

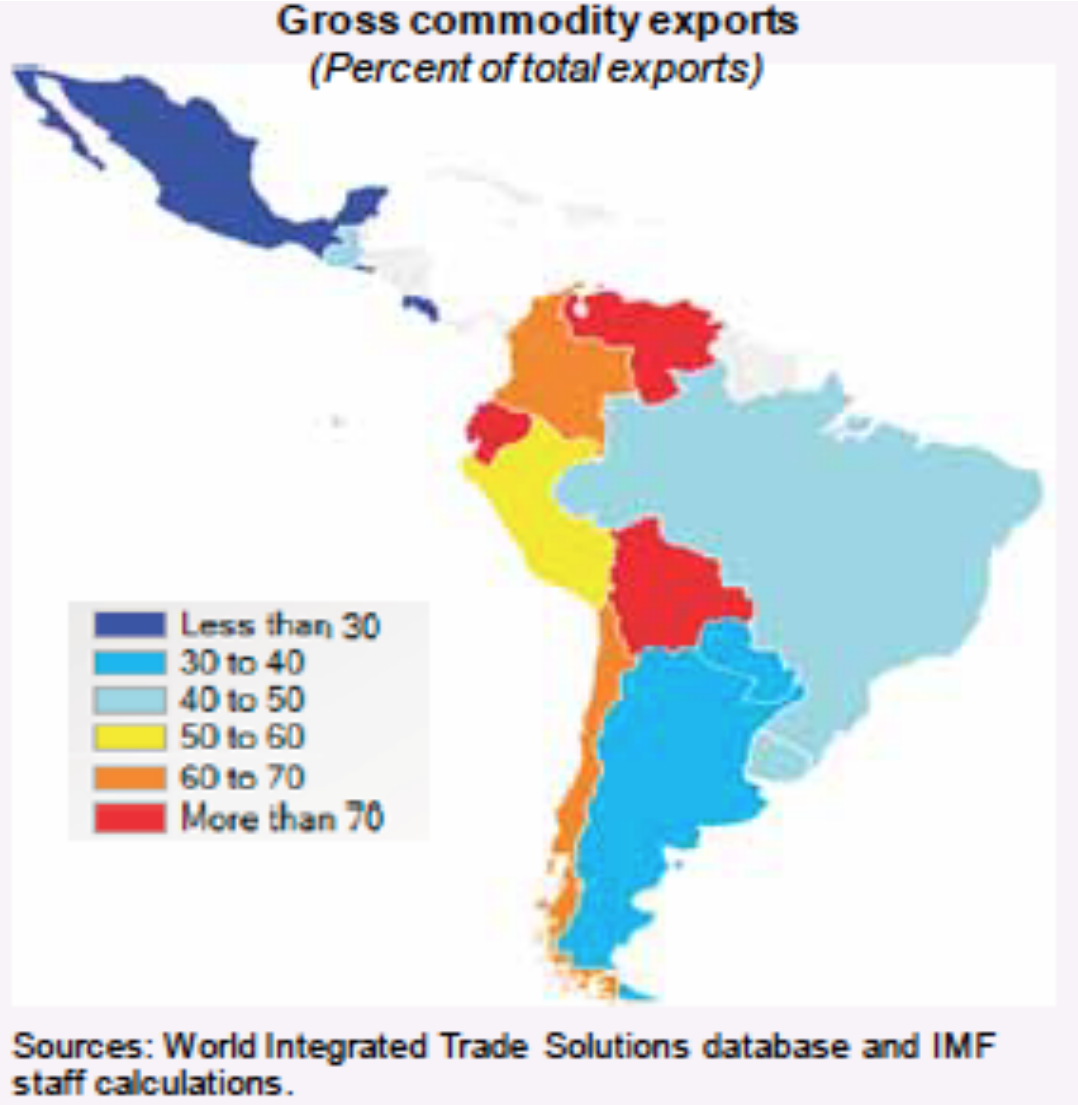
From Rhetoric to Action: Scaling Up Community and Indigenous Peoples' Land and Resource Rights

Towards full recognition of tenure rights in Latin America
Challenges and opportunities in the context of Colombia and Peru as
new emerging economies

