



Tenure reforms in indigenous lands: decentralized forest management or illegalism?

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Granting indigenous people legal land titles has emerged as an intervention to implement decentralized governance. Tenure reforms, however, may not avoid land expropriation and degradation without supporting institutions that enforce exclusion rights. Focusing on land expropriation in the Andean-Amazonian region, this review looks at enabling conditions and challenges for aligning tenure reforms with other interventions (i.e. environmental licensing and activism) to enforce indigenous rights and improve land security. Although a pro-rights rhetoric is enshrined in tenure reforms, they may be seen as a 'tolerated illegalism of rights' that allow for different kinds of mutually advantageous interplay between governments, transnational corporations and financial organizations. Yet, some contestations by indigenous groups supported by local and global activism have helped to successfully guarantee tenure security.

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Introduction

Many developing countries now practice the 'decentralized' management of their forests, where a central government cedes powers to actors and institutions at lower levels in a political-administrative hierarchy [1]. Since the 1980s the granting of land titles to indigenous people (IP) has become a leading intervention to decentralize forest governance [2]. IP tenure reforms represent this trend towards state recognition of community property rights [3]. Although many studies have examined the effect of such reforms on forest cover, only

a few have looked at the capacity of IP to enforce tenure rights in practice [4]. This review focuses on land expropriation in the Andean-Amazonian region, once many IP reside in this area and it provides different interesting cases for understanding IP rights implementation. It then examines the enabling conditions and challenges for aligning IP tenure reforms with other interventions (i.e. environmental licensing and activism) to enforce IP rights and improve land security. In doing so, it provides insights on issues linked to IP dispossession, neoliberalism and the role of the state, NGOs and international financial organizations.

Tenure reforms mostly involves institutional measures, here defined as the 'cognitive, normative, and regulatory structures that provide stability and meaning to social behavior' [5:33]. Effective implementation, however, also requires information management to identify and record existing land titles and to track ongoing changes with title claims. Institutional measures and information determine how land and its resources are accessed, and who can benefit from them, for how long and under what conditions. It is important to distinguish the tenure terminology used here. The form of tenure concerns the norms and rules that govern the bundle of property rights; that is access, use, management, exclusion and alienation [6•], while tenure security relates to the enforcement of such rights [7,8•].

Previous research suggests that community titling has various effects including the over-exploitation of natural resources [9,10,11•,12]. Additionally, the effects of titling are likely to be conditional on the governance environment (i.e. different interests at power) and interactions with other forest interventions (i.e. interventions outside the forest sector) [13–16]. Land titles may not change management patterns without supporting institutions that enforce and legitimize exclusion rights [17]. Thus, the understanding of which institutions could enhance IP tenure security is of crucial importance to guide both policy and local decisions about decentralized governance. This analysis specifically reviews the recent academic and grey literature on the topic of tenure reforms and land expropriation in IP lands in Bolivia, Brazil and Peru. The search was made in scientific databases of different sources in English, Portuguese and Spanish. Key words included: 'tenure reforms', 'titling', 'indigenous lands', 'land expropriation', 'tenure security', 'illegalism', 'large scale projects', 'IP rights', 'exclusion', 'activism', 'environmental licensing', 'decentralization',

‘forest management’, ‘governance’, ‘institutions’. Specific search of legislation, reports and official documents was used to complement the analysis.

The evolution of tenure reforms on indigenous people's lands

Secure access to land is a central concern of IP [18]. Land has sacred and spiritual importance to IP [19] and is a symbol of social empowerment, wellbeing and ancestral inheritance. The situation of IP tenure is tied to a country's history of colonial, post-colonial and nation-state policies. Pacheco *et al.* [20] say that forest tenure reforms have emerged first, from grassroots social pressure, particularly ancestral claims for homelands; second, from growing global conservation concerns that have permeated national policy decision making; and third, from shifting political views about forest governance linked to political decentralization.

