

ILLUSTRATION OF THE CONCEPTUAL FRAMEWORK – PERU CASE STUDY

KEY PRINCIPLES IN LA SYSTEM	NARRATIVE OF PERUVIAN LAND ADMINISTRATION PRACTICES
PRINCIPLE 1 – LAND POLICY CONTRIBUTES TO TENURE SECURITY	
<ul style="list-style-type: none"> • There is clear policy for the recognition of land tenure for all types of land, including: <ul style="list-style-type: none"> ○ Private rights (including lease, strata, usufruct, qualified title etc) ○ Commons ○ Customary rights (including the definition of the holder of the allodial right) ○ Public land (public use, protection, future use/land bank) ○ Religious land 	<p>There are no National Land Policies in Peru addressing land issues in a holistic approach. Land policy formulation responding to sector-driven visions of development and attempts to articulate project investments or programs are sporadic. In the case of central government agencies with land administration functions, they respond to the priorities imposed by the Ministry it belongs to; and coordination is a function carried out in the ministry’s cabinet usually to deal with short term issues. As an example, formalization of land rights have been carried out during the last decade by two different agencies, COFOPRI in charge of urban settlements under the Ministry of Housing and funded by a World Bank Program; and PETT for rural lands funded by an IDB Program. Each agency carried out its own processes with little coordination among themselves and disconnected to overall housing policies or rural development policies. Only recently both agencies have been merged but still the coordination of formalization with other land related policies is a pending issue.</p>
<ul style="list-style-type: none"> • The assignment of institutional roles and responsibilities is clear and unambiguous: <ul style="list-style-type: none"> ○ At a national level ○ At the various levels of administration ○ At both formal and community levels. ○ For state and private sectors 	<p>In Peru land administration functions are spread through a myriad of public agencies whose competencies are distributed at national, regional and local levels of government. Although in recent years a more or less clear definition of the responsibilities of each have been reached –responding to functional roles, i.e. natural resources management, formalization, registration, land development controls, etc.- there also exists many grey areas. The recent legislation on decentralization has clarified previous discussions about competencies among district (county) and provincial levels of government but has also created a new level of government (the Region) which poses a new agenda for the implementation and transfer of land administration functions.</p> <p>The decentralization process under way poses new complexities since many important land administration functions carried out by central government agencies are in the process of being transferred to regional and local governments. The poor existing information on rights over land and natural resources adds to the lack of capacities at decentralized levels determining that decentralization becomes a long term effort.</p>

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PRINCIPLE 2 – PROPERTY RIGHTS HAVE LEGAL RECOGNITION	
<ul style="list-style-type: none"> • Real Property has legal recognition 	<p>Land rights in Peru are composed by a complex web of laws, regulations and practices administered by a myriad of public agencies whose competencies are distributed at national, regional and local levels of government. The long history of the occupation of the land and the colonial heritage shaped the distribution of land and the recognition of a variety of rights including the customary rights of the <i>comunidades campesinas</i> along with private ownership and the declaration of state property over idle land and any parcel not owned by a private interest.</p>
<ul style="list-style-type: none"> • There is a continuum of land rights that have legal recognition and can be upgraded incrementally to real property rights. 	<p>In Peru there exist special protective regimes for the lands belonging to Andean “<i>comunidades campesinas</i>” (peasant communities) and the Amazonian “<i>comunidades nativas</i>” (native communities). However, their land rights stated in the law are not reflected in legal records and therefore the capacity to make use of, and enforce those rights, are limited. Rural land formalization processes have been almost completed in the coastal areas and despite the fact that special rules for formalization of <i>comunidades</i> exist, very little progress have been made in the formalization of their rights. It is worth mentioning that Peru is subscriber of international conventions recognizing rights of native communities over natural resources.</p> <p>In Peru legislation is very clear in recognizing land rights of females. Urban formalization processes included specific bylaws and directives guiding the crews in the field to make sure that rights of female spouses were incorporated in titles.</p>
<ul style="list-style-type: none"> • There is broad community understanding of rights and associated processes to recognize these rights. 	<p>The formalization legal framework processes in Peru provides good examples of efforts to adjust law to custom. One example is the recognition of documents and practices embedded in local custom as proof of ownership, such as the documents kept by community leaders registering membership to the settlement and contribution in cash or in work to the improvement of the settlement.</p> <p>Formalization programs in Peru include public awareness components and community mobilization as part of routine activities. However, the efforts displayed seem to be focused only in the documentation needed for specific formalization activities, not to the general understanding of land rights and duties.</p> <p>Formal credit institutions recognize land rights when they are legally registered. However, for the traditional banks who are bigger lenders, the rights of formalized owners, although duly registered are not acceptable as collateral.</p>

