

Forests for People

Community Rights and Forest Tenure Reform

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Authority Relations under New Forest Tenure Arrangements

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The question of authority appears to be a central factor affecting the outcomes and success of forest tenure reform, yet this issue has not been well developed in the related literature. For communal properties in particular, decisions regarding ‘authority’ are central to shaping how decisions are made, whose opinion or knowledge is taken into account and how access to land and natural resources is determined in practice. When property rights are formalized, authority relations define the extent of decision-making power that is held at different levels, from the community to the state, and the way in which customary and *de facto* local management norms and knowledge regarding resource management are – or are not – recognized in the formalization of tenure rights and institutions. Authority relations are also important in understanding on-the-ground dynamics of power, which shape access to resources and benefits.

The term ‘authority’ is used in several ways, particularly in the realms of policy and practice. In particular, it is used to refer both to the abstract notion of power and to the person or institution holding that power (Fay, 2008). According to Weber (1968), authority refers to power that is ‘legitimate’. The issue of legitimacy raises additional questions, of course: who considers the authority legitimate, for example, and what constitutes legitimacy? This chapter considers authority not as a fixed attribute that can be mandated or assumed, but rather as something that is constructed through social interactions and subject to conflict and contestation (Sikor and Lund, 2009). It argues that the recognition of community rights by central governments leads to political contestations over authority as social actors react to the changes introduced by the reforms. The central issue of concern here is the institution selected to represent the collective that receives formal rights under these new legal arrangements.

Both the nature of the institution representing the collective and its domain of powers are fundamental to the distribution of access to land and forest resources and to the benefits they generate. The institution chosen to represent the collective by law may or may not be considered a legitimate, representative leader by the population, and it may or may not be the same one that has played this role or made these decisions in the past. This institution may be bestowed with the power to make significant external and/or internal decisions on behalf of the collective regarding resource access. It may be in charge of resources, including financial resources, intended to benefit the collective.

This chapter explores these issues specifically with regard to indigenous territories in Nicaragua and Bolivia, ancestral domain lands in the Philippines and local forests in kin-based stools in Ghana. All of these cases involve the recognition of customary rights to land or forest resources and the empowerment of traditional local actors and the institutions that represent them. In these four cases, the politics of authority takes different forms. Together, they demonstrate that recognizing tenure rights is not a straightforward process that simply grants greater legal security to a set of existing, and fair, customary institutions. Rather, recognition alters the existing institutional structure through the act and practice of recognition (Ribot et al, 2008); it is therefore a highly political act that is subject to negotiation, contestation and manipulation. The cases demonstrate that these contestations may lead to conflict over authority or to new, emergent configurations that improve local resource governance.

The cases presented here demonstrate:

- 1 the crucial role of the institution established to represent the community's formal tenure right in shaping the exercise and allocation of rights and benefit distribution in practice;
- 2 ways in which the process of recognizing rights through specific institutions turns those institutions into sites of struggle such that they may break down or be manipulated under the pressure of competing interest groups; and
- 3 the central role of representation and downwards accountability in these processes.

The chapter draws on the theoretical development of 'authority relations' in Fay (2008) to argue that the construction of the property right in practice is about much more than just choosing the correct, downwardly accountable institution to represent the population. Rather, the construction of authority – and sometimes multiple authorities – emerges from a process of contestation involving a dynamic tension among the state, the community and the entity chosen by each of these to 'represent' the community.

Authority relations and communal forests

The subject of authority has been identified as an important emerging issue with regard to property research and practice and is integral to understanding the interplay of tenure and rights in forest tenure reform. As Ribot et al (2008)

argue, ‘while “property” is an enforceable claim (MacPherson, 1978), too much attention is trained on the rules of the game rather than the origins and construction of the authorities “enforcing” the rules’. If property refers to the rules of the game, then the implementation of new tenure rights refers to the making of those rules. The authority relations established in that process define the extent of decision-making power that is held at different levels and by different institutions and shape access to resources and benefit distribution on the ground (Larson, 2008; Larson et al, 2008; Sikor and Thanh, 2007).

The recognition of tenure rights for communities, then, results in numerous sites of struggle. This chapter focuses specifically on the choice of institution to represent the collective. When those receiving new or formal rights already have customary rights to the land, it might seem that the simplest solution is to recognize the institution that is currently in power. However, there are at least two problems with this.

First is the question of tradition and the issue of ‘traditional authority’ in particular. The call to respect customary rights, such as traditional land rights, has been central to indigenous struggles in Latin America. But tradition and custom are loaded terms. For some, respecting or recognizing tradition refers to the enfranchisement of peoples whose rights have been denied (Taylor, 1994); for others it means the opposite, protecting people as a group but not individual rights – a necessary condition for citizenship (Mamdani, 1996; see also Ribot et al, 2008).

Ribot et al (2008) warn, in particular, against conflating customary rights or practices with customary authority.¹ When the state recognizes, in the tenure reform, a particular institution as the community representative, it is granting that institution external legitimacy. This institution may not have internal legitimacy, or it may have internal legitimacy but not to manage the particular set of powers now being granted (Fay, 2008). An example is the recognition of non-democratic institutions – chiefs and headmen who inherit their posts – in African nations undergoing decentralization (Ribot et al, 2008; Ntsebeza, 2005), and this issue is relevant to the Ghana case here.

Second, the granting of tenure rights may necessarily involve the formation of new institutions, particularly for large territories. Indigenous movements in several Latin American countries, including Bolivia and Nicaragua, have promoted a territory model comprising multiple communities for the implementation of indigenous property rights (see Chapter 2). These territories are expected to facilitate the demarcation and titling of large areas covering the land areas that indigenous peoples have used historically. The territory model – seen as the most advanced form of granting indigenous tenure rights – should permit sufficient space for resource conservation, use and management, real participation of indigenous peoples in the definition and demarcation process and the use of resource management models that combine traditional and modern practices for long-term development (Davis and Wali, 1994). The Philippines case also represents a territory, known as ancestral domain, comprising multiple communities, though the total area is much smaller.

The territory model has encountered serious problems, however, due to the choice of institution to represent the collective. When such territories are newly created, their demarcation and titling require the formation of new governance institutions. In his review of experiences in the legalization of indigenous territories in four South American countries, Stocks (2005, p98) argues that ‘the weakness of the indigenous governing institutions’, and particularly the lack of democratic representation at the territorial scale, ‘is an extremely vulnerable aspect of the indigenous land movement’. This problem is explored in Bolivia, Nicaragua and the Philippines.