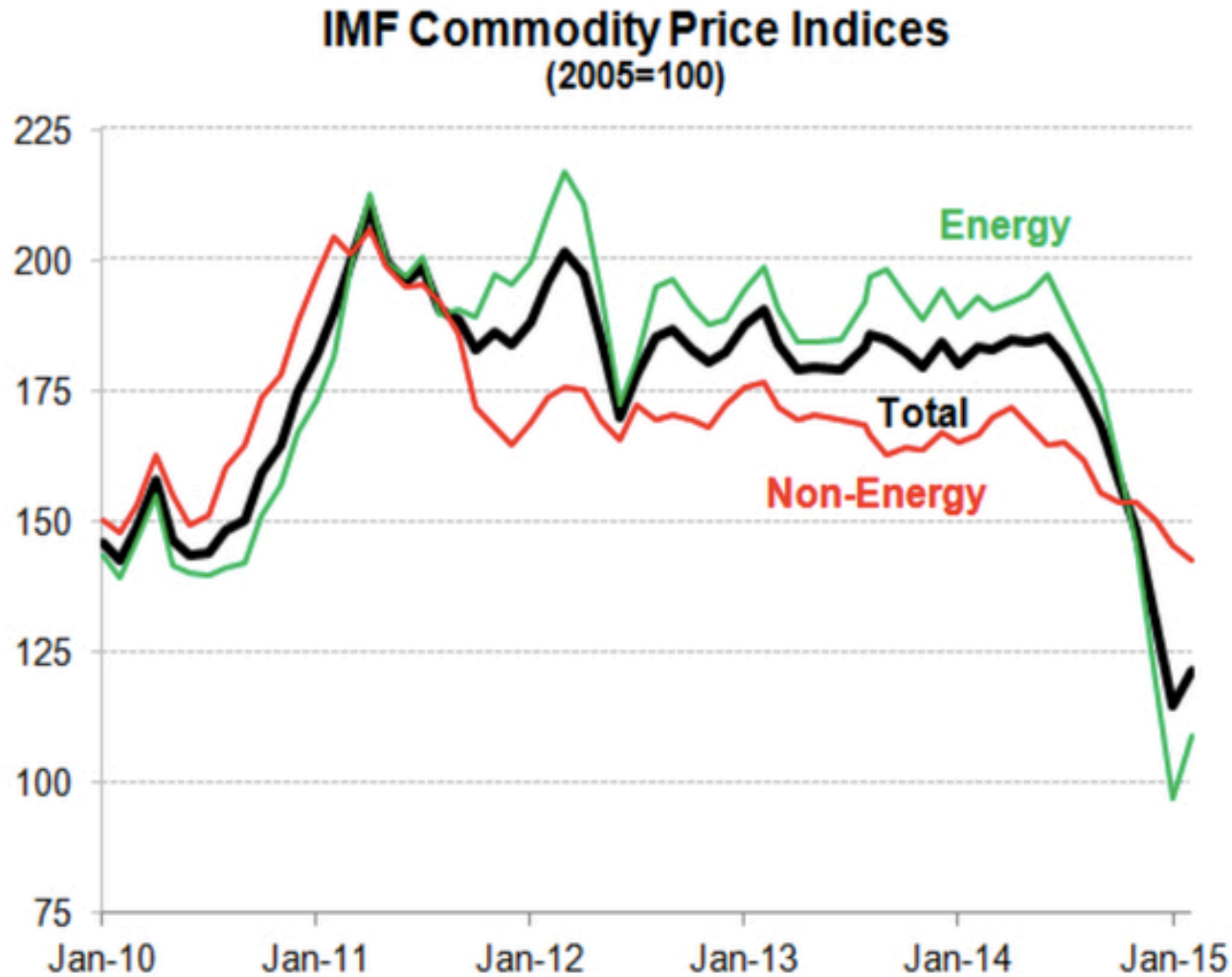
September 30, October 1 2015
Kursaal, Bern, Switzerland