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<ul style="list-style-type: none"> • The system to register/record rights has effective mechanisms to ensure that the systems to record rights reflect the actual situation on the ground (such as adverse possession/prescription). 	<p>The Peruvian Civil Code established adverse possession as a mechanism available to acquire ownership and change land registry records to reflect reality. In recent years, administrative adverse possession procedures implemented by notaries and certain public officials have been implemented to reduce the overload of the courts.</p> <p>The main mechanism for updating the property system during the last decade has been formalization processes. The formalization legal framework established a combination of documentary evidence (which standards were modified to allow customary documentation) together with recognition on the ground, including attestation by adjoining tenants and community leader's testimonies. For formalization of rural land, the law includes the proof of economic exploitation of the parcel –even for periods lower than the adverse possession rules - as a proof of possession able to supersede existing rights.</p> <p>Peru illustrates the case in which the mechanisms to ensure that land records reflect reality becomes a source of uncertainty and legal insecurity. Especially in rural areas, encroachments of land and “productive investments” fabricated with acquiescence of corrupted public and private agents are put in place by speculators to get a new title dispossessing previous owners (most times the State land). An undesired effect of the very progressive rules for formalization is that – as long as ad hoc rules become permanent- they are being used for speculative purposes.</p>
<ul style="list-style-type: none"> • There are no undue constraints on the ability to register/record a change in rights (particularly for peri-urban areas): <ul style="list-style-type: none"> ○ Uncertainty in administrative boundaries ○ Land classification systems and difficulty in changing land classification ○ The need to demonstrate compliance with land use planning/zoning requirements ○ The need to comply with construction codes/obtain building approvals ○ The need to obtain tax clearance certificates 	<p>In the case of registration of transfer (i.e. transfer among private parties of the soil only not considering buildings), either urban or rural, is not subject to administrative approval in Peru. The constraints for registration of parcel transfer are associated to the transaction costs incurred by users who have to afford legal fees of surveyors, lawyers and notaries. For many citizens the obligation of including tax payments receipts as part of the file for registration is an important constraint. The urban land formalization framework passed in the early 1990s provided mechanisms for the reduction of transaction costs including administrative simplification and the obligation for the property registry not to request any document or condition which is not directly associated to the definition of property. In 2000 the legal framework was modified re-introducing tax control and notaries mandatory intervention. As a result, many formalized owners are returning to informality.</p> <p>Change of land use, new constructions and extensions, are subject to administrative control by local governments. Urban land developments in most cities of Peru are made without proper licensing and therefore although the right over the soil might be clear, the building cannot be registered. Therefore the incidence of informality is still a “chronic” problem that will not be solved through formalization campaigns. In 2007 new legislation was passed to simplify the procedures for land development and building permissions, including the de-regulation of some functions transferred to private sector professionals and the silent consent of the authority after a certain period of time.</p>

