



STUDY OF THE RIGHT TO ACCESS TO LAND TITLING BY INDIGENOUS COMMUNITIES IN THE PERUVIAN AMAZON

The study of Right to Access to Land Titling by Indigenous Communities in the Peruvian Amazon is intended to examine the land rights situation of Amazonian native communities in Peru, past efforts at land titling, and to identify successes, failures, current difficulties, as well as potential opportunities for USAID to work in this area. The guiding questions are as follows:

1. What is the current situation of land tenure, rights, and titling for Indigenous peoples?
2. What are the current approaches to land titling?
3. Have there been any unintended impacts on the Indigenous land titling process?
4. What are the lessons learned from USAID and other international cooperation interventions?

METHODOLOGY

The study was carried out with an eminently qualitative methodological approach that combined two data collection techniques: documentary review and in-depth interviews. The documentary review included 53 documents (books, articles, and reports) and 12 national and international legal standards. Fifty-eight people from Lima, Loreto, Ucayali, and Madre de Dios were interviewed.

CONCLUSIONS

- There are different terms to refer to the Amazon Indigenous populations. Thus, although most of the regulations and statistical information related to the titling of their lands refer to “native communities,” the Ministry of Culture uses the term “Indigenous or native peoples” in accordance with international regulations and conventions. Many Amazonian Indigenous organizations claim their right to be considered “peoples” and not native communities.

- The titling of lands of native communities is a procedure that recognizes a pre-existing right, given these populations have inhabited their territories since ancient times. These rights are recognized by international standards, ratified by Peru, which consider the right to territories as part of human rights, since they are the basis for the exercise of other rights such as economic and administrative rights.
- Peruvian regulations on land titling for native communities have a community and not a peoples' perspective, as proposed by international standards and Indigenous organizations, which weakens the unity of the peoples, their organizations, and their ability to defend themselves against legal or illegal deforestation (which affects climate change), illegal economies, invasions, among others.
- The approach to legal security of Indigenous territories goes beyond titling itself. It implies the protection and safeguarding of these territories, as well as access to basic health and education services; aspects in which the State, at its different levels, has a key responsibility.
- The country is characterized by a multiplicity of legal norms at different levels related to the titling process, many of which are outdated, unclear, and complex. This prevents or makes the titling process long, expensive, and cumbersome. Other norms related to the promotion of public and private investment (hydrocarbons, mining, forestry, and environment) cause legal insecurity for native communities since they become inhabitants with land with assignment of use.
- The creation of the General Directorate of Agrarian Property Sanitation (DIGESPAR) and the issuance of guidelines on community physical and legal sanitation to guide the implementation of the regional governments' functions are important developments of the Ministry of Agriculture and Irrigation (MIDAGRI) in the exercise of its stewardship in terms of recognition and titling of peasant and native communities. However, as it is a recently created institution, it shows incipient efforts of its stewardship concerning coordination, advice, and capacity building for officials of the Regional Directorates of Agriculture, as well as for information management.
- The regional governments, responsible for this process at the departmental level, have not achieved uniform progress in the titling process. This is due to various factors ranging from the lack of political will expressed in the meager budget allocated to this task, as well as the lack of a qualified professional team and even the existence of practices contrary to regulations and legality in the assignment of territories, to the detriment of the native communities.