Fitzpatrick (2005) highlights four ways in which the state can recognize customary tenure (see Chapter 4), each suggesting a specific institutional model for representing the collective, with increasing levels of state intervention in existing arrangements. The two that are relevant for the cases here are the agency and the group incorporation approaches. In the former, an actor – commonly a chief or clan leader – is selected to represent and negotiate in the name of the collective. The latter involves the formal incorporation of the group into a legal entity, with corporate bylaws and formal internal rules of practice. In the cases studied here, Ghana represents the agency approach and Bolivia and the Philippines, the formal incorporation approach. The Nicaraguan case falls somewhere between the two.

As the case studies will demonstrate, the implications of these models of recognition for the construction of authority are by no means predictable but are, rather, the result of conflict. Fay (2008) develops the concept of *authority relations* based on three sets of interactions: between an actor in authority and the subjects, between this actor and the external justification for his or her rule or power, and between the subjects and this external justification. If we assume that the ‘external justification’ generally refers to the state (and statutory law), we can use this concept to refer to:

- 1 the relationship between the community and the state;
- 2 internal relations between community members and the community actor(s) or institution in authority; and
- 3 the relation between this institution and the state.

These arenas of social interaction are useful for analysing the case studies to understand the roots of conflict and the construction of authority as legitimate power.

The first set of relations plays out through the central role of the state in establishing and implementing the legal framework granting local tenure rights. This relationship between the state and the community then leads to the question of who receives powers when the state recognizes or transfers tenure rights to communities, and the implications of that choice. Hence the other two sets of relations immediately raise an important question regarding the community institution in authority, since this is a major site of contestation. For example, the state and the community may recognize *different* actors as the ‘legitimate’ representative of the community, as in the Nicaragua and Bolivia

cases below. The next section presents the four cases and the following section returns to a discussion of the models adopted and the ways in which these three sets of interactions help us understand authority relations as a site of struggle affecting outcomes of reforms.

Four case studies

The cases describe a variety of situations in which tenure rights are granted or formalized. In each, a particular institution is recognized as the formal representative of the community. The process of implementation demonstrates how this institution shapes the distribution of rights on the ground and becomes a site of contestation.

Nicaragua: Indigenous territories²

Nicaragua's 1987 Constitution recognizes and guarantees the rights of indigenous and ethnic communities to their cultural identity, forms of organization and property, as well as to the enjoyment of their waters and forests. The Autonomy Statute (Law 28), also passed in 1987, created the North and South Atlantic autonomous regions, whose first regional autonomous councils were elected in 1990. These two regions represent approximately 45 per cent of the country's land area and only 12 per cent of the total Nicaraguan population but are home to the vast majority of indigenous and ethnic people, who constitute 8.6 per cent of the nation's total (INEC, 2005). According to the 2005 national census, the Miskitu population is the largest, with 121,000 people, followed by the Creoles, with 20,000 and the Sumu-Mayangna with 10,000.

In 2003, the Communal Lands Law³ (Law 445) was enacted. Like the constitution, this law formally recognizes the rights of indigenous and ethnic communities to their historical territories, but it also establishes the institutional framework for demarcation and titling and for the formal recognition of indigenous leadership institutions ('communal authorities'). The law responded to demands of Caribbean Coast⁴ indigenous communities and, more specifically, commitments acquired by the government of Nicaragua in a ruling by the Inter-American Court for Human Rights in *Awas Tingni v. Nicaragua*. The Sumu-Mayangna community of Awas Tingni filed the suit against the government for granting a forest concession, on their traditional lands and without community consent, to the Korean company SOLCARSA in 1995. The community's legal representatives had fought the concession in the national courts to no avail, despite a Supreme Court ruling in 1997 that the concession was unconstitutional for failing to obtain the prior approval of the regional council, as established by law (Wiggins, 2002).

In 2001, the international court ruled in favour of Awas Tingni, finding that the Nicaraguan government had violated the American Convention on Human Rights as well as the community's rights to communal property as guaranteed by the Nicaraguan Constitution. The court ordered the state to create an effective mechanism for demarcation and titling for indigenous

communities ‘in accordance with their customary laws, values, customs and mores’ (judgment cited in Anaya and Grossman, 2002).

The Communal Lands Law guarantees indigenous communities ‘full recognition of rights over communal property, [and] use, administration and management of traditional lands and their natural resources’ (Article 2). Nevertheless, demarcation and titling proceeded extremely slowly from 2003 to 2006, with little enthusiasm from the central government and accusations of corruption in the intergovernmental institution established to oversee the process. The process picked up again after January 2007 when the Sandinista political party (FSLN) returned to power.

The law establishes procedures for titling either as a single community or as a group of communities. It formally recognizes ‘traditional communal authorities’ as the legal representative (externally) and government (internally) of the community (Art. 3). These include the *wihta* (communal judge), *síndico* (the official most often in charge of land and natural resource allocation today), and others. When communities form multicomunity territories, the territorial authority is elected by an assembly of all the communal authorities from participating communities, according to the procedures they adopt (Art. 3, 4). This new governance institution is the administrative organ and legal representative of the territorial unit (Art. 5). The regional council then registers and certifies the people elected. The elected community-scale institution authorizes the use of communal land and resources by third parties; the territorial-scale institution authorizes the use of resources common to the multiple communities of a territory (Art. 10).

Some Caribbean Coast indigenous communities have a century-old history of close association as a group of communities; other affiliations are more recent and based on common history and/or social and economic relations. For example, younger communities were sometimes formed by family members from an older ‘mother community’ to increase access to forest lands and resources. When the Caribbean and Central American Research Council (CCARC) conducted a participatory study to identify indigenous territorial demands in the late 1990s, the formation of multicomunity territories was recognized as a new priority in the conception of land rights and autonomy (CCARC, 2000), though this vision was still incipient (Hale, personal communication).

Today, this vision has become the norm. At the time of the study, one of the two sites studied in the CIFOR-RRI research project, Tasba Raya, which has seven recognized Miskitu communities, preferred to be demarcated as individual communities but later, in 2005, formed a territory and a territorial authority. The other site, Layasiksa, which actually constitutes two Miskitu communities, preferred to be demarcated as the community of Layasiksa when our study began; in January 2009, however, Layasiksa joined with a third community to form the territory Prinzu Rau. Both groups decided that forming a territory was in their strategic interest: Tasba Raya communities joined together to face a conflict over territory with a neighbour, Awas Tingni, and Tasba Raya and Layasiksa formed territories to gain a greater voice in negotiations with regional political leaders.

