

## Regional and local perspectives on tenure insecurity in the Loreto and Madre de Dios regions of Peru

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### Key messages

- In Madre de Dios and Loreto, tenure security in native communities<sup>1</sup> extends beyond the recognition and titling process. Regional and local actors have identified economic, social and political factors that threaten communities' freedom to exercise their rights after they have received title.
- According to local actors, insecure tenure is a result of indigenous issues not being a priority in the national and regional political agenda, incoherence between regulations and local realities as well as a lack of progress in decentralizing public roles and empowering communities.
- Participatory prospective analysis (PPA) allows for incorporating actors' different perspectives, exchanging information and generating shared knowledge on the issue of insecure communal tenure.

### Introduction

While the Peruvian State recognized indigenous communities in the Constitution of 1920, formal titling of native communities (indigenous to the Amazon) began in 1974 (DL 20653). Since then, more than 300 native communities have been titled (IBC 2016) and granted usufruct contracts for 17% of the national forest area, which amounts to more than 12 million ha (MINAM 2016). For native communities, formalizing land rights entails carrying out soil studies<sup>2</sup> to assess the appropriate land use classification of the claimed area. Areas classified as suitable for agriculture and livestock can be given an agrarian title, while areas classified as forest require native communities to follow another process to obtain a usufruct contract. This difference

in the right granted over forest areas has existed since 1975, when it was established that national forest is owned by the state.

Despite progress in community titling, the legal security of native communities' land is not guaranteed. The absence of a national registry makes it difficult to determine the total area and number of pending claims. According to AIDSESEP (2016), there are claims for over 20 million ha of forest, and according to SICNA-IBC,<sup>3</sup> more than 600 native communities (about 5.5 million ha) need to be formalized (IBC 2016). While formalization is important, communities find that the restrictions on land use, unclear limits and conflicts generate insecurity of the tenure rights acquired (Cruz-Burga et al. 2017a, 2017b). Secure tenure is a critical dimension in sustaining collective rights (Mwangi and Meinzen-Dick 2009, 310).

1 'Native community' is a legal term in Peru for indigenous communities applying for recognition and titling under the law.

2 In May 2017, new guidelines were approved that substitute the use of soil analysis with an agrologic evaluation for the best use classification (RM 0194-2017-MINAGRI).

3 Data from the Sistema de Información sobre Comunidades Nativas de la Amazonía Peruana: <http://www.ibcperu.org/servicios/sicna/>

This document is part of the Global Comparative Study on Forest Tenure Reform carried out by the Center for International Forestry Research (CIFOR). It summarizes collective discussions during five workshops that used the PPA to discuss tenure insecurity in native communities, especially in Madre de Dios and Loreto. The first four workshops were held in these two regions<sup>4</sup> and included experts on indigenous issues, representatives from different sectors of the regional and national government (present in the region), native communities and their federations, and nongovernmental organizations (NGOs). The fifth workshop, coordinated with the National Organization of Andean and Amazonian Indigenous Women at the national level, identified similarities between the previous results and women's perspectives.

The PPA methodology for this study follows the protocol developed by Bourgeois et al. (2017). It consists of three stages implemented in participatory workshops. The first identifies the forces of change (variables) that generate insecure tenure; the driving forces are obtained from an analysis of how these forces of change mutually influence each other. The second stage develops future scenarios depending on possible states of the key forces. The third stage identifies actions to counter the negative scenarios and promote greater tenure security in native communities. The results are summarized below.

## The process in both regions

Loreto and Madre de Dios present two distinct contexts. Loreto is the largest region in the country (28.7% of the national territory), and its forests (35 million ha) represent 50.9% of the Peruvian Amazon (MINAM 2016). It is the region with the second lowest population density (2.8 inhabitants per km<sup>2</sup>), and a large part is pending titling. There are more than 1,000 recognized native communities (689 titled) and 141 recognized riverine communities (*riberaños*, of which 63 are titled, even though only 20 titles have been registered) (Cruz-Burga et al. 2017a).

