

Progress in formalizing “native community” rights in the Peruvian Amazon (2014–2018)

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Key messages

- The mobilization of indigenous and civil society organizations has been key to getting the recognition of collective rights on the political agenda, reducing gaps in the formalization of native communities and promoting implementation.
- The most recent changes in the regulations on formalization have involved the approval of specific guidelines seeking to standardize and clarify technical criteria and to expedite procedures.
- Current funding opportunities include initiatives related to REDD+ and climate negotiations, which have incorporated native community titling into their goals, although it is not clear whether they will go as far as the important step of registering the title deeds.
- Important social conflicts, such as Bagua and Saweto, have shifted public opinion in favor of indigenous peoples’ collective rights.

Introduction

Since 1974, the Peruvian government has formalized collective property rights by titling more than 1300 native communities¹ on over 12 million hectares (IBC 2016). This recognition is important for the peoples who live in the Peruvian Amazon and directly depend on these forests. It also has implications for the conditions of the forests they live in, which represent 17% of the national forest area (MINAM 2016).² Despite this progress, there is still a considerable gap in the process of formalizing the lands claimed by the indigenous peoples. According to SICNA-IBC (2016), over 600 native communities (some 5.5 million hectares) are still pending titling. The lack

of a national registry makes it hard to determine the area involved and the number of pending claims (Defensoría del Pueblo 2014).³ For example, according to the Interethnic Association for the Development of the Peruvian Amazon (AIDSESP 2016), there are outstanding claims to 20 million hectares of lands and forests. These include demands for the recognition and titling of native communities, the expansion of already-titled communities, and other mechanisms that allow the recognition of management rights for indigenous peoples in relation to protected areas, such as communal reserves.⁴ They also include demands for the establishment of new territorial reserves for isolated groups and those that are under initial contact with mainstream society (AIDSESP 2013).

1 We have chosen to use the term “native” communities, rather than using the more common term “indigenous,” because this is the entity that has defined rights by law in Peru. We use the term indigenous when speaking more generally.

2 Although this brief does not address the issue, it is worth stressing that the relationship between the collective tenure of indigenous peoples and the condition of the forests in titled communities has been analyzed in specialized literature (e.g. Blackman et al. 2017; Schleicher et al. 2017).

3 A Ministerial Resolution was passed on September 6, 2018 creating a new “Cadastral System for Peasant and Native Communities” (No. 0362-2018-MINAGRI).

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

According to the current regulatory framework (Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests, Decree Law 22175 of 1978), native communities formalize their rights to land and forest through a process with two different results: a) the demarcation and titling of lands for agricultural use; and b) the signing of a usufruct contract for forest lands. Both require communities to have prior legal recognition (Ministerial Resolution 0435-2016-MINAGRI). This difference in the right granted over forest areas has existed since 1975, when it was established that the national forest estate is in the public domain. Since then, it has not been possible to title lands considered apt for forests or for protection. Until 2017, a soil study was used (Ministerial Resolution 0355-2015-MINAGRI) to define the main land use, and thus determine what area to grant under an agrarian title (area for agricultural and livestock) and what area to grant through a usufruct contract (area of forest use). An agrological evaluation is currently used, which eliminates the chemical analysis, but maintains the use of soil samples as a technique for classifying the appropriate use of the claimed area (Ministerial Resolution 0194-2017-MINAGRI, see Table 1).

Although the formalization of native communities began over 40 years ago, changes in the regulatory framework have affected progress in implementation. There are still communities waiting for recognition and titling, while others do not have usufruct contracts that formalize their rights over the areas categorized for forest use. The context surrounding implementation is complex, with different interests shaping the priorities of each respective government administration, as well as the mobilization of indigenous and civil society organizations that have played a key role in reducing gaps in the recognition of collective rights.

This publication is part of the Center for International Forestry Research (CIFOR)⁵ “Global comparative study on forest tenure reform.” Its objective is to reflect on the process of recognizing native community land and forest rights in the Peruvian Amazon, in light of recent changes in the formalization process. This brief analyzes the most important advances with regard to legislation, institutions and funding. Please see the companion brief focusing more specifically on challenges to reforms (Monterroso and Larson 2018). The analysis here is based on a roundtable discussion with key actors held in November 2017,⁶ other discussions addressing

native community titling,⁷ and an analysis of the procedures for formalizing the rights of communities, particularly the differences between the regulatory framework and its implementation (Notess et al. 2018).