For their part, political leaders from the Miskitu party Yatama have been pushing communities to form territories based on a design of their own conception. According to Miskitu leaders, they are interested in forming territories that cover a significant part of the land area, leaving little behind as 'national land', including all indigenous communities inside territories and moving quickly while the political moment is favourable (CRAAN, 2007). Yatama is also interested in reshaping electoral districts; this involves eliminating the municipal structure imposed by the central government and replacing it with an 'indigenous' structure of territories and territorial authorities. This would involve legal reforms that are currently in draft form.

In theory, if community self-government were the foundation, with multi-community territorial institutions at the second tier and electoral districts based on these structures for the election of the regional autonomous councils, this new governance structure could provide the institutional basis for the self-determination of the indigenous and ethnic populations of the autonomous regions. But not all indigenous and ethnic groups, even many Miskitu, feel represented by Yatama or trust its leaders' motivations. What has happened in practice demonstrates the intimate relationship between the issue of territory, the institution representing that territory and access to resources.

Síndicos, the community actors in charge of land and natural resources, have been notoriously corrupt. All over the autonomous region, they have been accused of selling land to colonists, selling timber to loggers and intermediaries and failing to account for these deals to community members. In addition to representing their communities or territories in outside negotiations, *síndicos* also have access to a percentage of tax funds from natural resource exploitation that are designated for the communities from which resources were extracted. Their only punishment for corrupt practices has been removal or not being reelected to their post. In Layasiksa, a *síndico* absconded with part of the tax funds after he had been replaced.

Tasba Raya and Layasiksa had both worked diligently over the recent years preceding this study, in part with external support, to elect more responsible leaders and improve local norms, sanctions and accountability systems. The *síndicos* in both territories have been reelected and are free of such accusations. But both territories have had direct conflicts with regional government officials. Since the election of its territorial authorities, Tasba Raya has been unable to obtain registration by the regional government. The lack of accreditation means that it cannot undertake any external activities in legal representation of the territory, including, for example, having access to the tax funds.

Though he had been previously certified as *síndico* of Layasiksa, the *síndico* of what is now the Prinzu Rau territory has had similar problems, because reaccreditation occurs every year. It took most of 2008 to gain accreditation and he was certified for only five months. In both cases, regional government officials rejected the communities' petitions, stating that the 'territorial authority' they were proposing did not conform to the model established in another territory – even though the law states that the communities in each territory should determine the nature of their own authority.

That may not be the real reason for rejection, however. Based on the vision of Yatama leaders, both Tasba Raya and Layasiksa–Prinzu Rau are subsumed into much larger territories under the administration of territorial coordinators, apparently selected by the head of Yatama. Though the law mandates that ‘territorial authorities’ be elected in territorial assemblies, elections that had taken place in some territories were evidently manipulated. In one case the people certified were not the ones elected. In other cases, the territory coordinator is unknown to community leaders, who clearly did not participate in his election.

The territorial authorities elected by the people of Tasba Raya and Prinzu Rau have had trouble getting certified because they interfere with political leaders’ larger project. Even with certification, the Layasiksa–Prinzu Rau *síndico* has never had access to the tax funds, since this power has been assigned to the coordinator of the larger territory established by regional leaders. Though this *síndico* has maintained his role in approving permits for logging, which has expanded substantially for salvage operations in the wake of Hurricane Felix (September 2007), in many territories this power is also now in the hands of the territorial coordinator. If Yatama’s vision of indigenous territories does result in the remaking of the municipal administrative structure, then the nature of the territory and the institution representing that territory has further political and economic consequences for the distribution of community resources.

Bolivia: Guarayos community land⁵

The recognition of indigenous land claims in Bolivia has resulted from a slow process of policy reform driven by rural collective action to pressure government decision-makers. Indigenous people developed an activist social network of organizations in the country’s eastern lowlands under an umbrella organization, the Confederation of Indigenous People of Eastern Bolivia, and used mass marches and other forms of protest to draw attention to their cause. This pressure led to constitutional change, the signing of the International Labour Organization’s Convention 169 and a series of presidential decrees defining a type of indigenous property known as original community land (*tierra comunitaria de origen*, TCO).

Demarcation of the TCO in Guarayos has taken more than a decade. Guarayos is a rapidly changing forest frontier province in the north of Bolivia’s Santa Cruz department, with an interdepartmental highway that opened the region to outsiders, including timber industries, ranchers, large-scale commercial farmers and smallholder colonists. Many of these actors, who became competing stakeholders for land, were moving to the region for its fertile soils and expanses of forest. By the 1990s there was growing tension in the province where indigenous people began to feel the pressure as others claimed land and extracted resources (for a full description of the Guarayos TCO, see Chapter 3).

The Guarayos people are represented by the Central Organization of Native Guarayos Peoples (COPNAG), created in 1992 to pressure the government to

recognize their land claims. COPNAG overlies two grassroots organizational structures: one a remnant of institutions imposed by religious missionaries and a second influenced by the rural union movement originating with Bolivia's 1952 revolution. Traditional indigenous organization from the mission period was based on a *cabildo* system introduced by Franciscan missionaries in the 19th century, consisting of several male leaders called *caciques* (chiefs), assigned by local priests. Today the role of *caciques* is largely ceremonial, though they do exert moral leadership.

Starting in the 1970s, the Guarayos people began adopting an organizational strategy to occupy and allocate land reflecting the practice of the highland rural unions, in this case referred to as agrarian zones. Small villages have a single agrarian zone, but in larger towns multiple agrarian zones come together to form what is called a *central* (again, modelled after the rural union movement). In both large and small settlements, communal assemblies headed by an elected president hold decision-making power over natural resources, allocate land to agrarian zones and mediate disputes. These village-level organizations provide the basis for the system of indigenous political power.

Lands immediately surrounding settlements are divided into agricultural zones and, beyond that, forestlands and wetlands are considered 'zones of influence', loosely defined to distinguish territories between neighbouring communities. The agricultural zones are authorized or sanctioned by the village *central* at the request of groups of local indigenous families seeking land to cultivate. Single communities may have only one such zone or 30 or more, depending on the size of the population. The agricultural zones are communal areas in which each family is granted customary ownership of a plot, typically about 50 ha containing swidden agriculture fields, fallows and forest areas. Ownership is based on use and the land can be passed to descendants but cannot usually be sold. The zones of influence are generally forest areas used by community members for subsistence (hunting, extraction) but also for the expansion of agriculture. Neither agricultural zones nor zones of influence have any formal or legal standing, though some families had received formal titles to their plots during previous rounds of agrarian reform.