Madre de Dios makes up 6.6% of the national territory and 12% of its forests (MINAM 2016). Considered to be the 'capital of biodiversity' (Law 26322 1994), 60% of its surface is protected area. It is the least populated region (0.4% of national total), with the highest internal migration rate (more than 30%) (GOREMAD 2014). Mining is the main economic activity and has negative socioenvironmental impacts. In 2016, a state of emergency was declared in 11 districts due to "the mercury contamination of the river waters, hydrobiological species and the population" (DS 034-2016-PCM). In Madre

de Dios there are only 33 native communities (31 recognized and 25 titled). Two communities are pending recognition, and six are pending titling.<sup>5</sup> By 2016, only eight of those titled were registered and geo-referenced, and none had a usufruct contract (Baldovino 2016).

## Drivers of change and insecurity

In the literature, tenure security is associated with the existence of a legal framework; the exercise of acquired rights; and the actors' perceptions of the legislation and exercise of these rights (Safitri 2010; Larson 2013). Central to our analysis is the recognition of collective rights as well as the local and regional perception of drivers of change that generate insecure tenure in native communities.

According to the PPA workshop results (Zamora and Monterroso 2017a, 2017b), the actors identified economic, social, political, institutional and environmental factors – beyond legislation and practice – that positively or negatively affect native communities' tenure security over land and forests (Table 1).

The common forces mentioned in the five workshops are the following:

1. **Inefficiencies in the State apparatus limit the fulfillment of roles.** Bureaucracy, government corruption, lack of coordination between offices and entities, incomplete role transfers, overregulated and changing processes, outdated or missing information and inefficient management of staff.
2. **Low priority of indigenous issues in the national and regional political agenda.** Existing policies are subject to change depending on the current government and are inconsistent with local realities; lack of regional government resources for indigenous matters; officials lack motivation on these issues.
3. **Limited progress in the regularization of communal land and forests.** Lack of comprehensive regularization of native communities' titles and issuance of usufruct contracts. Communities await pending formalization amid a lack of information on procedures and updated registries.
4. **Lack of community empowerment.** The need for basic services, strengthening of cultural identity associated with intercultural education, and technical and management capacities. For communities, empowerment means political participation. In spite of active indigenous federations in both regions, prior consultation and socialization of community matters prove insufficient.

<sup>4</sup> The technical reports of these workshops, the results and the complete list of participants can be reviewed at <http://www.cifor.org/gcs-tenure/publications/technical-reports/>

<sup>5</sup> According to interviews with the Dirección Regional Agraria del Gobierno Regional, Madre de Dios, 2016.

**Table 1. Summary of variables associated with insecure tenure (regional and local perspectives)**

Dimensions	Variables
Social	Limited capacities and operational skills of communities, indigenous federations and regional government institutions and few opportunities to strengthen them. Poor management of existing information, and absence of criteria to unify and ensure access to necessary information for communal and regional decision making. Inadequate access to quality health and intercultural education. Loss of ancestral knowledge and customs; youth's lack of interest in community issues.
Economic	Lack of access to funding for regularization of native and riverine communities as well as lack of productive development projects. Low capacity to manage budgets, monitor and oversee initiatives.
Environmental	Legal requirements to access and manage natural resources in titled areas.
Political	Political priorities and development models contrast with the indigenous people and regional actors' vision. Disconnect between national regulations and regional realities, and failure to comply with regulations that recognize collective rights. Inadequate transfer of responsibilities to regional governments; no political will regarding the issues of indigenous peoples. Low participation of local people in the elaboration of norms and little capacity to supervise and regulate.

Source: Elaborated based on the forces of change identified during the first stage of the PPA.

These factors operate at a regional level in the following ways:

- **The situation of communities.** In Loreto, differences in laws pertaining to native versus riverine communities add complexity. The large number of communities in this region mean remote ones have problems receiving funding.
- **NGO presence and political support from the regional government.** These are key to ensuring economic and technical aid in the titling process. While the NGO presence in Madre de Dios is greater and more varied, funding options and political support from the regional government are limited. In Loreto, initiatives on community recognition, titling and expansion have swayed the regional government's political support toward native communities. Several titling projects have prioritized Loreto, including the Cadaster, Rural Land Titling & Registration Project in Peru, the Putumayo Tres Fronteras project and the Saweto Peru Dedicated Mechanism (see IBC 2016; Bolaños 2017).
- **The role of indigenous organizations.** Historically, indigenous federations have played a key role in ensuring continuity in the formalization of communal tenure processes (Chirif 2012, 2006; Monterroso et al. 2017).