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<ul style="list-style-type: none"> The boundaries of rights are clear and accepted. 	<p>The long history of the occupation of land and the colonial heritage in Peru shaped the distribution of land in large “haciendas”. Many of them were registered through colonial titles with very poor descriptions of boundaries. Over time, those lands were subdivided, some were distributed during the Agrarian Reform of the 1970s; others were occupied by urban settlements and subsequently formalized. Over the years some areas were subject to modern techniques of surveying and mapping, but the registered titles in many cases were not rectified. As a result, it is very common to find cases of overlapping rights. This is an important source of uncertainty which increases transaction costs for the users who need to contract lawyers and surveyors to obtain security. Since 2002 the National Superintendency of Registries (SUNARP) started building a registration cadastre which is still an ongoing initiative. There is a recent legislative initiative not yet implemented to facilitate the rectification of land records by establishing that the boundaries defined on the field in a due process prevails over registered measurements without need of court rectification</p> <p>The Law for the creation of a National Cadastre System (Sistema Nacional Integrado de Catastro) is an attempt to coordinate the functioning of the main agencies producing geographic information. It was approved in 2004 following and intensive policy formulation effort and establishing SUNARP as the technical secretariat. However, three years after the law was passed, little progress has been made.</p>
<p>PRINCIPLE 3 – COST EFFECTIVE, ACCESSIBLE AND RELIABLE SERVICE DELIVERY BY LAND INSTITUTIONS THAT IS WIDELY UTILIZED</p>	
<ul style="list-style-type: none"> Land administration mechanisms are transparent and predictable and there are clear service standards – promises on time, cost, quality for key processes 	<p>The Administrative Procedures Code in Peru establishes that all public agencies must publish an Administrative Procedures Unique Text (TUPA) including: each of the legal procedures the agency is obligated to carry out at request of citizens, the laws or regulations applicable, the requirements for each procedure, the fees applicable, the time fixed for responding and the specific public agent accountable of the procedure. This is a very good step towards providing certainty. However, in most cases it is in the discretion of the public administration to expand the requirements forcing the user to reinitiate the process or asking for requirements that involve the intervention of other agencies. Many administrative procedures involving land issues require presentation of title certificates and maps that are unavailable or which provision requires time consuming and costly additional steps. E.g. Commonly, maps prepared by a surveyor reflecting reality in the field do not coincide with maps recorded at the property registry, forcing the user to initiate a procedure for rectification of registered records, which involves court intervention.</p> <p>Service standards are not clear and the perception of users about land administration services is, in general, of poor performance. The case of the public registries deserves a special mention: Public registrars are autonomous in their decisions, which is a legal provision to guarantee independence in the performance of his/her function. This principle ends up working as a disincentive to timely performance, because in case of errors the registrar is personally accountable without any mechanism of protection by SUNARP. The result is that registrars avoid making decisions that may bring any risk of liability.</p>

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<ul style="list-style-type: none"> • The land administration system is accessible and affordable for customers 	<p>Most of the functions of land administration in Peru are not accessible for the common citizen. The fact that most new urban developments and housing are informal is a clear indication that for one reason or the other, citizens prefer to avoid formal procedures. Another indication is given by the high incidence of reported cases of formalized owners heading back to informality. The reasons are not necessarily associated to the direct fee of a given procedure, but to the indirect costs imposed by the requirements that involve necessary participation of professional intermediaries and the uncertainty of bureaucratic action.</p> <p>Physical access to the offices where services are provided is also a serious problem in a country with population spread in a difficult geography. Innovative mechanisms have been experimented to bring registration services to customers through mobile units and by the creation of front-desk offices to receive applications to be processed in a central office. However, these efforts have been limited to formalization campaigns and not internalized as a routine way of operation.</p> <p>The on-going decentralization process in Peru opens the opportunity to bring land administration services closer to the citizens, but the poor standards of existing information and the lack of capacities at the decentralized levels are a clear impediment. One of the policies in land administration is to prepare and “clean” the information before the transfer to regional and municipal governments takes place.</p>
<ul style="list-style-type: none"> • The land administration system is sustainable from the stand point of: <ul style="list-style-type: none"> ○ Finances ○ Technology ○ Capacity/HR ○ Participation 	<p>Land administration policies are sector driven and lack a vision of sustainability. Formalization agencies do not charge for most of their services. A general principle of the Peruvian administrative system is that fees should cover the cost of producing the service. However, in the case of the property registry there exist cross-subsidies by which the affluent areas (i.e. Lima and the highly populated cities in the coast) finance the operation of the rest of the offices. The need to maintain services in all provinces of Peru seems contradictory with the legal mandate of charging only for the production of services. In any case, no serious studies have been made to address this issue.</p> <p>In general, land administration agencies do not have long term plans addressing sustainability in technology, human resources or participation. SUNARP is an exception in terms of planning and investment in technology and human capacity building.</p> <p>Citizen participation is set by the law as an important component of formalization processes, but after the issuing of title the role of participation vanishes. For most of the land administration functions citizen participation is not considered relevant. An exception is the public consultation required to approve and modify development planning and zoning areas.</p>