Changes in legislation, institutions and funding

An observer recently commented that in Peru, more than other countries in the Latin American region, there is a tendency to separate sectors and goals and that it is particularly difficult to maintain a common vision between land titling and sustainable forest management. There are discrepancies not only between sectors but also between the national and subnational levels, with each entity blaming problems on another (Defensoría del Pueblo 2014). The legal framework is also extraordinarily complex: a compendium of formalization laws has more than 700 pages, and even lawyers fail to agree on the interpretation of certain procedures.

The tragic events of Bagua in 2009⁸ and the deaths of four Ashaninka leaders from the community of Saweto in 2014 generated renewed political interest in indigenous rights in the country (Monterroso et al. 2017). Following these events, the mobilization of indigenous organizations and other defenders of indigenous rights focused on promoting changes in the institutional and legal framework to improve implementation and accelerate the process of recognition and formalization of native community rights. As a result, many international and national commitments that seek to address the drivers of deforestation include goals related to the formalization of native communities and have generated new funding opportunities (Bolaños 2017).

Changes in legislation

Following Bagua, there have been two important reforms to the legislation affecting native communities (Monterroso et al. 2017).⁹ The first was the approval of the Law of Prior Consultation of Indigenous or Original Peoples (Law 29785) in 2011, which sought to establish the framework for recognizing the right of indigenous peoples to free, prior and

5 See <http://www.cifor.org/gcs-tenure/>.

6 The roundtable discussion on “Collective tenure, interculturality and gender in the formalization of native communities” was held in Iquitos, Loreto, with the following aims: (1) to discuss the current challenges and obstacles with regard to the implementation of collective rights formalization processes, based on specific native community recognition and titling experiences; and (2) to review the scope and replicability of gender and interculturality approaches in existing titling initiatives. The results are presented in Durán et al. (2018).

7 We are referring, for example, to the work group on titling created in the framework of the National Roundtable on Reducing Emissions from Deforestation and Forest Degradation, REDD+, which is mainly comprised of NGOs working on REDD+.

8 In 2009, a confrontation between indigenous peoples and police in the province of Bagua, during a broader protest against a series of legal reforms, resulted in the death of 34 people.

9 It is important to mention other recent changes in legislation, such as Laws 30230 (2014) and 30327 (2015), which include specific provisions that could also affect native communities (IBC 2016; Red Muqui and GRUFIDES 2015).

Table 1. Main changes to regulations related to the formalization of native communities in 2014-2017.

Year	Regulation	Description
2014	Ministerial Resolution 0547-2014-MINAGRI	<ul style="list-style-type: none"> • Approved following political mobilization to resolve the process of titling the community of Saweto, which had been suspended due to its overlap with Permanent Production Forest (BPP). • Establishes that the process of demarcating and titling a native community cannot be suspended due to overlapping with BPP (article 1). • Defines the steps for modifying the size of BPP with the aim of facilitating the demarcation and titling of native communities in those cases in which there is overlap. • Establishes that the regional governments are responsible for informing the National Forest and Wildlife Service in order to conduct the process of resizing the BPP.
2015	Supreme Decree 021-2015. Regulations for managing forest and wildlife in native and peasant lands	<ul style="list-style-type: none"> • Approves specific provisions for forestry management on the lands of native and peasant communities. • Creates new structures at the communal and local government levels to promote their participation and that of communities in the organization of local-level forest management activities.
2016	Ministerial Resolution 0435-2016-MINAGRI and Ministerial Resolution 0589-2016-MINAGRI. Guidelines for recognizing and registering native communities as legal entities	<ul style="list-style-type: none"> • Establish guidelines for the implementation of the process of recognizing native communities as legal subjects. • Provide the regional governments with specific directives and technical criteria for standardizing the procedures for the recognition of new native communities and their registration as legal entities.
2017	Ministerial Resolution 0194-2017-MINAGRI. Guidelines for implementation of the process of agrological evaluation of the lands of native communities and classification based on "best use" for the purpose of titling.	<ul style="list-style-type: none"> • Replaces the use of chemical soil analysis to classify the best land use as a prerequisite for titling native communities (Ministerial Resolution 0355-2015-MINAGRI) with a somewhat simplified agrological evaluation for the classification of their use capacity. • Establishes that the responsibility for conducting such evaluation corresponds to the regional governments of lower and upper rainforest regions in the framework of exercising function (n) of article 51 of the Organic Law of Regional Governments (Law 27867).
2017	Ministerial Resolution 0370-2017-MINAGRI. Guidelines for georeferencing the Titled Native Communities Territorial Demarcation Map.	<ul style="list-style-type: none"> • Establishes, standardizes, clarifies, makes viable and expedites technical and legal criteria employed by the regional governments of lower and upper rainforest regions to conduct the process of georeferencing native communities' demarcation map (article 1). • Establishes that the responsibility for conducting the georeferencing process corresponds to the regional governments.