Six *centrales* represent the Guarayos population in towns and small Guarayos communities scattered across the province. These organizations come together in general assemblies and elect leaders who form the core of COPNAG. In 1996 COPNAG presented a TCO demand for almost 2.2 million ha to the government covering most of the Guarayos province; the claim was reduced to 1.3 million ha after the government's spatial needs study (VAIPO, 1999). Through a rule referred to as 'immobilization', new third-party claims in the area are prohibited until titling is completed.

To demarcate the TCO, the *Instituto Nacional de Reforma Agraria* (National Institute of Agrarian Reform, INRA) evaluates competing claims through a review process and 'regularizes' property rights before issuing the land titles. Legitimate third-party claims to land within the TCO demand were made by landowners with long histories in the region and others who had previously purchased land and received title. After the settlement of competing

claims, state lands would be turned over to the TCO through collective titles held by COPNAG in the name of the Guarayos people. Even though the law mandates indigenous participation, COPNAG had limited control over the decisions made by government agencies.

In 1997, for example, as the process began, COPNAG filed a legal challenge to keep the Forest Superintendence from awarding timber concessions to industries that previously had exclusive access to the region's forests. The companies held contracts valid for 20 years (set to expire in 2010) and COPNAG argued that the 40-year concessions awarded under the new forestry law constituted *new* rights in 'immobilized' areas (Vallejos, 1998). Nevertheless, later that year the Forest Superintendence rejected COPNAG's position and determined that the industrial rights were preexisting. As a result, more than 500,000 ha of production forest, most of it overlapping the TCO demand, was granted as concessions to 11 timber industries.

INRA adopted a strategy that allowed rapid progress in titling but did not address the immediate land security problems faced by most Guarayos residents. Rather than focusing at the settlement scale and addressing customary properties delineated by agricultural zones, INRA instead grouped large expanses of territory into five 'polygons', independent of the pattern of indigenous land use. INRA concentrated on remote polygons with few inhabitants first, instead of attempting to secure indigenous landholdings where most indigenous people lived. The strategy allowed the agency to cover huge territories rapidly and avoid resolving competing claims in more densely populated areas. By the end of 2003, about 1 million ha from the first two polygons had been titled; by late 2006 an additional 18,000 ha had been titled in the third polygon (only 7 per cent of the polygon's area). These titled areas are mostly remote and in some cases form irregular archipelagos of titled patches. There has been little progress in the fourth and fifth polygons that surround the highway and main town, where most of the population is concentrated.

Once the TCO demand was accepted, COPNAG was given power and administrative responsibilities over the territory – roles for which it was not designed or prepared. Mechanisms for collective decision-making, clearly defined rights and responsibilities of leaders, as well as processes for oversight by constituents, were not sufficiently developed. Representation and consultation with constituents suffered because of the distance between remote communities and a leadership based in the provincial capital – a problem compounded by weak transportation and communications infrastructure. COPNAG had been created to pressure the government to recognize land claims, but with the TCO it suddenly became responsible for representing Guarayo interests to the government, allocating resources by supporting forest management requests of indigenous residents and certifying the authenticity of preexisting land claims by non-indigenous people.

The competing claims of non-indigenous residents were a thorny issue involving economically and politically powerful individuals, not all of whom had legitimate claims. Though the 'immobilization' of the territory was supposed to freeze land transactions while the agency sorted out claims, long

delays in the review process in the most contested areas (more than ten years, to date) and INRA's emphasis on titling uncontested lands allowed illicit land transactions to take place in the accessible lands that were highly prized by both indigenous people and outsiders. For example, COPNAG leaders were implicated in providing forged certification documents for landowners (López, 2004; Moreno, 2006) and charges surfaced that in 2001 there had been 44 fraudulent transactions involving private landowners, COPNAG leaders and INRA technicians (López, 2004).

The influx of economically powerful actors laying claim to large areas of land for ranching and other agro-industries had risen sharply and continued to be a source of conflict. Many had arrived to establish cattle ranches, but increasingly soybean production has become more important, requiring the transformation of extensive areas of forest. It is difficult to know the number of such properties. However, examining preliminary data from INRA, Cronkleton and Pacheco (2008b) estimate that these actors control some 20 per cent of the province.

The atmosphere of illegal transactions has also begun to undercut customary land allocation systems. For example, some families that had received individual title or other documents authorizing their occupation sold these rights to outsiders and moved further into the forest to establish new plots. In other cases, indigenous members of agricultural zones that were claimed by ranchers or non-indigenous farmers accepted payment to drop their claim to the land. The indigenous families apparently expected that large areas were going to be titled to the Guarayos people.

COPNAG has not been an effective territorial governance institution, but it is only fair to note that it faced difficult circumstances that would challenge the capacity of much more consolidated organizations. One of the problems is scale. Working at the territorial level limited the effectiveness of the TCO as a property rights institution because mechanisms for resource allocation customarily worked at the village level. Also, as an entity, the TCO is vague and incomplete, not completely contiguous, and home to a diverse ethnic mix with a significant non-indigenous population. More importantly, as has been noted with other TCOs whose property boundaries do not conform to political-administrative divisions (Stocks, 2005), the Guarayos TCO overlaps several municipal governments. These recognized political units have legal attributes, responsibilities and powers and are part of the national civic-administrative structure, independent of indigenous governance institutions.

In several ways the titling process itself inhibited the development of strong indigenous institutions and undermined the conception of the TCO as a cohesive entity. INRA's delays, and the decision to recognize timber concession rights over indigenous rights, undermined confidence that government institutions would defend indigenous interests. An impoverished population is more susceptible to influence and bribes that respond to their individual interests over the interest of the collective. Unprepared for its assigned tasks and under extreme pressure from external actors in a highly charged environment, the indigenous organization was unable to control the process, its members or its leaders.

The accusations of fraud and the influence of competing interests have continued to generate turmoil in COPNAG and the Guarayos political movement. In 2007 the organization split in two, the former leaders were expelled and a woman was elected president. The expelled leaders formed a parallel group they call the ‘authentic’ COPNAG, which has been recognized as the legitimate representative of the Guarayos TCO by Santa Cruz’s departmental government and the *Comité Cívico* of Santa Cruz – which also represents the interests of the industrial timber sector. The original organization is divided much along the contours of the national political conflict between the central government (in favour of the indigenous president, Evo Morales) and regional departmental governments (against Morales and demanding regional autonomy). Such internal conflict further complicates indigenous efforts to consolidate the territory.

