the communal and local government levels to promote participation of local governments and local communities to organize forest management activities at the local level
2016	**Ministerial Resolution No. 0435-2016 MINAGRI** Guidelines for Recognizing and Registering Native Communities as legal entities *Lineamientos para la ejecución del Procedimiento de Reconocimiento e Inscripción Administrativa de la Personería Jurídica de Comunidades Nativas*	• Provided regional governments with specific guidelines and technical criteria to standardize procedures for recognizing new native communities and registering them as legal entities

Source: Baldovino (2016) and IBC (2016).

while subnational governments retained the responsibility for titling indigenous lands, the Ministry of Agriculture was in charge of supervising the process (Defensoría del Pueblo 2014). Since then, this function has been carried out by the Office for Land Formalization of Agrarian Properties and Rural Cadaster (DISPACR) in the Ministry of Agriculture. DISPACR is now in charge of the implementation of the PTRT III project – the third phase of the IDB land administration project started in the 1990s, which currently includes the target of titling 403 native communities.[22] Initial efforts to standardize procedures from DISPACR have included the approval of guidelines to recognize communities (Ministerial Resolution No. 0435-2016 MINAGRI), which includes the establishment of a national registry of native communities.

22 AIDESEP presented a formal complaint (http://www.aidesep.org.pe/mision-de-aidesep-en-washington-mici-registra-la-solicitud-de-queja-por-el-ptrt3/) to the IDB Independent Complain Mechanism ICIM (http://www.iadb.org/en/mici/complaint-detail,19172.html?id=MICI-PE-2015-0094), over the project goals, including the number of native communities to be titled with this project. Accessed 14 February, 2017.

6 Analyzing remaining challenges

Current subnational governments continue to face challenges resulting from reforms in the institutional framework for titling over the last 25 years, described in the previous sections. Since the first law authorizing recognition and titling of native communities in 1974, the office responsible for demarcating and titling collective land rights has shifted inside and outside the Ministry of Agriculture several times. In 1992, an internal reform relocated this responsibility to the newly created PETT program, also within the Ministry of Agriculture. In 2006, PETT's responsibilities, including titling of native communities, were transferred to the Office for the Formalization of Informal Property (COFOPRI) in the Ministry of Housing. COFOPRI's responsibilities were transferred to regional governments the following year (Supreme Decree 088-2008-PCM and 064-2009-PCM).

Although the legal provisions for this most recent transfer were passed in 2006, implementation was postponed five times between 2006 and 2010 (Supreme Decree N° 068-2006-PCM; Supreme Decree No. 074-2007-PCM; Supreme Decree No. 088-2008-PCM; Supreme Decree No. 064-2009-PCM; Supreme Decree No. 056-2010-PCM). The transfer of responsibilities also included the need to move existing records for titled communities and communities undergoing the titling processes to the regions. The result was disastrous for communities during this period: exacerbated by missing files, incomplete records and confused users, it took years for a single community to complete the titling process.

Despite recent efforts to standardize procedures and organize the institutional framework for the recognition and formalization of indigenous communities, a series of challenges remain. First, the lack of a national cadaster with a registry of titled communities makes it difficult to account for existing pending claims. This is compounded by the absence of integrated records of the total number of native and peasant communities registered or awaiting title (IBC 2012, 2014; AIDESEP 2013a; Defensoría del Pueblo 2014). In 2013, AIDESEP estimated that approximately 20 million hectares were pending recognition as indigenous lands, while data provided by the National Ombudsman's Office in 2014 estimated that about 600 communities had not been titled. Data varies across sources (IBC 2016); Figure 1 provides estimates using available information. Claims include those from more than 2,300 riverine (*ribereño*) communities in the Amazon that do not belong to recognized native indigenous groups (IBC 2016).[23] Differing from AIDESEP (2013), our estimates in Figure 1 do not include the number of claims for enlarging existing communities (*ampliaciones*) and other mechanisms that allow recognition of management rights over protected areas, such as communal reserves.[24] The estimate also omits claims to additional territorial reserves for uncontacted peoples and indigenous communities under initial contact. According to AIDESEP (2013b), these claims could account for over 8 million additional hectares in the Amazon.