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PRINCIPLE 4 – BROAD ACCESS TO LAND ADMINISTRATION INFORMATION (BOTH SPATIAL AND TEXTUAL INFORMATION)	
<ul style="list-style-type: none"> Land information is readily accessible and sufficiently detailed (for both public and private rights) 	<p>In Peru the Law on the transparency of public administration mandates that all agencies should display the information they manage. In general terms it can be said that all information administered by land administration agencies can be accessed by the public. However, the dispersion of the relevant information among a multiplicity of agencies, the poor quality and maintenance of records in many offices (especially local governments) make it very difficult for the common citizen to be aware of the status of land rights and restrictions.</p> <p>In the specific case of land registration information, it is open to the public and it is not required to prove interest to access to information. However, the complex nature of the records, involving the abstracts of the land transfers but also the documents and plans lodged for registration, make it necessary the involvement of professionals whose costs are many times unaffordable.</p>
<ul style="list-style-type: none"> The spatial information (coordinates and maps) that provides the spatial framework for land rights is readily available. 	<p>The Law for the creation of a National Cadastre System (Sistema Nacional Integrado de Catastro) is an attempt to coordinate the functioning of the main agencies producing geographic information. It was approved in 2004 following and intensive policy formulation effort. However, three years after the law was passed little progress has been made.</p> <p>The National Geographic Institute (IGN) is the agency producing authoritative mapping with reference to coordinates. IGN provides aerial photography and official maps at different scales to the public.</p> <p>Land administration agencies usually produce their own spatial information to define rights over land and natural resources. This is the case of the rural cadastre managed by the Ministry of Agriculture, the mining cadastre, COFOPRI, among others. This information is commonly available and its access and cost is defined in the respective TUPAs.</p>
<ul style="list-style-type: none"> There is web access to land administration information. 	<p>Some agencies, such as the mining concessions registry and SUNARP offer web access to the information they handle. A few local governments also offer zoning maps. Many agencies offer web access to the customers to track the situation of the legal procedures.</p>
<ul style="list-style-type: none"> The cost of access to information and certified extracts from the land records do not unduly inhibit public access, including access location (decentralization). 	<p>A principle of the administrative system in Peru is that fees should reflect the cost of production of services. However, there are no defined methodologies or standards to calculate a fair price and therefore fees are set arbitrarily.</p> <p>Some agencies such as SUNARP have to contradict the cost-recovery principle to cross-subsidize the operation of provincial registry offices. Many local governments find in the provision of land related services an opportunity to collect resources for their recurrent costs.</p>

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PRINCIPLE 5 – TRANSPARENT PUBLIC LAND MANAGEMENT, EXPROPRIATION, DISPOSAL OR PRIVATIZATION PROCESS	
<ul style="list-style-type: none"> • There is a complete inventory of public land assets (both textual and spatial) and public land is used for public purposes (including public use, protection/reserve, and future use/land bank). 	<p>The creation of the National Superintendency of State Property (Superintendencia de Bienes Nacionales - SBN) in 2000 established the legal framework and procedures for the completion of an inventory of public land assets. An aggressive campaign of state owned land regularization was initiated by SBN during the early 2000s but the process is far to be completed.</p> <p>In Peru there is not an integral policy for public land management, but sector driven initiatives: Concession of forest or mining resources, granting of idle state owned land for rural development promotion, creation of land banks for new settlements as a complement of urban formalization, etc. The decentralization framework establishes the transfer of public land management functions to regional and local governments. However the poor organization of records and lack of capacities at decentralized levels determines a considerable delay in the transference of these functions.</p>
<ul style="list-style-type: none"> • There are transparent processes to allocate (dispose of) or privatize public land. 	<p>Before the creation of the Superintendence of State Property SBN, the function of transferring state owned land to private hands was dispersed through a number of government agencies which many times misused their competences to benefit individual interests. This was particularly severe in the case of local governments privatizing peri-urban lands. After the creation of SBN, consistent procedures and some principles for the disposal of public land have been established disciplining and making it more transparent. In the case of large investments, the procedures are clearly defined and implemented by a specialized privatization agency through transparent processes. However, for small tracks of idle land the processes of privatization is subsumed under rural formalization processes and many times subject to fraudulent practices.</p>
<ul style="list-style-type: none"> • There is due process for expropriation and fair and just compensation, and resettlement 	<p>The legal framework for expropriation in Peru establishes guarantees of due process including the declaration of the reason for expropriation by Congress and only for public use purposes, establishment of previous compensation at market value and the opportunity to contest unduly expropriation before courts. The Constitution approved in 1993 abrogated “expropriation for social interest causes” under which private land was expropriated for agrarian reform, human settlement regularization and other social interests that were deemed to erode the stability of property rights. Nowadays invasions over private land are not subject to expropriation but require an agreement between the private owner and the settlers.</p>