Philippines: Ikalahan ancestral domain⁶

The first indigenous community in the Philippines to receive recognition of its forest rights were the Ikalahan (also known as the Kalanguya) people, who won formal rights to use, manage and exclude third parties from the Kalahan Forest Reserve in 1974 through a memorandum of agreement with the state forest department. Formally, the reserve was public land under the jurisdiction of the Department of Environment and Natural Resources, which assigned management and oversight to the Bureau of Forest Development. Prior to the agreement, the state held all formal rights to the land and forest, but the Ikalahan people used and managed the area according to their customary practices. This included the allocation of forest areas to individual families, who could then harvest forest products, use the land for swidden agriculture and transfer their plots through inheritance or in return for payment in cash or in kind (for ‘improvements’) to other members of the tribe. There were no restrictions on hunting or gathering (Dahal and Adhikari, 2008), and large areas were deforested (e.g. 50 per cent and 60 per cent in two of the seven communities) (Dizon et al, 2008).

The struggle of the Ikalahan people for the formal recognition of their rights began in the late 1960s in response to outside encroachment from land grabbers. In 1968, a few prominent politicians obtained title to about 200 ha of tribal lands and in 1970 the government was planning to occupy more than 6000ha and build a vacation resort called Marcos City. In 1972 the Ikalahan won a court ruling voiding the claims of these external actors but obtained no legal document securing their own rights.

Like the Guarayos people in Bolivia, the Ikalahan decided to form an organization to fight for formal recognition of their land claim. With the assistance of an American missionary, Pastor Delbert Rice, they formed the Kalahan Educational Foundation (KEF; it was originally set up to establish a high school, hence the name). In 1974, after two years of negotiations, KEF signed a memorandum of agreement that designated the forest as a community forest for 25 years (Dahal and Adhikari, 2008). It largely recognized customary

rights and practices, except for the right to transfer land among members of the tribe, and granted exclusion rights to KEF. It also established management guidelines that KEF was required to follow.

By the time the agreement expired 25 years later, in 1999, the Philippines government had passed the Indigenous People's Rights Act (Republic Act 8371), establishing the procedures by which tribal communities could obtain certificates of ancestral domain titles. This title formally recognized the rights of possession and ownership of indigenous cultural communities over ancestral domain areas to which they could prove historical possession (Dizon et al, 2008). Section 58 of the 1997 act states that indigenous communities shall be given the responsibility to maintain, develop, protect and conserve their ancestral lands with the full and effective assistance of government agencies.

KEF obtained a certificate of ancestral domain claim valid for five years as part of a community-based forest management agreement, pending full implementation of the Indigenous People's Rights Act. In 2006, it obtained its permanent certificate of ancestral domain title. The title recognizes Ikalahan rights to 14,730 ha. It confirms all of the tenure rights granted by the original agreement as well as the right to conduct internal land transfers and, perhaps most importantly, it is permanent. KEF is the formal representative of the tribe and the designated institution with decision-making power over land and forest management.

KEF has about 500 member households in seven communities (*barangays*, which are the smallest units of political administration). More than 90 per cent of the people living in the reserve are Ikalahan, and all Ikalahans are automatically KEF members. The adults in each *barangay* constitute the Barangay Assembly and are all voting members. Each *barangay* has elected local government officials (the *barangay* council), tribal elders (almost always men) and informal tribal leaders. According to Rice (2001), elders hold office by ascription and are recognized as effective at providing leadership and resolving disputes, but they do not represent the community or make decisions for the community. The most important institution is the Tongtongan. The Tongtongan functions like a tribal court, presided over by local elders, whereby the community comes together to discuss a conflict or problem; the elders make the final judgment, which is aimed at reconciliation (Rice, 1994). In effect, the Tongtongan, as an informal or customary institution, is even more important for decision-making than KEF.

KEF was formed by a group of elders and its first board of trustees was made up of one representative from each of the participating *barangays* plus an additional representative from the most populous community and one youth representative. A representative of all the *barangay* local government offices was allowed to attend the meetings but originally without voting rights. Today, of 15 voting members, three are women. The *barangays* each choose their representatives for two-year terms in general assembly meetings, which are held twice a year. Elders and older community leaders continue to dominate the board and younger, better-educated Ikalahan occupy the technical positions of the foundation. Rice (2001) believes that the elders have more effective

social skills that ‘keep the community members working together’; the elders also ensure that ‘social problems are fully recognized in the development programs’.

Before KEF and the recognition of tenure rights, the situation appears to have been characterized by open access. The elders and local government could influence the use of land based on existing customary rules and government regulations but had neither full control over its use nor the power to exclude others, including speculators, from entering and claiming portions. With the memorandum of agreement and now with title, KEF is charged with establishing and enforcing the rules and regulations for the reserve. Today, these include regulations regarding swidden farming, tree cutting, chainsaw registration, fishing, quarrying, hunting and land claims. KEF also addresses forest fires, illegal entry and the use of sanctuaries. Bans have been established for certain tree and non-timber forest product species. The rules also establish penalties for violations. KEF approves the allocation of all household parcels by issuing certificates of stewardship contracts signed by the farmer and the board of trustees. The board must also approve land transfers among tribal members. KEF’s agroforestry office provides permits for all tree cutting, which also has to be approved by the *barangay* captain, or government officer. Any clearing of new land also requires a permit from the agroforestry office.

The relationship between KEF, local governments and community members is largely harmonious. Dahal and Adhikari (2008) report that the relationship with *barangay* governments is based on trust and mutual cooperation, including shared revenue from timber permits. Community members also largely respect the rules, following the principle that all stakeholders are responsible for following and enforcing them. The rules and regulations were presented and discussed in each *barangay* before final approval by the board of trustees. There is also an incentive for catching violators: the person denouncing the violation has a right to half the funds from the fine. The regular general assembly meetings are open to all, and when important issues need to be discussed, attendance and participation are high (Dizon et al, 2008). A focus group analysis of power dynamics before and after the tenure change concluded that the farmers themselves, who had previously had less influence than other actors, were now highly influential, together with KEF, regarding forest and land management. In other words, the current arrangement is seen as giving community members greater voice.

The Tongtongan continues to be an important informal institution for problem solving and collective decision-making and works hand in hand with the KEF governance system. Honesty, equity and fairness are explicitly promoted. In one case, the chair of the board was implicated in illegal harvesting and transport of timber from the forest and he was penalized (Dahal and Adhikari, 2008). A third-party financial audit is conducted every year. Pastor Rice, who played an important role in building the ‘bonding social capital’ and encouraging fair internal management, serves as executive director of KEF and helps mediate relationships between the community and external actors, such as the government, donor agencies and NGOs. The situation of KEF, which

has been devolved substantial decision-making powers, is not typical of other community forests in the Philippines, however.