Second, numerous titled communities have been unable to register their titles in the National Public Registry Office (SUNARP). This includes as much as 90% of titled native communities, according to IBC (2016). In Loreto alone, the regional government reports that less than 15% of titled communities have completed the process (DRA–DISAFILPA 2016). Recent interviews with government representatives from Loreto indicate that, while some communities are not aware of this process,

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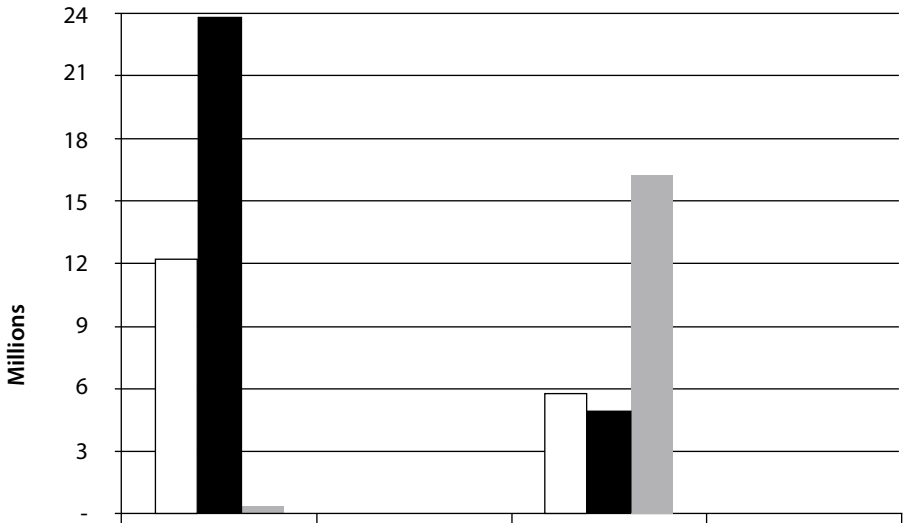
23 Due to space limitations, we have not discussed the separate regulatory and institutional framework around peasant communities in this working paper, or the implications of requiring indigenous people to rename themselves as 'peasant communities' in order to obtain recognition and title. But these also raise important challenges regarding indigenous collective rights in Peru (e.g. in the highlands) and those of customary riverine peoples (*ribereños*) in the Amazon.

24 Communal reserves are a type of protected area category that recognizes management rights to communities (Special Regime for the Management of Communal Reserves, Resolution 019-2005-INRENA-IANP).



	Titled		Pending claims	
	Area (hectares)	Number	Area (hectares)	Number
Native communities	12,159,400	1,365	5,736,752	644
Peasant communities (Andes and Coast)	23,779,801	5,097	4,772,756	1,023
Peasant communities (Riverine Communities)*	380,560	63	16,329,436	2,368

Figure 1. Progress and pending claims in the formal recognition of collective rights in Peru

*According to Supreme Decree No. 008-91-TR riverine communities are those "established along riverbanks throughout the Amazon, usually referred to as "*ribereñas mestizas*", "peasant riverine" or simply "*ribereñas*", that are composed of at least 50 families, have no common ethnic or culture tradition, and maintain a communal organization of land use typical of peasant communities". Differing from the native communities, the formalization of the collective rights of riverine communities is based in the General Law of Peasant Communities No. 24656 and the Law for the Demarcation and Titling of Communal Territories No. 24657. Data on the number and extension of peasant-riverine communities is from the Regional Government of Loreto (2016). Data on the number and extension of pending claims for riverine communities is based on the number of recognized riverine communities from the Regional Government of Loreto and the projection calculated by IBC (2016:53).

