

# LEGAL SERVICES AND SUPPORT COMBINED WITH PEASANTS' EMPOWERMENT TO SECURE THE LAND RIGHTS OF FARMERS AND PEASANT COMMUNITIES

STUDY OF THREE EXPERIENCES IN PERU, BOLIVIA  
AND GUATEMALA



Laureano Del Castillo Pinto  
Giannina Pastor Carvajal  
2008

**WORKING DRAFT**

To be published in:

FAO-NRLA (Land Tenure and Management Unit), **“Legal Empowerment in Practice to Secure the Land Rights of the Poor”**, Resource CD, FAO Land Tenure Collection n°3, 2008



INTERNATIONAL  
LAND  
COALITION



Legal Empowerment in Practice to Secure the Land Rights of The Poor



# LEGAL SERVICES AND SUPPORT COMBINED WITH PEASANTS' EMPOWERMENT TO SECURE THE LAND RIGHTS OF FARMERS AND PEASANT COMMUNITIES

## STUDY OF THREE EXPERIENCES IN PERU, BOLIVIA AND GUATEMALA

Photograph by Fundación Tierra

Laureano Del Castillo Pinto  
Giannina Pastor Carvajal  
2008

*The views expressed in this publication are those of the authors and do not necessarily reflect the views of FAO and ILC.*

*This document has been produced within the frame of a joint collaboration on legal empowerment issues among ILC members, including Grupo ALLPA and FAO. Cases were prepared by Fundación Tierra –Bolivia, CODECA-Guatemala and CEPES Peru and supervised by Grupo ALLPA, with financial and technical support from ILC Secretariat and technical support from FAO.*

As part of its work programme, FAO's Land Tenure and Management Unit – NRLA identified **access to land information and land institutions to secure the land rights of the poor** as a central item on its agenda. More specifically the Land Tenure and Management Unit has identified access of the rural poor to legal information (on how customary rights and informal transactions can become formalized and legally guaranteed) and to institutions (allowing to perform this formalization) as key factors for securing land rights, encouraging agricultural investment and improving the livelihoods of the rural poor.

In this global work some specific case studies on Latin America and on Asia have been produced with financial and technical support from ILC Secretariat and technical support from FAO. These publications are the joint effort of a number of members of ILC: Fundación Tierra –Bolivia, CODECA-Guatemala, CEPES Peru, and TFM – Philippines as authors of the case studies; Grupo ALLPA<sup>1</sup> as coordinator of the Latin American case studies; and FAO as initiator of the project and in technical support. The International Land Coalition (ILC) is a global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building. The legal empowerment of individuals and communities to secure their rights to access, manage and control land is central to the work of the International Land Coalition.

---

<sup>1</sup>El Grupo ALLPA (which means land in one of Peru's indigenous languages) was set up in 1997 by civil-society organizations and trade unions with interest in the theme of land rights, rural development and farmer communities. Contact Details: c/o CEPES, Av. Salaverry 818, Jesus maria, Lima 11, Tel: 00511 433 6610; Fax: 00511 433 1744, Contact: [Mr Laureano del Castillo](mailto:Mr.Laureano.del.Castillo), [www.allpa.org.pe](http://www.allpa.org.pe)

## TABLE OF CONTENTS

1. Introduction .....	1
2. One reality, different variants .....	1
3. Statutory law prevails over other regulatory systems.....	2
4. Use of law .....	2
5. Community, community organization and social fabric .....	3
6. The importance of property regularization.....	4
7. State involvement .....	4
8. Perspectives .....	5

## 1. Introduction

The cases from which these few pages are drawn gather the experiences of three civil society organizations (non-governmental and grass-root organizations) that work in Central and South America. Such organizations basically work with and support peasant and indigenous communities to access and secure their property under the legal framework and complex context of their countries.

The documents of the *Fundación Tierra* (Land Foundation) in Bolivia, the *Comité de Desarrollo Campesino* (CODECA – Committee for Peasants' Development) in Guatemala and the *Centro Peruano de Estudios Sociales* (CEPES – Peruvian Center of Social Studies) in Peru emphasize the importance of relating to existing legal framework and using applicable laws in rural areas. Moreover, the different local intervention scenarios of these institutions show how access to and effective use of legislation for a fair land titling require organizing (and making effective) an agenda of still pending issues as for the individual and community land property rights in rural areas.

