

Improving Land Sector Governance in Latin America: The case of Peru

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Challenges in the process

- Panel conformation
 - Experts selection
 - Political concerns
- Preparation of material before the panels
 - Great effort to compile information, but ...
 - Real experts are too busy to prepare before the session
- Managing the sessions to assure technical discussion
- Data gathering after the panels

Recognition vs enforcement of rights: Communal lands

1. Recognition of a continuum of rights

LGI-1 (i) Land tenure rights recognition (rural)
A Existing legal framework recognizes rights held by more than 90% of the rural population, either through customary or statutory tenure regimes

LGI-1 (iii) Rural group rights recognition:
A Group tenure in rural areas is formally recognized and clear regulations exist regarding group's internal organization and legal representation

2. Enforcement of rights

LGI-2 (i) Surveying and registration of claims on communal or indigenous lands
D Less than 50% of the area under communal lands has boundaries demarcated and surveyed and associated claims registered

Main difficulties to enforce communal rights

- Unsolved boundary conflicts among communities
- Surveying in jungle areas is costly and difficult
- Requirements to prove community representation are too difficult to comply with
- Defining native communities territories cannot be ascertained by traditional approaches of occupation
- Some communities oppose State recognition claiming self-determination

The result:
-Vulnerability
-Lost opportunities

Recognition and enforcement of rights vs management of public land: urban settlements

LGI-1 (ii) Land tenure rights recognition (urban)
A Existing legal framework recognizes rights held by more than 90% of the rural population

LGI-2 (ii) Registration of individually held properties
C Between 50% to 70% of individual properties are formally registered

LGI-15 (i) Transfer of expropriated land to private interests
A Less than 10% of land expropriated in the last 3 years is used for private purposes

The debate about expropriation of private land occupied by settlements

Expropriation for "public interest" eliminated in Constitution 1993

New expropriation law to formalize settlements: justification

•The purpose is to offer a solution when current legal instruments do not work

- Conciliation not met
- Adverse possession blocked

•Safeguards of the proposed law

- Only settlements before 2004
- Only irreversible situations
- Only when no other resource is possible

Criticism

- The expropriation law contradicts the policy of recognizing and formalizing property
- Safeguards rely too much on administrative decision therefore subject to political pressure
 - Deadlines for settlement recognitions are changed every 5 years
 - Who defines irreversibility?