In the workshops with women, the results regarding variables associated with insecure tenure were similar to those identified by groups comprised of both women and men (Table 1). They also emphasized four aspects that had not been previously mentioned: (1) the strong impact of violence from extractive activities in communities; (2) the need to

strengthen mechanisms for adapting to climate change; (3) the need to strengthen indigenous identity and values within the family and community as a central aspect to strengthening the management and governance of their territories; (4) the need to incorporate gender equality in the implementation of national and regional policies, through mechanisms that gather both men's and women's perceptions of their territory.

## A look at the future

Possible scenarios for communal tenure were identified by analyzing the possible states of the key forces in each of the workshops. This allowed for developing positive and negative scenarios as well as alternatives (see Table 2, 3 and 4 as well as Figure 1, 2 and 3).

These scenarios show that (i) the objective of secure tenure in both regions goes beyond obtaining a title; (ii) a positive relationship exists between a community's quality of life and the forest; (iii) both regions acknowledge progress in the recognition of collective rights based on titling, the problem being insufficient application of norms due to the lack of budget and personnel and communities' ability to exercise acquired rights; (iv) the national government does not understand the situation in the regions; (v) the regional government's position on indigenous issues influences the communities greatly, because complying with norms often depends on the will of the acting official.

Table 2. Positive scenarios

Loreto	Madre de Dios	Both
<b>'A paternalistic State'</b>	<b>'When an NGO takes on the role of the government'</b>	<b>'The ideal'/'When everything is good'</b>
The State approaches indigenous issues in a protective manner. It protects the forest and gives each family an economic subsidy that covers a large part of their needs. Changes in communal dynamics and increased dependency on the State.	The community, while ignored by their government, has a good quality of life due to the nongovernmental entities that take on the role of the State, giving them basic services, training and support in preserving the forest.	The State prioritizes indigenous issues and full tenure security is reached. The empowered community uses the resources in a sustainable way. The forests are preserved.