Some degrees of reflection out of these experiences are summarized below. The conclusions attempt at suggesting prospect changes to be introduced to ensure land tenure security while advancing the advocacy agenda with the State and policy-makers, as well as with the society as a whole..

## 2. One reality, different variants

The experiences analyzed herein, despite their differences, have similar fundamental features with a common pattern marked by a frail political system and historical experience of a highly polarized and bi-modal society with large estates next to landless or almost landless communities or farmers. Therefore, the cases document:

- formalizing communities' property rights as well as small farmers' property rights, thus reverting a process that was initially developed in very little participatory and highly bureaucratic way, in order to favor large landowners (Bolivia);
- accessing land for landless farmers and ensuring regularization of their land title in a context marked by a recently finished civil war and related internal displacements, where state authorities have shown little flexibility in facilitating alternative land-access schemes (Guatemala); and
- ensuring peasants' community property rights in the light of an increasing pressure by mining companies for using such lands in a frame of State's inaction(Peru).

Even though it may sound well-worn, the experiences analyzed herein show how, despite the progresses in the democratization processes that are taking place in Latin American countries, the reality of peasant and indigenous communities is still far from being decent. Poverty, illiteracy and lack of resources to defend their rights are combined with marginalization and, in some cases, with exclusion due to cultural and ethnical biases. The national rural property formalization policies, which have been applied in recent years, together with laws and by-laws that, at least on paper, aspire to provide land holders and owners with enhanced tenure security are often turned into

barriers that end up consolidating exclusion rather than serving the needs of rural populations.

### **3. Statutory law prevails over other regulatory systems**

The conceptualization of law, as a general and abstract rule, typical of judges and lawyers, contrasts with how peasants and indigenous people conceive it, as they incorporate in their experience the superposition and interaction between different systems. Such interaction has proved to be a constant, controversial and changing relation between the regulatory systems in the pre-Hispanic, colonial and republican period, the latter including the liberal, conservative and most recently populist and neoliberal variations. However, the dominant legal centralism in our countries prevents from recognizing the existence, together with or within the official law, of different regulatory systems. Customary law has little, if any, recognition.

This explains why, in cases as the Bolivian, rules related to property formalization do not take into consideration situations that are recurring in indigenous communities (coexistence of commonly owned resources resulting in collective community property along with individual family property), though, after a long “negotiation” within a very favorable political context, the official law succeeds to incorporate some mechanisms that both recognize indigenous and peasants’ community and are recognized by communities -in this case a participatory stance for community led land regularization process (*Saneamiento Interno*).

Situations, in which the legal rules issued by the government do not normally consider the practices and conceptions of rural populations, are likely to lead to tensions and even confrontations, often characterized by peasants and indigenous communities lacking required knowledge to manage official rules, which in turn consolidates their exclusion. The Guatemalan and Peruvian cases clearly show how law is used as a form of exclusion of poor rural communities.

### **4. Use of law**

What has been described above and, to a great extent, developed in the case studies, show that communities and their members do not know their rights and are little aware of the laws and amendments to the regulations regarding their properties and community organization. Therefore, they are more likely to be maneuvered by other economic stakeholders and can be easily manipulated by them, including public officers.

A recurring aspect in these three experiences is that legal counseling is necessary for achieving an appropriate and efficient land defense or, as the case may be, for allowing rural groups to access it (as for the groups supported by CODECA in Guatemala). Nevertheless, it is important to clearly remark that long-term tenure security will finally depend on public policies and laws that seek for changing landholding structure or land access structures. More clearly, the law can be useful, but it would be so only to the extent public policies and political will allow farming sectors to use the lands.

Within this broader framework, the studies show that the knowledge and management of legal matters (both rights and procedures) allow rural communities to exercise their

rights over community land ownership. Likewise, this exercise of their land rights constitutes a learning experience regarding their rights as citizens and, in so doing, it contributes to the development of their awareness as holders of rights. Eventually, it also contributes, though with all its limitations, to the larger process of citizenship development.

Furthermore, the experience described in these cases show that the current deficiencies in the administration of justice and application of laws in the field of land tenure are often difficult to solve. Nevertheless, they usually affect most directly the users of legal counseling services of such institutions. The case of Guatemala illustrates this clearly. It shows how regulations can restrict the possibilities to change a given legal status, so producing an higher state interference into farming-related activities. This explains why, in all the cases documented, the legal action is always combined with other advocacy/pressure measures, such as marches, public protests, radio broadcasting, etc. Said otherwise, it is about taking advantage of the laws in force, but such appropriation process requires the support of other means in order to ensure respect of the same laws.