Source: Data from IBC (2016:53) and Regional Government of Loreto (2016).

others have attempted but failed because they could not provide spatial coordinates information (georeferencing) or because the lands overlap with other categories of right-claimants (Regional Government interviews 2016[25]). The exclusion from the public registry is an important source of tenure insecurity, even for communities that have completed the formalization process. In those cases where overlap or conflict over boundaries occurs, authorities argue that rights that are registered will prevail (Regional Government interviews 2016). Those communities lacking geo-referenced registered data will have to rely on further analysis, including testimonials or other historical records, to support their legal claims.

A third important challenge is the need to gain recognition of classified forestlands. Following the 1975 reform of forest regulations, all native communities are required to complete soil analysis and classification to be able to identify the 'best' land use in the claimed area. However, these are expensive procedures that involve taking soil samples and transporting them to authorized laboratories across the country. Nationwide, only three institutions have official authorization to do this type of analysis (Regional Government interviews 2016). In 2015, these regulations were modified (No. 0355-2015-MINAGRI) to require fewer samples per area, however, they still involve expensive procedures that communities often cannot afford.

25 As part of this research project, between July and August, 2016 a total of 14 representatives of 9 different offices of the Regional Government of Loreto were surveyed to analyze their perspectives on reform implementation.

Results of soil analyses are used to indicate which lands should be categorized as forests and which lands should be categorized as agriculture and pasture. Communities only receive titles for agricultural and pasturelands. For lands classified as forests, they should initiate a process to obtain a usufruct contract. The procedure is established by forest regulations, but it is currently unclear which government entity will be responsible for implementation. While new forest regulations have established that the National Forest Service (SERFOR) is the governing body guiding the norms, their role in relation to that of regional governments in issuing pending usufruct contracts is not well-defined. As discussed in previous sections, usufruct contracts have been rarely allocated to native communities since the second reform to the forest law in 2000. While new forest regulations allow forest management activities in native communities regardless of whether communities are titled or not, it is unclear how this will be applied in practice. Additionally, a number of organizations have raised the argument that by dividing the set of rights that are granted to communities (between titled agricultural lands and forest use rights), rather than recognizing the integral nature of indigenous territories, the Peruvian government is failing to recognize provisions established in ILO Convention 169 (García Hierro 2014; Ruiz Molleda 2014).

Finally, following Lima's hosting of the XX UNFCCC COP international negotiations on climate change in 2014, international and national commitments to tackle deforestation drivers in Peru include new funding opportunities. Funding is now earmarked to recognize and title communities in Amazon forestlands, which is seen as an effective mechanism to address degradation and to slow deforestation rates, thus meeting climate negotiation goals (DCI 2014). Since 2014, AIDESEP and civil society organizations have identified more than 10 internationally funded initiatives in Peru that include titling and recognition of native communities as part of their targets (IBC 2016). These projects' outcomes focus on environmental goals, but some also include the recognition, demarcation and titling of indigenous communities as intermediate outcomes to avoid deforestation and degradation, and as such are managed by the Ministry of Environment. However, this ministry has no jurisdiction over the titling of indigenous lands, requiring coordination between different ministries, levels of government agencies and donors. One of these projects is the Joint Declaration of Intent (DCI) between the Governments of Peru, Norway and Germany on 'Cooperation on reducing greenhouse gas emissions from deforestation and forest degradation (REDD+) and promoting sustainable development in Peru.'[26] This project includes the specific target of increasing, by at least 5 million hectares, the titled area of indigenous lands in the Amazon region. Implementation of these initiatives represents an opportunity to involve different stakeholders, including multiple levels and sectors of government, indigenous organizations, donors and non-governmental organizations. These initiatives need to address important challenges: improving coordination, avoiding duplication of efforts, ensuring that financial and human resources address information gaps, reviewing existing procedures and regulations to lower the high transaction costs created by changes in the institutional framework during the past few decades. Unfortunately, risks remain as conflict may persist if these challenges are not resolved.

26 For review of information on DCI, including the guiding document https://www.regjeringen.no/en/aktuelt/Peru-Germany-Norway-launch-climate-and-forest-partnership/id2001143/. Accessed 11 December 2016.