Ghana: Traditional lands and trees⁷

Though the state legally manages Ghana's natural resources 'for the benefit of the population', especially the landowning communities, important tenure reforms have occurred since the return to constitutional rule in 1992 and adoption of a forest and wildlife policy in 1994. The constitution and this policy, as well as related laws and acts, directly promote the sharing of benefits from forest products with forest-fringe communities. These include the distribution of stumpage fees, the negotiation of social responsibility agreements (SRAs) and benefits to farmers. The first two will be considered here.

The formula for the distribution of stumpage fees, established by the constitution, mandates 25 per cent to the stool (a family or clan represented by a chief or head of family), 20 per cent to the traditional authority (presumably the paramount chief) and 55 per cent to the local government. SRAs are negotiated between logging companies and communities to provide 'social facilities and amenities' in contracted logging areas. Though these changes provide new opportunities for communities to benefit from forest resources, they are fraught with problems, including the issue of representation, especially with regard to revenue distribution.

The political structures in the local arena in Ghana involve both modern and traditional authorities. Ghana has a decentralized local political administration. The most powerful political institution at the district level is the district assembly, which has deliberative, legislative and executive powers and is made up of both elected and appointed members. Typically, each community (village or town) may be represented by one or more elected persons, called assemblymen (sometimes including women). At the community level, the main political entity is the unit committee, which includes the assemblymen and other elected and government-appointed members, all from the community.

Land and resources, however, cannot be separated from the traditional system of landownership in Ghana and the institution of chieftaincy; both are preserved in the 1992 Constitution (Art. 267). Although the state has vested control and management rights for all natural resources in the president, the ownership of these resources remains in the hands of traditional authorities. To understand the linkage between traditional institutions and rights to forest benefits under the various reforms, it is important to understand the complexity of the traditional chieftaincy system and territorial jurisdictions.

The chieftaincy position is hereditary, based on membership of a royal family or clan belonging to a community that has collective ownership of a specific portion of land, called stool land. A traditional area is an area within which a paramount chief exercises jurisdiction. That is, traditional areas are not linked with state administrative boundaries but rather associated with a paramount chief. Each paramount chief presides over two ranks of subchiefs and the elders in a traditional area's council. The paramount chiefs in specific

administrative regions form the Regional House of Chiefs and five elected members from each regional house of chiefs in turn form the National House of Chiefs (Art. 271). Customarily, all the land in a traditional area is 'symbolically' under the paramount stool, but ownership is complex and subject to multiple claims, especially by the lower-level chiefs.

Chiefs are important and powerful leaders in Ghana because they have a certain legitimate claim of custodianship over community properties and rule over specific territories and domains. In short, the jurisdiction of chiefs, recognized in customary and often in statutory law, has permitted them to assume positions as community representatives since colonial times. Today, in most SRA negotiations with logging companies, chiefs represent communities and in almost all cases are the signatories. Marfo (2001) studied SRA negotiations in five communities and found that traditional leaders exerted substantial control over decision-making, and in some cases their opinions silenced the views of elected community leaders. Another study found that in five out of nine cases no entity representing community interests other than the chief was involved in the contract (Ayine, 2008). Further, in some cases, provision for marginal side-payments to chiefs and other community leaders were included in the agreement; in one case, US\$600 was to be paid monthly to a paramount chief. When other political leaders are present, they are often unable to challenge the chief's position regarding the content of 'community interest' (Marfo, 2004). An attempt to follow the SRAs of all 173 licensed timber operators in Ghana concluded that even though the legal framework provides an enabling environment for negotiation, the practice of negotiating and implementing these agreements to benefit communities leaves much to be desired (Ayine, 2008).

Forest revenue is supposed to be distributed to the stool and to the traditional authority. The law is ambiguous in its details, however, stating that funds should be directed 'to the stool through the traditional authority for the maintenance of the stool in keeping with its status' (Art. 267). There is no explicit requirement that the stool's 25 per cent be reinvested in the community. Nor is it clear whether local people should benefit from allocations to traditional leaders in their private capacity.

Opoku (2006) observed that 'chiefs tend to appropriate royalties for their personal or household use and have often claimed that this is the meaning of "maintenance of the stool in keeping with its status"'. They argue that only the royalties allocated to the local government belong to communities. Nevertheless, the constitution states that 'ownership and possession of land carry a social obligation to serve the larger community and in particular,...the managers of...stool...lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool... concerned and are accountable as fiduciaries in this regard' (Art. 37, s. 8). Also, as Opoku (2006) argues, since land is communal property, it follows that royalties belong to the community as a whole and not to chiefs. The 'status' of the stool can therefore refer only to the well-being of the community that it symbolizes; chiefs in customary law are custodians of the community interest.

The allocation of forest revenue is also contested based on multiple claims within the hierarchy of traditional authorities. Some subordinate stools complain that payment of royalties through the traditional authority enables paramount stools to appropriate part or all of these funds (Opoku, 2006). Marfo (2006) documented one such conflict between the chief of the Juaso stool lands and the Dwaben paramount chief. The former argued that he and his elders constituted the traditional authority over the Juaso stool land and thus should receive the Juaso stool revenue directly. For his part, the paramount chief argued that he owned all lands in the traditional area over which he exercised jurisdiction and should thus receive stool revenues through the traditional council's account.

Though cultural practices make it difficult to challenge paramount chiefs openly, similar complaints have been heard in private communications. Also in private communication, many chiefs have reported either that they have not received their revenue from the traditional council for some time or that the amount received may not reflect the actual amount paid. Thus, even if stool land chiefs use forest revenue for the collective interest of the communities they are supposed to represent, the traditional system may severely limit the downward flow of benefits.

In addition, by allocating 20 per cent of royalties directly to traditional authorities, the constitution further blurs the customary law distinction between ownership and political leadership. Customarily, lands belong to the stool and therefore every chief has jurisdiction over his own land. But the paramount chief, as head of the traditional council of chiefs, holds a political leadership position that does not confer ownership rights over land. Opoku (2006) concludes that the benefit-sharing arrangement condones state sponsorship of elite chieftaincy institutions in a way that gives them a stake in the system whereby timber companies exploit community resources.

The issue of community representation determines the extent to which the reforms promoting benefit sharing will actually affect the lives of ordinary people. There is increasing interest in Ghana in rethinking the community arena and building a governance culture that allows for the redefinition of community representation. Indeed, researchers have observed that community members may prefer other structures, aside from their chiefs, such as a community development committee or other elected committee, to represent them (Marfo, 2004). In other words, tenure reforms that grant rights to communities to share in benefits associated with timber present an opportunity but are effective only if representation and decision-making are accountable and can guarantee that benefits actually reach the intended recipients. Though the new policies work towards this goal, the lessons from SRAs and the distribution of forest revenue do not inspire much hope.