Progress on institutionalizing IP's rights to their ancestral lands has been especially pronounced in the Andean-Amazonian region, where these rights have been linked to the constitutional recognition of multiculturalism [21]. These tenure reforms were introduced mostly in the 1980s/90s to strengthen land rights, with priority given to collective forms of tenure over individual ownership. Much of the impetus for change in the related legal frameworks has come from the World Bank and other multilateral donors [22,23]. In the 2000s the development of legal frameworks relating to environmental services and climate legislation has also facilitated the recognition of new rights [24].

However, despite progress with recognition of rights, the pressure on indigenous lands remains intense [25^{••},26^{••}]. IP still face multiple obstacles to maintaining tenure security, including racism and discrimination; inappropriate, assimilationist social policies; challenges to establish inter-institutional coordination mechanisms to enforce rights; inflexible or deficient land administration services; and the lack of resources, capacity, political connections and awareness that hinder access to legally enshrined opportunities [27–30]. Moreover, IP's rights are often denied by forestry, mining, oil, gas, dam building and agribusiness interests [31]; and indigenous lands are often expropriated by groups who want to search for exploitable natural resources or convert forests into agricultural or urban uses [32[•],33,34].

In theory, community titling reforms is an attempt from central governments to increase tenure security by improving IP's legitimacy to guarantee their rights and exclude external individuals and groups from their lands. Tenure security may increase by enhancing the enforcement capabilities of the state and by providing a ‘reference point’ to IP that can be used to adjudicate land disputes [35,36^{••}]. The holding of formal titles is

crucial for communities to avail legal remedies when external non-right holders move on to their lands [31]. The next section explores how these reforms have improved security in practice. Moreover, it raises the question of whether or not the reforms are a form of ‘illegalism’, corresponding to strategic games that different agents play with the law at its margins, not abiding by the law but doing so within limits generally tolerated by society [37].

From rights to security: enabling conditions and challenges

Indigenous lands in Bolivia, Brazil and Peru remain under multiple pressures from commercial agribusiness, mining, plantation forestry, industrial logging, dams, and oil and gas pipelines, mainly supported by transnational agencies such as the World Bank [38^{••},34,39]. Most of these initiatives fail to recognize IP's ownership of lands and disregard indigenous rights [26^{••},40[•]]. The situation in the three countries provide cases to explore decentralized forest management in practice by looking at issues linked to IP dispossession, neoliberalism and the role of the state, NGOs and international financial organizations.

Bolivia

Bolivia has seen popular dissatisfaction with two periods of neoliberal reform (1990–2000 and 2003–2014) that were dominated by the country's elites [41,42^{••}]. During the mid-1990s, vested interests blocked IP's claims to obtain title to lands, resulting in displacement and hardship [43]. This was followed by a ‘turn to the left’ with the election in 2005 of Evo Morales, Latin America's first indigenous president [44]. However, while the 2009 Bolivian Plurinational Constitution and the 2010 Law of Mother Earth provided significant new rights to IP and nature, an extractive boom hindered their implementation.

The experiences of Chiquitano and Ayoreo people who live in the Gran Chaco area of eastern Bolivia, are good examples of the early consequences of the encroachment of private interests on ancestral territories [25^{••}]. Coordinated efforts of the World Bank, the US and Bolivian governments and transnational corporations led to the partial privatization of Bolivia's hydrocarbon sector. Expanded oil and gas exploration usurped the control of natural resources from Chiquitanos and Ayoreos [45,46]. In response, Chiquitanos and Ayoreos have used international legal instruments to compel governments, corporations and financial institutions to respect their rights [42^{••}]. They strengthened their political agency by confronting investors and asserting the negative environmental and other impacts of projects such as the Bolivia-Cuiabá pipeline [47]. Their pragmatic combination of direct action, lobbying, negotiation, and regional, national and international press outreach [42^{••}] improved their living conditions, secured control over land and ensured the survival of their cultures.

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