7 Conclusion

This study has examined the historical trajectory of reforms that define and regulate tenure regimes over land and forests that affect indigenous peoples in the Amazon. It has analyzed the political context that lies behind changes in regulations and the outcomes they have brought about. It has demonstrated that over the past 50 years many laws have had a significant impact on indigenous rights to land and forests, though few have had the recognition of collective rights as their main goal.

Rights recognition of indigenous communities in the Peruvian Amazon has been possible because of progressive ideas that pushed forward changes in regulations in the early 1970s. However, it was the push from social movements that mobilized political and financial support to implement reforms during the 1980s and 1990s. During periods without implementation, in particular the late 2000s, crisis situations, such as the violent confrontations of indigenous and government authority representatives during Bagua and the deaths of indigenous people in Saweto, were key in promoting shifts in the trajectory of policy processes. These crises swayed public opinion in favor of indigenous collective rights and prompted discussion of the challenges to implementation of existing reforms. This suggests that, in the case of tenure reforms that favor the recognition of collective tenure rights, what happens on the ground depends on the existence of a legal framework that guarantees the collective right to land and forest, and on how reforms are actually implemented, including the role of government officials and social mobilization. Conflict may occur at different moments in the reform as social actors oppose or appropriate reform processes.

Throughout the three periods analyzed, economic development policies have been the most important counterforces challenging implementation of reforms that favor collective tenure rights to land and forests. These include policies that favor colonization, promote privatization and focus on individual land titling and, more recently, investment policies. While there have been some changes in these policies over time, the ideas behind them have not gone away. For instance, ‘putting the forest to use’ continues to be an important undercurrent in agricultural policy. Large forest areas, often perceived as unpopulated lands, are still seen as unproductive to the national economy.

Despite the fact that land titles grant property rights only over agricultural lands, native communities have not stopped demanding their forests and other lands be recognized and titled. Recognition, demarcation and titling, however, are not easy tasks. The process is long, complicated and expensive. Indigenous people usually cannot afford the costs, and the state has remained reluctant to release funds to support community titling. Demarcation and titling in the Amazon has largely occurred because of the pressure exerted by indigenous organizations, including AIDESEP and CONAP and their regional federations, which have allied with local and international organizations in order to leverage financing and technical assistance, and mobilize political support. Today indigenous organizations are also demanding that the government recognize full rights over agricultural and forestland, as well as rights to multi-community territories, rather than just to individual communities, though this may require constitutional reform (AIDESEP 2013a). Current opportunities for titling include initiatives related to REDD+ and climate negotiations.

As recently argued (Larson et al. 2016), there has not been a single reform process in Peru, instead multiple reforms have shaped forest tenure rights, contributing to both progress and setbacks for indigenous people and communities. The analysis of the historical trajectories around key transition periods has demonstrated that while occasional, individual dramatic events propelled progress toward meaningful rights devolution, more often, multiple changes and feedback loops evolved over a period of years until the context was notably different. Reforms in favor of communities often emerge from social struggle, sometimes as a part of broader national reforms and with the support of wider networks and alliances for change.

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In Peru, since 1974, more than 1,200 communities have been titled in the Amazon for over 12 million hectares, representing about 20% of the country's national forest area. This working paper analyzes policy and regulatory changes that have influenced how indigenous peoples access, use and manage forest and land resources in the Peruvian Amazon during the last fifty years. It reviews the main motivations behind changes, the institutional structures defined by law and the outcomes of these changes in practice. The paper discusses political priorities related to land and forest tenure, social actors involved in reform debates and the mechanisms used for recognizing indigenous rights claims. The paper argues that there has not been a single reform process in Peru; instead multiple reforms have shaped forest tenure rights, contributing to both progress and setbacks for indigenous people and communities. This working paper is part of a global comparative research initiative that is analyzing reform processes that recognize collective tenure rights to forests and land in six countries in highly forested regions.

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