Role of authority in tenure reforms

The four cases demonstrate that the recognition of rights to land and forest resources is rarely straightforward, and the choice of institution representing

the collective affects the rights and access to resources in practice. Even though the method of recognition (Fitzpatrick, 2005) and the role of traditional or customary authorities vary somewhat across the cases, the choice of institution is the central site of struggle and contestation.

The politics of authority plays out in different ways. Competing interest groups or institutions can manipulate the process of implementing reforms, leading to a loss of rights for intended beneficiaries. In the Nicaraguan case, this involves manipulating the definition of the territories and the choice of territorial authorities. In Bolivia, the territorial institution found its authority challenged when decision-making over what constituted a legitimate prior claim over 'original' lands was decided by the state in favour of agrarian and timber elites, culminating in the intentional corruption of indigenous leaders as part of rampant land grabbing. Ghana's traditional authorities tend to usurp benefits for their personal use. Only in the Philippines case did authority politics create legitimate power – an effective authority that was legitimate to both the state and the community. All of the cases demonstrate the central role of representation and downwards accountability in the choice of authority.

This section begins with a discussion of the domain of powers and choice of institution in each case, based on Fay (2008) and Fitzpatrick (2005), and the relation of traditional authority to the institutions recognized. It closes with a discussion of authority relations as a site of struggle.

Domain of powers and choice of authority

In each case study, the institution selected to represent the collective is granted an important domain of powers that shapes resource rights on the ground. In Guarayos, an indigenous people's organization was granted the power to support logging petitions and to certify the validity of land claims. In Nicaragua, leaders at the territory level approve logging permits and have access to tax income designated for the territory. In the Philippines, an institution headed by elected representatives grants land and forest access permits and establishes management norms defining resource access. In Ghana, traditional chiefs receive forestry funds and negotiate agreements for social amenities, both of which should benefit the community.

Ghana is the only case that uses an agency approach to representing the collective: the chief is the designated representative of the community, or stool. Fitzpatrick (2005) writes that the main advantage is simplicity but warns that representatives may not act in the interest of the group. This is the fundamental issue regarding chiefs in Ghana, who appear to be battling among themselves for access to timber funds and excluding other community representatives in the negotiation of agreements on behalf of the community. Currently, traditional authorities appear to present substantial obstacles for communities to gain benefits from the opportunities presented by new forest rights.

The Bolivia and Philippines cases both use the group incorporation approach but with different results.⁸ The advantage of incorporation is that a clear, corporate structure with written bylaws and regular elections helps

‘prevent internal abuses of power’ (Fitzpatrick, 2005). In both cases, the organizations began more as social movements aimed at fighting for formal recognition of their communities’ land and then became administrators of the territory. The Bolivian institution was less successful in making this transition, for several reasons: the Guarayos territory faces multiple and significant external pressures, the land area is almost 2 million ha and the population the organization represents is highly dispersed. In contrast, the Philippine institution manages less than 15,000ha over seven communities and a contiguous land area without competing claims. A foreign pastor with significant moral authority facilitated effective organization and communication over many years. It is important to note, however, as Fitzpatrick points out, that this structure does allow for legal recourse in the case of abuse of power, and such recourse has been taken in the Guarayos case.

The Nicaraguan case falls somewhere between these two approaches. At the community level, the law recognizes the existing communal authorities, who are periodically elected. At the territory level, the authority is supposed to be elected by the communal authorities based on an internally identified method and structure. As in the agency method, these representatives then act on behalf of the community without the formation of a new corporate structure. Unlike most agents, however, they are not appointed but elected, at least in theory. Both the communal and the territorial entities do become formal, legal institutions, hence presumably with legal recourse mechanisms – similar to the group incorporation approach, though they do not, at present, have written bylaws.

In all the cases, the institutions chosen to represent communities are based, to some degree, on traditional authorities, recognizing or taking into account existing customary arrangements and/or promoting the creation of new institutional structures based on the demands of those receiving new tenure rights. Only in the case of Ghana are these traditional leaders non-elected and hereditary. In the Philippines, tribal elders are very important in Ikalahan communities, but they hold formal office only if they are elected as community representatives, either to the *barangay* (local government) or to the institution, which in the past has included many elders. In Nicaragua’s Miskitu communities, leaders are elected in annual community assemblies; a group of elders may be recognized as having certain moral authority or given a role in oversight of younger elected leaders. In Bolivia, the leaders of the institution were elected by the Guarayos organizations and communities that came together to fight for land. Though these traditional institutions may, at times, be autocratic and self-interested, abuse of power is clearly not limited to traditional authorities, and such authorities are an integral part of the most successful authority studied, the Kalahan Educational Foundation, in the Philippines.

As might be expected, the crucial variable is not whether an authority is traditional, but whether it is accountable. The Kalahan Educational Foundation was built by tribal elders with substantial support and influence from an outsider who pushed leaders to work for the benefit of all the Ikalahan people

and helped establish effective accountability mechanisms. In this case the traditional Tongtongan meetings – where the entire community comes together before the tribal elders to discuss and resolve problems – are seen as playing an important role as well. In Nicaragua, conflict has arisen precisely because some communities have come together to build multicommunity territories and governance organizations on their own terms, with significant efforts, informed by past experiences, at improving accountability and representation. But then they are faced with the imposition of other territories and authorities they did not choose and who do not represent them. In Ghana, the problem resides precisely in the fact that chiefs and clan leaders are not elected, are not necessarily accountable to communities and cannot be removed from their posts.

Authority relations as site of struggle

The site of struggle through which authority relations are contested, negotiated or manipulated, and from which legitimate power may emerge, is defined by three sets of relations: between the state and the community, between the state and the institution representing the community, and between this institution and the community it is supposed to represent. Exploring these relationships helps tease out the nature of conflict (or resolution) in each of the cases. The central site of contestation in the relation between the state and the community is the *choice* of institution selected to represent the community and the *nature* of that institution, which then sets the stage for the other two sets of relationships. First, the institution chosen by the state may not be the same institution that the community has chosen. Second, this institution may not implement its domain of powers through accountable relations with the community.