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PRINCIPLE 6 – TRANSPARENT SYSTEMS FOR PROPERTY VALUATION AND PROPERTY TAXATION	
<ul style="list-style-type: none"> Information on market prices is readily available and transaction fees and taxes are set and administered in a manner that encourages the declaration of market prices. 	<p>In Peru there is not a land market that could work as a provider of information yet, but many different land markets with different degrees of compliance with the law. Naturally only the most advanced markets count with institutional credit. Most of the land is governed by different markets, albeit informal not less active. The implications are manifold: financial institutions have difficulties in providing credit to recently formalized areas because the lack of a formal market able to provide prices and the uncertainty that foreclosure was possible, lack of information on prices or access to information for privileged actors about public investment produce land speculation, etc. Taxes for the transfer of land and property encourage the sub-valuation of land.</p>
<ul style="list-style-type: none"> Property valuations for rating/taxing purposes are prepared in an objective, transparent and uniform manner with appropriate and effective processes for objection or appeal. 	<p>Property tax is fixed as a percentage of the value established administratively by a special agency. This value is composed by several factors including the classification of land and improvements in different categories. There exist mechanisms for discussing the values established, however they are not commonly used.</p>
<ul style="list-style-type: none"> Property taxes and fees are collected in an effective and equitable manner. 	<p>Although the competence to collect property taxes is established in the law as a municipal income, they are generally unevenly or not collected at all in most of the municipalities in Peru, with the exception of the most affluent municipalities. The typical case is that only properties located in commercial areas or the neighborhoods surrounding the center of towns are charged.</p>
PRINCIPLE 7 – ACCESSIBLE AND RESPONSIVE INSTITUTIONS FOR ENFORCEMENT OF RIGHTS AND LAND DISPUTES MANAGEMENT	
<ul style="list-style-type: none"> There are standards in the civil service for professional and personal integrity and a system to enforce these standards and/or a system of incentives for ethical behavior. 	<p>In general, in Peru there is very little development of a public sector career path. Usually new administrations bring new public officials with the loss of accumulated experience.</p> <p>Citizens have access to some guarantees of due administrative procedures, including the “rules of the game” set in advance in the Administrative Procedures Unique Text (TUPA) including: each of the legal procedures the agency is obligated to carry out at request of citizens, the laws or regulations applicable, the requirements for each procedure, the fees applicable, the time fixed for responding and the specific public agent accountable of the procedure. However, in most cases excessive discretion of the public administration prevents citizens to benefit from predictable processes. In many cases, this uncertainty allows space for corruptive practices.</p> <p>Some public agencies have a designated ombudsman to look after the user’s rights. During the last two years initiatives to implement a law of the public servant are deemed to address this issue.</p>

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<ul style="list-style-type: none">• There are efficient community, administrative, and judicial mechanisms to resolve land disputes.	<p>The ultimate forum to solve land disputes are the courts, which in Peru are perceived as highly inefficient and very corrupt.</p> <p>As part of the principles of administrative law in Peru, all public agencies establish appeal bodies that need to be addressed before bringing the case to courts. In some agencies such as SUNARP and COFOPRI, administrative tribunals, composed by independent experts have operated effectively.</p>