## **5. Community, community organization and social fabric**

These three reports equally emphasize the role of community organization and how it has been adapting to circumstantial and even more significant changes, which reinforces its social validity.

Land and land-related policies, together with legal and institutional frameworks related to land management have not included the different realities and practices of rural societies. As a consequence they have created regulatory mechanisms that govern property rights regardless of the customary law, something that makes such regulating framework inaccessible to such rural groups, as illustrated by the case of the Monseñor Romero community in Guatemala.

As mentioned above, communities do know neither their rights nor the legislation and related amendments associated to their properties and even to their own community organization. In CODECA, CEPES and Fundación Tierra, one of the most significant achievements in the legal counseling experience has been consolidating the community organization, so that the communities could more effectively defend themselves when their property is threatened. By means of different ways of action, through legal counseling (legal counseling, training of paralegals, farmers' advocate offices, legal workshops, etc.), the strengthening of communities and their awareness of their own land rights have been fostered in order for communities to defend their rights before state institutions, as part of a wider process of social empowerment.

The promotion of leaders to achieve peasants' empowerment through legal training is fundamental in this process. This helps peasants to develop their capabilities, abilities and skills in order to have more influence on their groups. The leadership that Fundación Tierra, CODECA y CEPES promote becomes necessary for community members to act as a unit in any situation.

This form of leadership, with a strong collective characterization, allows community members and their leaders to organize themselves for supervising the activities of state and non-governmental organizations when they are related to their property and internal

organization. It is worth-reminding how, in the tradition of communities, the strengthening of community members as individuals is closely related to the social fabric of the community as a whole. Therefore, the defense of community interests becomes an important mechanism through which leadership legitimacy is affirmed and recognized and, in that sense, it is functional to deal with the challenges of land tenure security defense.

## **6. The importance of property regularization**

The three experiences documented allow pointing out that it is necessary to make land titling and regularization a less bureaucratic, complex and expensive procedure that would really solve conflicts as faced by rural groups. Even though formalizing rural property cannot be deferred, the procedures to achieve it should not compromise community rights. The cases described herein not only show the importance of having a real state registry or cadastre, but also how winding is the current path to access to it.

Even for Bolivian communities, which decided to boycott the titling process during ten years (1996-2006), it is still necessary to clarify property rights and settle conflicts between and among communities in the highlands, something whose importance communities and their members have started to recognize and that can be favored by a legal system that today results much closer to the communities' needs and capacities.

In the Peruvian case, since the decade of 1990s, though the highest pressure on community lands is on the coast (where there are less peasants' communities), the legal framework tends to favor concessions to mining companies in highlands of the Andes. This happens particularly in the *Sierra*, a region with great concentration of communities, where an increasing expansion of mining activities is taking place and is causing severe land conflicts with reference to land-use for subsoil exploitation. Furthermore, the legal framework promotes individualization of community lands and their incorporation into the land market. Thus, titling of communities and within communities gains great importance in such context.

The reality documented by CODECA in Guatemala is slightly different. As part of the peace agreements, the *Fondo de Tierras* (Land Fund) was created to facilitate access to land by landless or almost landless farmers. The State had to provide credits to farmers and foster the creation of a more fluid land market. The experience shows that in most cases farmers have contracted a debt without having knowledge or the necessary capacities to manage it. Although there are legal alternatives to regularize rural properties, public authorities do not speed up the procedures, despite their former commitments to making legal reforms, such as simplification of titling procedures and land registration. Eventually, long-lasting procedures fail farmers, who are left with few alternatives but further increase their lobbying and protests against land institutions, or leave the lands acquired and keep their debts.

## **7. State involvement**

In the three cases documented, the strategies used for establishing and strengthening the relationship between the communities and State have not been able to balance off the lack of confidence of the rural population in the State.

In Bolivia, the procedure for obtaining land titling did not include the participation of community organizations and did not have mechanisms for conflict-solving. In Peru, the State is, at its different levels, little transparent, with officers usually manipulating legal information and procedures, thus perpetrating an attitude that conceives communities as a restraint for national development.

In Guatemala, the State leaves scarce resources as land to market regulations, which does not favor poor population, such as small farmers, peasants, indigenous peoples, community members, etc. There are no progresses in property legalization and in access of farmers to land. FONTIERRA appears to have only made these populations further indebted.