In Nicaragua, communities have come together as territories and elected their own territorial authorities – only to have these ignored by government officials in the autonomous regions. Indigenous party leaders have sought to impose their own configuration of territories and virtually assign their chosen ‘leaders’ as territorial coordinators. In a sense, these political officials are seeking to impose an agency approach – their agent – on the recognition of local authority. Hence, the state and community are each putting forward its own authority and seeking to win legitimacy with the other. For its part, the state seeks to legitimate its chosen institution through controlled elections, political pressure, party politics and patron–client relations; communities have used multiple mechanisms, such as seeking donor funds to demarcate their own territories, electing their own territorial authorities and using their personal and political connections to get them registered.

The state is the more powerful player, however. Its imposed institutions control access to forest resources for commercial purposes and receive funds destined for the territory. Though to date the smaller-scale territorial authorities elected by the communities are still (at least in some cases) being asked permission for resource access, this structure is far from building the self-determination that many believe should be at the root of regional autonomy.

Given the proposals on the table, it is unclear how the domain of powers of these imposed territorial coordinators, which has already shifted powers away from those proposed by communities themselves, may expand in the future.

Though the history is different, the current situation in Guarayos, Bolivia, is similar to that of indigenous communities in Nicaragua, with the state – in this case the departmental government of Santa Cruz – and indigenous communities each having recognized a different institution to represent the territory. When indigenous communities initially elected an institution to struggle for the recognition of their land rights, it was a legitimate and effective social movement organization. At the same time, state authorities failed to defend indigenous territorial rights over the renewal of logging concessions, moved slowly on titling and avoided the most vulnerable areas. This led – at least in some places – to an open-access dynamic and the collusion of national-level, and some local, leaders in the sale of land rights. Severe pressure for land (with a perception that indigenous titling would not hold), a new role for which it was not prepared and ineffective mechanisms for downwards accountability undermined the legitimacy of that group of leaders.

In response, Guarayos indigenous communities, using the powers granted to them through the bylaws of their incorporated organization, ousted the discredited leaders and elected a new set of representatives. They have sought and won legitimacy through grassroots support and the investigation of the former leaders for corruption. The contest for power has continued, however: the ousted leaders formed a parallel institution that was immediately recognized by departmental officials – aligned with industrial elites – as legitimate.

The politics of authority in Ghana is somewhat different. Though the agency approach and the choice of institution representing communities are contested, there is also considerable debate regarding the nature and domain of the institution that has been recognized – in this case the traditional authority – and, therefore, regarding the relationship between the community and this institution. Traditional institutions in Ghana have been recognized as the main recipient of stumpage fees on behalf of communities and have assumed the role of community representative with logging companies in negotiating agreements for social amenities. Their presence in negotiations appears, in general, to silence other community representatives, including those who were elected by the community. Evidence so far regarding timber fees suggests that few of these benefits are likely to reach communities.

Some chiefs at least do not believe that they have any obligation to the communities they represent, and the vague wording of the legal statutes gives cover. At the same time, the constitution clearly establishes that chiefs are fiduciaries with a social obligation to the communities for whom they hold land. The state has explicitly granted a portion of funds to customary leaders and considered them legitimate community representatives but failed to hold them responsible for investing timber revenues in the community. For their part, different levels of leaders within the traditional structure also claim the right to be recognized as legitimate recipients of fees – but not, apparently, to be more accountable community representatives.

Finally, in the Philippines, the state and community have both agreed to recognize the same institution and hence its legitimate power as the representative of the Ikalahan people. The Kalahan Educational Foundation has been successful in part because it was built on a foundation of honesty and equity, with effective mechanisms for participation and accountability. Moreover, the ethnic community is homogeneous and an external participant has been an informal but influential moral authority, negotiating both upwards and downwards accountability and acting as a cultural broker. Dahal and Adhikari (2008) credit the president of the institution, Pastor Rice, with catalysing high 'bonding social capital' (for internal cooperation) and promoting fair internal management practices; they believe that his relationships beyond the community also helped support two other types of social capital – for bridging social differences and divisions and linking to people in power.

The Kalahan Educational Foundation maintains respectful coordination with the local elected governments, which are seen mainly as providing government services and hence addressing a different and non-competing domain of power and decision-making. Traditional elders are elected to positions alongside younger and sometimes better-educated people. Both the foundation and the elected local governments turn to the traditional *Tongtongan* for conflict resolution when needed. The integration of a new entity with traditional institutions and actors allows for an effective balance between formal statutory and customary practices and a high level of local legitimacy. Farmers believe that the recognition of their tenure rights has given them greater voice in resource decision-making both as resource users and as members of the foundation.

Conclusion

This chapter has demonstrated that the institution selected to represent the collective in forest tenure reforms plays a significant role in the distribution of forest rights and benefits. The four cases show that simply choosing the correct, downwardly accountable institution may not often be an option; in fact, in none of the cases did such an entity exist at the scale required. Rather, authority relations constitute sites of negotiation and conflict, and the politics of authority may play out in different ways.

Constructing legitimate power, whether based on customary or new institutions, does not occur in isolation but is based on the interactions among the state (in its multiple manifestations), the community and the institution recognized by each of these as the community representative. In two cases, the state and community recognized different institutions as legitimate. In three, the entities selected by the state were not accountable to the communities they were supposed to represent. The only case in which a single authority emerged that was legitimate both to the state and to the community involved an embedded external broker.

That finding should suggest not that external actors are a necessary condition for the construction of authority, but rather that effective representation

requires transparent rules of the game, including broad agreement on how representatives are chosen, the creation of accountability mechanisms and the specific domain of powers of each authority. Communities and their organizations will need allies, both in and outside state institutions, when the state is, or appears to be, complicit in backtracking on the rights that have been won through tenure reforms. Greater recognition of the need to address these concerns and explicit emphasis on their effective resolution should lead to more positive outcomes in the implementation of new community rights.

Notes

1. For the purpose of clarification, we have tried to avoid using ‘authority’ to refer to the institution in power (or domain of power), but because of the widespread use of ‘traditional authority’ and ‘customary authority’, it is difficult to avoid without creating further confusion. If authority denotes legitimacy, then the term itself assumes legitimacy where this may not exist.
2. See also Larson and Mendoza-Lewis (2009).
3. Abbreviated from the Law for the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers.
4. The autonomous regions are referred to by residents as the Caribbean Coast of Nicaragua, though only part of the region is actually coastal. Hence the term is capitalized to refer to the area as a whole.
5. See also Larson et al (2008), Pacheco et al (2008b) and Cronkleton and Pacheco (2008b).
6. Special thanks go to Josefina Dizon, Tamano Bugtong and Mona Pindog for helping clarify this section.
7. See Marfo (2009).
8. The Bolivian state allows organizations like COPNAG to write their own bylaws based on *usos y costumbres*, or customary practices; that is, it does not impose or require any specific internal structure.