

# Communal Lands and Protected Areas in Peru



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The National System of Protected Natural Areas of Peru consists of 77 protected areas covering 15% of the national territory. Sixty-nine percent of these areas are home to rural and indigenous communities. Little is known about the exact number of communities living in these areas, and even less is known about how many of these communities have pending the assessment and resolution of overlapping claims to the land they occupy. This lack of knowledge stems from the fact that there is no unified and up-to-date official land registry of rural and indigenous communities at the national level. However, we estimate that there could be around 200 communities living in protected areas.

Recognition of community rights over these lands, including physical demarcation and land titling, would guarantee strong legal security, settle border conflicts, and place certain responsibilities upon the State.

However, granting these rural and indigenous communities land titles over lands within protected areas continues to be an almost impossible task, due to limitations of the legal framework as well as an unfounded fear that this would adversely affect the conservation of the natural resources in protected areas. In addition, the process of granting land titles over communal lands in Peru is very complicated, and is further compounded when those communal lands are located in protected areas.

As we can observe, granting property titles for communal lands located in protected areas is not only an important issue but also a complex one, which deserves careful analysis. In this brief, we outline in greater detail the main challenges and opportunities, related to this issue, and conclude by presenting some recommendations on the way forward.

# Formalising land titles over communal land in protected areas: challenges, opportunities, actions and achievements to date

As noted in the introduction, granting communal land rights and conserving biodiversity in protected areas are two aspects that apparently could be considered to be incompatible. This is due to two main factors: 1) limitations and lack of clarity in the legal framework; and 2) fear of an adverse effect on the management of natural resources. With regard to the first factor, three main elements stand out:

1) According to Peruvian law, a community can only be recognized as such once the regional government in whose jurisdiction they live issues a resolution acknowledging their status. They then become a legal person. Only then can a community apply for rights over their land. The problem with this procedure – and the historical burden that it carries – is the very slow progress currently being made in granting titles over communal lands. This in turn has led to many cases in which protected areas have been established over lands belonging to communities that have not yet been recognized as such, making it more difficult to prove pre-existing rights over the protected area in question, and thus undermining the procedure for granting them land titles.

2) Peruvian law does not specify the legal tenure status of protected areas – i.e. whether the State exerts ownership over these areas or only authority. If the State holds property rights over these areas, regional agrarian directorates – in charge of issuing titles for communal lands – would not be authorised to concede these lands to indigenous communities. If the government only has authority over the protected areas then that would be a different matter. Moreover, under Peruvian law, property rights cannot be granted for lands considered suitable for forestry, only for lands suitable for agriculture. This is a major issue that needs to be resolved in law, as few lands within protected areas would be classified as being suitable for agriculture.

3) Despite the fact that granting land titles to communities for land located in protected areas is a very particular procedure that must be handled with great care - both for the sake of the protected areas and for the communities - Peruvian law does not establish any specific regime for this issue, thus creating a vacuum within which universal and generic procedures are applied.

Regarding the second factor, it is important to note that the prevailing fear that granting land titles for lands located within protected areas will have an adverse effect on the management of natural resources therein is a result of two important issues:

1) In Peru, aside from remarkable local advances in the co-management of communal reserves, a national model for the co-management of protected areas that identifies communities as allies in conservation efforts has not yet been established in law and policy.

2) Planning instruments and roadmaps for the management of protected areas - such as those setting guidelines for the use of natural resources - are not sufficiently participatory. The limitations and restrictions relative to the use of natural resources thus established are then imposed on communities, which undermines the likelihood of their support for the conservation measures put in place. In addition, management of protected areas is determined by the values of the biodiversity found therein, without taking into consideration the needs of the local communities and the development plans that they make with their environment to ensure their way of life.

Having outlined the main causes of the problem under review, we can now note that the main *challenges* in this matter are: a) to create a special legal regime regarding property rights over the lands of the rural and indigenous communities located in the protected areas; b) to implement an efficient mechanism for the co-management of the natural resources in the protected areas with communities ; and c) to better articulate the work of the three central government sectors involved in issuing land titles over communal land located in protected areas – i.e. environment, culture and agriculture – in order to set out a clear policy on this topic.

The main *opportunities* in this matter are: a) the issue of physically and legally regularizing rights over communal land is already on the public agenda – there are currently 11 projects aiming

to grant land titles over rural lands in Peru; b) the institutionalization of the three central government sectors involved in issuing land titles over communal land located in protected areas is already consolidated; c) the National Protected Areas Service has demonstrated greater engagement with communities in the co-management of protected areas through its activities in the communal reserves; d) the financial sustainability of protected areas is an important concern at this moment in Peru, and there are opportunities to link this to the issue of co-management of protected areas with indigenous communities; and e) the recent election of a new Peruvian government offers potential for renewed dialogue on these issues. These openings create opportunities to break the dominant paradigm that posits that the recognition of indigenous communities' rights and those of protected areas are incompatible.

## Recommendations

Physically and legally regularizing the land rights of rural and indigenous communities living in protected areas is an ongoing and exceedingly complex issue that faces various challenges. Here we outline some recommendations for overcoming these problems:

- Clarify the legal status of protected areas, particularly with respect to their registration and control, in order to identify suitable mechanisms or procedures to physically and legally regularize the land rights of communities living therein.
- Create spaces for dialogue and analysis, in order to promote coordination amongst the three central government sectors involved in this topic, to define the field of competence of each, and to outline a clear policy on the matters of conservation and protection of biodiversity, protection of communities and their collective rights, and the property rights of communal lands located inside the protected areas.
- Work within the regulatory sphere in order to develop a normative framework and a set of procedures that will drive the process of physically and legally regularizing land rights over communal lands located inside protected areas.
- Set up mechanisms or protocols to ensure that management instruments for protected areas in which land rights have been regularized are articulated and compatible with the development plans of the communities living therein - including as regards the use of natural resources.
- Work with the institutions involved in the management of protected areas in order to create a management model that is more participatory, identifying communities as allies in the conservation of protected areas. Once this model has been established, it will be important to implement an efficient and equitable co-management mechanism with the communities regarding natural resources. Perhaps integrating the issue of co-management in current initiatives to address the financial sustainability of the protected areas system can be a first approach, considering the prominence of the issue in current public debates.

*This issue brief has been prepared by Silvana Baldovino and Andrea Calmet, Peruvian Society for Environmental Law (Sociedad Peruana de Derecho Ambiental, SPDA), Peru.*

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