Source: Based on the review and updating of data published by Monterroso et al. 2017, IBC 2016 and Baldovino 2016.

informed consent.¹⁰ The second was the passing of the Forests and Wildlife Law (Law 29763), also in 2011, which represented the first consultation process for a piece of legislation, in line with Law 29785. The consultation regarding its four regulations continued until 2015.

Since 2014, the main changes in the formalization-related regulations have come through the approval of specific guidelines aimed at standardizing and clarifying technical criteria and expediting procedures. These are described in Table 1.

Changes in institutions

In addition to the reforms to regulations, in the last 10 years there have been important changes in the corresponding

¹⁰ It is important, however, to clarify that consent and consultation are not the same thing.

institutions.¹¹ The process of transferring responsibilities to the regional governments, which began in 2002, was completed in 2009 (Supreme Decree 064-2009-PCM). This process was slow and confusing and has been shaped by the absence of the necessary financial and human resources to ensure implementation (Zamora and Monterroso 2017). There was also a need to establish a governing body that was responsible for producing guidelines and would administer and consolidate cadastral information at the national level. This office would also ensure compliance with the process of physical and legal *saneamiento* (evaluating competing claims and “regularizing” legitimate property rights before titles can be registered) and formalization of agrarian property, including the lands of native communities (IBC 2016, 38-39). It was not until 2014 that Supreme Decree 001-2013-AG defined the Ministry of Agriculture and Irrigation (MINAGRI) as the governing body and created the Office for Land Formalization of Agrarian Property and Rural Cadaster (DISPACR) (DS 008-2014-MINAGRI).

In 2017, MINAGRI’s Regulations on Organization and Functions (ROF) were modified again through Supreme Decree 001-2017-MINAGRI, turning DISPACR into the General Directorate for Land Formalization of Agrarian Property and Rural Cadaster (DIGESPACR) under the Vice-Ministry of Agrarian Policy. This decision represents an opportunity to strengthen the work of the governing body, ensure the right conditions for more personnel and a larger budget, provide better support to regional governments, coordinate the work of titling projects and other civil society initiatives, and consolidate the National Cadaster system as the central database that incorporates information from the native communities in process of formalization.

New funding sources

The changes in public opinion in favor of indigenous collective rights promoted a debate on the challenges involved in the implementation of existing reforms and put formalization back on the political agenda (Monterroso et al. 2017). Beginning in 2014, and even moreso as of 2016, a variety of initiatives with international funding in Peru included the titling and recognition of native communities among their goals (IBC 2016; MINAM-DCI 2018).

While these projects primarily have environmental objectives, such as reducing emissions from deforestation and forest degradation (REDD+), some include the recognition,

11 Since 1974, the office responsible for the demarcation and titling of collective rights to land has changed on various occasions and has been both inside and outside of the Ministry of Agriculture and Irrigation (MINAGRI). From 1992 to 2006, the responsibility corresponded to the Special Project on Land Titling (PETT), within MINAGRI. In 2006, PETT’s responsibilities, including native community titling, were transferred to the Commission for the Formalization of Informal Property (COFOPRI) in the Ministry of Housing. The following year, COFOPRI’s responsibilities were transferred to the regional governments (Supreme Decrees 088-2008-PCM and 064-2009-PCM).

demarcation and titling of indigenous communities as intermediary results (Bolaños 2017). Thanks to these initiatives, titling of native communities has progressed in the Amazon, particularly in Ucayali, San Martín and Loreto, since 2014.¹² At least ten projects have been identified for the period 2016-2020 (Table 2).