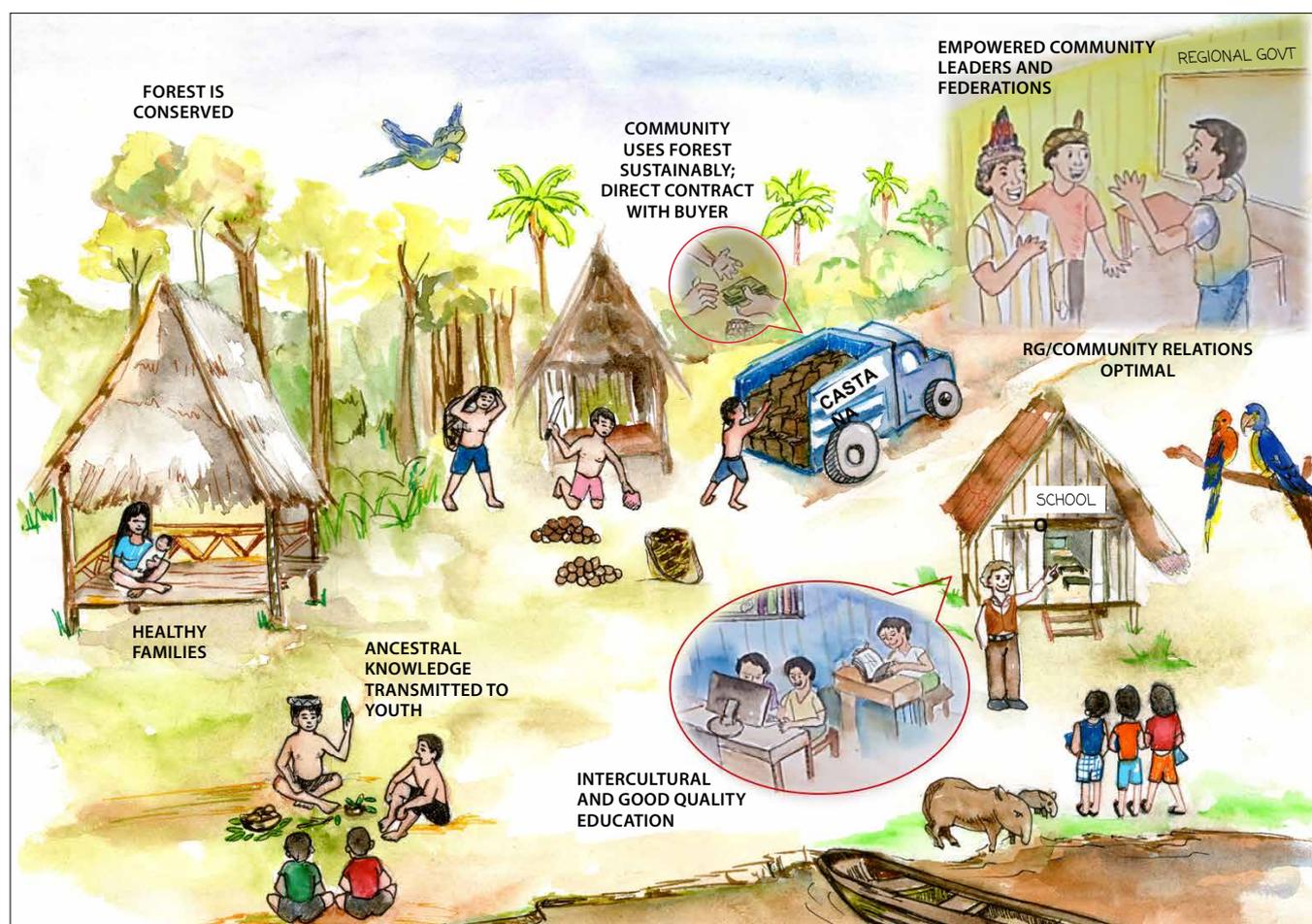


Figure 1. 'When everything is good': Illustration of a positive scenario in Madre de Dios.

Source: Zamora and Monterroso (2017a).

**Table 3. Negative scenarios**

Loreto	Madre de Dios	Both
<p><b>‘Government prioritizes extractive activities’</b></p>	<p><b>‘An authoritarian regional government’</b></p>	<p><b>‘From bad to worse’/‘Reversing progress’</b></p>
<p>The central government favors extractive activities within indigenous territories, but the regional government has enough political will to facilitate processes where possible, somewhat improving the communities’ situation. Extractive activities damage forests.</p>	<p>The legal framework is favorable for communities, but the regional government, considering its own interests, operates on the margin. Little supervision and unlimited resources for mining strengthen the current regional government and lead to the departure of NGOs. The communities’ situation worsens, and they are unable to reverse it. Deforestation and pollution increase at alarming rates.</p>	<p>State of national crisis. The government prioritizes other issues, harming indigenous territories. Shortages in the regional government offices. Corruption and bureaucracy predominate. There is no State or institutional presence in the community; quality of life is degraded along with forests.</p>



**Figure 2. ‘Reversing progress’: Illustration of a negative scenario in Loreto.**

Source: Zamora and Monterroso (2017b).

**Table 4. Intermediate scenarios**

Loreto	Madre de Dios	Both
<p><b>'The community disappears'</b></p> <p>The State prioritizes indigenous issues, but forgets the intercultural approach. Education with urban values fosters rejection and later loss of cultural identity in children. In the end, the youth migrate, and indigenous culture disappears. The community is left with elderly people, and there is nobody to work in the forests.</p>	N/A	<p><b>'Half way there'/'Our reality'</b></p> <p>Conditions exist for secure tenure, but processes are overregulated and confusing. Laws do not reflect reality, impeding local development. Support from the regional government is subject to deficiencies in state management. The community survives despite degradation of forests and quality of life.</p>

**Figura 3. 'Our reality': Drawing of intermediate scenario in Loreto.**

Source: Zamora and Monterroso (2017b).