Humberto Campodonico
Universidad Nacional Mayor de San Marcos, Peru

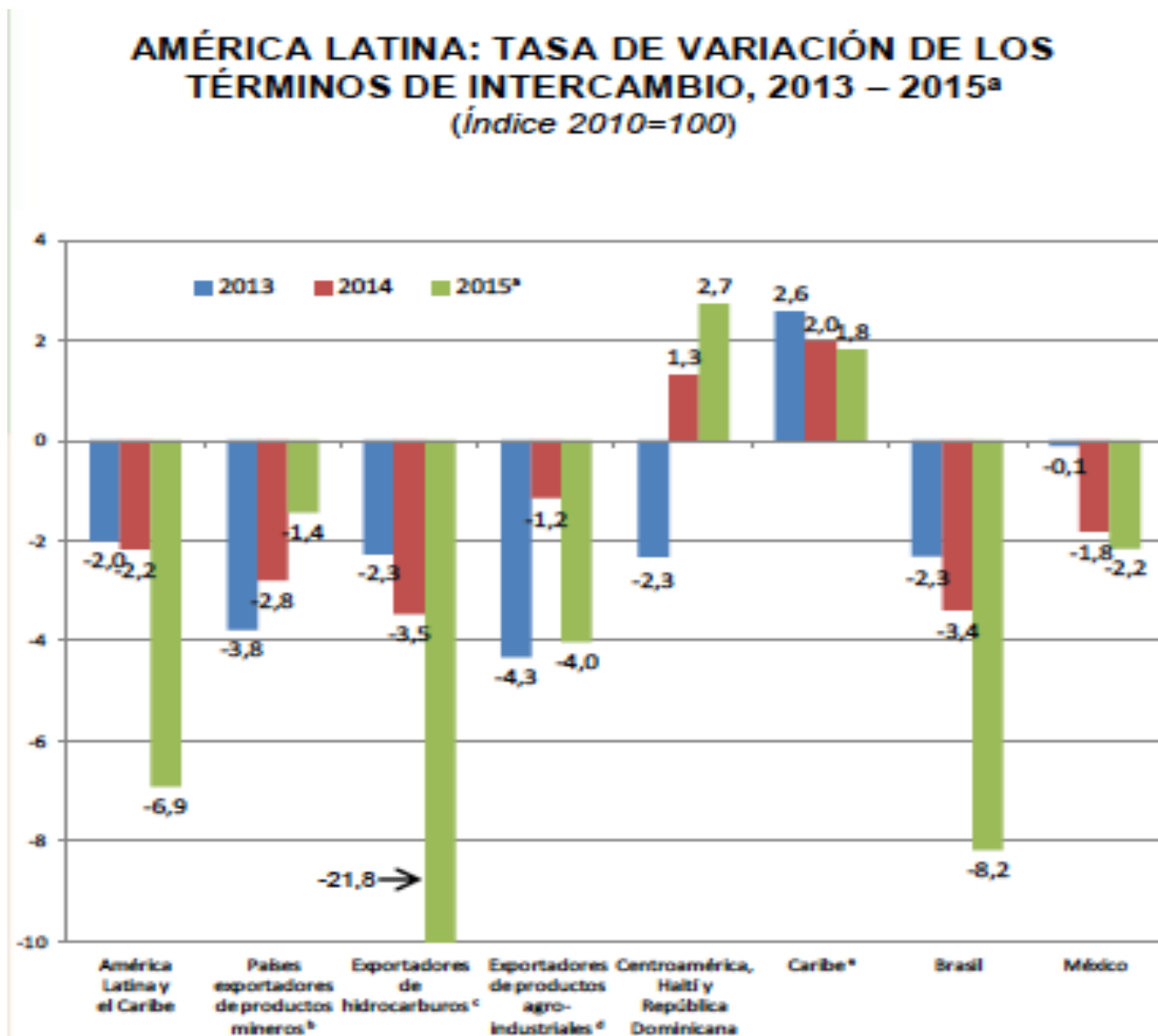
Commodity Dependence exceeds 25% of Exports in most countries



Commodity Prices are heading south since 2011: Food, Raw Materials, Energy and Minerals



The end of the super cycle of high prices of natural resources – Terms of trade head south



Dramatic loss of export revenues for Latin America: US\$ 67 billion in 2014 and 2015

AMÉRICA LATINA Y EL CARIBE (GRUPOS SELECCIONADOS DE PAÍSES): PÉRDIDAS O GANANCIAS POR VARIACIÓN EN LOS TÉRMINOS DE INTERCAMBIO ENTRE 2014 Y 2015 *(En millones de dólares y en porcentajes del PIB)*

Grupos de países	<i>millones de dólares</i>	<i>porcentaje del PIB</i>
América Latina	-67 561	-1.2
Exportadores de hidrocarburos ^c	-39 486	-3.3
Exportadores de productos mineros ^b	-2 188	-0.5
Mercosur ^f	-23 104	-0.9
Centroamérica, Haití y República Dominicana	4 534	1.6

Investment Environment of Extractive Activities is getting more support

Upon completion of the super-cycle of commodity prices, there has been a strong decrease in

- 1) Economic Growth,
- 2) Foreign Exchange Earnings and
- 3) Tax Revenues .