According to regional and local actors, the process of regularizing native communities should ensure the completion of the formal registration of the right (titles and usufruct contracts) in public registries (Zamora and Monterroso 2017). This is consistent with current regulations (Supreme Decree 003-79-AA, SUNARP Resolution 05-2013-SUNARP/SN). However, the titling initiatives do not all clarify if they will assure this final step is completed during the project period. In the context of Peru regulations, it is important to understand that the title is granted to the community prior to *saneamiento* (the regularization process to resolve competing claims and boundary conflicts); whereas registration requires the *saneamiento* process to be completed. Hence the fully registered title is the only legal guarantee of the property right.

Conclusions

This document analyzes the recent changes in legislation, institutions and funding aimed at the formalization of native communities in Peru. The mobilization of indigenous and civil society organizations has played a key role in placing the recognition of indigenous collective rights on the national agenda. However, the progress made in terms of legislation has been strongly influenced by the results of important conflicts, such as Bagua and Saweto. These have shifted public opinion in favor of the collective rights of indigenous peoples and have been essential to shifting the direction of political processes, as well as to debates on the challenges involved in implementing existing reforms. Current titling opportunities include initiatives related to REDD+ and climate negotiations.

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12 To a lesser degree, there has also been progress in Madre de Dios (an initiative of the Tenure Facility) and other parts of the Amazon (PTRT3 project). Table 2 refers to initiatives that benefit native communities and does not cover the formalization of the collective rights of peasant communities under other forms of legal recognition.

Table 2. Projects that promote the formalization of native communities (NCs) in the Peruvian Amazon.

Project	Entity responsible	No. of native communities (NCs) pending recognition	No. of NCs pending title/ expansion	Hectares (approx.)	No. of NCs georeferenced	Project's year of completion	Intervention regions
1. Alternative Development Program	DEVIDA	0	6	24,336	0	2016	Pasco
2. Support for the implementation of the Joint Declaration of Intent on REDD+ between Peru, Norway and Germany	WWF	0	35	150,000	0	2017	Loreto
3. Expansion of the cadaster, titling and registration service for lands in native communities of the basins of the Pastaza, Tigre, Corrientes and Marañón rivers in the provinces of Datem del Marañón and Loreto, Loreto region	DIGESPACR/ GORE Loreto	0	60	658,072	40	2017	Loreto
4. Alternative, Comprehensive and Sustainable Development Program (PIRDAIS)	DEVIDA	2	10	32,758	0	2017	Junín
5. UNDP Project (UNDP-DCI)	UNDP-PNCB	0	68	310,000	0	2018	San Martín, Ucayali, Loreto
6. SAWETO Specific Dedicated Mechanism (MDE)	AIDSESP/ CONAP/ WWF	310	130	780,000	0	2020	Loreto, Ucayali, Madre de Dios, Amazonas, Junín, San Martín, Huánuco
7. Rural Land Cadaster, Titling and Registration Project, third phase (PTRT3)	UEGPS- MINAGRI	0	403	3,000,000	0	2020	Amazonas, Cajamarca, San Martín, Junín, Huánuco, Ucayali, Cusco, Apurímac, Puno, Loreto
8. FIP – Tarapoto-Yurimaguas in the departments of San Martín and Loreto	PNCB	2	5	70,000	25	2020	San Martín and Loreto
9. FIP – Puerto Maldonado Corridor–Iñapari and the Amarakaeri Communal Reserve, in the department of Madre de Dios	PNCB	0	8	45,000	17	2020	Madre de Dios
10. FIP – Atalaya, in the department of Ucayali.	PNCB	2	4		20	2020	Ucayali

Source: MINAM-DCI (2018) (presentation made during the Roundtable on Deliverable 4 – DCI).

*Abbreviations used in this table:

AIDSESP – Interethnic Association for the Development of the Peruvian Amazon
CONAP – Confederation of Amazonian Nationalities of Peru
DEVIDA – National Commission for Development and Life without Drugs

FIP – Forest Investment Program

PNCB – National Forest Conservation Program

UEGPS –The PTRT3 project's Social Project Management Implementing Unit

UNDP – United Nations Development Program

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