## Recommendations

The workshop participants proposed actions to avoid unwanted scenarios and promote desired futures. From these actions, detailed recommendations were made. The following recommendations aim to strengthen the process of formalizing collective rights (see Zamora and Monterroso 2017a, 2017b):

- The regional governments' agrarian affairs offices (DRAS), specifically the offices of Land Regularization and Rural Properties (DSFLPR), should guarantee the communities equal access to resources and the capacity to fulfill the requirements for formal recognition, titling and regularization procedures. These resources and capacities should encourage the support and coordination of governing bodies at the central level. This includes:
  - Promote access to information about existing projects and ensure that the indigenous federations are aware of and can discuss them.
  - Carry out an assessment to better understand the conditions of indigenous communities at the watershed level as a baseline for local initiatives.
  - Ensure coordination with the General Directorate of Rural Property and Cadaster (DIGESPACR) of the Ministry of Agriculture and Irrigation to ensure a supportive regulatory framework.
  - Promote the coordination and implementation of titling processes between the DIGESPACR and the DSFLPR, and the creation of a single national cadastral information system with updated official information and free access.
  - Promote a gendered approach in community initiatives. This includes subnational governments. Ensure that women specifically can participate and have access to the necessary information.
  - Improve coordination between the offices of DSFLPR and NGOs working on and alongside local processes to optimize resource use.
- The regional environmental authorities, through their forestry offices, should reach out to the National Forestry and Wildlife Service (SERFOR) to ensure norms allow for the following:
  - Discussion and approval of the regulations that grant usufruct contracts established in the forestry law and its regulations.
  - Prevention of overregulation and outsourcing of forest management in the creation and implementation of regulations for the use of the forest's natural resources.
  - Review of existing mechanisms so native communities can promote plans for forest management.
  - Continuation of the process started by SERFOR to elaborate regulations for the use of forest resources in indigenous lands.
- The regional governments' agrarian affairs offices should promote the empowerment and self-sufficiency of native and riverine communities, to improve techniques for resource use. Strengthen existing alliances between

government institutions, NGOs and native communities through their representing organizations.

- Strengthen the capacity of the regional governments' planning offices to generate and promote projects to formalize tenure rights for native communities. Indigenous organizations as well as regional and local NGOs must monitor and oversee these processes.
- Improve management of the regional government offices that assist native communities to improve officials' disposition toward communities and expedite procedures; take advantage of the NGO experience and work in coordination with the communities to better identify their needs.
- Apply consultation processes in decision making on regulations and project development concerning indigenous people. Promote the exercise of citizenship: that is, participation in consultation processes, project follow-ups, audits of government work, meetings and the political arena.

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## Acknowledgments

The Global Comparative Study on Forest Tenure Reform, carried out by the Center for International Forestry (CIFOR), is funded by the European Commission and the Global Environmental Facility (GEF), with technical support from the International Fund for Agricultural Development (IFAD) and the Food and Agriculture Organization of the United Nations (FAO). We would like to thank Richard Smith, Sondra Wentzel and Manuel Guariguata for their comments on earlier drafts. The authors also want to thank Angela Michi and Silvia Leticia Jarama Escudero for their support during the facilitation and implementation of the workshops in Puerto Maldonado, Madre de Dios. Similarly, we thank the following people for the facilitation and implementation of the workshops in Iquitos, Loreto: Silvia Leticia Jarama Escudero, Joe Sixto Saldaña Rojas, Gerardo Hidalgo Meléndez and María Antonieta Saldaña. The illustrations of the future scenarios were done by Lesky Zamora Rios in watercolor on paper and then digitalized for this publication. This study forms part of the CGIAR Research Program on Policies, Institutions and Markets (PIM), led by the International Food Policy Research Institute (IFPRI), and the CGIAR Research Program on Forest, Trees and Agroforestry (FTA), led by CIFOR. The opinions expressed in this paper represent the analysis of the authors and do not necessarily reflect the views of CIFOR, CGIAR or the financial sponsors.



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