Governments are implementing policies designed to relax the conditions of mining and oil contracts, in order to increase production.

The bigger exports in volume would “compensate” the losses brought by the end of the “super cycle”.

Investment in Extractive Activities is getting more support

This policies have broad implications for environmental and social conditions. The argument is:

- Commodity revenues are necessary for the welfare of the whole country
- Special interest groups or “small groups” of people cannot go against the interests of the country as a whole.

The policy relaxation is particularly noticeable in three areas:

- a) Previous Consultation
- b) Environmental Impact Assessments (EIAs)
- c) Access to land owned by communities and indigenous people to “encourage” investment

In some cases (Bolivia), investment is now permitted in Protected Natural Areas, which was strictly forbidden by previous legislation.

The case of Peru and the “packages”

Since May 2013 to present, the government has implemented four sets of important measures for promoting investment in the natural resources sector, mining and hydrocarbons. They are called “packages”.

The measures include the following:

- Flexible access to ownership of rural and urban land for investment projects,
- Easier approval of EIA's for public and private investment .
- Special procedures to facilitate the delivery of any rural property (titled or not, in use or not) for investment projects .
- Jurisdiction to Community Boards Directives to authorize the disposal of communal lands, thus ignoring the legal role of the General Assembly.
- Flexible environmental procedures and easier access to rural land for investment projects through easements of rights of way and expropriations.

Colombia

The National Development Plan (NDP) 2014-2018

The NDP 2014-2018 considers that Mining and Hydrocarbon resources are strategic. Some of the most important considerations are:

- The Government will decide on the mining energy resources to be exploited primarily on criteria of efficiency, relevance, cost-benefit, and the regions and profitability in the long term.
- The Ministry of Mines and Energy will determine the mining and hydrocarbon resources of strategic interest and the areas where they are located.
- Projects have presented difficulties related to approvals and permits for land acquisition, consultation procedures and environmental procedures, among others, affecting the terms of formulation and implementation of project.
- The government will promote that the State goes with the private sector in the implementation of corporate social management to facilitate the incorporation of the territories to the development of projects.

A huge door has been opened to the expense of communities and the natural heritage

“It appears that extractive activities should strengthen further in the country in the next four years, because Strategic Mining Areas have an important role within the National Development Plan. Many analysts believe that **a huge door has been opened to large business groups to exploit fields, mines and forests at the expense of communities and the natural heritage**”.

THE NDP LOOKS MORE LIKE A BUSINESS PLAN

In his opinion, the NDP looks more like a business plan with a clear bias to the private sector, than a road map for real progress in the country.

Carlos Alberto Suescún, professor of the Economics Faculty of the Universidad Nacional Bogotá, May 2015

COLOMBIA

The New Project of the National Agency of Hydrocarbons (ANH): a “redesigned tailored dress”

September 2015: The ANH has just launched a package that consists of eight courses of action, the most important being:

1. Improve prospectivity .
2. Strengthen ANH
3. The projects should be made more economically attractive
4. Increase the efficiency of time and processes.

Extension of terms for investment, the release of cash flows by means of flexible guarantees and tax measures, the authorities in the industry working on a plan to rethink the conditions for the exploration and extraction of oil and gas.

Now, the ANH will have a "redesigned tailored dress" and the idea is to move to make permanent annual rounds, which will be complemented by a kind of private initiative processes

The perspectives to continue to go forward, putting more action in our pursuit for community land rights

- **Important legal gains in the last two decades, concerning the previous consultations, the EIAs, the concept of territory.**
- **Legal gains are not implemented on the ground and many problems remain.**
- **Sometimes those gains are reversed because of low economic growth and fiscal crisis.**
- **This has been a cyclical pattern. Let us make it a permanent pattern.**

Those gains must be consolidated in different fronts

- 1. Government: It should not pursue economic growth goals violating existing laws**
- 2. International and national Courts have reinforced legal gains in numerous verdicts**
Colombia: The Constitutional Court has ruled in favor of indigenous groups
United Nations and the Interamerican Court of Human Rights
- 3. Indigenous movements have centuries of climate knowledge. This enhances the fight against climate change. An alliance towards COP 21 and after is indispensable.**
- 4. Private sector companies that understand that their interest cannot be carried forward without a good relationship with people, especially with indigenous groups that are the owners of the land where natural resources are found.**

It is not a political question, but a cultural one and of respect of the traditional knowledge.