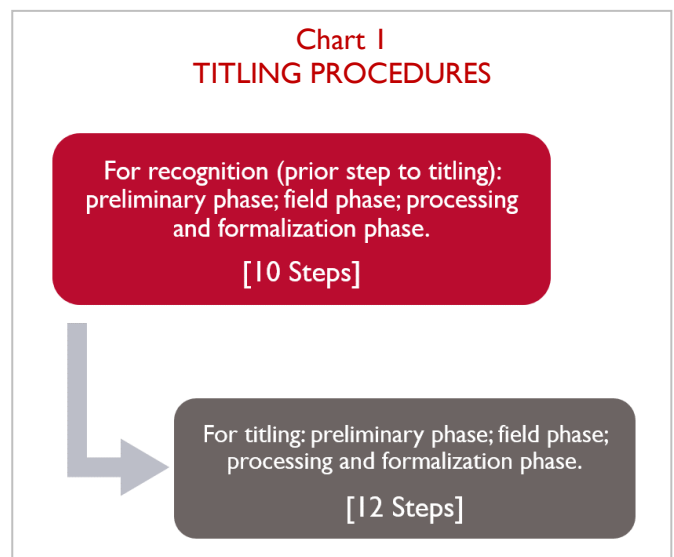
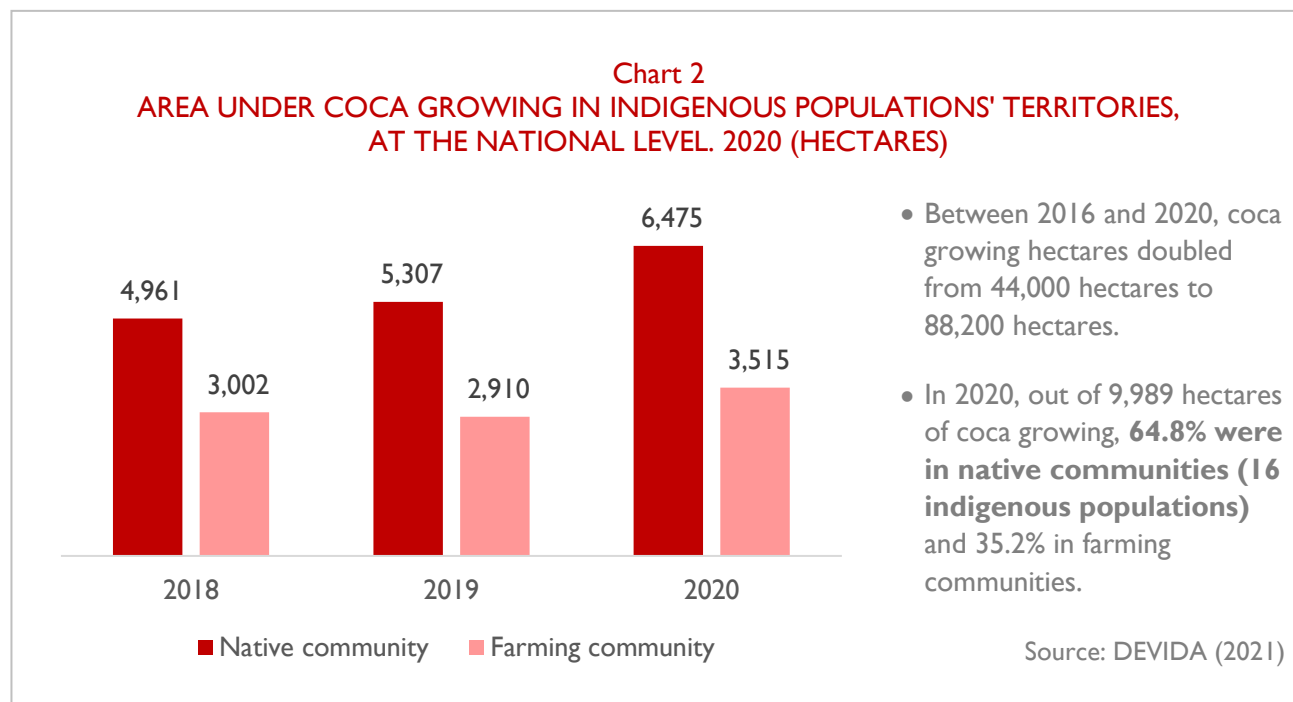


Table I
GAPS IN TITLING BY DEPARTMENT

Department	Total communities (A)	Titled (B)	Pending titling (C)	Gap (B/A)
Loreto	1,121	689	432	39%
Ucayali	300	249	51	17%
Junín	190	164	26	14%
Amazonas	178	170	8	4%
Pasco	124	98	26	21%
San Martín	98	30	68	69%
Cusco	63	58	5	8%
Madre de Dios	33	27	6	18%
Huánuco	14	10	4	29%
Ayacucho	6	1	5	83%
Cajamarca	2	2	0	0%
Total nationwide	2,129	1,498	631	30%

- In recent years, important developments have been made in the process of recognizing the legal status and land titling of the native communities of the Amazon, but there is still a gap of around 30 percent of native communities without title to their lands, and a similar percentage have not been able to register their titles with the Public Registry Office.
- There is a great heterogeneity in the native Amazon communities, not only in relation to their formalization situation, but also with regards to their relations with other forms of production and commercialization, their contact with illegal economies, their development possibilities according to the quality of the lands in which they are located and the political commitment of their regional authorities.
- The presence of illicit activities in Indigenous territories, such as drug trafficking, illegal logging, illegal mining and land trafficking, constitutes a serious risk for the survival of Indigenous peoples. The murder of Indigenous leaders defending their territories has been denounced, mainly, by the alternative digital press, due to the indifference of public opinion and the State's inaction.
- A significant number of existing native communities—with or without title—face conflicts due to overlapping of their territories with other communities, invasion or ill-gotten possession, logging, oil, mining, and illegal mining companies. These overlapping problems halt titling procedures.
- There is lack of guidelines to establish standards and technical criteria to solve controversies in cases of communal land overlapping with forestry, mining and oil concessions or protected natural areas.