As clear from the three summaries, it should be recognized that the most effective efforts have been generally made through establishing inter-institutional agreements and MoUs with other state organizations (ombudsman's office, municipality, etc.), so to increase the pressure on the state agencies in charge of property regularization.

Therefore, it calls our attention the contradiction between the multiple statements and official commitments to defend and promote peasants' and indigenous community sectors, and the official practice that denies such communities even the minimum gains and benefits as established by national legislation. Such behavior evidently nourishes the distrust in the State and its institutions by peasant and indigenous groups.

## **8. Perspectives**

In each of the experiences, the final conclusions put forward some consideration on progresses achieved and suggestions for changes to be introduced in order to ensure better tenure security for farmers and communities. Equally, they all suggest some further perspectives to achieve a higher impact at the various levels of the state, the policy and law makers, and society as a whole.

Shall we start mentioning that, in neither of the countries considered, the State has appropriate mechanisms for conflict-solving in the rural areas. This has impeded the property formalization in many cases, despite the significant resources committed to this task, and worse has led to major conflicts in many cases. However, the application of mechanisms, such as conciliation, hearings, roundtable discussions and dialogue sections along with the re-validation of traditional customary mechanisms, has allowed to settle or manage conflicts inside communities and in fewer cases even between communities. This is a field that has not yet deserved enough attention by experts on justice, so that the different judicial reform proposals do not consider these valuable customary mechanisms, with the exception of some reference to the application of an extrajudicial conciliation, which by contrast has been basically thought for urban areas.

On the basis of these three experiences, we think that training tasks and legal counseling to community and groups of farmers should be constant and should be specifically focused on community authorities, since they are the organization's leaders. To this respect, not only private organizations or NGOs should carry out this task, but also the State, as the issuer of official regulations, should have a more important role in their dissemination as well as in training, although in a basic way, of peasants and community leaders.

Legal counseling in such context becomes essential for the defense of land-rights. The experiences documented highlight how when legal counseling is combined with other elements; particularly legal training, the results offer much more than legal advice, beyond the immediate solution of the problem. The legal empowerment that arises from these experiences shows that, if legal counseling is carried out in this combined way, it is the community or the group who adopt the juridical tools as their own, something that put them in a much better position to face conflicts. This is specifically important when strong advocacy is required, so relying on media-liaising, protests or lobbying.

Likewise, even though years ago some countries had counseling services for farmers, state agencies have currently abandoned such function. This is an important responsibility the State should not dismiss in order to provide such vulnerable groups with free and high-quality legal counseling.

However, as abovementioned, it is worth-recalling that the longer-term tenure security, including via the respect and validity of land property rights, largely depends on public policies and regulations the State, and its powers, can approve and on which it can have stewardship. In such a sense and without diminishing the importance of processes through which communities buy-in and manage legal issues, the broader context in which those actions take place cannot be ignored. The globalization process is also having impact on our countries. Therefore, the pressure on land and other natural resources by investors may, in perspective, call for a greater and greater efforts to defend the land-rights of communities and community groups in the future.

The bottlenecks that are currently seen in the administration of justice in the countries of this region, as well as in the application of land laws, when it is related to the rights of farmers and communities, are common concerns emerging in all the three cases. Therefore, it would be relevant to promote and disseminate those successful experiences where the importance and contribution of the community through customary mechanisms are recognized. It would be equally important to disseminate successful stories where, by applying traditional practices and local customary rights, conflicts in given areas have been settled.

On the other hand, it is fundamental to keep an eye on key international trends that, as per today, are of growing concern. Thus, the increasing interest in plantations and crops for biofuels is being translated into a stronger pressure for big properties, thus favoring re-consolidation processes particularly in developing country economies, as Latin American countries. Such trend is then fostered by the high price of petroleum. At the same time, the strong demand from China and India, among other countries, is translated into an increase of metal prices, which will continue encouraging the presence of mining companies in our region, rich in minerals and oil.

The case studies considered herein have provided with useful inputs for the design of policies that contribute to rather than impede the access of communities and peasant population to land, as well as to land-related justice and to the broader exercise of their full citizenship.

Eventually, we think that this summary of experiences represents for the Coalition's members and partners, including FAO's Land Tenure and Management Unit – NRLA, a

set of cases that may enrich its work in the Latin American context. The strengthening, the legal training, including through training of paralegals, legal counseling and advice, legal workshops, etc. support the communities and more generally the population to be more aware of their own land rights so to defend them.