- Organizations representing Indigenous populations have land titling as a priority item on their work agenda. In particular, AIDSESEP was created as an institutional support for affiliated organizations in the face of threats focused on the territorial spaces of Indigenous populations.
- Some of the non-governmental organizations that work in the Amazon play an important role in providing technical support for titling; the key to the success of their interventions is the involvement of native communities and their representative organizations.

RECOMMENDATIONS

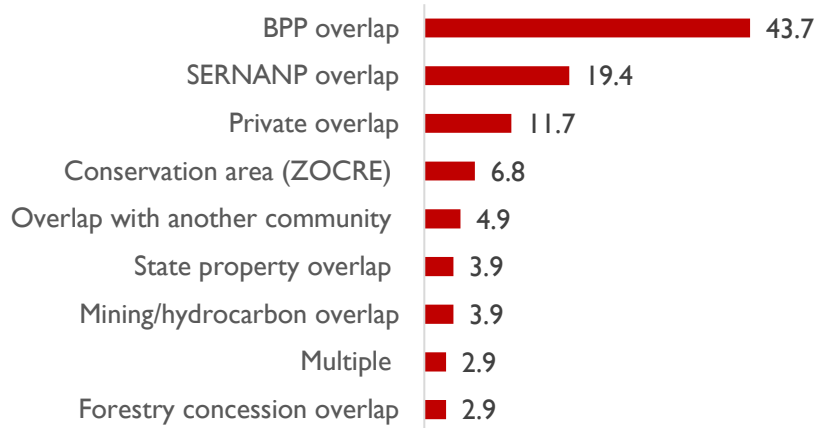
The recommendations that are made, derived from the conclusions of the study, are aimed at supporting the Ministry of Agriculture and Irrigation (in its capacity as governing body) and the regional governments of the Amazon (directly responsible for titling) to make titling processes and procedures for native communities more efficient and effective, ensuring that they conform to international instruments on collective rights, such as ILO Convention 169.

The realization of these recommendations assumes the establishment of specific agreements either with MIDAGRI, with regional governments, or with Indigenous organizations, as well as the preparation and/or adaptation of projects with the support of economic and technical resources from USAID.

I. With the General Directorate of Agrarian Property Sanitation and Rural Cadaster (DIGESPACR) of the Ministry of Agriculture and Irrigation (MIDAGRI):

- a. Review the norms that regulate the titling of native communities to update them in accordance with the current Constitution, clarify and simplify them. The Amazon regional governments and the two national Indigenous organizations (AIDSESEP and CONAP) must also participate in this process.

Chart 3
LAND DISPUTES DURING THE TITLING PROCEDURE, 2017 (%)



- 14% of the total number of communities had conflicts with logging companies, 7.3% with oil companies and 5% with mining companies (Census, 2017).

Source: Ombudsman's Office (2018)

- b. Formulate a national public policy for the recognition and titling of native communities, with specific objectives and goals at the level of each of the Amazon regions and with an intercultural approach.
- c. Prepare technical documents that provide standards and guidelines for the resolution of disputes in cases of overlapping of communal lands with forestry, mining and oil concessions or protected natural areas, based on successful experiences in countries with similar problems.
- d. Update the national rural cadaster, based on the cadaster of the regional governments.
- e. Update territory georeferencing of the native communities, based on the information provided by the regional governments.
- f. Develop a monitoring system for the titling of native communities interconnected with the Regional Agrarian Directorates.

2. With the Regional Agrarian Directorates (DRA) of the regional governments:

- a. Prepare specific studies that identify the main “bottlenecks” at the regional level, which help design the most appropriate strategies to cover the titling gaps of existing native communities. These studies must yield regional roadmaps.
- b. Design and implement a permanent plan to strengthen the capacities of the personnel working for Regional Agrarian Directorates in regulatory matters related to recognition and titling, interculturality (language, relationship with native communities, worldview of Indigenous territory), among other aspects.
- c. Update the regional cadaster of native communities, as well as their georeferencing, using the most appropriate and up-to-date technologies and methods (hardware, software, use of satellites, specialized personnel).

- d. Design monitoring systems for the titling of native communities.

3. With Indigenous organizations (AIDSEP and CONAP):

- a. Design and implement a permanent training and updating system in current regulations on the recognition and titling of native communities, aimed at national and regional Indigenous leaders.
- b. Design a national and international positioning strategy for the collective rights of Indigenous peoples, including the protection of environmental defenders, in the face of threats and aggression from illicit economies.
- c. Disseminate among the native communities the regulations regarding their rights over their territories in alliance with non-governmental organizations specialized in the matter.
- d. Participate proactively in the debate on the issue of native communities titling, through the identification of bottlenecks and the formulation of regulatory proposals to be channeled through Congress, DIGESPACR, and the regional government.

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